



## **Restrict & Regulate Non-Disclosure Agreements**

### ***Stop Silencing Women & Workers***

#### **Law Reform in Brief**

The Working Women's Centre South Australia is calling on the South Australian Government to commit to introducing a standalone bill that will restrict the use of Non-Disclosure Agreements (NDAs) in Workplace Sexual Harassment and Discrimination matters.

In workplace sexual harassment matters NDAs are legal contracts and clauses which require someone to keep secret the details of the harassment they experienced, often for the rest of their life. NDAs include non-disparagement clauses and/ or confidentiality clauses in settlements or deeds of release and employment or other work-related contracts.

Many victim-survivors feel like they have no choice but to sign an NDA to resolve their complaint. NDAs silence ordinary workers and protect perpetrators, employers and corporate reputations. They hide systemic problems in workplaces and discourage positive action for change by protecting those responsible.

As well as stifling action workplace change, NDAs prevent people affected by the impacts of sexual harassment from seeking support – often even from close friends and family, and medical practitioners. Many experts now agree that blanket NDAs in sexual harassment and discrimination settlements are harmful and counterproductive.

#### **It's time for NDA law reform**

Globally, including in Australia, since the #MeToo movement, victim-survivors, law reformers and unions have been calling for change to stop the silencing of women and other workers by NDAs.

Extensive media coverage and investigations have shown the extent of the misuse of NDAs, and independent inquiries and research have shown the harm caused by NDAs and different ways forward.

Models of legislative reform around the world have led the way, including Acts of Parliament to restrict the use of NDAs in the United Kingdom, Ireland, the United States and provinces of Canada.

In Australia, the groundbreaking *Restricting Non-Disclosure Agreements (Sexual Harassment at Work) Act 2025 (Vic)* was passed by Victorian Parliament in November 2025. The Victorian reform process has been championed by the Victorian Trades Hall, the community legal sector and courageous victim-survivors.

The Working Women's Centre SA proposes that the South Australian Government use the Act as a model for reform in South Australia

## **Key elements to good NDA law reform**

### ***A standalone Act which creates a clear, comprehensive and intersectional framework to follow***

- The Act applies to workplace sexual harassment *and* discrimination as these misconducts are highly interconnected.
- The Act legislates a presumption that NDAs are not the standard.
- The Act applies to all types of workers and workplaces.

### ***Law reform that is trauma informed, addresses power imbalances and prioritises victim-survivors***

- NDAs can only be victim-survivor (complainant) initiated.
- An NDA must meet preconditions to be lawful and must include permitted disclosures and the right to seek support - that is people and agencies someone who has signed an NDA can still speak to.

### ***The right to independent advice and clear information***

- Complainants must receive information and time to gain independent advice and make informed decisions. We recommend 60 days.
- Information statements and NDAs themselves must be in plain language.

### ***No more lifelong silencing***

- Victim-survivors/ complainants can waive their confidentiality and withdraw from an NDA in the future. In Victoria this can happen after one year.
- The Act includes provision for permitted disclosures (the right to seek support and the right for disclosure in the public interest) to be applied to existing NDAs.

### ***Regulation, reporting and accountability***

- There are clear and simple processes for enforceability and dealing with breaches.
- NDA use by employers is reportable and therefore accountable.
- Penalties apply for the misuse of NDAs.

### ***Consistency with the goal of ending the causes of workplace sexual harassment and discrimination***

- The objective of the Act must be to improve the rights of workers and victim-survivors and combat the causes of sexual harassment in workplaces.
- NDAs must be consistent with workplace health and safety, public interest and positive duty principles.

Finally, NDA reform should include a strategy to inform and educate workplaces, workers, employers and the legal sector on new NDA laws, to ensure the reform is effective and implemented in practice.

## Law reform globally

### Australia

In June 2025, the Australian Human Rights Commission published its report *Speaking from Experience: What needs to change to address workplace sexual harassment*. This landmark report recommends legislation to restrict the use of NDAs in Australia, in line with Ireland's Employment Equality Act 1998, and civil penalties for breaches of Positive Duty.

In September 2025, Community Legal Centres Australia released their *Vision for Justice + Actions for the 48th Parliament of Australia* which asks the Federal Government to "prevent people who use violence from weaponising laws and government and legal systems to continue or hide their harmful behaviour" through reforms to Australia's national model defamation provisions and restricting the use of confidentiality and non-disclosure agreements in workplace sexual harassment cases unless requested by the complainant.

In November 2025, the groundbreaking *Restricting Non-Disclosure Agreements (Sexual Harassment at Work) Act 2025 (Vic)* was passed by Victorian Parliament in November 2025. The Victorian reform process has been championed by the Victorian Trades Hall, the community legal sector and courageous victim-survivors, and follows the Victorian Ministerial Taskforce on Workplace Sexual Harassment.

The Act is a progressive reform which substantially changes how NDAs in workplace sexual harassment matters are treated in Victoria and sets a benchmark for other jurisdictions in Australia. It addresses power imbalances experienced by victim survivors of workplace sexual harassment, and increases access to information, choice and support.

The Act is an important step in tackling workplace sexual harassment, and supports improved work health and safety, and compliance with the Positive Duty in the *Sex Discrimination Act 1984 (Cth)*.

### The U.K

The *Employment Rights Act 2025 (ERA)* was passed in the United Kingdom in December 2025.

The ERA includes measures that ban and void an NDA between an employer and a worker where the NDA prevents the worker from speaking out about harassment and discrimination, or their employer's response to the relevant harassment or discrimination, or the making of an allegation of relevant harassment and discrimination.

It builds on several other new legal restrictions on NDAs designed to protect workers including a ban on NDAs in higher education with staff, students, members or visiting speakers in relation to a complaint about sexual abuse, sexual harassment, sexual misconduct, or other forms of harassment and bullying, and restrictions on NDAs for victims of crimes. The U.K has also mandated that an NDA cannot prevent a worker from whistleblowing by making a protected disclosure under the ERA.

## Ireland

As of 20 November 2024, Ireland's new *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024* amended 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.

## 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).

## Change the laws

Communities and workers want governments to increase public transparency and take stronger action to prevent sexual harassment.

The Working Women's Centre SA is calling on the South Australian Government to follow and build upon Victoria's work to legislate the restriction and regulation of NDAs, so that their overuse and misuse is stopped.

Making this change would:

- Provide stronger protections, support, and justice for workers and victim-survivors
- Challenge entrenched cultures that drive sexual harassment and secrecy in workplaces
- Advance the public interest in ending sexual harassment by requiring transparency and accountability, and
- Provide greater consistency with Australian Human Rights Commission advice, Positive Duty legislation and Workplace Health and Safety laws.

***Changing the laws would build on existing South Australian Government commitments to gender equality and ensuring safer workplaces.***

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



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