Classification of offences

# Categorised offences and conditions

Table 1 – Categorised offences

|  |  |  |
| --- | --- | --- |
| Offence classification | Conditions  | Included offences (not limited to) |
| **Disqualified person**(results in a permanent exclusion with no right of appeal, except on grounds of mistaken identity) | Where there is a conviction for a Class 1 offence committed as an adult (at least 18 years old) | * Murder and attempted murder
* Serious assault against a child or vulnerable person
* Sexual assault of a child or vulnerable person including incest
* Child pornography-related offences
* Abduction or kidnapping offences against a child or vulnerable person involving a sexual or abusive element
* Bestiality

(See Schedule 1 **–** Class1 offences) |
| **Presumptively disqualified person**(results in an exclusion unless exceptional circumstances are identified) | Where there is a conviction for a Class 2 offence, or specific Class 3 offences\* as an adult, or a pending charge for a Class 1 or Class 2 offence as an adult (at least 18 years old)* \*Class 3 offence convictions as an adult where there is reasonably believed to have been an indecent act performed in the course of committing the offence, and the offence occurred in the presence of a child or vulnerable person.
 | * Manslaughter
* Assault and sexual offences not captured as disqualifying offences
* Dangerous or negligent acts against a person under care
* Abduction or kidnapping offences not captured as disqualifying offences
* Animal cruelty offences not captured as disqualifying offences
* Drug trafficking offences
* Fraud and deception offences against a child or vulnerable person
* National security offences
* Pending charges for disqualifying offences

(See Schedule 1 – Class 1 offences and Schedule 2 – Class 2 offences) |
| **No presumption**(certain Class 3 offences may trigger a risk assessment) | All other offences not included in the categories of Disqualified Person or Presumptively Disqualified Person |  |

# Definitions relating to offences

Table 2 – Definitions relating to offences

|  |  |
| --- | --- |
| Term | Definition |
| Conviction | Refers to a court:* making a formal finding of guilt in relation to the offence
* convicting the person of the offence, if there has been no formal finding of guilt before conviction
* accepting a plea of guilty from the person in relation to the offence
* acquitting the person following a finding under The Criminal Code section 27 that the person is not guilty of the offence on account of unsoundness of mind or an acquittal following an equivalent finding under a law of another jurisdiction.
 |
| Spent conviction | A conviction where the person concerned is permitted not to disclose the fact that they were convicted or found guilty of the offence. Under the NDIS Worker Screening Act 2020 a spent conviction is also regarded as a conviction. |
| Pending charge | A current charge for a criminal offence that has not yet been finalised, whether the person is being dealt with as an adult or a child. |
| Non-conviction charge | A charge for an offence that has been disposed of by a court otherwise than by way of a conviction. Examples of a non-conviction charge include:* where a person is found not guilty of a charge for an offence
* where a charge against a person is withdrawn or a prosecution is discontinued
* where a conviction is overturned or set aside on appeal.
 |

# Full schedule of offences: Class 1

## Schedule 1 – Class 1 offence schedule

Table 3 – Schedule 1 – Class 1 offence schedule: *The Criminal Code*

|  |  |  |
| --- | --- | --- |
| Provision | Description of offence | Condition |
| Section 181 | Carnal knowledge of animal |  |
| Section 186 | Occupier or owner allowing young person to be on premises for unlawful carnal knowledge |  |
| Section 187 | Facilitating sexual offence against child outside Western Australia |  |
| Section 191 | Procuring person to be prostitute | The victim is a child or a vulnerable person |
| Section 192 | Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug | The victim is a child or a vulnerable person |
| Section 204A | Showing offensive material to child under 16 | The offensive material is child exploitation material as defined in The Criminal Code section 217AThe offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 204B | Using electronic communication to procure, or expose to indecent matter, child under 16 | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 217 | Involving child in child exploitation | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 218 | Producing child exploitation material | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 219 | Distributing child exploitation material | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 220 | Possession of child exploitation material | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 279 | Murder |  |
| Section 283 | Attempt to unlawfully kill |  |
| Section 284(3)(c) | Culpable driving (not of a motor vehicle) causing death | The offence is committed with intent to cause death |
| Section 284(3)(d) | Culpable driving (not of a motor vehicle) causing grievous bodily harm | The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person |
| Section 293 | Stupefying in order to commit indictable offence | The victim is a child or a vulnerable person |
| Section 294 | Act intended to cause grievous bodily harm or prevent arrest | The victim is a child or a vulnerable person |
| Section 305 | Setting dangerous thing | The intended victim is a child or a vulnerable person |
| Section 306(2) | Female genital mutilation | The victim is a child or a vulnerable person |
| Section 306(4)\* | Female genital mutilation — taking or arranging for a child to be taken from the State |  |
| Section 317A(b) | Assault with intent to do grievous bodily harm | The victim is a child or a vulnerable person |
| Section 320 | Sexual offences against child under 13 |  |
| Section 321 | Sexual offences against child of or over 13 and under 16 | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 321A | Persistent sexual conduct with child under 16 | The offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 322 | Sexual offences against child of or over 16 by person in authority |  |
| Section 323 | Indecent assault | The victim is a child or a vulnerable personThe offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 324 | Aggravated indecent assault | The victim is a child or a vulnerable personThe offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 325 | Sexual penetration without consent | The victim is a child or a vulnerable personThe offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 326 | Aggravated sexual penetration without consent | The victim is a child or a vulnerable personThe offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 327 | Sexual coercion | The victim is a child or a vulnerable person |
| Section 328 | Aggravated sexual coercion | The victim is a child or a vulnerable person |
| Section 329(2) | Sexual penetration of a child who the offender knows to be his or her lineal relative or de facto child |  |
| Section 329(3) | Procuring, inciting or encouraging a child who the offender knows is his or her lineal relative or a de facto child to engage in sexual behaviour |  |
| Section 329(4) | Indecently dealing with a child who the offender knows is his or her lineal relative or a de facto child |  |
| Section 329(5) | Procuring, inciting or encouraging a child who the offender knows is his or her lineal relative or a de facto child to do an indecent act |  |
| Section 329(6) | Indecently recording a child who the offender knows is his or her lineal relative or a de facto child |  |
| Section 329(7) | Sexually penetrating a person who the offender knows is his or her lineal relative | The victim is a vulnerable person |
| Section 330 | Sexual offences against incapable person |  |
| Section 331B | Sexual servitude | The victim is a child or a vulnerable person |
| Section 331C | Conducting business involving sexual servitude | The victim is a child or a vulnerable person |
| Section 331D | Deceptive recruiting for commercial sexual service | The victim is a child or a vulnerable person |
| Section 332 | Kidnapping | The victim is a child or a vulnerable person, other than where the victim is a child and the offender is a family member of the child |
| Section 343 | Child stealing | The offence is committed by a person other than a family member of the child |
| Section 562 | Accessory after the fact to an indictable offence | The principal offence is the offence of murder |

Table 4 – Schedule 1 – Class 1 offence schedule: *Children and Community Services Act 2004*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 192 | Employing a child, or permitting a child to be employed, to perform in an indecent, obscene or pornographic manner |  |

Table 5 – Schedule 1 – Class 1 offence schedule: *Classification (Publications, Films and Computer Games) Enforcement Act 1996*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 59(1) | Possessing or copying an indecent or obscene article with intent to sell or supply, or selling or supplying, or offering to sell or supply, an indecent or obscene article | The article is child exploitation material as defined in The Criminal Code section 217A |
| Section 59(3) or(4) | Displaying, exhibiting or demonstrating an indecent or obscene article in specified circumstances | The article is child exploitation material as defined in The Criminal Code section 217A |
| Section 59(5) | Possessing or copying an indecent or obscene article | The article is child exploitation material as defined in The Criminal Code section 217AThe offence does not fall within the ambit of section 6(4) (see Endnote) |
| Section 101 | Using a computer service to transmit, obtain, demonstrate, advertise or request transmission of objectionable material | The article is child exploitation material as defined in The Criminal Code section 217A |

Table 6 – Schedule 1 – Class 1 offence schedule: *Prostitution Act 2000*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 16 | Causing, permitting or seeking to induce a child to act as a prostitute |  |
| Section 17 | Obtaining payment for prostitution by a child |  |
| Section 18 | Agreement for prostitution of a child |  |

Table 7 – Schedule 1 – Class 1 offence schedule: *Road Traffic Act 1974*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 59 | Dangerous driving causing death | The offence is committed with intent to cause death |
| Section 59 | Dangerous driving causing grievous bodily harm | The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person |

Table 8 – Schedule 1 Class 1 offence schedule: *Western Australian Marine Act 1982*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 75B(1) | Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug | The offence is committed with intent to cause death |
| Section 75B(2) | Dangerous navigation of vessel occasioning death | The offence is committed with intent to cause death |
| Section 75BA(1) | Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug | The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person |
| Section. 75BA(2) | Dangerous navigation of vessel occasioning grievous bodily harm | The offence is committed with intent to cause grievous bodily harm to a child or a vulnerable person |

# Full schedule of offences: Class 2

## Schedule 2 – Class 2 offence schedule

Table 9 – Schedule 2 – Class 2 offence schedule: *The Criminal Code*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 192 | Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug | The victim is a person other than a child or a vulnerable person |
| Section 204A | Showing offensive material to child under 16 | The offensive material is child exploitation material as defined in The Criminal Code section 217AThe offence falls within the ambit of section 6(4) (see Endnote) |
| Section 204B | Using electronic communication to procure, or expose to indecent matter, child under 16 | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 217 | Involving child in child exploitation | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 218 | Producing child exploitation material | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 219 | Distributing child exploitation material | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 220 | Possession of child exploitation material | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 221BD | Distribution of intimate image | The image is of a child or a vulnerable person |
| Section 262 | Failing to provide necessaries of life in breach of duty | The victim is a child or a vulnerable person, the offender is involved in the provision of care, support or services to the child or vulnerable person, and the care, support or services relate to the vulnerability of the child or the vulnerable person but are not care, support or services provided by a member of the family of the child or the vulnerable person as part of a normal familial care relationship |
| Section 263 | Duty of head of family |  |
| Section 280 | Manslaughter |  |
| Section 281 | Unlawful assault causing death |  |
| Section 284(3)(c) | Culpable driving (not of motor vehicle) causing death | The offence causes death but without intent to cause death |
| Section 284 (3)(d) | Culpable driving (not of a motor vehicle) causing grievous bodily harm | The offence causes grievous bodily harm but without intent to cause harm to a child or a vulnerable person |
| Section 288 | Procuring, counselling or aiding another to commit suicide |  |
| Section 290 | Preventing birth of live child |  |
| Section 292 | Disabling in order to commit indictable offence |  |
| Section 293 | Stupefying in order to commit indictable offence | The victim is a person other than a child or a vulnerable person |
| Section 294 | Act intended to cause grievous bodily harm or prevent arrest | The victim is a person other than a child or a vulnerable person |
| Section 297 | Grievous bodily harm |  |
| Section 298 | Suffocation and strangulation |  |
| Section 300 | Persistent family violence | One or more of the prescribed offences applying under The Criminal Code section 299 are offences listed in Schedule 1 or of this Schedule and the victim is a child or a vulnerable person |
| Section 301 | Wounding and similar acts |  |
| Section 305 | Setting dangerous thing | The intended victim is a person other than a child or a vulnerable person |
| Section 306(2) | Female genital mutilation | The victim is a person other than a child or a vulnerable person |
| Section 317A(b) | Assault with intent to do grievous bodily harm | The victim is a person other than a child or a vulnerable person |
| Section 321 | Sexual offences against child of or over 13 and under 16 | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 321A | Persistent sexual conduct with child under 16 | The offence falls within the ambit of section 6(4) (see Endnote) |
| Section 323 | Indecent assault | The victim is a person other than a child or a vulnerable personorThe offence falls within the ambit of section 6(4) (see Endnote) |
| Section 324 | Aggravated indecent assault | The victim is a person other than a child or a vulnerable personorThe offence falls within the ambit of section 6(4) (see Endnote) |
| Section 325 | Sexual penetration without consent | The victim is a person other than a child or a vulnerable personorThe offence falls within the ambit of section 6(4) (see Endnote) |
| Section 326 | Aggravated sexual penetration without consent | The victim is a person other than a child or a vulnerable personorThe offence falls within the ambit of section 6(4) (see Endnote) |
| Section 327 | Sexual coercion | The victim is a person other than a child or a vulnerable person |
| Section 328 | Aggravated sexual coercion | The victim is a person other than a child or a vulnerable person |
| Section 329(7) | Sexually penetrating a person who the offender knows is his or her lineal relative | The victim is a person other than a vulnerable person |
| Section 329(8) | Consenting to be penetrated by a person who the offender knows to be his or her lineal relative |  |
| Section 331B | Sexual servitude | The victim is a person other than a child or a vulnerable person |
| Section 331C | Conducting business involving sexual servitude | The victim is a person other than a child or a vulnerable person |
| Section 331D | Deceptive recruiting for commercial sexual service | The victim is a person other than a child or a vulnerable person |
| Section 332 | Kidnapping | The victim is a person other than a child or a vulnerable personorThe victim is a child and the offender is a family member of the child |
| Section 343 | Child stealing | The offence is committed by a family member of the child |
| Section 380 | Concealing a will | A beneficiary of the testamentary instrument is a child or a vulnerable person |
| Section 381 | Concealing a document that is evidence of title to any land or estate in land | A person with an interest in the land is a child or a vulnerable person |
| Section 409 | Fraud | The victim is a child or a vulnerable person |
| Section 473 | Forgery and uttering | The victim is a child or a vulnerable person |
| Section 510 | Personation | The victim is a child or a vulnerable person |
| Section 511 | Personating owner of shares | The victim is a child or a vulnerable person |

Table 10 – Schedule 2 – Class 2 offence schedule: *Animal Welfare Act 2002*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 19 | Cruelty to animals | This item does not apply if the CEO is satisfied that the offence did not involve serious cruelty to an animal |

Table 11 – Schedule 2 – Class 2 offence schedule: *Children and Community Services Act 2004*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 101 | Failing to protect child from harm |  |
| Section 102 | Leaving child unsupervised in vehicle |  |

Table 12 – Schedule 2 – Class 2 offence schedule: *Classification (Publications, Films and Computer Games) Enforcement Act 1996*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 59(5) | Possessing or copying an indecent or obscene article | The article is child exploitation material as defined in The Criminal Code section 217AThe offence falls within the ambit of section 6(4) (see Endnote) |

Table 13 – Schedule 2 – Class 2 offence schedule: *Disability Services Act 1993*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 53 | Offence of ill-treatment | The victim is a child or a vulnerable person, the offender is involved in the provision of care, support or services to the child or the vulnerable person, and the care, support or services relate to the vulnerability of the child or the vulnerable person but are not care, support or services provided by a member of the family of the child or the vulnerable person as part of a normal familial care relationship |

Table 14 – Schedule 2 – Class 2 offence schedule: *Misuse of Drugs Act 1981*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 6(1)(a) or (c) | Offence concerned with prohibited drugs | The sale or supply was to, or intended to be to, a child or a vulnerable person |
| Section 6(1)(b) | Offence concerned with prohibited drugs | The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person |
| Section 7(1)(a) | Offences concerned with prohibited plants or drugs generally | The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person |
| Section 7(1)(b) | Offences concerned with prohibited plants generally | The sale or supply was to, or intended to be to, a child or a vulnerable person |
| Section 7(2) | Offences concerned with prohibited plants generally | The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person |
| Section 7B(4) | Selling drug paraphernalia to a child |  |
| Section 8Q(1) | Manufacturing a psychoactive substance | The act constituting the offence endangered the life, health or safety of a child under the age of 16 years or of a vulnerable person |
| Section 8Q(2) | Sale or supply of psychoactive substance | The sale or supply was to a child or a vulnerable person |
| Section 15 | Sale or supply of category 1 item | The sale or supply was to a child or a vulnerable person |
| Section 17 | Sale or supply of category 2 item | The sale or supply was to a child or a vulnerable person |

Table 15 – Schedule 2 – Class 2 offence schedule: *Road Traffic Act 1974*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 59 | Dangerous driving causing death | The offence causes death but without intent to do so |
| Section 59 | Dangerous driving causing grievous bodily harm | The offence causes grievous bodily harm but without intent to cause grievous bodily harm to a child or a vulnerable person |

Table 16 – Schedule 2 – Class 2 offence schedule: *Western Australian Marine Act 1982*

|  |  |  |
| --- | --- | --- |
| Provision (section) | Description of offence | Condition |
| Section 75B(1) | Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug | The offence causes death but without intent to do so |
| Section 75B(2) | Dangerous navigation of vessel occasioning death | The offence causes death but without intent to do so |
| Section 75BA(1) | Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug | The offence causes grievous bodily harm but without intent to cause grievous bodily harm to a child or a vulnerable person |
| Section 75BA(2) | Dangerous navigation of vessel occasioning grievous bodily harm | The offence causes grievous bodily harm but without intent to cause grievous bodily harm to a child or a vulnerable person |

# Endnote

## Section 6(4)

6. Class 1 offence and Class 2 offence

(4) For the purposes of Schedule 1 or 2, an offence falls within the ambit of this subsection if –

1. the victim of the offence is a child who has reached 14 years of age; and
2. the age difference between the victim and the offender does not exceed five (5) years.

Additional Class 1 and Class 2 offences are prescribed in the [*National Disability Insurance Scheme (Worker Screening) Regulations 2021*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s52903.html) (www.legislation.wa.gov.au > Subsidiary legislation in force).