



# Mandatory notifications

## Guidance for disability workers

July 2021 Version 1



To receive this publication in an accessible format phone 1800 497 132, using the National Relay Service 13 36 77 if required, or email [info@vdbc.vic.gov.au](mailto:info@vdbc.vic.gov.au)

Authorised and published by the Victorian Disability Worker Commission.

© State of Victoria (Victorian Disability Worker Commission) 2021.



This work, Mandatory notifications: Guidance for disability workers, is licensed under a [Creative Commons Attribution 4.0 licence](https://creativecommons.org/licenses/by/4.0/). You are free to re use the work under that licence, on the condition that you credit the State of Victoria (Victorian Disability Worker Commission) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including the Victorian Government logo and the Victorian Disability Worker Commission logo.

Copyright queries may be directed to [info@vdbc.vic.gov.au](mailto:info@vdbc.vic.gov.au)

ISBN: 978-1-922483-06-5

Available at [www.vdbc.vic.gov.au](http://www.vdbc.vic.gov.au)

# Contents

What are notifications?.....	5
What types of conduct require notifications?.....	5
What is reasonable belief?.....	5
What is intoxication while practising? .....	5
What is sexual misconduct?.....	6
What is impairment? .....	6
What is a significant departure from professional standards? .....	7
Who has to notify? .....	8
Notifications about students who are on the Disability Students Register... <b>Error! Bookmark not defined.</b>	
When must I notify? .....	9
How do I notify? .....	9
I have already told another organisation about my concerns. Do I have to notify the Victorian Disability Worker Commission?.....	9
What information should I provide in the notification? .....	9
How are notifiers protected? .....	9
How does the Victorian Disability Worker Commission manage notifications? .....	10
What if I am the subject of the notification? .....	10

## What are notifications?

Under the *Disability Service Safeguards Act 2018* (the Act), 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.

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 of disability workers require notifications?

Under the Act, 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 to detrimentally 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?

Employers and disability workers must make a notification if they reasonably believe a disability worker practised as a disability worker while intoxicated by alcohol or drugs.

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 notifiable conduct has occurred.

## **What is sexual misconduct?**

Employers and disability workers must make a notification if they reasonably believe a disability worker engaged in sexual misconduct while practising as a disability worker.

Sexual misconduct is a broad term encompassing any unwelcome acts or behaviours that are experienced by the person 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.

For notifications under the Act, sexual misconduct is:

- in connection with the person's practise as a disability worker and
- with people under the disability worker's care, or linked to their practise as a disability worker.

It includes when a disability worker has:

- engaged in sexual activity with a service user, whether or not that person has given consent
- made sexual remarks
- touched a service user in a sexual way
- touched a service user in an intimate area when it is not required or necessary for the provision of support to the service user or
- 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 services that are appropriately provided as part of a purchased service by an approved sexual service provider and to which a service user consents.

## **What is impairment?**

Employers and disability workers must make a notification if they reasonably believe 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 detrimentally to affect, the disability worker's capacity to practise as a disability worker.

'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, and whether the disability worker placed, or may place, the public at risk of harm.

To assess a risk of harm you should consider:

- the nature, extent and severity of impairment
- practice context, for example controls and oversight, if part of an integrated team or a solo worker
- how well the impairment can be managed with treatment
- extent of engagement with treatment
- strategies used to manage impacts of impairment.

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 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 it is safe 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 practised, or is practising, 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 a 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 practice standards, 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.

A disability worker may practise in a way that constitutes a significant departure from accepted professional standards, but that is not enough to trigger a mandatory notification. You need to make a mandatory notification only if the significant departure also places the public at risk of harm.

To assess a risk of harm you should consider:

- practice context, for example controls and oversight, if part of an integrated team or a solo worker
- capacity to judge the extent of departure and extent of self-reflection
- action underway to redress gaps in practice

- attitude towards compliance with professional standards
- extent of harm.

## Who has to notify?

Disability workers and employers 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.

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's conduct. For example, a reasonable belief would be constituted 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 behaviour for which health, conduct or performance action may be taken against you.

This includes action for a failure to comply with 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 a disability worker has failed to comply with the Disability Service Safeguards Code of Conduct, action may be taken against the disability worker. Action may include the Victorian Disability Worker Commission investigating the conduct of an unregistered 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, where it is necessary to avoid a serious risk to health, safety and welfare. The Disability Worker Registration Board of Victoria may investigate the conduct of a registered disability worker and take action, including action that affects a worker's registration.

## Who does not have to notify?

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.



## When must I notify?

You must notify the Victorian Disability Worker Commission as soon as practicable after you form a reasonable belief that the behaviour of a disability worker 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 National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission, the Department of Fairness, Families and Housing, 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 are notifications managed?**

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 and the Disability Worker Registration Board of Victoria may decide for a notification or complaint, including:

- counselling the disability worker on the subject of the notification
- referring it to an appropriate entity, for example the NDIS 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 or the Disability Worker Registration Board of Victoria must provide written notice to the disability worker advising them of the decision, except where 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 or the Disability Worker Registration Board of Victoria determines that the disability worker should be investigated, the investigation will follow the investigation process required by the Act.

No further action may be taken where the Victorian Disability Worker Commission or the Disability Worker Registration Board of Victoria determines that:

- it is satisfied that the notification is frivolous, vexatious or was not made in good faith
- the subject matter of the notification is trivial, misconceived or lacking in substance and there are grounds for a reasonable belief that 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 or the Disability Worker Registration Board of Victoria
- 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 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 decision on how the notification will be dealt with, unless the Victorian Disability Worker Commission or the Disability Worker Registration Board of Victoria 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 are invited to respond to this written notice.

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