Article Information

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New Restrictions on the use of NDAs in Workplace Sexual Harassment Cases

In November last year, the Victorian Parliament passed new legislation to restrict the use of non-disclosure agreements in settling workplace sexual harassment cases. With the Victorian Government recently indicating that these reforms are intended to commence on 1 July 2026, we take a closer look at what this new prohibition will mean for employers.

Development of the reforms

The *Restricting Non-disclosure Agreements (Sexual Harassment at Work) Act 2025* (Vic) (the **Act**) was introduced in response to the findings of the Victorian Ministerial Taskforce on Workplace Sexual Harassment, which found that non-disclosure agreements (**NDAs**) are often misused to silence victims of workplace sexual harassment, protect employers' reputations, and avoid full liability.

What are non-disclosure agreements?

The Act broadly defines an NDA as "*a contract or other agreement… the purpose or effect of which is to prevent a person who is party to the agreement from disclosing certain information…*". Relevantly, the Act expressly notes that this may include a "*non-disclosure clause*" or "*non-disparagement clause*" in a settlement agreement.

An NDA will be a "workplace" NDA if it contains material information about workplace sexual harassment, and both the complainant and their employer, or the respondent (who is another employee of the employer) are parties to the agreement.

Restrictions under the Act

The Act aims to protect workers who have been subjected to sexual harassment, and prevent victim-survivors from being silenced by:

- prohibiting workplace NDAs unless they are requested by the complainant;
- creating mandatory requirements for information statements and a review period before a worker signs an NDA;
- prohibiting an employer from pressuring or influencing a worker to enter an NDA;
- allowing a worker who has entered into an NDA to talk to certain people and bodies such as Victoria Police, and medical and legal professionals; and
- allowing a worker to end an NDA after 12 months of entering into it, by giving notice to the other party.

Effect of the Act

The stated purpose of the Act is to prevent employers from concealing sexual harassment in the workplace to protect the company name, prevent the disclosure of the perpetrator's name or prevent the disclosure of any financial compensation paid to victim-survivors.

However, even if an employer takes the prescribed steps under the Act before entering into an NDA with a worker, the worker may unilaterally decide to end the NDA after 12 months.

An unintended consequence of the Act may be that employers reduce the monetary offers of settlement that they are

prepared to make to complainants in sexual harassment cases because the employer cannot have confidence that the complainant will maintain the confidentiality of the settlement after 12 months has elapsed.

Commencement of Restrictions

The Act will come into effect on a date to be proclaimed, or otherwise on 1 November 2026 if it is not proclaimed earlier. The Victorian Government recently published an update that it is intended that the Act will be proclaimed to commence on 1 July 2026 to "enable time for implementation, preparation of the mandatory information statement, and relevant guidance material".[1] However, this is yet to be officially proclaimed as the commencement date.

The restrictions under the Act are not retrospective, so they will not affect NDAs already in place prior to the commencement of the Act.

Key Takeaways

Both Victorian employers, and national employers employing people in Victoria or with a relevant connection to Victoria should ensure that staff responsible for overseeing the settlement of workplace sexual harassment matters understand the restrictions on the use of NDAs in Victoria.

In particular, employers should be aware of the preconditions required before a workplace NDA can be lawfully used in Victoria, and be cautious when including non-disclosure or non-disparagement clauses in settlement agreements in relation to workplace sexual harassment cases. Employers should also take care not to inadvertently pressure complainants in settling these matters.

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[1] Victorian Government, *Restricting Non-Disclosure Agreements (Sexual Harassment at Work) Act 2025* (Web Page, 18 February 2026) <https://www.vic.gov.au/restricting-non-disclosure-agreements-sexual-harassment-work-act-2025>.

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