



# **Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints**

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## Recommended approach to the use of confidentiality clauses

Confidentiality clauses should not be seen as standard terms in workplace sexual harassment settlement agreements. When resolving an allegation of workplace sexual harassment, organisations should aim to promote openness and transparency to ensure they are able to take steps to address and prevent sexual harassment.

Based on the findings of the Respect@Work Report, the following approach should inform the use of confidentiality clauses in all workplace sexual harassment settlement agreements:

1. Consider the need for a confidentiality clause on a case-by-case basis.
2. The scope and duration of the confidentiality clause should be as limited as possible.
3. Confidentiality clauses should not prevent organisations from responding to systemic issues and providing a safer workplace.
4. All clauses in a settlement agreement should be clear, fair, in plain English and, where necessary, translated and/or interpreted.
5. The person who made the allegation should have access to independent support or advice to ensure they fully understand the meaning and impact of the settlement agreement, including any confidentiality clause.
6. Negotiations about the terms of a settlement agreement should ensure so far as possible the wellbeing and safety of the person who made the allegation, and be trauma-informed, culturally sensitive and intersectional.

These Guidelines are directed towards confidentiality obligations contained in legally binding settlement agreements. Nothing in this document prevents the parties choosing to keep details of the complaint or settlement confidential, including the person who has made the allegation.



## Checklist before finalising a settlement agreement that contains a confidentiality clause

The safety and wellbeing of the person who made the allegation should be a central consideration in all discussions about confidentiality clauses in settlement agreements. The person who made the allegation should be fully informed at every stage of the process so that they have an opportunity to decide what is in their best interests. To ensure the person who made the allegation is aware of the settlement agreement process and what a confidentiality clause means, they should be provided with:

- a copy of these Guidelines and the *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints - Fact Sheet for Individuals*
- where possible, a copy of any proposed settlement agreement drafted in an accessible format, including plain language
- information about how to access legal services including Legal Aid Commissions, Aboriginal and Torres Strait Islander Legal Services, community legal centres or other sources where they may be able to access free legal advice
- information about how to access support and counselling services, including union representatives where appropriate
- adequate time to read, understand and sign the settlement agreement.