



# Mandatory notifications

## Guidance for disability workers

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## What are notifications?

Under the *Disability Service Safeguards Act 2018*, disability workers or their employers are required to notify the Victorian Disability Worker Commission when they believe that a disability worker has engaged in 'notifiable conduct'. This is a notification.

All disability workers or their employers are required to make a notification to the Victorian Disability Worker Commission when they reasonably believe that the disability worker has engaged in notifiable conduct.

When the registration scheme is in operation and there are accreditation standards and approved programs of study, this obligation will also apply to education providers in relation to conduct by students undertaking approved programs of study who appear on the Disability Students Register as well.

The requirement to notify the Victorian Disability Worker Commission about notifiable conduct helps to prevent these types of conduct and protect people with disability from harm.

## What types of conduct require notifications?

Under the *Disability Service Safeguards Act 2018*, disability workers and disability employers must make a notification to the Victorian Disability Worker Commission if they form a reasonable belief that a disability worker has engaged in notifiable conduct.

Notifiable conduct means when a disability worker has:

- practised as a disability worker while intoxicated by alcohol or drugs or
- engaged in sexual misconduct while practising as a disability worker or
- placed, or may place, the public at risk of harm because the disability worker has an impairment that detrimentally affects, or is likely detrimentally to affect, the disability worker's capacity to practise as a disability worker or
- placed, or is placing, the public at risk of harm because the disability worker practised, or is practising, as a disability worker in a manner that constitutes a significant departure from accepted professional standards.

The key terms about notifications are explained below.

## What is reasonable belief?

Before making a notification, you must form a 'reasonable belief' about the conduct. To do so, you generally need direct knowledge of the incident or behaviour that led to a concern. This should be more than suspicion. However, a 'reasonable belief' does not require certainty or evidence.

You might directly observe the incident or behaviour. You may have a report from a reliable source or sources about conduct they directly experienced or observed. In that case, you should encourage the person with the most direct knowledge of the incident or behaviour to consider whether to make a notification themselves.

The principles about forming a 'reasonable belief' come from legal cases. In short, a reasonable belief is a state of mind based on reasonable grounds. It is formed when all known considerations, including matters of opinion, are objectively assessed and taken into account.

If you are unsure about whether you need to make a notification, contact the Victorian Disability Worker Commission for assistance.

## What is intoxication while practising?

The word 'intoxicated' has the ordinary meaning of 'under the influence of alcohol or drugs'. 'Drugs' include illicit drugs and prescribed and over-the-counter medicines.

The key issue is that the disability worker is practising while intoxicated, regardless of when they consumed the drugs or alcohol. A disability worker may be considered to be intoxicated when their conduct is impaired or adversely affected by drugs or alcohol.

For example, you might have witnessed or been told from a reliable source that a disability worker was working while smelling of alcohol or drugs, or was unsteady on their feet, or slurring their speech; indicating impaired judgement so they are unable to perform their regular duties. In these circumstances, you need to make a notification.

You do not need to report if the practitioner is intoxicated in their private life (when not practising their profession), unless the intoxication triggers a reasonable belief that behaviour which constitutes another type of notifiable conduct has occurred.

## What is sexual misconduct?

Sexual misconduct is a broad term encompassing any unwelcome acts or behaviours that are experienced by the person with disability as being sexual in nature. This includes physical and verbal actions committed without consent or by force, intimidation, coercion or manipulation. It includes sexual violence and exploitation but is not limited to actions which constitute a criminal offence. It includes when a disability worker has at any time, including outside of work hours:

- engaged in sexual activity with a service user, whether or not that person has given consent
- made sexual remarks about a service user
- touched a service user in a sexual way
- engaged in sexual behaviour in front of a service user.

There is frequently a power imbalance between a disability worker and a service user. When delivering services, workers are expected to adhere to the highest standards of behaviour, be respectful and take every action to make sure people with disability are safe. This means having professional boundaries in place for relationships between staff and people with disability, and preventing and responding to any inappropriate behaviours by anyone towards a person with disability, including sexual misconduct

If a disability worker engages in sexual activity with someone who was previously a service user, this may also be sexual misconduct. Whether this constitutes sexual misconduct will depend on the circumstances

Sexual misconduct will not include sexual contact that is appropriately provided as part of a purchased service by an approved sexual service provider and to which a service user consents.

## What is impairment?

'Impairment' has a broad meaning, covering both physical and psychological conditions.

Impairment under the *Disability Service Safeguards Act 2018* means 'a loss or abnormality of structure or function of an intellectual, cognitive, neurological, sensory, psychological or physical nature, whether permanent or temporary'. When making a notification, the question is whether the impairment detrimentally affects, or is likely to detrimentally affect, the worker's capacity to practice.

Disability workers, employers and education providers must notify the Victorian Disability Worker Commission if a disability worker placed, or may place the public at risk of harm, because the disability worker has an impairment that detrimentally affects (or is likely to detrimentally affect) the disability worker's capacity to practice.

You do not need to notify the Victorian Disability Worker Commission if the disability worker has effective controls to manage the impairment and address the risk and severity of harm to the public, such as:

- treatment

- taking a break from practice, such as sick leave
- modified scope of practice
- strategies used to manage impacts of impairment
- compliance with monitoring and supervision.

For example, a disability worker applies for sick leave so they can be treated for a mental health condition. They tell you that they cannot return to work until their treating practitioner advises them to do so. As the employee is engaged in and complying with treatment, the public is not at risk of harm, so you are not required to make a notification.

## What is a significant departure from professional standards?

Disability workers, employers and education providers must notify the Victorian Disability Worker Commission if a disability worker placed, or may place the public at risk of harm, because the disability worker practiced, or is practicing, in a manner that constitutes a significant departure from accepted professional standards.

'Accepted professional standards' includes reference to documents like the Disability Service Safeguards Code of Conduct. It covers both practice and professional behaviour.

A significant departure is serious (not slight or moderate) and would be obvious to any reasonable person who practises as a disability worker. For example, if a disability worker has placed or is placing the public at risk by failing to follow practise protocols, making substantial errors with procedures such as medication or food management, or is clearly breaching one or more elements of the Disability Service Safeguards Code of Conduct, they may be significantly departing from accepted professional standards.

If a disability worker meets accepted professional standards while engaged in innovative practice, different clinical decision-making or treatment approaches, you are not required to notify the Victorian Disability Worker Commission.

## Who has to notify?

Disability workers, employers and education providers must notify the Victorian Disability Worker Commission if they form a reasonable belief that another disability worker has engaged in notifiable conduct.

An employer of a disability worker means a person that employs that disability worker under a contract of employment or a contract for services.

Notification requirements do not apply to employers of a disability worker if the employer receives disability services from the disability worker. This means that a person with disability who directly employs a disability worker (who could be a family member) is not required to make a notification to the Victorian Disability Worker Commission.

An employer of a disability worker is a person that employs a disability worker through a contract of employment or a contract of services. This includes disability service providers and hiring agencies or platforms where a worker is connected to a person with disability to provide disability services.

If you are a disability worker, you are *not* required to make a notification in the following circumstances:

- You know, or reasonably believe, that the Victorian Disability Worker Commission has already been notified of the worker conduct. For example, reasonable belief would constitute if a colleague who is a disability worker, or a disability employer, tells you that they have notified the Victorian Disability Worker Commission of the worker's conduct.
- You are employed or engaged by an insurer that provides professional indemnity insurance in relation to the disability worker who is a subject of the notification and you formed the reasonable belief as a

result of a disclosure made by a person to you in the course of a legal proceeding or providing legal advice arising from the insurance policy.

In all other circumstances, if you are a disability worker and you do not make a notification to the Victorian Disability Worker Commission, this may constitute a breach of the Disability Service Safeguards Code of Conduct. The Disability Service Safeguards Code of Conduct requires all disability workers to:

- promptly take steps to raise and act on concerns about matters that may impact the quality and safety of supports and services provided to people with disability
- take all reasonable steps to prevent and respond to all forms of violence against, and exploitation, neglect and abuse of people with disability
- take all reasonable steps to prevent and respond to sexual misconduct.

If the Victorian Disability Worker Commission finds that a disability worker has breached the Disability Service Safeguards Code of Conduct, action may be taken against the disability worker. Action may include investigating the disability worker or imposing an interim prohibition order or prohibition order that prohibits the disability worker from providing specified or all disability services for a period of time.

When the registration scheme is in operation, if you are a registered disability worker and do not make a notification to the Victorian Disability Worker Commission when required, this may constitute behavior for which health conduct or performance actions may be taken against you.

## Notifications about students who are on the Disability Students Register

An education provider must notify the Victorian Disability Worker Commission if one of its students who is on the Disability Students Register has an impairment that detrimentally affects the capacity of the student to undertake supervised practice safely, and which poses a serious risk to the life of a person, or the health, safety or welfare of a person or the public.

A disability worker must notify the Victorian Disability Worker Commission if a student has an impairment that detrimentally affects the capacity of the student to undertake supervised practice safely.

### When must I notify?

You must notify the Victorian Disability Worker Commission as soon as practicable after you form a reasonable belief that behaviour that constitutes notifiable conduct. The *Disability Service Safeguards Act 2018* does not define as soon as practicable. The Victorian Disability Worker Commission expects you to not delay making a notification once you have formed a reasonable belief.

### How do I notify?

The simplest way to make a notification to the Victorian Disability Worker Commission is to contact us through the website, see: <https://portal.vdwc.vic.gov.au/public/home>. Our website has information about how we handle notifications.

You can also call us on **1800 497 132** and tell us you want to make a notification. If you make a notification verbally, the Victorian Disability Worker Commission must make a record of the notification.

If you are making a notification and you want your identity to be confidential, please let us know. We will take all reasonable steps to keep your details confidential. However, there may be some instances where we are unable to do so. If this is the case, we will inform you of the reasons.

If you need help making a notification, the Victorian Disability Worker Commission will provide you with reasonable assistance. This may include assisting you to put your notification in writing or assisting you to clarify the nature of the notification.



## **I have already told another organisation about my concerns. Do I have to notify the Victorian Disability Worker Commission?**

You must notify the Victorian Disability Worker Commission if you have a reasonable belief that a disability worker has behaved in a way that constitutes notifiable conduct. This applies even if you have told another body about your concerns.

Notifying the Victorian Disability Worker Commission does not impact any other requirements or obligations to notify other bodies or schemes, such as the NDIS Quality and Safeguards Commission, the Disability Worker Exclusion Scheme, or the Commission for Children and Young People. You should make sure you are aware of all your requirements or obligations under all relevant legislation, regulations, schemes and policies.

If a notification relates to a registered NDIS provider, the Victorian Disability Worker Commission must refer the matter to the NDIS Quality and Safeguards Commission.

## **What information should I provide in the notification?**

When you make a notification to the Victorian Disability Worker Commission, you will be asked to explain what the conduct involved, who the disability worker involved is, and other details such as the place, time and date where the notifiable conduct took place and if there were other people present.

This information is necessary for us to understand what happened and what action the Victorian Disability Worker Commission may need to take to make sure the people involved are safe.

After you have made a notification, we may need to contact you for further information. You can specify how and when you prefer to be contacted.

## **How are notifiers protected?**

The *Disability Service Safeguards Act 2018* protects a person who makes a notification, with that person not liable for any loss, damage or injury suffered by another person by making the notification, producing documentation or giving information or evidence in making the notification. Privacy obligations do not prevent you from making a notification.

If action has been taken against you as a result of making a notification you can contact the Victorian Disability Worker Commission. You may also wish to contact your legal adviser, union, professional association or insurer.

## **How does the Victorian Disability Worker Commission manage notifications?**

Once a notification is received, the Victorian Disability Worker Commission must assess it in the same way it assesses all complaints and determine a suitable course of action within 60 days. There are several possible courses of action the Victorian Disability Worker Commission may decide for a notification or complaint, including:

- referring it to an appropriate entity, for example the National Disability Insurance Scheme Quality and Safeguards Commission
- investigating the disability worker
- taking any other appropriate action, such as issuing an interim prohibition order or conciliating a matter
- taking no further action

Once a suitable course of action has been determined, the Victorian Disability Worker Commission must provide written notice to the disability worker advising them of the decision, except where the Victorian Disability Worker Commission reasonably believes that providing notice would prejudice any

investigation of the notification, or place at risk a person's health or safety, or place a person at risk of intimidation or harassment. For more information about the potential outcomes following an investigation, please refer to the website at [www.vdwc.vic.gov.au](http://www.vdwc.vic.gov.au)

Where the Victorian Disability Worker Commission determines that the disability worker should be investigated, the investigation will follow normal investigation procedures.

No further action may be taken where the Victorian Disability Worker Commission determines that:

- it is satisfied that the notification is frivolous, vexatious or was not made in good faith
- the subject of the matter of the notification is trivial, misconceived or lacking in substance and reasonably believes it does not require investigation
- the subject matter of the notification comes within the jurisdiction of another entity, for example, the Australian Health Practitioner Regulation Agency (Ahpra)
- the subject matter of the notification has already been dealt with adequately by the Victorian Disability Worker Commission
- the subject matter of the notification is being dealt with, or has been dealt with by another entity or has been referred to that entity
- the Victorian Disability Worker Commission reasonably believes that the disability worker whom the notification relates to has taken appropriate steps to remedy the matter
- the notification is made more than twelve months after the provision of the disability service that is the subject matter of the notification
- the notification is made more than twelve months after the disability service sought was not provided.

## **What if I am the subject of the notification?**

You will receive written notice of the Victorian Disability Worker Commission's decision on how the notification will be dealt with, unless the Victorian Disability Worker Commission reasonably believes that the notice will prejudice any investigation of the notification, or place at risk a person's health or safety, or place a person at risk of intimidation or harassment.

You may wish to contact your legal adviser, union, professional association or insurer if the Victorian Disability Worker Commission takes further action as a result of a notification made against you. The Victorian Disability Worker Commission can inform you of the notification process but cannot provide you with legal advice.