Working Women's Centre Vic.

Submission to Industrial Relations Victoria

Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases

16 September 2024

Free and confidential legal help for women and non-binary people in Victoria facing workplace problems

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About Working Women's Centre Victoria

Working Women's Centre Victoria (WWCV) is a not-for-profit partnership that provides holistic, trauma-informed services to women and non-binary people who experience workplace sexual harassment and other workplace issues.

The WWCV is a collaborative partnership formed by four community legal centres with significant expertise and experience in employment, discrimination and sexual harassment law, as well as training and capacity building: South-East Monash Legal Service (SMLS), Women's Legal Service Victoria (Women's Legal), Westjustice, and Northern Community Legal Centre (NCLC). Together, we aim to provide comprehensive support for working women and non-binary people across Victoria. Each partner brings extensive expertise in legal assistance, community development, law reform, training, advocacy, and a shared commitment to social justice.

SMLS leads the partnership, but all four centres collaborate to deliver services, conduct training, and achieve strategic objectives.

Our Services

At the WWCV, we offer a range of free services to support working women and non-binary people in Victoria:

- Advice and Information: We can help provide legal advice and information about workplace issues like sexual harassment and discrimination.
- Representation and Advocacy: We support and represent women and non-binary individuals in mediations, tribunals, and courts if they have faced workplace issues such as sexual harassment.
- Education and Training: We provide training for workers, the community, and businesses to raise awareness of people's rights and create safe, supportive workplaces.
- Prevention and Law Reform: We collaborate with our peak body, Working Women's Centre Australia, and other organisations across Australia to promote gender equality and eliminate gendered workplace violence, including sexual harassment. We make submissions to inquiries and contribute to driving change in workplace laws and legal systems in Victoria.

Our specialist lawyers help women and non-binary people with a variety of workplace-related matters including:

- Sexual harassment
- Discrimination
- Wage theft
- Unfair dismissal
- Sham contracting
- Workplace entitlements
- Parental leave
- Accessing family violence leave at work
- Discrimination

- Workplace bullying

Our Commitment

The WWCV provides holistic, trauma-informed services that are accessible to all working women and non-binary individuals, particularly those from culturally and racially marginalised (CARM) backgrounds, Aboriginal and Torres Strait Islander communities, non-binary, trans and intersex people, young women, women with disabilities, and those in rural or remote locations. We ensure our services are delivered place-based with outreach activities where needed, promoting accessibility across Victoria.

Additionally, we work collaboratively with other services and organisations to create effective referral pathways, ensuring comprehensive support for our clients. By partnering with the national body and other working women's centres, we coordinate service delivery and promote gender equality and the prevention of sexual harassment on a broader scale.

All women can access advice and information, and we aim to ensure we are accessible to women and non-binary people who are at most significant risk of discrimination and harm in the workplace. This includes people experiencing family violence, people with a disability, migrant workers, international students, casual workers, trans and gender diverse people and young workers in unstable employment.

WWCV is funded by the Department of Employment and Workplace Relations, Australian Government.

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Executive Summary

Subject to safeguards, Working Women's Centre Victoria (WWCV) supports a framework that prohibits the use of NDAs unless requested by the victim-survivor of sexual harassment and only after they receive culturally appropriate, trauma-informed, and independent legal advice funded by employers at arms' length or through Government-funded services. Legal assistance providers like WWCV, community legal centres (such as JobWatch), and legal aid are well-positioned to provide this to workers who are not members of their union.

This reform will transform NDAs from a bargaining tool that contributes to the current culture of secrecy, cover-ups and silencing of victim-survivors into a clause that only victim-survivors can introduce to protect their privacy after experiencing sexual harassment in their workplace. Any new legislation must ensure that the wishes of the victim-survivor are the paramount focus.

Many of the sexual harassment cases we see through our practice occur alongside other issues such as discrimination, unpaid wages, bullying, and occupational health and safety issues. Any legal advice or service must be about the entire complaint and complete settlement agreement, not limited to the NDA clause. Any assistance should also be holistic and include integrated support like social work and financial counselling. Victim-survivors who are most at risk of sexual harassment in their workplace also experience additional issues with their visa status, migration and mental health.

We believe victim-survivors should retain the flexibility to draft clauses that best reflect their interests and don't support strictly prescribed forms of NDAs. However, we support regulator-issued templates akin to court forms found in regulations, with the express ability to amend these according to the parties' interests.

A proposed model should include a list of permitted disclosures and an option for any other person or organisation to be included in a permitted disclosure as agreed between the parties of the NDA. In addition to the examples outlined in Respect@Work *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*, victim-survivors should be able to lend their voice and story to help guide law and policymakers and contribute to a public reporting regime.

After the terms have been agreed upon, a 'cooling-off' period of at least seven business days should apply to the entire settlement so that victim-survivors have time to make an informed decision and seek any required psycho-social support.

While we don't advocate for a maximum duration, victim-survivors should be able to provide written notice to their employer to waive all or part of their confidentiality under the agreement if they wish to speak about their experience when an opportunity arises such as public advocacy or the need to disclose their experience to support a family member or friend.

While victim-survivors should be able to negotiate preventative action or request that their employer address systemic sexual harassment issues, requiring an NDA not to adversely affect the future health of a third party places undue pressure on victims-survivors to account for the public interest during what can already be a highly pressurised negotiation process. Preventative action

and culture change are public interest concerns that can be addressed through a public reporting regime and enforcement mechanism.

A regime led by an independent regulatory agency (such as the Victorian Equal Opportunity & Human Rights Commission (**VEOHRC**)) can be appropriately funded and resourced to receive and publish the reports, and we propose that this include a combination of employer-identified and private data. This role is essential to bringing about widespread culture change and emphasising to employers the need to take responsibility for the systemic change needed to prevent sexual harassment and gendered violence.

In addition, a civil penalty regime that involves no filing fees must be part of an individual enforcement mechanism in cases where an employer's response to sexual harassment complaints, including their use of an NDA, causes further harm to a victim-survivor. Whenever a non-compliant NDA is introduced, only that specific clause should be void without impacting the entirety of the settlement or requiring the victim-survivor to repay any settlements.

These reforms need to be continuously monitored and evaluated to ensure no unintended consequences for victim-survivors, including a legislative review two years after they have been introduced.

Please see attached an endorsement of this submission by our national body, Working Women's Centre Australia (WWC Australia), in Appendix 1.

Recommendations

1. NDAs should be prohibited unless requested by the victim-survivor.

2. The proposed NDA reform should be expanded to include intersecting discrimination claims.

3. The Terms of Settlement and NDA should include the following, in writing, witnessed by the lawyer who provided the victim-survivor with legal advice:

    - A statement that the NDA or confidentiality clause is the expressed wish and preference of the victim-survivor
    - Confirmation and acknowledgement that

- Confirmation and acknowledgement that:
- the victim-survivor has been provided with independent legal advice,
- there have been no undue attempts to influence the victim-survivor with respect to the decision to include an NDA or confidentiality clause.
    - A clause providing an opportunity for the victim-survivor to waive their confidentiality in the future

4. There should be careful monitoring and evaluation of any reforms carefully to ensure there are no unintended consequences for victim-survivors, including a mandatory legislative review after two years.

5. Independent and confidential legal advice must be available to victim-survivors before requesting an NDA through to any negotiation on the Terms of the Settlement.

6. Victim-survivors must be provided with at least 20 business days to seek independent legal advice.

7. Legal advice should be about the victim survivor's complaint and complete settlement agreement, and not limited to the NDA.

8. Community legal centres or Victoria Legal Aid are the most appropriate avenues for ensuring legal advice is independent, culturally appropriate, trauma-informed and accessible, and should be resourced appropriately to take on this role.

9. Victim-survivors should have access to independent legal advice before requesting an NDA or agreeing to waive their rights, including as a safeguard against employers exerting undue influence or pressure to enter an NDA.

10. Public interest concerns should be addressed through public reporting and enforcement mechanisms rather than mandated NDA terms.

11. Victim-survivors should be able to waive all or part of their confidentiality by providing written notice that their confidentiality is waived. The waiver should not result in compensation amounts being required to be paid back by victim-survivors.

12. Best practice guidelines regarding drafting a confidentiality waiver should be issued by an appropriate authority like VEOHRC.

13. The wishes of the victim-survivor should be the paramount concern when considering the duration of an NDA.

14. A cooling-off period of no less than seven business days following the finalised Terms of Settlement should apply to the full terms of the settlement

15. The model should include a list of permitted disclosures as well as an option to include any other permitted disclosures as agreed between the parties.

16. The preliminary list of permitted disclosures should be expanded to more comprehensively cover the range of professionals and individuals from whom the victim-survivor may seek support, and to organisations and bodies undertaking a relevant research, investigatory, law reform or policy-making function.

17. Victim-survivors should retain the flexibility to draft clauses in a form that best reflects their interests.

18. Guidance be developed for parties that set out what an NDA can and cannot include but do not go so far as prescribing specific wording. Guidance should instruct that the NDA must be clear and exact, in plain English, not use legal jargon, and explain clauses and limits.

19. Employers should be required to publicly report:

    - the use of an NDA,
    - any actions taken in response to the sexual harassment, including any disciplinary action against the perpetrator, and
    - broader organisational changes or improvements to create systemic change and transparency in their workplace culture surrounding sexual harassment complaints.

20. Any reporting program should also capture data about sexual harassment complaints, including:

    - complaints of sexual harassment,
    - complaint outcomes,
    - policies and procedures in place to prevent sexual harassment
    - settlement terms, and
    - whether an employer has undertaken a workplace audit or other steps to comply with their positive duty in accordance with the VEOHRC Guideline on Sexual Harassment.

21. A mechanism should be established to assist victim-survivors in reporting the use of NDAs to the authorised reporting body to help indicate when employers have not self-reported.

22. Employers that fail to comply with NDA restrictions and public reporting requirements

should be listed on a public register accessible to prospective employees, restricting the employer from accessing government procurement and grants processes.

23. The public reporting of any data must protect victim-survivors privacy.

24. Any regulatory agency tasked with reporting functions associated with these reforms must be independent and appropriately resourced to acquit these functions.

25. A proposed framework should restrict an NDA between a victim-survivor and an alleged harasser (unless requested by the victim-survivor).

26. Non-disparagement clauses that relate to the same subject matter as the sexual harassment complaint should be covered by NDA restrictions.

27. NDA restrictions should apply to all workplace arrangements, including volunteers, student placements or apprenticeships, contractors and employees, including labour-hire employees and employee-like regulated workers.

28. Legislation prohibiting NDAs as outlined in this submission must include a civil penalty regime, where employers do not comply with NDA restrictions. Civil penalties should be paid to the victim-survivor.

29. Where an NDA is found to be non-compliant, then that NDA only should be void, as opposed to the entire settlement. Settlement amounts should not be required to be repaid by the victim-survivor.

30. Mechanisms for individual enforcement must be accessible to victim-survivors, including with no filing fees or risk of costs (for example through the Victorian Civil and Administrative Tribunal (**VCAT**) Human Rights List).

31. Funding should be dedicated to ensure victim-survivors can access free trauma informed and culturally sensitive legal assistance to enforce NDAs they have signed.

32. VEOHRC should be given the powers and resourcing to enforce and monitor any new laws restricting NDA use at a systemic level.

33. Adequate resourcing must be dedicated to provide education and guidance in relation to any reforms.

Prohibit NDAs unless requested by the complainant

1. Should a Victorian framework prohibit NDAs unless requested by the complainant?

2. How could a complainant request be evidenced?

3. How could this approach be successful in reducing any misuse of NDAs?

Subject to the other safeguards recommended in this submission, we strongly support a framework prohibiting NDAs[1] unless requested by the victim-survivor, provided that:

- the victim-survivor request is made with an informed understanding of the legal implications and risks, and
- the victim-survivor's request is sufficiently evidenced and attached or incorporated into the NDA.

It is important to ensure that victim-survivors[2] feel empowered to report sexual harassment. Prohibiting the use of NDAs unless requested by the victim-survivor is an important step towards a culture of prevention and in line with the positive duty to prevent sexual harassment in the workplace.

Proposed scope of NDA reform should be expanded to include intersecting discrimination claims

We recommend that the regulation of NDAs should apply not only to sexual harassment but also to intersecting discrimination claims. We regularly see victim-survivors whose sexual harassment claims include intersectional experiences of discrimination, for example, relating to sex, race, age, sexuality, visa status, pregnancy, religion or disability. For example, our lawyers report that many clients who are visa holders have experienced a combination of sexual harassment, bullying, and wage theft and that these issues frequently occur together. Recent research from ANROWS on Migrant and Refugee women's experience of sexual harassment confirms that structural inequality heightens the impact and that it is not an isolated form of abuse or exploitation.[3]

The research found that workplace sexual harassment was consistently experienced alongside exploitative work conditions and/or racial discrimination. The researchers particularly noted that interaction between workplace sexual harassment and other forms of abuse is 'a critical and

[1] In the context of this submission, we refer to NDAs as including both standalone confidentiality agreements as well as settlement deeds or agreements that include confidentiality clauses. However, settlement deeds or agreements with confidentiality clauses are the most common.

[2] Throughout this submission, we refer to complainants as victim-survivors of sexual harassment.

[3] Segrave, M., Tan, S. J., Wickes, R., Keel, C., & Alarcón Lopez, N. (2024). Migrant and refugee women: A national study of experiences of, understandings of and responses to sexual harassment in the workplace (Research report, 07/2024), P. 18.

complex issue in the context of developing robust policy settings.'[4] Survey respondents who participated in the research underpinning the ANROWs report often perceived that 'the behaviour of people who perpetrated workplace sexual harassment was motivated by multiple forms of prejudice. The most frequently cited factors underpinning such prejudice were gender and/or sexual orientation and race and/or religion.'[5]

It is critical that these intersections are accounted for in any reforms to limit NDAs and improve systemic and individual responses to workplace sexual harassment. There would be an unintended consequence to prohibiting NDA reforms if the prohibition applied only to sexual harassment matters but not the discrimination claims brought alongside them, rending one part of a client's claim potentially subject to confidentiality but the rest public. It would confuse victim-survivors about the scope of what they can say publicly and create uncertainty about the validity of either side of the settlement.

Client story – Reem

Reem worked in a disability facility as a social worker. Most of her team had a different cultural background to her, and she faced bullying from other members of the team.

She was a part-time worker on an industry award at level 6. While she had a generally positive relationship with her team leader, they convinced her to become a casual employee. Throughout this time, she was never paid for casual loading at all.

When that team leader left, the new manager claimed the contract had been lost and asked her to sign a new contract at a much lower level 4 award rate.

Later, a new specialist was hired who was known by other staff to have a history of being verbally abusive and rude.

One day, when Reem did not immediately pick something up off the ground for him, he got upset with her. He began to be aggressive and rude to Reem. Reem stood up for herself, asking, 'What's up with you?'. The specialist then made comments of a sexual nature- including aggressively referring to his genitals.

Reem reported that incident of harassment, which management recorded as 'not serious'. Her new manager laughed at her story and told her to get over it. After her complaint, she wasn't offered any more shifts and received notice of termination a few weeks later.

[4] Ibid. P. 17

[5] Ibid. P. 35

Client story – May

May worked in administration for a large building company as a casual employee.

May had a good relationship with Tim, her senior co-worker, and she remembers that he sometimes joked about relationships and sex, and the conversation was friendly and flirtatious.

May felt uncomfortable, especially because of the power imbalance between her and Tim. May also had a different cultural background from most of the people in the office and was nervous as a migrant worker. She needed this job to survive, so she didn't raise any concerns initially.

One day, when they were talking in the office while no one else was around, Tim started mocking May's way of dressing and walking. He then jokingly asked May to perform a sexual act.
May got upset and felt angry.

She reported that incident to human resources. She was transferred to another office and was given a copy of the company's sexual harassment policy.

She continued to work for the company in the new office, and everything seemed fine. Over time, she witnessed her coworkers receiving permanent contracts while she stayed in her casual role. She raised this with her manager, and the manager responded, 'Oh, you know- women always get pregnant and go on leave; it's too difficult for the company to manage'.

After this conversation, she started to have her shifts cut, and eventually, no more shifts were offered.

Barriers to accessing justice in the current system

In our experience, the use of NDAs can:

- result in victim-survivors feeling like they are being silenced
- be used to cover up sexual harassment, and
- prevent identification of systemic behaviour by perpetrators in the workplace.

This is particularly concerning given the multiple and intersecting barriers to reporting sexual harassment and when cases very rarely reach the judgment stage to establish legal precedent.

It is our experience that respondents often use confidentiality as a bargaining tool alongside the potential settlement sum (i.e. requesting a confidentiality term with an agreement for additional compensation). This leaves victim-survivors - who may otherwise be interested in sharing their story in the hope of creating change - left with a decision to weigh their personal interests in compensation against using their story to achieve broader systemic change.

Impact of misuse of NDAs

Employers, including big corporations, misuse NDAs in settlement negotiations to protect their reputation and financial interests, often protecting the perpetrator from repercussions or disciplinary action.

Due to the length, cost and emotional challenges of pursuing legal proceedings, victim-survivors may feel compelled to agree to broad NDAs that fail to protect their interests. This comes at the expense of the victim-survivors mental health and their agency to share their story to prevent future sexual harassment in that or other workplaces.

NDAs can also harm other employees by allowing perpetrators and complicit employers to remain undetected and socially unaccountable. In addition, NDAs limit the ability of policymakers and employers to identify and respond to the systemic nature of sexual harassment and discrimination.

Prohibiting NDAs will limit their misuse, particularly when the power imbalance in employment relationships is exploited to push victim-survivors into settling their legal claims without receiving any legal advice or before the filing of any claims.

Evidence of a complainant's request

We agree that victim-survivors should retain the right to request an NDA. It is our experience that some victim-survivors of sexual harassment in the workplace do want NDAs – particularly those needing confidentiality for personal, cultural or professional reasons.

Guided by the approach taken in the Irish bill, the Terms of Settlement and NDA should include the following in writing:

- A statement that the NDA or confidentiality clause is the expressed wish and preference of the victim-survivor
- Confirmation and acknowledgement that:
- the victim-survivor has been provided with independent legal advice,
- there have been no undue attempts to influence the victim-survivor with respect to the decision to include an NDA or confidentiality clause.
- A clause providing an opportunity for the victim-survivor to waive their confidentiality in the future.

If an NDA is being sought and included, the Terms of Settlement and NDA must be witnessed by the lawyer who provided the victim-survivor with legal advice.

Need for monitoring and evaluation of any reforms

We emphasise the need to monitor and evaluate reforms carefully to ensure no unintended consequences for victim-survivors, particularly given that few claims make it to trial. For example, there is currently limited data about the Terms of Settlements, including compensation amounts.[6] It will also be important to monitor any discrepancies that arise between Victoria and other jurisdictions regarding claims and compensation amounts.

Recommendations

1. NDAs should be prohibited unless requested by the victim-survivor.

2. The proposed NDA reform should be expanded to include intersecting discrimination claims.

3. The Terms of Settlement and NDA should include the following, in writing, witnessed by the lawyer who provided the victim-survivor with legal advice:

    - A statement that the NDA or confidentiality clause is the expressed wish and preference of the victim-survivor
    - Confirmation and acknowledgement that:
        - the victim-survivor has been provided with independent legal advice,
        - there have been no undue attempts to influence the victim-survivor with respect to the decision to include an NDA or confidentiality clause.
    - A clause providing an opportunity for the victim-survivor to waive their confidentiality in the future.

4. There should be careful monitoring and evaluation of any reforms carefully to ensure there are no unintended consequences for victim-survivors, including a mandatory legislative review after two years.

Complainants are offered independent legal advice

4. Should the Victorian framework include a requirement that a complainant is offered independent legal advice prior to entering into an NDA? Are there any risks with this approach?

5. Should the provision of independent legal advice be at the employer's expense?

6. If legal advice is provided at the employer's expense, what safeguards could be included to ensure that the advice provided to the complainant is truly independent?

7. If legal advice is provided at the employer's expense, should there be parameters around this? If yes, what type of parameters should be considered? For example, should the advice be limited to the content and effect of the NDA and/or capped at a certain financial amount?

[6] The need for a strong reporting framework is discussed in further detail below.

8. Should a requirement that a complainant receive legal advice extend to advice about negotiating the terms of an NDA for vulnerable workers and/or where there is a significant power imbalance?

We strongly support a framework that requires independent and accessible legal advice to be offered to victim-survivors. Victim-survivors of sexual harassment in the workplace are already subjected to a significant power imbalance with the employer (as evidenced by our examples included above). This power imbalance is exacerbated if victim-survivors do not receive legal advice regarding their options, especially in relation to their options surrounding NDAs (for example, optional or varied NDA versus strict NDA).

Need for independent legal advice and services

When sexual harassment occurs, victim-survivors need free, confidential, trauma-informed and culturally appropriate support, advice and advocacy. By their very nature, NDAs (and settlement deeds more broadly) are legal documents involving legal terms. Given this, victim-survivors must receive legal advice and, if necessary, additional legal services (such as representation to negotiate the Terms of Settlement or assistance drafting correspondence).

Deeds and NDAs are frequently drafted in complex language, and determining the legal effect of a clause is often challenging for individuals who are not legally trained. Legal advice is essential to ensure victim-survivors fully understand the impact of a deed/NDA they are signing. Further, the lawyer providing the victim-survivor with advice must be an employment law specialist, have experience advising on NDA and settlement terms, and be free from any conflict of interest with the victim-survivor's employer.

As noted by the Australian Human Rights Commission in its report *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, 'victims have difficulty navigating options for taking action on sexual harassment, whether in the workplace, with external agencies or through the courts' and recommended further investment in organisations providing legal assistance including Working Women's Centres, community legal centres and legal aid, notably to support workers who aren't already members of their union. [7]

We particularly note Recommendations 49 and 53 of that Report, which call for governments to provide increased and recurrent funding to working women's centres, community legal centres, Aboriginal and Torres Strait Islander legal services, and legal aid commissions to provide information, advice and assistance to workers at greater risk of experiencing sexual harassment, taking into account particular needs of workers facing intersectional discrimination. We acknowledge that the Commonwealth funding of Working Women's Centres across every state and territory contributes to implementing these recommendations.

In a survey by JobWatch and RMIT in October and November 2022, over 2,600 Victorians were

[7] Australian Human Rights Commission, Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces (2020). Available at: ahrc_wsh_report_2020.pdf p. 38

interviewed about their experience of workplace sexual harassment and discrimination. When asked whether they were satisfied with the results of their legal and non-legal actions, survey respondents reported distress at 'not understanding their legal rights, having their claims and enquiries ignored, and not having sufficient support to navigate the legal system'.[8]

ANROWS' recent report on migrant and refugee women who had experienced sexual harassment in the workplace also underscored the need for accessible legal assistance for migrant and refugee women who have experienced sexual harassment in the workplace, with women who participated in the research expressing concern about the amount of evidence that they would need to provide, impacts on visa processes, and the costs entailed in accessing legal representation.[9]

Timing of legal advice

A victim-survivor should have access to free, confidential, culturally appropriate, and trauma-informed legal advice and services from the time they are deciding whether to request an NDA through to any negotiation on the terms of the settlement.

A victim-survivor should be offered accessible legal advice at the time a sexual harassment claim has been made, and the terms of the settlement are contemplated. The victim-survivor should be provided with an appropriate length of time to seek legal advice (no less than 20 business days), noting the time it can take to find a suitable lawyer and book an appointment. In our experience, a sexual harassment complaint is often the first time our clients have searched for or engaged with a lawyer.

Scope of legal advice and services

Victim-survivors should have clear legal advice on what an NDA can and cannot include as well as its scope (for example, that the employer cannot contract out of worker's compensation claims, time limits and carve out clauses for statutory claims for victims of crime compensation).

The legal advice provided to victim-survivors should not be limited to the terms of the NDA but should cover the entire settlement agreement and the merits of their claim. Without this, the client will not be fully informed or understand what they are bargaining away by agreeing to the NDA and/or settling the matter.

Confining the parameters of providing advice to the NDA component would contradict the lawyer-client relationship because the lawyer would either not be fully appraised of all the client's circumstances or cannot provide fulsome advice. For example, lawyers would not be able to advise

[8] JobWatch, *Overwhelmed And Frustrated: Experiences Of Workplace Sexual Harassment And Discrimination; The Barriers Faced With The Legal System* (2023) JobWatch-Research-Report web-version.pdf p. 40

[9] Segrave, M., Tan, S. J., Wickes, R., Keel, C., & Alarcón Lopez, N. (2024). Migrant and refugee women: A national study of experiences of, understandings of and responses to sexual harassment in the workplace (Research report, 07/2024), p. 71

on an NDA without knowing:

- The background of events and the sexual harassment
- If the NDA is to cover any other entitlements in the case of termination of employment (or claims such as underpayments or discrimination)
- If there are ongoing workers' compensation or discrimination claims

We also see that in many of the sexual harassment cases where we provide legal advice and services, the victim-survivor has also experienced other intersecting issues in the workplace, such as discrimination, unpaid wages, unfair dismissal, bullying, and occupational health and safety issues. For our clients, support is also frequently required for visas, migration, or mental health. This underpins a need for holistic legal services and support (including social work support and financial counselling) for victim-survivors.

Employer-funded legal advice and services

We agree that the victim-survivor should not be responsible for, or required to pay for, legal advice or service about their complaint and the terms of the settlement but consider that there are significant risks with requesting the advice be at a respondent employer's direct cost, including:

- That the employer may seek to recover the cost from the employee through any settlement sum negotiated (or reduce their settlement sum by an equivalent amount)
- The victim-survivor may feel pressured to take as little time as possible with the lawyer because they do not wish to create an additional financial burden for the employer
- The employer may require the victim-survivor to get advice from their own lawyer, which might influence the advice given due to the employer’s position

To address these concerns, we support a model whereby legal advice and services for victim-survivors are employer-funded. However, we strongly recommend doing this at arms-length (for example, through a levy imposed on all employers into a common fund administered through a regulator). Unlike direct payments made by employers to a lawyer, this regulator-managed model would ensure that the legal advice provided to the victim-survivor is genuinely independent.

Quality of legal advice and services

The lawyer providing the victim-survivor with advice or legal services must be an employment law specialist, have experience advising on NDA and settlement terms, and be free from any conflict of interest in relation to the victim-survivors employment.

To ensure that the legal advice (and any other subsequent legal services) is independent, accessible, trauma-informed and culturally safe, we recommend making it available through community legal centres (such as the Working Women’s Centre Victoria or Jobwatch) or Victoria Legal Aid, which are funded to provide specialist workplace sexual harassment advice. Appropriate funding and

resourcing should be provided to support this, including continuing to fund these services as recommended by the Respect@Work Report.

Recommendations

5. Independent and confidential legal advice must be available to victim-survivors before requesting an NDA through to any negotiation on the Terms of the Settlement.

6. Victim-survivors must be provided with at least 20 business days to seek legal advice.

7. Legal advice should be about the victim survivor's complaint and complete settlement agreement, and not limited to the NDA.

8. Community legal centres or Victoria Legal Aid are the most appropriate avenues for ensuring legal advice is independent, culturally appropriate, trauma-informed and accessible, and should be resourced appropriately to take on this role.

No attempts have been made to unduly pressure or influence a complainant to enter an NDA

9. What is the best mechanism to ensure that an employer does not unduly pressure or influence a complainant to enter an NDA?

10. What could be considered an attempt to unduly influence or pressure a complainant? What conduct would fall outside this definition, and therefore be permissible?

The most appropriate safeguard against an employer exerting undue pressure or influence is ensuring that a victim-survivor can seek independent legal advice before requesting an NDA or agreeing to waive their rights. It is crucial that victim-survivors are supported to know and understand their rights and protections, negotiate terms, identify concerns, including undue influence, and identify general protection claims and any related claims, including unfair dismissal or general protection involving dismissal.

We suggest that the definition of 'undue pressure' or 'undue influence' should draw on the meanings of 'undue influence' and 'unconscionable' conduct under contract and consumer laws.

Additional safeguards could include:

- A provision stipulating that the effect of the confidentiality clause or the whole settlement agreement is waived when there has been undue pressure or influence on a victim-survivor to enter an NDA.
- Civil remedy penalties where undue influence is found to have occurred.
- A fact sheet must be attached to every NDA explaining undue influence alongside a term in a deed to confirm that all parties have read and understood the material.

- Additional training and resources be made available to VCAT/VEOHRC mediators and conciliators to enhance compliance with the NDA framework, including ensuring that a trauma-informed approach is taken in mediation and conciliation discussions.

Recommendations

9. Victim-survivors should have access to independent legal advice before requesting an NDA or agreeing to waive their rights, including as a safeguard against employers exerting undue influence or pressure to enter an NDA.

Ensuring an NDA does not adversely affect others

11. Should a proposed framework provide that a permitted NDA does not adversely affect the future health or safety of a third party or the public interest?

12. Should a proposed framework require that all NDAs include a clause that an employer engage in preventative action, and assess its compliance with its positive duty, to eliminate sexual harassment?

We agree that the NDA reform process should consider the best way to ensure that employers take systemic and preventative action and to protect future victim-survivors of sexual harassment from serial perpetrators. This is particularly important where employers are continuing to utilise NDAs or confidentiality clauses in their settlements of sexual harassment matters where a victim-survivor requests this.

It is our view that parties should have the flexibility to negotiate outcomes within their settlement that include preventative action or action to address systemic sexual harassment, such as workplace training, workplace culture audits, or other steps recommended to meet the positive duty under the VEOHRC Guideline on Sexual Harassment.

However, there is a risk that a regulatory framework requiring a permitted NDA to not adversely affect the future health or safety of a third party or the public interest may place an unfair burden on a victim-survivor to account for the public interest when negotiating their Terms of Settlement, including in considering to request an NDA. We suggest that public interest or health and safety concerns are better addressed through alternative reporting mechanisms, including existing psycho-social hazard reporting requirements (discussed further below).

A mandatory requirement that an NDA requires an employer to engage in preventative action and assess compliance with its positive duty to eliminate sexual harassment may not have the intended consequence. While we support a mechanism for victim-survivors to report their NDA to an authorised body, there are limited ways for a victim-survivor to determine whether the employer genuinely agrees to undertake those measures, whether they will or have complied with them, and whether they would risk challenging the employer's compliance with the NDA or settlement deed when they have received their compensation and other agreed outcomes already. Preventative action and culture change are broader public interest concerns that could be addressed through alternative reporting and enforcement mechanisms.

.**Recommendations**

10. Public interest concerns be addressed through public reporting and enforcement mechanisms rather than mandated NDA terms.

Ability to waive an NDA

13. Should there be an ability for a complainant who has entered an NDA to waive all or part of their own confidentiality under the agreement?

14. Should there be certain procedural requirements that an individual must comply with (i.e. a period of notice) if they wish to waive confidentiality?

15. Should there be a minimum time period (say 12 months) before a complainant could waive confidentiality?

In our experience, some clients feel satisfied with a confidentiality clause during negotiations but sometimes later feel that their story has not been heard, that they have been silenced, and/or that they need to discuss their story as part of their recovery. In this context, victim-survivors should be able to waive all or part of their confidentiality under the agreement. A victim-survivor may wish to speak about their experience when an unexpected opportunity arises or a particular event occurs. This could include a public advocacy opportunity or the need to disclose an experience to support family members or friends. Victim-survivors should not be limited due to the general uncertainties and the unforeseeable nature of life.

There is a risk, however, that if a victim-survivor is entitled to waive the confidentiality requirement in their agreement, this would disincentivise employers to settle at all. A minimum timeframe might mitigate this before a victim-survivor can seek to speak out about their circumstances and waive confidentiality or use a set and limited duration for the NDA/confidentiality term.

In relation to procedure, we recommend that the victim-survivor provide the employer with written notice to waive their confidentiality. Best practice guidance for drafting a waiver of confidentiality should be issued through VEOHRC in a way similar to an Equal Opportunity Act Guideline or other best practice resource.

We believe waiving confidentiality should not result in the victim-survivor needing to pay back any compensation that was paid in the period before the waiver, especially where that compensation was to remedy the harm and damage caused by the sexual harassment, not to compensate for the inclusion of the NDA or confidentiality term.

Recommendations

11. Victim-survivors should be able to waive all or part of their confidentiality by providing written notice that their confidentiality is waived. The waiver should not result in compensation amounts being required to be paid back by victim-survivors.

12. Best practice guidelines regarding drafting a confidentiality waiver should be issued by an

appropriate authority like VEOHRC.

NDA to be of a set and limited duration

16. Should NDA legislation specify a maximum duration (for example five years) as a requirement for NDAs to be considered lawful? If yes, what would be a reasonable duration? Alternatively, should the duration of an NDA be agreed between the parties to the agreement?

17. If a duration is set, should there also be an opportunity for a complainant to waive their own confidentiality within that duration?

18. If a duration is set, should it be limited to disclosures by the complainant only (with the employer bound by the NDA in perpetuity unless the complainant chooses to release the parties from the NDA by discussing matters publicly)?

19. Would a time-limited NDA create any adverse consequences?

While we note that binding the parties to an NDA in perpetuity may create barriers to achieving organisational change and structural improvements, it is our view that the wishes of the victim-survivor should be the paramount concern when considering the duration of an NDA.

We support waivers as outlined above rather than a set maximum duration for NDAs.

We recommend that additional training and resources be available to relevant mediators and conciliators to enhance compliance with these reforms.

Recommendations

13. The wishes of the victim-survivor should be the paramount concern when considering the duration of an NDA.

Review and 'cooling off period'

20. Should a complainant have a specified amount of time to review an NDA before signing it and a set 'cooling off' period during which time they could revoke an NDA after signing it?

21. If yes, what would be an appropriate amount of time to review/revoke an NDA?

22. If yes, should a complainant have the ability, if desired, to waive the review and cooling off period?

We support measures to ensure a victim-survivor has a minimum time to review the terms of an NDA before signing it and a 'cooling-off' period of no less than seven business days following the finalised terms of the settlement. We consider that the 'cooling-off' period should apply to the settlement terms as a whole and not be limited to the NDA component. The 'cooling-off' period should commence after the victim-survivor has received legal advice on the merit of their claim and the full Terms of Settlement, and the Terms of Settlement have been agreed in principle.

We particularly note that the personal nature of sexual harassment claims means victim-survivors may want the opportunity to give thought about what they are signing on to. A 'cooling-off' period is an essential tool to ensure the victim-survivor has the agency to make an informed and supported decision, including seeking support from a health professional such as a psychologist, a trusted family member, or a religious or spiritual adviser.

This will also allow a victim-survivor to seek further support and advice (for example, from a sexual assault service or psychologist) in relation to the impact of the settlement on their health and wellbeing.

Recommendations

14. A cooling-off period of no less than seven business days following the finalised Terms of Settlement should apply to the full terms of the settlement.

Permitted disclosures

23. Should a proposed model include a list of permitted disclosures?

24. Do you have any views on the preliminary list of permitted disclosures above?

25. Should a prescribed list include an option for 'any other person as agreed between the parties of the NDA'?

26. What are the risks with permitting disclosures to family and friends? How could these risks be managed?

Victim-survivors of sexual harassment should be able to disclose what had happened to them to assist their recovery, receive therapeutic support and retain agency of their experience. We note that the processes surrounding permitted disclosures should be victim-led and trauma-informed.

We support a proposed model that includes a list of permitted disclosures and an option for any other person to be a permitted disclosure as agreed between the parties of the NDA. The list of permitted disclosures should not be inconsistent with the examples outlined in *Respect@Work Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*[10], and should include support people, including professionals in the scope of seeking support (such as specialist sexual assault counsellors, psychologists, financial counsellors, religious and spiritual advisers, social workers, legal professionals, tax advisors, migration agents, social support services, settlement support services, and government agencies such as Centrelink).

The list should also include organisations, government bodies, regulators and agencies that are conducting research, investigations, inquiries and royal commissions into issues relating to sexual

[10] Australian Human Rights Commission, Respect@Work Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints (2022). P.12

harassment, such as sex and gender discrimination, systemic gender inequality, and sexual violence, where the victim-survivors voice should be able to be heard, and their story used to guide law and policy-makers about changes to laws, systems and processes.

The public reporting regime should be included as a permitted disclosure to enable it to function efficiently and without any argument from employers that it prevents reporting or can be contracted out of.

Guidance material should be explicit that employers cannot contract out of permitting certain disclosures, including to police, workers' compensation agencies, and in relation to statutory claims for victims of crime compensation.

Recommendations

15. The model should include a list of permitted disclosures as well as an option to include any other permitted disclosures as agreed between the parties.

16. The preliminary list of permitted disclosures should be expanded to more comprehensively cover the range of professionals and individuals from whom the victim-survivor may seek support, and to organisations and bodies undertaking relevant research, investigatory, law reform or policy-making function.

Prescribed form or mandatory provisions

27. Do you think the form of an NDA should be prescribed under legislation? Should certain clauses be prescribed?

We do not support strictly prescribed forms of NDAs. We believe victim-survivors should retain the flexibility to draft clauses in a form that best reflects their interests. However, we support regulator-issued templates akin to court forms found in regulations with the express ability to amend these according to the parties' interests. These could include drafting notes that indicate what is mandatory under the regulation and what can be negotiated in compliance with the reforms.

We recommend that guidance be developed for parties that set out what an NDA can and cannot include but do not go so far as prescribing specific wording. Guidance should instruct that the NDA must be clear and exact, in plain English, not use legal jargon, and explain clauses and limits. Information should be available in languages other than English, in as many languages as possible, as those who speak different languages at home or are not fluent in English are most susceptible to coercion, undue pressure to include an NDA or misunderstanding their rights to not have confidentiality as a term of their settlement.

Conciliators working with complaints of sexual harassment must also ensure they are discussing the risks and issues identified in NDA Guidelines (including the Respect@Work 'Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints' and/or any that are developed as part of this proposed legislative reform) with both parties at conciliation to ensure that the negotiated agreement is not based on an agreed remedy plus "standard terms". Any

confidentiality terms must be discussed and agreed upon before the settlement deed or agreement is drafted to ensure that the parties clearly understand what is proposed and that the victim-survivor can negotiate the confidentiality terms.

We recommend that additional training and resources be made available to relevant mediators and conciliators (for example, VCAT and VEOHRC) to enhance compliance with the NDA framework.

Recommendations

17. Victim-survivors should retain the flexibility to draft clauses in a form that best reflects their interests.

18. Guidance be developed for parties that set out what an NDA can and cannot include but do not go so far as prescribing specific wording. Guidance should instruct that the NDA must be clear and exact, in plain English, not use legal jargon, and explain clauses and limits.

Duty to report on NDA use and actions taken to address the conduct of alleged harassers

28. Should a model similar to the WGEA reporting program be adapted for use of NDAs in workplace sexual harassment? If yes, what should be included in the reports?

29. What should the consequences be if an employer fails to report?

30. Do you think reporting on NDAs would assist to reduce the misuse of NDAs and to prevent sexual harassment in the workplace?

Data must be collected on NDA use and actions taken to address the conduct of alleged harassers. We recommend that an employer be required to publicly report:

- the use of an NDA,
- any actions taken in response to the sexual harassment, including any disciplinary action against the perpetrator, and
- broader organisational compliance with positive duties to prevent sexual harassment or improvements to create systemic change and transparency in their workplace culture surrounding sexual harassment complaints.

Currently, employers in Australia do not accurately record sexual harassment cases and complaints, and the prevalence of the issue is largely unknown. We would support expanding the data captured through any reporting program also to include

- complaints of sexual harassment (formal and informal, including where anonymous complaints have been made)
- complaint outcomes (including disciplinary action taken and whether compensation has been paid)
- policies and procedures in place to prevent sexual harassment

- whether an employer has undertaken a workplace audit or other steps to comply with their positive duty in accordance with the VEOHRC Guideline on Sexual Harassment
- settlement terms.

To gather the most accurate data for public interest purposes, we support an additional mechanism to be established that facilitates victim-survivors reporting the use of NDAs. This will be essential to indicate to the authorised body where an employer has not self-reported.

A public reporting program is necessary to bring about widespread culture change and emphasise to employers the need to take responsibility and ownership of systemic change to prevent sexual harassment and gendered violence.

We support a model similar to the Workplace Gender Equality Agency (WGEA) reporting framework, including the public naming of agencies that fail to comply with the positive duty to prevent sexual harassment and any legislation implementing NDA reforms and associated restrictions such as prohibitions on tendering for government contracts and grants. A public register of agencies that have failed to comply is also appropriate so prospective employees can easily access this. While we support the public reporting of employer-identified data, reporting mechanisms should ensure that victim-survivors privacy is paramount.

The body tasked with reporting and data collection must receive appropriate funding and resources to acquit these functions appropriately.

Recommendations

19. Employers should be required to publicly report:

- the use of an NDA,
- any actions taken in response to the sexual harassment, including any disciplinary action against the perpetrator, and
- broader organisational changes or improvements to create systemic change and transparency in their workplace culture surrounding sexual harassment complaints.

20. Any reporting program should also capture data about sexual harassment complaints, including:

- complaints of sexual harassment,
- complaint outcomes,
- policies and procedures in place to prevent sexual harassment,
- whether an employer has undertaken a workplace audit or other steps to comply with their positive duty in accordance with the VEOHRC Guideline on Sexual Harassment,
- settlement terms.

21. A mechanism should be established to assist victim-survivors in reporting the use of NDAs to an authorised reporting body to help indicate when employers have not self-reported.

22. Employers that fail to comply with NDA restrictions and public reporting requirements should be listed on a public register accessible to prospective employees, restricting the employer from accessing government procurement and grants processes.

23. The public reporting of any data must protect victim-survivors privacy.

24. Any regulatory agency tasked with reporting functions associated with these reforms must be independent and appropriately resourced to acquit these functions.

Parties to the NDA

31. Should a proposed framework also restrict an NDA between a complainant and the alleged harasser?

32. Should a proposed framework also prohibit a separate NDA between the employer and the alleged harasser?

Yes, a proposed framework should also restrict an NDA between a victim-survivor and the alleged harasser (unless requested by the victim-survivor), as well as between an employer and the alleged harasser. We note that currently, settlement deeds are frequently drafted to extend to the alleged harasser and employer. The overall focus and purpose should be to protect the victim-survivor.

Recommendations

25. A proposed framework should restrict an NDA between a victim-survivor and an alleged harasser (unless requested by the victim-survivor).

Non-disparagement clauses

33. Should NDA restrictions also extend to non-disparagement clauses?

Yes. If non-disparagement clauses relate to the same subject matter as the sexual harassment complaint, then they should be covered by NDA restrictions.

26. Non-disparagement clauses that relate to the same subject matter as the sexual harassment complaint should be covered by NDA restrictions.

Defining the workplace

34. Should NDA restrictions apply only to an NDA entered into between an employer and employee or also extend to an NDA entered into between an employer and other worker engaged by an employer such as a contractor or volunteer?

35. Are there any typical scenarios in which an employer might seek to enter an NDA with respect to a complaint of workplace sexual harassment that you think should be considered in determining the scope of the restrictions?

We believe coverage of the NDA restrictions should apply to all workplace arrangements, including volunteers, student placements or apprenticeships, contractors and employees, including labour-hire employees and gig workers (now described as "employee-like regulated workers" under the *Fair Work Act 2009*). Unless the restrictions cover all types of workplace arrangements, there is a risk that employers could use contracting arrangements to avoid vicarious liability and NDA prohibitions. Consistent regulation of NDAs across all types of arrangements is required to ensure that the reforms create no loopholes – or to remove a risk that employers are incentivised to create sham contracting arrangements to avoid the restrictions on NDAs.

We suggest that the definition of worker should be a comprehensive standalone definition but consistent with the definition of employee and contract worker under the *Equal Opportunity Act 2010* (Vic) (**EO Act**) and the definition of employee and worker under the *Occupational Health and Safety Act 2004* (Vic).

Recommendations

27. NDA restrictions should apply to all workplace arrangements, including volunteers, student placements or apprenticeships, contractors and employees, including labour-hire employees and employee-like regulated workers.

Compliance and Enforcement

36. How could restrictions on the use of NDAs best be enforced?

37. Should NDA legislation include a civil penalty regime? Would this act as a deterrent in this context?

38. Who should bring a complaint for NDA non-compliance (e.g. complainant, employer, government agency)?

39. If an NDA is entered into that does not meet specified criteria, should it then void the NDA if this is sought by the complainant (noting that this would be limited to the NDA and not void the entire settlement agreement)?

40. What role does education and guidance have in achieving compliance? Do you think supporting guidelines on how to comply with NDA legislation and/or template clauses would aid compliance with the regulation of NDAs?

Individual mechanisms for enforcement

We support a model that includes an accessible individual mechanism for enforcement, supplemented by a regulator responsible for enforcing and monitoring compliance at a systemic level.

In terms of individual enforcement, we support the inclusion of a civil penalty regime in NDA legislation. The elimination of sexual harassment in the workplace is a matter of public concern. Decision-makers need to be open to imposing civil penalties where appropriate. We see the option

of imposing civil penalties duly re-orientates the focus on the conduct of the wrongdoer, signals the public disapproval of that conduct, and may act as a general deterrence.

Under the current anti-discrimination legislation, the remedies that flow from a claim are based on the injury and losses suffered by the victim-survivor arising from the perpetrator's conduct, to put them in the position they were in before the conduct occurred. They are not aimed at punishing unlawful conduct or preventing harm. In Victoria, VCAT has the power to award aggravated damages, but these are very rarely awarded and are still considered to form part of an assessment of loss by the victim-survivor (see e.g. *Collins v Smith* [2015] VCAT 1992 [134]). VCAT also has the power in sexual harassment and discrimination matters to make an order for a person to take action "with a view to addressing any loss, damage or injury suffered by the applicant as a result of the contravention" (s125 EO Act).

We recommend that the EO Act be amended to include an award of civil penalties in circumstances where employers respond to complaints of sexual harassment in a way that causes further harm to the victim-survivor. We suggest that this be extended to cover compliance with NDA restrictions. We consider that civil penalties should be paid to the victim-survivor (in line with similar approaches taken under s546(3) of the *Fair Work Act 2009* (Cth)).

We support an approach whereby if an NDA is introduced that is non-compliant, then that NDA only should be void, if this is sought by the victim-survivor. We do not support an approach that would void the entire settlement or result in a victim-survivor being required to repay settlement amounts paid or payable under the Terms of Settlement.

Mechanisms for individual enforcement must be accessible to victim-survivors, including with no filing fees and no risk of costs (for example, through VCAT's Human Rights List), noting that VCAT needs additional funding and resources to reduce delays in matters being listed and heard. We also recommend that funding be dedicated either through funding community legal centres or through a grant pool ensuring victim-survivor can access free trauma-informed and culturally appropriate legal services to enforce NDAs they have signed (noting this is likely to be a small number of victim-survivors).

Compliance and enforcement at a systemic level

We consider VEOHRC to be the most appropriate body to enforce and monitor any new laws restricting NDA use at a systemic level. We support a model whereby VEOHRC have broad investigation and enforcement powers, including the ability to compel evidence and issue improvement notices. We emphasise the success of any enforcement regime is contingent on adequate funding and resources.

As outlined above, we recommend strong public reporting and data collection as an essential component of achieving the systemic and cultural change required to prevent workplace sexual harassment, in line with the overarching objectives of these proposed reforms. We suggest the VEOHRC as the most appropriate body to receive and publish the reports and propose that this could include a combination of employer-identified and private data (noting the need to ensure the privacy of victim-survivor and the potential risks that employer-identified data could raise for the

confidentiality of victim-survivors). We further recommend robust monitoring and evaluation of any reforms to ensure there are no unintended consequences for victim-survivors, and a legislative review after two years.

Education and guidance will be critical to achieving compliance and consider the VEOHRC to have an important role to play in providing education and guidance in relation to any reforms, noting they have existing statutory functions and specialist expertise in relation to research, education, guidance, investigations and compliance audits. We emphasise the importance of ensuring adequate funding and resources are dedicated to this.

Recommendations

28. Legislation prohibiting NDAs as outlined in this submission must include a civil penalty regime, where employers do not comply with NDA restrictions. Civil penalties should be paid to the victim-survivor.

29. Where an NDA is found to be non-compliant, then that NDA only should be void, as opposed to the entire settlement. Settlement amounts should not be required to be repaid by the victim-survivor.

30. Mechanisms for individual enforcement must be accessible to victim-survivors, including with no filing fees or risk of costs (for example through VCAT's Human Rights List).

31. Funding should be dedicated to ensure victim-survivors can access free trauma informed and culturally sensitive legal assistance to enforce NDAs they have signed.

32. VEOHRC should be given the powers and resourcing to enforce and monitor any new laws restricting NDA use at a systemic level.

33. Adequate resourcing must be dedicated to provide education and guidance in relation to any reforms.

16 September 2024

Engage Victoria
Department of Treasury and Finance
1 Treasury Place
MELBOURNE VIC 3002

By Submission Portal

Dear Colleagues

Re: Restricting NDAs in workplace sexual harassment cases

Thank you for the opportunity to respond to the discussion paper on restricting Non-Disclosure Agreements in workplace sexual harassment cases dated 12 August 2024.

About Working Women's Centres

Working Women's Centre Australia (WWC Australia) is the newly established national body of Working Women's Centres. Working Women's Centres have been funded by DEWR to expand and establish across the country to provide education, advocacy**,** and legal/industrial services to working women. Working Women's Centres are operating in SA (1979), NT (2004)**,** and QLD (2004)**,** and by the end of the year, Working Women's Centres will be operating in every state and territory.

Working Women's Centres provide crucial legal, education, and advocacy services to women who are experiencing workplace issues, with a focus on sexual harassment and discrimination. Legal advice and representation for working women is free, confidential, and trauma informed. Working Women's Centre practitioners are regularly negotiating NDAs for their clients to limit the negative impacts on women, workplaces and their families however we collectively agree that systemic law reform is required in Victoria and across the country.

Endorsement

We refer to Working Women's Centre Victoria's submissions of 16 September 2024 and wholly endorse these submissions and the recommendations.

We welcome reform that leads to better outcomes for victim/survivors and supports truth telling, prevents cover-ups and allows the community to have the information we need to prevent sexual harassment and discrimination in the workplace.

Our endorsement reflects our commitment to advancing this issue nationwide.

Should you have queries about our submissions, please contact the writer; we welcome the opportunity to discuss our recommendations further.

Yours faithfully,

Abbey Kendall
Chief Executive Officer
Working Women's Centre Australia