



Sent by email to: [minister@equality.gov.ie](mailto:minister@equality.gov.ie)

Minister Roderic O’Gorman, TD  
Department of Children, Equality, Disability, Integration and Youth  
Block 1, Miesian Plaza,  
50 – 58 Lower Baggot Street,  
D02 XW14

27 August 2024

**Re: Provisions relating to Non-Disclosure Agreements in the General Scheme of the Maternity Protection (Amendment) and Miscellaneous Provisions Bill 2024.**

Dear Minister O’Gorman,

We note that the General Scheme of the Maternity Protection (Amendment) and Miscellaneous Provisions Bill 2024 (‘the General Scheme’) includes provisions aimed at regulating the use of Non-Disclosure Agreements (NDAs) relating to allegations of discrimination, harassment, sexual harassment, or victimisation.

As you may be aware, in our second submission to the Department’s Review of the Equality Acts,<sup>1</sup> the Commission recommended that provisions limiting the use of non-disclosure agreements be inserted in the Equality Acts, and that these provisions apply to mediated settlements reached through mediation under those Acts and the Workplace Relations Act 2015.<sup>2</sup> In that submission, we outlined significant concerns that the normalisation of NDAs potentially impedes the ability of equality proceedings to seek the elimination of discrimination, as well as the ability of complainants to pursue redress.

We are of the view that the use of NDAs should be limited in scope with adequate safeguards, including that the NDA is the express wish and preference of the complainant, the complainant be offered independent legal advice, there is no undue influence on the complainant, the NDA

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<sup>1</sup> IHREC, [Submission on the Review of the Equality Acts](#), 2023

<sup>2</sup> IHREC, [Submission on the Review of the Equality Acts](#), 2023 p.33-35



does not harm a third party or the public interest, there is an option for the complainant to waive confidentiality in the future, and that the NDA is for a set and limited period of time.

We welcome the provisions of the General Scheme in the context of ensuring that complainants may only enter into NDAs freely, and fully informed of their rights. However, we note that these provisions are limited to employment equality complaints. We are of the view that provisions regulating the use of NDAs relating to allegations of discrimination, harassment, sexual harassment, or victimisation should also apply in the settlement of cases under the Equal Status Acts.

It is also unclear whether the provisions of the General Scheme extend to the use of confidentiality clauses in mediated settlements reached through WRC mediation. We recognise the benefits of confidential mediation under the WRC Act 2015 in appropriate cases. However, we are concerned that some claimants who have not had the benefit of legal advice and/or representation may agree to participate in this process where they might otherwise have elected for an adjudication hearing. As a result, there may be less visibility with regard to the nature and extent of discrimination in the State. While the explanatory note states that the provisions of Head 8 of the General Scheme are intended to apply to “relevant provisions in employment contracts, severance agreements, settlement agreements, non-disparagement agreements”, we are of the view that, in the interests of clarity, mediated agreements under the WRC Act 2015 should be specifically named.

In accordance with our mandate, we will continue to analyse the Bill as it progresses through the legislative process.

Finally, we urge the Department to progress a further, substantive review of and amendments to the Equality Acts, as outlined in the Programme for Government and under successive Legislative Programmes. The Commission has made two substantial submissions to the Review of the Equality Acts,<sup>3</sup> and we consider the Review to be a significant opportunity to

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<sup>3</sup> IHREC, [Recommendations on the Review of the Equality Acts](#), 2022; IHREC, [Submission on the Review of the Equality Acts](#), 2023



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an Duine agus Comhionannas  
Irish Human Rights and Equality Commission

achieve comprehensive, fit for purpose equality legislation that promotes equality and combats discrimination into the future. We, as the national Equality Body, look forward to engaging further with the Department on all aspects of the Review and on the much-needed reform of equality legislation.

In line with our publications policy, this correspondence will be published on our website.

Yours Sincerely,

Deirdre Malone  
Director