



INFORMATION SHEET FOR AFFECTED WORKERS

Use of confidentiality clauses in the resolution of workplace sexual harassment complaints

Introduction

This information sheet is intended to guide people affected by workplace sexual harassment (affected workers) in the process of negotiating a settlement agreement. This information sheet is not legal advice. Affected workers are encouraged to seek independent advice.

For further information on this topic, including guidance for employers, see WorkSafe's guide, *Use of confidentiality clauses in the resolution of workplace sexual harassment complaints*.

What is a settlement agreement?

If you have been affected by a workplace sexual harassment incident, you may be asked to sign a settlement agreement.

A settlement agreement is a document that sets out what actions each person or group will take to resolve or settle the issue. These people or groups are known as 'parties' to the agreement. The parties usually include affected workers, organisations responding to the issue (e.g. employers), and in some cases, respondents. When all parties sign the settlement agreement, it becomes legally enforceable. This means that if one of the parties does not follow the terms of the agreement, another party can take legal action against them.

What is a confidentiality clause?

Settlement agreements can include confidentiality clauses, which require parties to keep information about the issue or settlement agreement private. There is no legal requirement for a settlement agreement to have a confidentiality clause. If a confidentiality clause is included in a settlement agreement, it should be tailored to suit the individual situation. All confidentiality clauses should clearly state:

- what information cannot be shared (e.g. details about what happened or the settlement agreement itself)
- who the information cannot be shared with and any exceptions to this (e.g. specific situations or people)

- how long the clause will apply for (e.g. after certain events occur, at an agreed date)
- any legal rights and responsibilities the clause will not remove.

Confidentiality clauses should not be permanent and should not prevent you from seeking professional support or advice, or from speaking with your support network (e.g. close friends, family) about your experience. It should not prevent you from making future allegations of workplace sexual harassment, or from taking legal action if another party does not follow the terms of the agreement.

Confidentiality clauses should not prevent your employer from addressing issues you raised or taking action to make the workplace safer. This may include investigating the sexual harassment as a work health and safety incident, and improving or adding new control measures to prevent future incidents (e.g. training, supervision, procedures for reporting inappropriate behaviour).

There are some legal reasons why a confidentiality clause cannot prevent parties from sharing information in all circumstances. For example, where parties are compelled to provide the information by law or by Parliament or a Parliamentary Committee; or are required to answer a subpoena, summons or other compulsory court process.

Agreeing to a confidentiality clause does not prevent you from making a protected disclosure under 'whistle-blower' legislation (e.g. the *Public Interest Disclosure Act 2013*). It also does not excuse employers from their obligation to notify WorkSafe of a notifiable or reportable incident, or to report an offence to the WA Police Force if required.

Important considerations

Before you sign an agreement with a confidentiality clause, you should fully understand what it means and how it may affect you. Confidentiality clauses are not always helpful, appropriate, or in the best interests of all parties. Having the freedom to share your experience can be an important part of recovery or reaching closure.

Consider the potential benefits and consequences of a confidentiality clause, and how your situation and needs could change in the future. You may wish to have the option of sharing your experience with people or agencies, such as potential employers, law enforcement, financial advisors, unions, workers compensation insurers, and WorkSafe.

Sexual harassment can be a traumatic experience and negotiating a settlement agreement can be stressful for affected workers. Your employer should be mindful of your wellbeing and safety, and take a trauma-informed approach throughout the process. This includes understanding the signs and impacts of trauma, and taking reasonable steps to prevent further harm. For example, allowing you to take breaks from discussions if you feel distressed.

In summary, throughout the settlement process your employer should take reasonable steps to ensure you have:

- **Accessible information** that you can fully understand. The settlement agreement should be discussed and written in clear, simple language. You can ask for more information, or for documents to be re-written into plain English or your preferred language. You can also ask for an interpreter or translator if you need one.
- **Time** to read, consider and discuss a settlement agreement to ensure you understand it. You should not be pressured to sign an agreement before you have had a chance to seek support or advice, and are sure you understand it.

- **Opportunities to get advice** to ensure you understand the meaning and impacts of a settlement agreement and any confidentiality clauses. An independent party, such as a lawyer or union representative, may help you understand the agreement and your rights, and support you to negotiate an outcome that suits your needs.
- **Choices** about the terms (i.e. details) of a settlement agreement and any confidentiality clauses. Negotiation is a normal part of the settlement process. You should not be pressured or threatened to sign an agreement before you have had an opportunity to discuss, negotiate or get advice about anything you are unsure of, or are uncomfortable with.
- **Opportunities to get support** throughout the process. It can be helpful to have a union representative, friend, or another trusted person with you while discussing the agreement. You may also wish to access support from a psychologist or another health practitioner.
- **Fair process**, which may involve mediation or conciliation. This process should be led by an impartial and unbiased person who will identify issues, develop options to resolve them, and help the parties reach an agreement. Ideally this person will be a qualified mediator or conciliator who is independent from the other parties (e.g. not a representative of your employer).

Further information

To access WorkSafe’s guide on this topic or find other information about work health and safety, visit [WorkSafe’s website](#)...

The following agencies may also provide information or independent advice for matters involving confidentiality clauses.

Respect@Work

The Respect@Work website provides a range of resources to assist individuals and organisations, including a guide on external pathways to address sexual harassment in Western Australia. This guide contains information about relevant agencies, their processes (including appeals), any costs involved, timeframes and support services.

Website: www.respectatwork.gov.au

Citizen’s Advice Bureau of WA

Citizens Advice Bureau (CAB) connects people with information and services so they can make informed decisions. CAB also provides low-cost legal advice and mediation services.

Website: www.cabwa.com.au

Phone: (08) 9221 5711

Community Legal WA

Community legal centres are independent community-based organisations that provide free or low-cost legal help. Community Legal WA’s online referral tool can help you find a suitable community legal centre or legal assistance provider.

Website: www.communitylegalwa.org.au

Phone: (08) 9221 5711

Legal Aid WA

Legal Aid WA is a WA Government legal service that offers free or low-cost legal services.

Website: www.legalaid.wa.gov.au

Phone: 1300 650 579 (Infoline) or 1800 319 903 (Legal Yarn for First Nations callers)

Aboriginal Legal Service of WA

ALSWA is a community-based Aboriginal and Torres Strait Islander legal organisation. It provides free legal aid services to Aboriginal and Torres Strait Islander peoples throughout WA.

Website: www.als.org.au

Phone: 1800 019 900

The Law Society of WA

The Law Society of WA has a directory of fee-for-service lawyers and law firms in WA. Law Access is a referral service for free legal help and can be accessed via their website.

Website: www.lawsocietywa.asn.au

Phone: (08) 9324 8600

This information sheet has been adapted with permission from the Australian Human Rights Commission's Respect@Work guidelines and fact sheet.