

Morrison government behind secrecy clause in payout to Dyson Heydon's alleged victims



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April 4, 2022 — 11.45am

The federal government, led by Attorney-General Michaelia Cash, demanded to keep secret the amount paid out to the sexual harassment victims of former High Court judge Dyson Heydon.

In February, three of Heydon's former associates received a historic payout from the Commonwealth for the harassment they were found to have suffered.

Rachael Patterson Collins, Chelsea Tabart and Alex Eggerking made the claim under the Sex Discrimination Act, commencing their action after the High Court publicly apologised in June 2020 to six women whose claims of sexual harassment against Justice Heydon were upheld by an independent investigation.

The settlement included an apology to the victims from Cash, on behalf of the Commonwealth.

The amount of the payment was kept secret.

It was reported to be a large sum the complainants were "very happy" with, according to their lawyer Josh Bornstein.

But the settlement included a secrecy clause preventing the parties from disclosing the amount of the settlement sum, or any information about the amount.

In Senate Estimates in February, Senator Michaelia Cash did not directly answer questions about which party had requested the confidentiality clause.

She told the Senate it would be "highly inappropriate" to discuss it. "That information will remain between the Commonwealth and the claimants," she said.

But responding to Senate Estimates questions on notice from Labor published last week, the government admitted it requested the secrecy clause.

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“This non-disclosure obligation in relation to the confidentiality of the Settlement Sum was included at the request of the Commonwealth,” the written response says. “In this matter, the terms of each of the settlement deeds were agreed between the Commonwealth and each of the claimants.

“Each settlement deed includes a clause which prevents the parties from disclosing the amount of the Settlement Sum, or any information about the amount or in respect of the amount, except in certain specified circumstances.”

Shadow Attorney-General Mark Dreyfus said Australian taxpayers paying for the settlement had a right to know “precisely how much Justice Dyson Heydon’s appalling behaviour has cost them”.

“The only basis for such confidentiality would be a specific request from the victims,” he said.

The settlement signed by the three women did not prevent them from talking publicly about the details of their experiences with Heydon.

Sex Discrimination Commissioner Kate Jenkins’ 2020 Respect@Work inquiry into sexual harassment looked at non-disclosure agreements.

The inquiry heard from many victims of sexual harassment who said NDAs in settlements had impeded their recovery.

The Respect@Work Council, set up to implement the response to the inquiry, is expected to review NDAs as part of its business.