

# Criminal history screening under the Disability Services Act 2006: who is a disqualified person?

Under the *Disability Services Act 2006*, people working or volunteering in places where the Department of Communities, Disability Services and Seniors funds or provides disability services or working or volunteering at an NDIS non-government service provider at a service outlet must undergo a criminal history screening process.

This process provides an assessment of a person's criminal history relative to their suitability to work with people with a disability. Upon completion of a criminal history screening process, the applicant is issued with a prescribed notice, which is also known as a Yellow Card.

It is an offence for certain people to apply for a Yellow Card. These people are called disqualified persons. It is also an offence for a disqualified person to apply for, start or continue engagement in a disability service outlet.

## Disqualifying offences

The table on the following pages provides a list of offences. Where a person has been convicted of any of these offences (subject to the qualifications listed), they are a disqualified person.

## Disqualifying court orders and obligations

Where a person is subject to any of the following obligations or orders, they are a disqualified person:

- Offender reporting obligations under the *Child Protection (Offender Reporting) Act 2004*
- Offender prohibition orders under the *Child Protection (Offender Prohibition Order) Act 2008*
- Disqualification orders under the *Disability Services Act 2006*
- Disqualification orders under the *Child Protection (Offender Prohibition Order) Act 2008*
- Sexual offender orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003*.

## Eligibility declarations

While it is an offence for disqualified persons to apply for a Yellow Card or to work in a disability service outlet, in some circumstances a disqualified person may apply for an **eligibility declaration** from the Department of Communities, Disability Services and Seniors. An eligibility declaration, when granted, allows a disqualified person to be considered eligible for a Yellow Card.

## Relationship with the Blue Card system

The Blue Card system is administered by Blue Card Services and has the same disqualification framework as the Yellow Card system.

This means that a disqualified person under the *Disability Services Act 2006* is also a disqualified person under the *Working with Children (Risk Management and Screening) Act 2000* and it is also an offence for a disqualified person to apply for a Blue Card.

## Current disqualifying offences

Where a person has been convicted of any of the offences below (subject to qualification), they are a disqualified person.

<b>Classification of Computer Games and Images Act 1995</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
23	Demonstration of an objectionable computer game before a minor	
26(3)	Possession of objectionable computer game	
27(3) and (4)	Making objectionable computer game	
28	Obtaining minor for objectionable computer game	
<b>Classification of Films Act 1991</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
41(3)	Possession of objectionable film	
42(3) and (4)	Making objectionable film	
43	Procurement of minor for objectionable film	
<b>Classification of Publications Act 1991</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
12	Sale etc. of prohibited publication or child abuse photograph	only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c)
13	Possession of prohibited publication	only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c)
14	Possession of child abuse publication or child abuse photograph	
15	Exhibition or display of prohibited publication or child abuse photograph	only if an offender was or could have been liable as mentioned in section 15, penalty, paragraph (c)
16	Leaving prohibited publication or child abuse photograph in or on public place	only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c)
17(1)	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c)
17(2)	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(2), penalty, paragraph (c)
17(3) and (4)	Producing prohibited publication	
18	Procurement of minor for RC publication or child abuse photograph	
20	Leaving prohibited publication or child abuse photograph in or on private premises	only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c)

<b>Criminal Code (Qld)</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
210	Indecent treatment of children under 16	
211	Bestiality	
213	Owner etc. permitting abuse of children on premises	
215	Carnal knowledge with or of children under 16	
216	Abuse of persons with an impairment of the mind	
217	Procuring young person etc. for carnal knowledge	
218	Procuring sexual acts by coercion etc.	if the offence was committed against a child
218A	Using internet etc. to procure children under 16	
218B	Grooming children under 16	
219	Taking child for immoral purposes	
221	Conspiracy to defile	if the offence was committed against a child
222	Incest	if the offence was committed against a child
228	Obscene publications and exhibitions	only if an offender was or could have been liable as mentioned in section 228(2) or (3)
228A	Involving child in making child exploitation material	
228B	Making child exploitation material	
228C	Distributing child exploitation material	
228D	Possessing child exploitation material	
228DA	Administering child exploitation material website	
228DB	Encouraging use of child exploitation material website	
228DC	Distributing information about avoiding detection	
229B	Maintaining a sexual relationship with a child	
229G	Procuring prostitution	only if an offender was or could have been liable as mentioned in section 229G(2)
229H	Knowingly participating in provision of prostitution	only if an offender was or could have been liable as mentioned in section 229H(2)
229I	Persons found in places reasonably suspected of being used for prostitution etc.	only if an offender was or could have been liable as mentioned in section 229I(2)
229L	Permitting young person etc. to be at place used for prostitution	
300	Unlawful homicide	only if the unlawful killing is murder under section 302
306	Attempt to murder	
309	Conspiring to murder	
315A	Choking, suffocation or strangulation in a domestic setting	
320A	Torture	if the offence was committed against a child
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	

352	Sexual assaults	if the offence was committed against a child
354	Kidnapping	if the offence was committed against a child and the context in which the offence was committed was not familial
354A	Kidnapping for ransom	if the offence was committed against a child
363	Child-stealing	if the context in which the offence was committed was not familial
363A	Abduction of child under 16	if the context in which the offence was committed was not familial
364	Cruelty to children under 16	
<b>Criminal Code (Cwlth)</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
270.5	Servitude offences	if the offence was committed against a child
270.7	Deceptive recruiting for sexual services	only if an offender was or could have been liable as mentioned in section 270.8
271.7	Offence of trafficking in children	
271.7	Offence of domestic trafficking in children	
272.8	Sexual intercourse with child outside Australia	
272.9	Sexual activity (other than sexual intercourse) with child outside Australia	
272.10	Aggravated offence – child with mental impairment or under care, supervision or authority of defendant	
272.11	Persistent sexual abuse of child outside Australia	
272.12	Sexual intercourse with young person outside Australia – defendant in position of trust or authority	
272.13	Sexual activity (other than sexual intercourse) with young person outside Australia – defendant in position of trust or authority	
272.14	Procuring child to engage in sexual activity outside Australia	
272.15	“Grooming” child to engage in sexual activity outside Australia	
272.18	Benefiting from offence against this Division	
272.19	Encouraging offence against this Division	
272.20	Preparing for or planning offence against this Division	
273.5	Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia	
273.6	Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia	
273.7	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people	
471.16	Using a postal or similar service for child pornography material	
471.17	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service	
471.19	Using a postal or similar service for child abuse material	

471.20	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a postal or similar service	
471.22	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people	
471.24	Using a postal or similar service to procure persons under 16	
471.25	Using a postal or similar service to “groom” persons under 16	
471.26	Using a postal or similar service to send indecent material to person under 16	
474.19	Using a carriage service for child pornography material	
474.20	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service	
474.22	Using a carriage service for child abuse material	
474.23	Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service	
474.24A	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people	
474.25A	Using a carriage service for sexual activity with person under 16 years of age	
474.25B	Aggravated offence – child with mental impairment or under care, supervision or authority of defendant	
474.26	Using a carriage service to procure persons under 16 years of age	
474.27	Using a carriage service to “groom” persons under 16 years of age	
474.27A	Using a carriage service to transmit indecent communication to person under 16 years of age	
<b>Customs Act 1901 (Cwlth)</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
233BAB	Special offence relating to tier 2 goods	if the offence involved child pornography or child abuse material

## Repealed or expired disqualifying offences

Whilst these offence provisions no longer exist or have been updated in legislation, where a person has been convicted of any of these offences (subject to qualification), they are a disqualified person.

<b>Criminal Code (Qld)</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
208	Unlawful sodomy	as the provision was in force from time to time before its repeal by the <i>Health and Other Legislative Amendment Act 2016</i> for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind.
212	Defilement of Girls under Twelve	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
218A	Using internet etc. to procure children under 16	as the provision was in force from time to time before its repeal by the <i>Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i> only if, at the time of the offence, the person in relation to whom the offence was committed was a child
223	Incest by adult female	as the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i> only if, at the time of the offence, the person in relation to whom the offence was committed was a child
344	Aggravated assaults	as the provision was in force from 20 December 1946 to 30 June 1997 if— (a) the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A; and (b) at the time of the offence, the person in relation to whom the offence was committed was a child.
<b>Crimes Act 1914 (Cwlth)</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
50BA	Sexual intercourse with child under 16	as the provision was in force from time to time before its repeal by the <i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i> (Cwlth)

50BB	Inducing child under 16 to engage in sexual intercourse	as the provision was in force from time to time before it is repealed by the <i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i> (Cwlth)
50BC	Sexual conduct involving child under 16	as the provision was in force from time to time before it is repealed by the <i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i> (Cwlth)
50BD	Inducing child under 16 to be involved in sexual conduct	as the provision was in force from time to time before it is repealed by the <i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i> (Cwlth)
50DA	Benefiting from offence against this Part	as the provision was in force from time to time before it is repealed by the <i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i> (Cwlth)
50DB	Encouraging offence against this Part	as the provision was in force from time to time before it is repealed by the <i>Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010</i> (Cwlth)
<b>Criminal Code (Cwlth)</b>		
<b>Section</b>	<b>Relevant heading</b>	<b>Qualification</b>
270.6	Sexual servitude offences	only if an offender was or could have been liable as mentioned in section 270.8, as the provisions were in force from time to time before their repeal by the <i>Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013</i> (Cwlth)