



## National Inquiry into Sexual Harassment: Request to waive confidentiality obligations of non- disclosure agreements

### KEY POINTS

- The Sex Discrimination Commissioner (SDC) is undertaking a [National Inquiry into Sexual Harassment](#). Submissions are due 28 February 2019.
- The SDC is asking employers **to issue a limited waiver of confidentiality obligations** in Non-Disclosure Agreements (NDAs) **to allow individuals to make confidential submissions** to the National Inquiry.
- Organisations issuing the waiver will be listed on [www.humanrights.gov.au](http://www.humanrights.gov.au).
- LPA has been requested to circulate this request to our members for their consideration.
- LPA raised concerns about the tight timeframes and the SDC subsequently provided an extension to end February.

Dear Member,

### Why is the SDC making this request?

NDAs are confidentiality agreements organisations sign with complainants/claimants, generally exchanging money to settle claims and secure withdrawal/silence by all parties in relation to the matters in dispute and non-disparagement. NDAs will therefore prevent those who are party to the matter from making submissions to the National Inquiry.

The National Inquiry is also keen to understand both organisational and individual experiences of the use of NDAs in workplace sexual harassment matters - specifically:

1. The operation of NDAs in practice, including general terms and conditions
2. Whether the use of NDAs in specific cases has been advantageous or otherwise from the perspective of all parties to the agreement. Therefore, the SDC would like to hear from both employers and employees about the positives and negatives of this practice.

### Some things to consider

If your organisation has in place NDAs relating to sexual harassment matters, **it is up to each individual organisation to decide** whether they are willing to issue a limited waiver of confidentiality obligations in NDAs for the purposes of the national inquiry. However, organisations should consider:

- **Seeking legal advice** prior to publicly committing to opening / releasing the NDAs to which they are party.
- **Understanding which NDAs your organisation** is party to, in relation to which conduct, and which current and former employees prior to considering this request. Note: NDAs and

harassment complaints may predate current management and the 'corporate memory' of those currently running organisations.

- **The legal, personal and reputational consequences for third parties not directly party to the NDA**, including perpetrators, witnesses, bystanders etc, and managers and human resource professionals.

**LPA cannot (and would not) make any such commitment on behalf of our members.**

**An organisation can only waive the confidentiality obligations of NDAs to which it is directly a party.**

**For more information**

For further enquiries, please contact **Kim Tran**, LPA's Director, Policy & Governance via [email](#) or on (03) 8614 2000.



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