

WORKING WOMEN'S CENTRE AUSTRALIA CALLS FOR NATIONAL NDA REFORM

Newly formed [Working Women's Centre Australia \(WWCA\)](https://www.wwc.org.au) has called for legislative reform and stronger regulatory powers to curb the overuse and misuse of Non-Disclosure Agreements (also known as confidentiality and gag clauses).

Non-Disclosure Agreements (NDAs) in workplace settlements on sexual harassment, abuse and discrimination are having a chilling effect on victim-survivors, public transparency and action to change our workplaces for the better.

Almost all sexual harassment settlement agreements include a strict NDA which prevent the person who has experienced sexual harassment from speaking about it – including to family, their medical practitioners as well as public interest inquiries or investigations.

Abbey Kendall, WWCA CEO speaking at last week's Small Steps, Safe Workplace Sexual Harassment Conference in Hobart, said:

"We know from public inquiries and even Royal Commissions that silencing of victim-survivors in institutional spaces causes enormous harm – so why would this be any different for workplace sexual harassment? There is growing evidence internationally that NDAs compound a person's distress and pain, makes them feel that their own needs are being trampled on or betrayed, and creates feelings of debilitating shame and burden including around not warning others."

"We also know that NDAs hinder positive action in workplaces and society to prevent sexual harassment in the first place; letting employers off the hook for systemic issues and perpetrators off the hook for their behavior."

"Employers now have an express obligation to prevent sexual harassment and discrimination in the workplace, and we believe that the misuse and default use of NDAs, is in breach of Positive Duty laws introduced as part of the Albanese Labor Government's commitment to implementing the Respect@Work recommendations."

The Respect@Work Report raised grave concerns about the unregulated overuse and misuse of NDAs, and the impact they have on transparency and preventing sexual harassment. New Commonwealth guidelines around the use of NDAs have been produced.

However, a groundbreaking report released by the University of Sydney in March this year, Regina Featherstone and Sharmilla Bargon's Let's Talk About Confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report, provides a powerful case that these guidelines have yet to substantially impact on how NDAs are used in Australia.

Kendall said,

"The Respect@Work NDA Guidelines can be helpful however it's clear that more legislative and regulatory power is needed to change rusted on practices that protect cultures of sexual

harassment. This can be seen in all types of workplaces right through to places like Federal Parliament where sexual harassment is being reported at high levels and as we recently saw in Senate Estimates, while attempting to stick to the NDA Guidelines even the Commonwealth admits there are times these may not be followed.”

Sharmilla Bargon, co-author of Let's Talk About Confidentiality and Assistant Principal Solicitor, Working Women's Centre NSW, said:

“Times have changed, and we need to take urgent steps to keep up with community standards and expectations. We must work together to stop sexual harassment, and not just react once the harm has already been done. Our research showed that there are significant issues with the way sexual harassment matters are resolved, in particular that NDAs are misused to both silence victim-survivors and to keep perpetrators in workplaces, free to sexually harass again. Perpetrators must be held accountable for their actions and employers must step up in their responsibilities to provide safe workplaces. Now is the time to take action.”

Legislative and regulatory change to restrict the overuse and misuse of NDA is the way forward to:

- Provide stronger protection for victim survivors and the public interest.
- Shakeup and ban rusted on practices that protect cultures of sexual harassment.
- Provide greater consistency with and to support Positive Duty to prevent sexual harassment laws.
- Build on important existing commitments to implementing Respect@Work recommendations.

Currently the Victorian Government is in the consultation stage for legislation to end the misuse of NDAs in cases of workplace sexual harassment, with other state Attorneys-General reportedly following this progress very closely.

Abbey Kendall concluded:

“We need to look closely at the system nationally – through Commonwealth and State-based systems – to change the laws and culture that ultimately serve to silence survivors and victims

“At WWCA, ending the misuse of NDAs is a key focus for our national advocacy and policy initiatives to advance women's rights in the workplace. We will be working with our national Working Women Centre network, our community legal service and trade union colleagues, the Australian Government and other parliamentary representatives, to make this change. It's important change, simple change and overdue change – let's get it done.”

MEDIA ENQUIRIES

Abbey Kendall
CEO WWCA
0412 454 900
abbey@wwc.org.au

Thais Martins
Communications Officer WWCA
thais.martins@wwc.org.au
08 8410 6499

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