

Parliament of Victoria

Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025

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No. 6 | November 2025

Bill Brief

Parliamentary Library & Information Service

Content warning: This Brief contains information that some readers may find distressing as it refers to sexual harassment and sexual assault.

Table of contents

Executive summary	1
1 Introduction	2
<i>What is sexual harassment?</i>	2
<i>What is a non-disclosure agreement?</i>	3
<i>Background to the Bill</i>	4
2 The Bill	6
3 Stakeholder responses	9
<i>Consultation responses</i>	9
<i>Views within parliament</i>	10
<i>Responses to the Bill</i>	10
4 Other jurisdictions	11
<i>Ireland</i>	11
<i>Canada</i>	12
<i>United Kingdom</i>	12
<i>United States</i>	13
Reference List	14

Bill information

Introduced: 29 October 2025
House: Legislative Assembly
Second Reading: 30 October 2025
Commencement: On a day or days to be proclaimed, or on 1 November 2026 if not proclaimed before that date.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second reading Speech can be found at the [Library’s Infolink page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary documents website](#).

Executive summary

In 2022, the Australian Human Rights Commission found that around one in three workers had experienced workplace sexual harassment in the last five years. Victoria's *Equal Opportunity Act 2010* defines sexual harassment as when a person makes an unwelcome sexual advance or request for sexual favours, or engages in any other unwelcome conduct of a sexual nature, in a way that would be expected to offend, humiliate or intimidate the other person.

Younger people, LGBTQIA+ people, First Nations peoples and people with a disability experienced sexual harassment more than the total population. Most harassers were men, and women were more likely than men to have been harassed.

Non-disclosure agreements (NDAs) or confidentiality clauses are regularly used by employers when settling workplace sexual harassment matters out of court. These agreements release the respondents (usually the harasser and the employer) from liability for the alleged conduct, in exchange for financial and non-financial outcomes. However, legal academics have highlighted that the overuse of NDAs in this context means that employers are covering up patterns of misconduct and are protecting repeat abusers, to the detriment of victim-survivors.

To consider how best to address this overuse of NDAs and other matters, in March 2021 the Victorian Government established a Ministerial Taskforce on Workplace Sexual Harassment. Following a consultation period, in July 2022 the Taskforce's findings were released and included the recommendation that legislation be introduced to restrict the use of NDAs in relation to workplace sexual harassment, using other jurisdictions (namely Ireland and the Canadian province of Prince Edward Island) as a model for reform. The government accepted the recommendation in principle and conducted another consultation process in 2024 specifically on NDA use in workplace sexual harassment matters.

In October 2025 the Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025 was introduced in the Legislative Assembly. If passed, the Bill will:

- prohibit NDA use, unless requested by the complainant;
- mandate the requirement for information statements and a period of review before a complainant signs an NDA;
- prohibit an employer from pressuring or influencing a complainant to enter an NDA;
- allow a complainant who has entered an NDA to talk to certain people and bodies (such as Victoria Police and medical and legal professionals); and
- allow a complainant to terminate an NDA on or after the first anniversary of it being signed, among other measures.

Where breaches of the legislation are deemed to have occurred, a resolution process will be available through the Industrial Division of the Magistrates' Court.

Responses to the Bill and the consultation process have been mostly positive. Measures that received broad support included those that would empower victim-survivors and increase employer accountability. However, others argued that the existing guidelines on NDA use were preferable, or that the issue should be dealt with federally.

Jurisdictions in Ireland, Canada, the United Kingdom and the United States have introduced or passed legislation to limit NDA use in workplace sexual harassment cases. The Irish legislation has been used as a model in several jurisdictions and has informed the Bill in Victoria.

1 | Introduction

This Bill Brief provides an overview of the Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025 ('the Bill'), including the background to its introduction, the proposed amendments, and responses to the Bill. It concludes with information on relevant legislation in other jurisdictions. This paper should not be seen as offering legislative interpretation or legal advice, nor is it an exhaustive account of the Bill.

What is sexual harassment?

Sexual harassment is defined in section 92 of the *Equal Opportunity Act 2010*. A person sexually harasses another person if the person:

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
- b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.¹

'Conduct of a sexual nature' in this context includes:

- subjecting a person to any act of physical intimacy;
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in their presence;
- making any gesture, action or comment of a sexual nature in a person's presence.²

Examples of sexual harassment include: comments about a person's private life or their appearance; sexually suggestive behaviour (e.g. leering/staring); displaying offensive images or objects; sexually explicit emails, texts or social media posts; and sexual assault, among others.³ Sexual harassment is unlawful behaviour that can occur regardless of the person's intention and, in some cases, may also be an offence under criminal law.⁴

Sexual harassment in Australian workplaces

Under the *Equal Opportunity Act*, employers have a positive duty to take reasonable and proportionate measures to eliminate sexual harassment, as far as possible.⁵ There are six minimum standards that employers must meet to comply with this positive duty.⁶

In 2022, the Australian Human Rights Commission's (AHRC) fifth national survey into sexual harassment in Australian workplaces found that around one in three workers (33 per cent) had experienced workplace sexual harassment in the last five years.⁷ Younger people, LGBTQIA+ people, First Nations peoples and people with a disability experienced workplace sexual harassment at rates higher than the total population.⁸

Most harassers were men, and women were more likely than men to have been harassed.⁹ Workplace sexual harassment can therefore be understood as a form of gendered violence,

¹ *Equal Opportunity Act 2010*, s 92(1).

² *ibid.*, s 92(2).

³ Victorian Equal Opportunity & Human Rights Commission (undated) '[Sexual harassment](#)', VEOHRC website.

⁴ *ibid.*

⁵ Victorian Equal Opportunity & Human Rights Commission (undated) '[Positive duty](#)', VEOHRC website.

⁶ Victorian Equal Opportunity & Human Rights Commission (2020) '[Guideline: Preventing and responding to workplace sexual harassment – Complying with the Equal Opportunity Act 2010](#)', VEOHRC website.

⁷ Australian Human Rights Commission (2022) *Time for respect: Fifth national survey on sexual harassment in Australian workplaces*, November, Sydney, AHRC, p. 12.

⁸ *ibid.*

⁹ *ibid.*, p. 13.

underpinned by the ‘deep-seated social norms, structures, attitudes and practices’ that are drivers of gendered violence more generally.¹⁰

Australia’s National Research Organisation for Women’s Safety has identified that sexual harassment occurs in every sector, though in some industries it has become so widespread that it is considered ‘part of the job’.¹¹

What is a non-disclosure agreement?

A non-disclosure agreement (NDA) is a type of contract that creates legally enforceable obligations on the parties involved to keep certain information confidential. Thus, NDAs are also known as confidentiality agreements. Other types of contracts, such as settlement agreements, may also include confidentiality clauses, alongside other clauses like non-disparagement.¹²

NDAs or confidentiality clauses are regularly used by employers when settling workplace sexual harassment matters out of court.¹³ When signed, a settlement agreement or ‘deed of release’ releases the respondents (usually the harasser and the employer) from liability for the alleged conduct, often in exchange for financial and non-financial outcomes that might include compensation, an apology and/or an agreement for the harasser to undertake anti-discrimination training.¹⁴

A recent survey of sexual harassment legal practitioners in Australia indicated that many consider confidentiality clauses to be ‘standard’.¹⁵ However, legal academics have highlighted that the ‘systematic overuse of NDAs, together with unchecked power imbalances in workplaces’, has ‘enabled employers to cover up patterns of misconduct and protect repeat abusers’.¹⁶

Calls to limit NDA use in workplace sexual harassment cases

The use of NDAs in workplace sexual harassment matters was brought into focus following the #MeToo movement and allegations against the American film producer, Harvey Weinstein. Weinstein regularly used NDAs to silence victim-survivors, meaning his behaviour was able to continue unchecked for decades.¹⁷

In January 2020, the AHRC released the *Respect@Work* report, following a national inquiry into sexual harassment. In considering the use of NDAs and confidentiality clauses, the report recommended that the AHRC, alongside the Workplace Sexual Harassment Council, ‘develop a practice note or guideline that identifies best practice principles for the use of NDAs in workplace sexual harassment matters to inform the development of regulation on NDAs’.¹⁸

Similarly, in August 2020, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) published a guideline on preventing and responding to workplace sexual

¹⁰ Victorian Government (2022) ‘[Ministerial Taskforce on Workplace Sexual Harassment](#)’, Victorian Government website.

¹¹ Australia’s National Research Organisation for Women’s Safety (undated) *What the evidence tells us: Insights from ANROWS’ sexual harassment research program*, Sydney, ANROWS, p. 2.

¹² Australian Human Rights Commission (2020) *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, Sydney, AHRC, pp. 556–557.

¹³ *ibid.*, p. 556; R. Featherstone & S. Bargon (2024) ‘Non-disclosure agreements are commonplace in sexual harassment cases, but they’re being misused to silence people’, *The Conversation*, 6 March.

¹⁴ E. Toumbourou (2024) ‘Workplace Law: NDAs and the culture of silence’, Law Institute of Victoria; R. Featherstone & S. Bargon (2024) *Let’s talk about confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report*, March, Sydney, University of Sydney, p. 6.

¹⁵ *ibid.*, p. 1.

¹⁶ *ibid.*, p. iv.

¹⁷ Featherstone & Bargon (2024) ‘Non-disclosure agreements are commonplace in sexual harassment cases, but they’re being misused to silence people’, *op. cit.*

¹⁸ Australian Human Rights Commission (2020) *op. cit.*, p. 564.

harassment. The guideline recommended that NDAs be used ‘sparingly’, and that employers ‘should not view non-disclosure agreements as the default’.¹⁹

In 2022, the AHRC released its *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*, which recommended that these clauses ‘not be seen as standard terms in workplace sexual harassment settlement agreements’.²⁰ In June 2025, the AHRC released the *Speaking from Experience* report, following consultation with workers from diverse backgrounds who had experienced workplace sexual harassment. The report recommended that the federal Sex Discrimination Act and relevant industrial laws be amended to restrict the use of NDAs in workplace sexual harassment cases, and that the AHRC be resourced to update its guidelines from 2022 in light of developments overseas.²¹

Background to the Bill

Ministerial Taskforce on Workplace Sexual Harassment and community consultation process

In March 2021, the Victorian Government established the Ministerial Taskforce on Workplace Sexual Harassment (‘the Taskforce’). The Taskforce was asked to ‘develop reforms that will prevent and better respond to sexual harassment in workplaces’, including measures to prevent the misuse of NDAs in these matters.²² A community consultation period was launched through Engage Victoria in June, seeking feedback on a consultation paper and how best to shape reforms in the state.²³ Many submissions highlighted the frequent misuse of NDAs to silence victim-survivors, and suggested reforms including limiting their use, creating best-practice guidelines, implementing a review mechanism, and addressing time pressures placed on victim-survivors to sign agreements. Some submissions called for NDAs to be banned entirely in workplace sexual harassment matters.²⁴

In July 2022 the Minister for Workplace Safety released the Taskforce’s recommendations, which noted that NDAs ‘are often misused to silence victims, protect employer reputations and avoid full liability’, and ‘can also be used to hide serial offending and offenders’.²⁵ The Taskforce recommended that the Victorian Government introduce legislation to restrict the use of NDAs in relation to workplace sexual harassment, using legislation from other jurisdictions as the model for reform—in particular, a piece of legislation introduced to the Irish Oireachtas, the Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021 (‘the Irish Bill’).²⁶

The government accepted the Taskforce’s recommendation in-principle, noting the ‘complexity’ of NDAs and ‘significant further work’ that would be required before any legislative change could occur.²⁷ In August 2024 the government launched a second consultation process through Engage Victoria specifically on restricting the use of NDAs in

¹⁹ Victorian Equal Opportunity & Human Rights Commission (2020) op. cit., pp. 89–90.

²⁰ Australian Human Rights Commission (2022) *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*, Sydney, AHRC, p. 9.

²¹ Australian Human Rights Commission (2025) *Speaking from Experience: What needs to change to address workplace sexual harassment*, June, Sydney, AHRC, p. 11.

²² J. Merlino, Acting Premier (2021) *Preventing sexual harassment in Victorian workplaces*, media release, 8 March.

²³ I. Stitt, Minister for Workplace Safety (2021) *Taking action on workplace sexual harassment*, media release, 25 June. For further information, see: Department of Justice and Community Safety (2021) *Consultation Paper: Addressing sexual harassment in Victorian workplaces*, June, Melbourne, DJCS.

²⁴ Department of Justice and Community Safety (2021) *Thematic Summary: Public consultation on workplace sexual harassment*, Melbourne, DJCS, p. 4.

²⁵ Ministerial Taskforce on Workplace Sexual Harassment (2022) *Recommendations*, July, Melbourne, The Taskforce, p. 5.

²⁶ *ibid.*

²⁷ Victorian Government (2022) *Victorian Government response to the Ministerial Taskforce on Workplace Sexual Harassment*, July, Melbourne, Victorian Government, p. 10.

workplace sexual harassment cases, and released a discussion paper seeking information and views from the community.²⁸

International models for the Bill

The discussion paper released for the consultation in 2024 referenced the Irish Bill as well as an Act recently passed in the Canadian province of Prince Edward Island (PEI) ('the PEI Act').

Introduced in 2021 by Independent Senator Lynne Ruane as a Private Members' Bill, the Irish Bill was the first major piece of legislation to propose amendments that restrict NDAs that relate to sexual harassment and discrimination in the workplace.²⁹

The Victorian Government's discussion paper invited feedback on whether and how several of the elements of the Irish Bill should be included in any Victorian reforms.³⁰ The main facet of the Irish Bill echoed by Victoria and other jurisdictions was the so-called 'victim exception', or the outright banning of NDAs in cases of sexual harassment except for at the specific request of the victim.

In their submissions to the government consultation, several stakeholders argued that major facets of the Irish Bill should be reflected in any proposal in Victoria, including the Australian Council of Trade Unions, the Victorian Trades Hall Council, the Working Women's Centre, Maurice Blackburn Lawyers, and the Human Rights Law Centre and Redfern Legal Service.³¹ The Human Rights Law Centre and Redfern Legal Service's submission stated that the Irish Bill and the PEI Act both 'strike a balance between centring the applicant's desires and providing the respondent with a degree of agency'.³²

Others argued that some provisions of the Irish Law should be included, but advised caution in their application. The Retailers Association of Australia said that the Irish Bill was too broad in its restriction of NDAs in all cases except a few, and the Law Institute argued that the Bill should provide more safeguards around sharing information with third parties than was contained in the Irish Bill.³³

The PEI Act also includes forms of harassment outside the workplace, particularly in circumstances where a person 'has an obligation in law to take reasonable steps to prevent harassment and discrimination in the place where the harassment or discrimination occurred or is alleged to have occurred'.³⁴ This is similar to the concept of 'positive duty' in Victoria's *Equal Opportunity Act 2010*, in which organisations and businesses have responsibilities relating to sexual harassment and discrimination of their members and staff,

²⁸ Victorian Government (2024) *Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases: Discussion Paper*, August, Melbourne, Department of Treasury and Finance.

²⁹ L. Ruane, Senator (2021) 'Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021: Second Stage', *Debates*, Ireland, Seanad Éireann, 14 June, pp. 89–93. While the Bill lapsed with the dissolution of the Dáil (the lower house of Irish parliament) in November 2024, the provisions it contained became law in October 2024 through the passing of the *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024*, commencing in November 2024.

³⁰ Victorian Government (2024) op. cit.

³¹ Australian Council of Trade Unions (2024) *ACTU Submission to Victorian Government Consultation into Restricting NDAs in Workplace Sexual Harassment Cases*, 13 September, Melbourne, ACTU; Working Women's Centre Victoria (2024) *Submission to Industrial Relations Victoria: Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases*, 16 September, Melbourne, WWCV; Victorian Trades Hall Council (2024) *Submission to Consultation on Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases*, 6 September, Melbourne, VTHC.

³² Human Rights Law Centre & Redfern Legal Centre (2024) *Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases*, 18 September, HRLC & RLC.

³³ Australian Retailers Association (2024) *ARA Submission: Restricting non-disclosure agreements in workplace sexual harassment cases*, August, East Melbourne, ARA; Law Institute of Victoria (2024) *Submission: Restricting non-disclosure agreements in workplace sexual harassment cases*, Melbourne, Engage Victoria.

³⁴ *Non-Disclosure Agreements Act 2021* (PEI), s 1(e).

and which has a broader application than the amendments proposed in the Bill (see ‘The Bill’ section).³⁵

Bill introduced

In October 2025, the Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025 was introduced to the Legislative Assembly. In the second reading speech, the Minister for Economic Growth and Jobs stated that the Bill responded to the recommendations from the Ministerial Taskforce on Workplace Sexual Harassment and would ‘contribute to Government action to improve prevention of workplace sexual harassment and assist in keeping Victorian workers and workplaces safe’.³⁶

The Premier highlighted that the Bill was ‘the first of its kind in Australia, and among the first in the world’.³⁷

2 | The Bill

The stated purpose of the Bill is to promote the health, safety and welfare of persons in the workplace. To that end—while not prohibiting the use of NDAs—the Bill restricts the circumstances in which NDAs relating to workplace sexual harassment can be entered, the terms that may be included and their enforceability.³⁸

In this section, the term ‘complainant’ is used to refer to the worker who is subjected to or is allegedly subjected to sexual harassment, and ‘respondent’ refers to the person who committed or allegedly committed sexual harassment.³⁹

A ‘workplace non-disclosure agreement’ (‘workplace NDA’) as set out in clause 4 means: it is an agreement relating to the disclosure of material information about workplace sexual harassment; the complainant in relation to the workplace sexual harassment is a party to the agreement; and at least one party to the agreement is the complainant’s employer or the respondent.

Application

The provisions in this Bill will apply to a workplace NDA and any other contract or agreement if the disclosure of material information relating to workplace sexual harassment is connected to Victoria, as set out in clause 6. This includes:

- if the complainant usually works in Victoria; or
- if the complainant is based in Victoria for the purpose of their work; or
- if the principal place of business of their employer is in Victoria; or
- if the workplace sexual harassment occurs or allegedly occurs in Victoria.

Preconditions

Central to the scheme are the preconditions for a workplace NDA set out in clause 8 to ensure that the choice to enter an NDA remains with the complainant. An NDA will only be valid under the Bill if:

- the agreement is requested by the complainant;
- it is their expressed wish and preference;

³⁵ Justice and Equity Centre (2024) *Submission to Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases*, Sydney, Justice and Equity Centre; *Equal Opportunity Act 2010*.

³⁶ D. Pearson, Minister for Economic Growth and Jobs (2025) ‘*Second reading speech: Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025*’, *Debates*, Victoria, Legislative Assembly, 30 October, p. 4442.

³⁷ J. Allan, Premier of Victoria (2025) *New laws to restrict NDAs and give victim-survivors a voice*, media release, 29 October.

³⁸ *Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025*, cl 1.

³⁹ *ibid.*, cl 3.

- they are provided with the workplace NDA information statement before entering an agreement;
- they are given a ‘cooling-off’ period of at least 21 days to review the agreement; and
- they acknowledge, by way of a form approved by the relevant departmental secretary (‘the secretary’), that the preconditions have been met.

The complainant may request a review period of less than 21 days or waive the review period altogether.⁴⁰ The information statement and the 21-day review period allow the complainant to consider the terms and implications of the agreement and seek legal advice if they so wish.⁴¹

The information statement is to be prepared by the secretary and include information about the preconditions, permitted disclosures, the complainant’s right to terminate the NDA, and the complainant’s right to seek legal advice, as well as any other prescribed matters. The statement must be approved by the relevant minister and be published on the department’s website.⁴²

The complainant need not specifically request a ‘workplace NDA’ and may use other terminology in their request, such as ‘privacy’ or ‘confidentiality’. A complainant may still enter into a settlement agreement with the employer or respondent—for example, where financial compensation is offered in exchange for the complainant releasing the employer or respondent from any liability for a workplace sexual harassment claim.⁴³

As an additional precondition, a complainant is also afforded protections from undue influence or pressure from their employer, the respondent or persons acting on their behalf.⁴⁴ Examples include an employer advising a complainant of a higher settlement amount on condition of requesting an NDA or a lower settlement amount if they do not request an NDA, or withholding work references if the complainant does not request an NDA.⁴⁵

Disclosure of information

The Bill specifies the types of information that under a workplace NDA a complainant is permitted to or should not be prevented from disclosing to certain agencies and service providers. There is ‘material information’, defined to include information on the identity of the respondent and details of the conduct that constitutes ‘sexual harassment’, and ‘protected information’ which includes details on financial compensation and information about a respondent who is under 18 years of age.⁴⁶

Schedule 1 of the Bill sets out the categories of agencies or service providers to whom a complainant may or may not disclose certain types of information.⁴⁷

Under ‘permitted disclosures’ as provided in clause 11, material information, excluding protected information, must be permitted to be disclosed to persons or authorities that can support or provide advice to a complainant. These include medical, legal and mental health practitioners; friends and family (on conditions of confidentiality); Victoria Police; as well as other appropriate investigatory bodies, such as the Independent Broad-based Anti-corruption Commission and parliamentary investigatory committees.⁴⁸ Additionally, an NDA should not prevent a complainant from disclosing material information to employers or prospective employers for the purpose of maintaining or obtaining work.⁴⁹

⁴⁰ *ibid.*, cl 8(2).

⁴¹ ‘[Explanatory Memorandum](#)’, Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, p. 6.

⁴² Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, cl 26.

⁴³ ‘[Explanatory Memorandum](#)’, *op. cit.*, p. 6.

⁴⁴ Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, cl 8(3).

⁴⁵ ‘[Explanatory Memorandum](#)’, *op. cit.*, p. 6.

⁴⁶ Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, cl 3.

⁴⁷ *ibid.*, Schedule 1.

⁴⁸ *ibid.*, cl 11; Schedule 1, Table 1.

⁴⁹ ‘[Explanatory Memorandum](#)’, *op. cit.*, p. 7.

With the exception of protected information, the identity of the respondent and the identity of the complainant's employer, the Bill provides that an NDA should also not prevent a complainant from disclosing material information to government bodies such as the AHRC, VEOHRC or the Fair Work Commission for research purposes.⁵⁰

Finally, the Bill provides that a complainant cannot be prevented from disclosing the financial details of compensation they received in respect to workplace sexual harassment settlements to certain government bodies including Centrelink, and financial agents, such as tax agents or financial advisers.⁵¹

Enforceability

The Bill provides that a workplace NDA is not enforceable against a complainant if it prevents them from disclosing material information about workplace sexual harassment. It is, however, enforceable if the NDA still meets the preconditions as set out in clause 8, including if there is a confidentiality obligation on an employer or respondent to not disclose a complainant's identity. An NDA can still prevent the disclosure of protected information and remain enforceable.⁵² Clause 15 provides that a complainant can make a disclosure in accordance with provisions for 'permitted disclosure', even if the NDA specifies otherwise.⁵³

Breach notices

Division 4 of the Bill establishes a process where there is a breach of the legislation. Clause 16 allows a complainant to issue a breach notice to each party to the agreement—the employer or the respondent—if they believe certain preconditions of the NDA, set out in clause 8, have not been met.

Breach notices—in a form approved by the secretary—must state the reasons for the notice and advise the other party that they have 30 days to challenge the notice by making an application to the Industrial Division of the Magistrates' Court ('the Industrial Division'). If no application is made, the NDA is taken to have not met the preconditions and will no longer be binding on the complainant. This process allows the complainant to seek action for a breach of the legislation without having to initiate court proceedings.⁵⁴

Clause 17 provides for the recipient of a breach notice to apply to the Industrial Division within 30 days of receiving the notice for an order that the preconditions *were* met and therefore the NDA is enforceable. If such an application is not made, or not made within 30 days, the Industrial Division can determine that the preconditions have not been met and the NDA is no longer enforceable. The 30-day provision allows time for the recipient to contest the breach notice.⁵⁵

Clause 18 provides that the Industrial Division may make orders on application relating to preconditions and disclosure of material information in determining enforceability as provided under clause 14(1). The Industrial Division may order that preconditions were met or not met and whether the agreement is enforceable in relation to disclosure of material information.

Termination

The complainant may terminate an NDA if it prevents a party from disclosing material information about workplace sexual harassment, or anytime on or after the first anniversary of the agreement—that is, 12 months after the date of the agreement. In the case of the

⁵⁰ Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, cl 12; Schedule 1, Table 2.

⁵¹ *ibid.*, cl 13; Schedule 1, Table 3; 'Explanatory Memorandum', *op. cit.*, p. 8.

⁵² Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, cl 14; 'Explanatory Memorandum', *op. cit.*, p. 8.

⁵³ 'Explanatory Memorandum', *op. cit.*, p. 8.

⁵⁴ *ibid.*, p. 9.

⁵⁵ *ibid.*, p. 13.

former, the complainant must give notice, in a form approved by the secretary, to each party to the NDA at least seven days before the date on which the termination takes effect.⁵⁶

Other non-disclosure agreements

Clause 20 provides that a complainant's employer and respondent may enter into an NDA relating to disclosure of material information. Such NDAs would not be enforceable against the employer if it prevents the employer from conducting an investigation into workplace sexual harassment. The NDA is also not enforceable against the employer if the allegations by the complainant are found by the employer to be substantiated and the agreement would have prevented the employer from disclosing material information about the matter to a prospective employer of the respondent. Protected information is still not to be disclosed to a prospective employer.

In cases where there is an NDA between an employer and a contract worker, the term of the contract should not prevent the worker being able to disclose material information concerning workplace sexual harassment or the NDA is rendered unenforceable. Protected information can still be prevented from disclosure.⁵⁷

3 | Stakeholder responses

Responses to the NDA reforms proposed in the Bill have come over multiple stages, including during the consultation process and at the time of the Bill's introduction to parliament.

Consultation responses

A broad range of stakeholders responded to the discussion paper prepared by government for the Engage Victoria consultation process on NDA reform in 2024. Respondents included legal centres, unions and industry groups, as well as several individuals. Industrial Relations Victoria released a snapshot of the responses and found that an overwhelming majority (41 of 44) were in favour of at least one reform measure proposed by the government.⁵⁸

Measures that received broad support included those that would empower victims, such as education measures, permitted disclosures and a requirement for independent legal advice.⁵⁹ Meanwhile, some proposals elicited a mix of support and concern, including the propositions that independent legal advice be paid for by the employer and that there be a set maximum duration of NDAs.⁶⁰

Legal groups and unions were largely supportive of the proposed reforms, with those in favour including firms Maurice Blackburn and Gordon Legal and all of the responding trade unions.⁶¹ Victorian Trades Hall Council's (VTHC) submission, in particular, which set out an extensive raft of recommendations urging NDA reform, elicited several endorsements among

⁵⁶ Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025, cl 19.

⁵⁷ *ibid.*, cl 21.

⁵⁸ Industrial Relations Victoria (2024) [Restricting NDAs in workplace sexual harassment cases: what we heard](#), Engage Victoria, Department of Treasury and Finance, p. 2.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ B. Kolovos (2024) ['Victorian review of NDAs gets strong support for outright ban in sexual harassment cases'](#), *The Guardian Australia*, 18 December.

union submissions.⁶² The Police Association also described the reform proposal as ‘necessary to promote a safer, more equitable workplace’.⁶³

Among the other responses, the Australian Industry Group was one of the few stakeholders to oppose legislative intervention on the use of NDAs, saying that ‘the issuing of appropriate guidelines is more fit for purpose’, while the Australian Chamber of Commerce and Industry and the Victorian Chamber of Commerce and Industry both felt that this would be better handled federally.⁶⁴ The Law Institute of Victoria found that the ‘misuse’ of NDAs in workplace sexual harassment cases was the main issue and that the government should be ‘regulating to guard against unethical use, rather than prohibiting use’.⁶⁵

Views within parliament

Since the government’s announcement of its commitment to reform, there has been support and awareness-raising within the parliament from some crossbench parties regarding the status of NDA reform.

Animal Justice Party MP Georgie Purcell made a notice of motion in May 2024 drawing attention to how ‘NDA misuse contributes to the culture of silence and institutionalised patterns of abuse’ and called for a number of regulatory reforms supporting victim-survivors.⁶⁶

Legalise Cannabis Victoria MP Rachel Payne has raised the issue on two occasions, and in July 2024 drew attention to the misuse of NDAs resulting in ‘victims, not the perpetrators, being forced out of the workplace’.⁶⁷

Responses to the Bill

A number of bodies have commented on the reforms since the Bill’s introduction, most of them in support.

Victorian Trades Hall Council, which pushed strongly for the reforms, welcomed the Bill. Wil Stracke, assistant secretary of VTHC, said the reforms were ‘gamechanging’ and a ‘positive step towards ending sexual harassment in workplaces’.⁶⁸ The VTHC was joined by Australian Unions in their praise of the Bill, crediting the work of ‘union members campaigning’ for the changes.⁶⁹

⁶² Victorian Trades Hall Council (2024) op. cit.; United Workers Union (2024) *Consultation into Restricting the Use of Non-Disclosure Agreements in Workplace Sexual Harassment Cases: Submission of the United Workers’ Union*, September, UWU; T. Piccolo (2024) *Consultation into Restricting the Use of Non-disclosure Agreements in Workplace Sexual Harassment Cases*, 6 September, Melbourne, Australian Manufacturing Workers’ Union (Victorian branch); Australian Services Union (Victorian & Tasmanian Authorities and Services) (2024) *Restricting the use of NDAs: response to Victorian Government consultation*, September, ASU (Vic & Tas); Young Workers Centre (2024) *Submission in response to the Restricting Non-Disclosure Agreements in Workplace Sexual Harassment Cases Discussion Paper*, 13 September, Carlton, Wurundjeri Country, Young Workers Centre.

⁶³ The Police Association Victoria (2024) *The Police Association Victoria submission to the discussion of restricting non-disclosure agreements in workplace sexual harassment cases*, September, Melbourne, PAV, p. 7.

⁶⁴ Ai Group (2024) *Ai Group submission: Restricting non-disclosure agreements in workplace sexual harassment cases*, 10 September, Melbourne, Ai Group, p. 2; Kolovos (2024) op. cit.

⁶⁵ Law Institute of Victoria (2024) op. cit. p. 3.

⁶⁶ G. Purcell (2024) ‘Notice of motion 443’, *Notice Paper no. 83: 11 September 2024*, Victoria, Legislative Council, 11 September, pp. 19–20.

⁶⁷ R. Payne (2024) ‘Questions without notice: workplace safety’, *Debates*, Victoria, Legislative Council, 30 July, p. 2321.

⁶⁸ B. Kolovos (2025) ‘Australian-first bill to ban use of NDAs to silence sexual harassment victims introduced in Victoria’, *The Guardian Australia*, 29 October.

⁶⁹ Australian Unions (@AustralianUnions) (2025) ‘For too long, unscrupulous employers ...’, *Facebook*, 2 November 2025.

National Sex Discrimination Commissioner Anna Cody said that employers ‘should not be assuming’ that NDAs will be used to ensure confidentiality in workplace sexual harassment cases, but that this was nonetheless the default at present. She said that the reforms in the Bill were ‘a way for the employer or business to be accountable, properly and publicly’ so that ‘employers are not silencing their employees’.⁷⁰

Working Women’s Centres (WWC) have been working towards reforms contained in this Bill, and the South Australian WWC congratulated the Victorian Government along with ‘those who have campaigned hard for this reform including workers and unions through the Victorian Trades Hall Council, victim-survivors, legal advocates and the Working Women’s Centre Victoria’.⁷¹ The South Australian Minister for Women and Minister for Domestic, Family and Sexual Violence, Katrine Hildyard, also indicated the South Australian Government was following the reforms closely, saying that ‘NDAs mask the extent of sexual harassment’ and ‘demand collective attention and action’.⁷²

Among legal firms, which were largely supportive of reform during the consultation, Maurice Blackburn welcomed the Bill, with special counsel Jessica Dawson-Field describing it as a ‘positive step forward towards ending sexual harassment in workplaces’ and the ‘culture of silence that persists’.⁷³ The Australian Lawyers Alliance also welcomed the Bill, saying it was an important reform for ‘addressing workplace safety and ensuring that victim-survivors, who are very often women, have a voice’.⁷⁴

4 | Other jurisdictions

Ireland

The Employment Equality (Amendment) (Non-disclosure Agreements) Bill 2021 proposed to amend Ireland’s employment equality laws to ban NDAs in the workplace.⁷⁵ Introduced in 2021 by Independent Senator Lynne Ruane as a Private Members’ Bill, the Bill was the first major piece of legislation to propose amendments that restrict NDAs that relate to sexual harassment and discrimination in the workplace.⁷⁶

The Irish Bill has been used as a model for the banning of NDAs in several other jurisdictions. Its main provision echoed by other lawmakers has been the focus on the choice of the alleged victim of sexual harassment or discrimination as to whether they enter into an NDA with their employer.⁷⁷ NDAs signed in such situations would only be allowed if they were requested by the victims to protect their confidentiality.

The Bill also outlined a number of conditions that must be met for any NDA to be viable in the case of sexual harassment or discrimination:

- the victim has been offered independent legal advice;
- there have been no undue attempts to influence the victim to include a confidentiality clause;

⁷⁰ H. Tattersall (2025) ‘Employers’ use of NDAs restricted under new Allan Labor laws’, *Australian Financial Review*, 29 October.

⁷¹ Working Women’s Centre SA (2025) *Working Women’s Centre SA welcomes the introduction of Non-Disclosure Agreement legislation in Victoria*, media release, 29 October 2025.

⁷² *ibid.*

⁷³ Tattersall (2025) *op. cit.*

⁷⁴ Australian Lawyers Alliance (2025) *Bill to curb use of NDAs in workplace sexual harassment welcome*, media release, 29 October.

⁷⁵ ‘Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021’, An Bille um Chomhionannas Fostaíochta (Leasú) (Comhaontuithe Neamhnóchta), 2021 (Ireland).

⁷⁶ Ruane (2021) *op. cit.*

⁷⁷ Australian Human Rights Commission (2025) *op. cit.*, p. 61.

- the agreement will not adversely affect the health or safety of a third party or the public interest;
- there is opportunity for the victim to waive confidentiality in the future; and
- the agreement is for a limited duration.⁷⁸

While the Bill lapsed with the dissolution of the Dáil (the lower house of the Oireachtas, Ireland's parliament) in November 2024, the provisions it contained became law in October 2024 through the passing of the *Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024* ('the Irish Act'), commencing in November 2024.⁷⁹

Canada

The Canadian province of Prince Edward Island (PEI) passed Canada's first NDA ban with its *Non-Disclosure Agreement Act 2021* (PEI Act) which came into effect in 2022.⁸⁰ Although it was passed before the Irish Act, the PEI Act is modelled on the Irish Bill, particularly the focus on victim's choice and the same requirements for an NDA to be valid.

Other provinces in Canada have attempted to or are in the process of bringing in similar legislation to the PEI Act, including British Columbia, Manitoba, Ontario, Nova Scotia and Saskatchewan.⁸¹ Ontario passed legislation in 2022 that applied specifically to cases of sexual misconduct by university employees against students, banning NDAs in such cases unless conditions similar to those in the Irish and PEI laws are met.⁸²

In 2023, the Can't Buy Silence Bill (Bill S-261) was introduced to the federal Canadian parliament, proposing to ban public money being used to pay for settlements in relation to harassment or violence or discrimination if the settlement is to include an NDA. The Bill lapsed when parliament was prorogued in January 2025, but was reintroduced in June 2025 and is currently at the first reading stage in the Senate.⁸³

United Kingdom

The United Kingdom is in the final stages of passing the Employment Rights Bill, which would insert a new Section 202A into the *Employments Rights Act 1996* in relation to NDAs.⁸⁴ While several Private Members' Bills proposing the same changes had been introduced into the House of Commons and the original text of the Employment Rights Bill did not address NDAs, an amendment introduced by Baroness Jones of Whitchurch has been accepted by both Houses.⁸⁵ The amendments will 'void any provision in an agreement ... between a worker and their employer in so far as it prevents a worker speaking out about relevant harassment or discrimination'.⁸⁶

While the clause is based on NDA provisions in the Irish Act, Baroness Jones labelled it as 'Ireland-plus', as it also covers workers who experience harassment and discrimination from

⁷⁸ Ruane (2021) op. cit.

⁷⁹ [Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024](#) (Ireland).

⁸⁰ Non-Disclosure Agreements Act 2021 (PEI).

⁸¹ Can't Buy My Silence (undated) '[Canada: Provincial law reform in place](#)', CBMS website; [Strengthening Post-secondary Institutions and Students Act, 2022](#) (Ontario); '[Loi modifiant le Code des droits de la personne \(accords de confidentialité\)](#)', [The Human Rights Code Amendment Act \(Non-Disclosure Agreements\)](#) (Manitoba); [Non-disclosure Agreements Act 2025 - Bill 13](#) (Nova Scotia); [The Saskatchewan Employment \(Fairer Workplace, Better Jobs\) Amendment Act, 2023 - Bill 613](#) (Saskatchewan).

⁸² Can't Buy My Silence (undated) op. cit.; [Strengthening Post-secondary Institutions and Students Act, 2022](#) (Ontario).

⁸³ [Can't Buy Silence Act - Bill S-232](#).

⁸⁴ [Employment Rights Bill](#) (UK).

⁸⁵ [Non-Disclosure Agreements \(No. 2\) Bill](#) (UK); [Non-Disclosure Agreements Bill](#) (UK).

⁸⁶ Baroness Jones of Whitchurch (2025) '[Report \(1st Day\); Employment Rights Bill](#)', *House of Lords Official Report*, UK, House of Lords, 14 July.

third parties, such as clients and customers of their employer.⁸⁷ The proposed amendments do not impact NDAs used for legitimate reasons, such as commercially sensitive information.

Other UK legislation which deals with NDAs has also been updated recently. The issue of how universities have used them when dealing with misconduct or alleged misconduct has been addressed in the *Higher Education (Freedom of Speech) Act 2023*, while the *Victims and Prisoners Act 2024*, which came into force on 1 October 2025, ensures that nobody is stopped from reporting a crime to the police due to an NDA.⁸⁸

United States

Laws against the misuse of NDAs have been passed at both federal and state levels in the United States. The *Speak Out Act* passed Congress in December 2022 and prohibits employers from enforcing NDAs and non-disparagement agreements that may prevent an employee from discussing sexual harassment or assault.⁸⁹ These agreements are often signed at the commencement of an employee's work.

The Can't Buy My Silence website reports that 27 US states have updated legislation restricting the use of NDAs regarding workplace sexual harassment, including California, Arizona, Hawaii, Illinois, Louisiana, Nevada, New Jersey, New York, Vermont, and Virginia.⁹⁰

⁸⁷ Baroness Jones of Whitchurch (2025) op. cit.

⁸⁸ [Higher Education \(Freedom of Speech\) Act 2023](#) (UK); [Victims and Prisoners Act 2024](#) (UK); Ministry of Justice (2025) '[Victims and Prisoners Act 2024: changes to non-disclosure agreements \(for businesses\)](#)', UK Gov. J. Lewis (2023) *Higher Education (Freedom of Speech) Bill: Progress of the Bill*, London, House of Commons Library.

⁸⁹ [Speak Out Act](#) (USA); P. Smith (2022) "'Speak Out Act' targets Wall Street's silencing of sexual harassment", *The Seattle Times*, 16 November; K. Elsesser (2022) '[Congress Passes Law Restoring Victims' Voices, Banning NDAs In Sexual Harassment Cases](#)', *Forbes*, 16 November.

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Suggested citation

Aroozoo, M., E. Florence, C. Otter, A. Tonkin & A. Wright (2025) *Restricting Non-disclosure Agreements (Sexual Harassment at Work) Bill 2025*, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.

Acknowledgements

The Parliament of Victoria Library acknowledges the Traditional Owners of the lands on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past and present, and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

The authors would like to thank Debra Reeves for her assistance in the preparation of this paper.

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Parliamentary Library & Information Service

ISSN: 2204-4779 (Print) 2204-4787 (Online)