

# Restrict & Regulate Non-Disclosure Agreements

## *Stop Silencing Women & Workers*

### Law Reform in Brief



Restricting and regulating the use of NDAs in workplace sexual harassment cases can be achieved through legislative reform with three main pathways – industrial relations amendment, gender equality/ anti-discrimination amendment or a stand-alone bill.

Legislative pathways in South Australia include: a stand-alone bill to regulate NDAs in matters of sexual harassment and discrimination; inclusion in the promised *Gender Equality Bill*; or an amendment to *Equal Opportunity Act 1984 (SA)*, the *Work Health and Safety Act 2012 (SA)*, or the *Fair Work Act 1994 (SA)*.

In South Australia, a stand-alone bill, an equality approach through new or existing laws, or a WHS approach could apply to a greater number of industries and workplaces than amending the *Fair Work Act 1994 (SA)*.

A statewide information campaign should be considered an important aspect of any law reform, to help educate employers, employees, and legal and industrial professionals, about new rights and responsibilities.

### Key elements to NDA law reform

#### *Creating a legislative presumption that NDAs are not necessary or standard*

Legislation should reserve NDAs for specified circumstances, always at the active instigation of the victim-survivor, without coercion, and with the opportunity for independent legal or industrial advice.

#### *Prioritising victim-survivor agency and a trauma-informed approach*

Victim-survivors should retain the right to speak about their experience with others who can provide them with support and assistance, or in the public interest.

#### *Consistency with Positive Duty laws*

An NDA must not adversely affect the health and safety of a third party, the public interest, or efforts to stop sexual harassment in a workplace.

#### *Cooling-off, reversibility, and waivers*

Victim-survivors should retain a right to change their mind after a cooling-off period, and to reverse their decision and waive their own confidentiality in the future, without penalty or repercussions.

#### *Regulating NDAs through transparency, reporting and accountability*

Legislation should require all NDAs to be registered with a central agency. Regulators should identify and investigate where multiple NDAs are reported. NDAs that deviate from the law would be unenforceable, and civil penalties would apply to employers misusing or overusing NDAs.

#### *Widest range of applicability*

New laws should apply as widely as possible. Sexual harassment, and the misuse of NDAs to cover it up, happens in all workplaces – large public and private employers, non-profit institutions, and small business.

## Law reform elsewhere

### Victoria, Australia

The Victorian Government have committed to introduce legislation to restrict the use of NDAs in sexual harassment cases, in 2025. This follows the Victorian Ministerial Taskforce on Workplace Sexual Harassment recommending restrictions to the use of NDAs in workplace sexual harassment cases. The Victorian reform process can be followed here:

[Restricting NDAs in workplace sexual harassment cases | Engage Victoria Discussion Paper - Restricting NDAs in Workplace Sexual Harassment Cases](#)

### Ireland

As of 20 November 2024, Ireland's new *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024* amends the *Employment Equality Act 1998* by restricting the use of non-disclosure agreements (NDAs) in situations involving allegations of discrimination, victimisation, harassment and sexual harassment.

The amendments, informed by a landmark 2021 Bill that is known globally as the Irish NDA Bill, have banned the use of gagging orders that prevent victims of workplace abuse, harassment and discrimination from speaking out about their experiences.

The Act essentially makes NDAs the exception to the rule. Any exempted NDA needs to meet strict requirements including that the NDA has been requested by the employee, and that they received independent legal advice in writing, and that can withdraw from the agreement within 14 days of signing, without penalty.

### The U.K

The regulation of NDAs in cases of sexual harassment and discrimination has been highly topical in the U.K, with the Starmer Labour Government indicating it will continue to legislate to restrict the use of NDAs across the board, as it has done in the higher education sector.

The Government's *Employment Rights Bill 2024-25* (ERB) has returned to the House of Commons for debate in 2025. Some 250 amendments have been added by the Government, including one to prohibit the use of NDAs in cases of sexual harassment or abuse, introduced by Labour MP Louise Haigh.

The ERB includes a provision adding sexual harassment to the list of whistleblowing protections. If enacted, sexual harassment allegations could no longer be silenced using NDAs as they would be protected by the wider ban on using NDAs in whistleblowing situations.

### North America

In December 2022, a new federal law known as the *Speak Out Act* (SOA) was passed by the United States Congress. It prevents the enforcement of pre-dispute NDAs in cases of sexual assault or harassment. Some eighteen U.S states have prohibited or regulated NDAs, (as have provinces in Canada).

Law reform in the United Kingdom, Europe and North America are detailed in [Let's Talk About Confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report](#).

**Join the call to stop silencing women and workers through NDAs.  
Help eradicate sexual harassment and discrimination in our workplaces.**



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