

27 August 2024

The problematic use of NDAs in the Sydney Anglican Diocese
A response to the Standing Committee report *Use of Non-Disclosure Agreements in the Diocese*¹

As well as being the chair of Uphold, Mike Doyle has been helping mistreated gospel workers for over 15 years and is a senior minister in the Sydney Anglican Diocese.

It's pretty uncontroversial for followers of Jesus to agree that God cares for the vulnerable and condemns those who oppress the weak, and that those with power and privilege are to use it in selfless service of those they lead.

Given these basic truths, it is reprehensible for any Christian leader to misuse power and authority to abuse those in their care. It is even more reprehensible for Christian leaders to hide the truth and manipulate those around them in order to cover up their sin and avoid repercussions. Leaders who do these things, and those who participate in the cover up of abuse, stand condemned before God.

Is it possible that the Sydney Anglican Diocese has, perhaps unintentionally, been involved with covering up abuse?

A recent report from the Standing Committee² suggests that this is exactly what has been happening. The report, *Use of Non-Disclosure Agreements in the Diocese*, comes with a raft of principles and recommendations that have been endorsed by the Standing Committee. Whether the Sydney Synod will adopt these recommendations remains to be seen.

The report has found that non-disclosure agreements (NDAs)³ are widely used in the diocese, and that it is possible they have been used to cover up ungodly behaviour.⁴ The writers of the report

¹ Standing Committee of the Synod, 'Use of Non-Disclosure Agreements in the Diocese (A report of the Standing Committee)', in *Annual Report of the Standing Committee and Other Reports and Papers*, Book 1 of the Second Session of the 53rd Synod, Anglican Church Diocese of Sydney, pp. 177-184 (available online: <https://www.sds.asn.au/sites/default/files/Book%201%20-%20Annual%20Report%20of%20the%20Standing%20Committee%20for%20Synod%202024.pdf>).

² The Standing Committee is the elected representative body of the Sydney Synod, the governing body of the Sydney Anglican Diocese.

³ 'NDA' can stand for either 'non-disclosure agreement' or 'non-disparagement agreement', and is often part of a deed of release, a legally enforceable agreement. NDAs can be used to silence victims and cover up abuse.

⁴ Paragraphs 9, 30.

acknowledge that our churches, organisations and schools have a long and shameful history of covering up sin.⁵

This topic is what Dr Julie Macfarlane will be addressing in her keynote address at this year's annual Uphold Sydney Anglican information night.⁶ Dr Macfarlane will be joining us by zoom as she shares her experience of years of sexual abuse and violence at the hands of an Anglican priest in the Church of England. After leaving the UK, this priest moved to Australia and served in the Anglican Diocese of Perth. When his abuse was exposed, instead of being defrocked he was allowed to resign. He then became a minister in a Uniting Church in Perth. For over 40 years this priest was allowed to continue to abuse, moving from church to church, facing no consequences. It was only when Julie launched legal action that any real steps were taken against this man. Other victims came forward and a criminal prosecution began, leading to a conviction in 2020. The priest is now serving time in prison.

This man was able to continue his abuse for 40 years because of bad process and the use of NDAs, and because he was allowed to resign rather than be defrocked and publicly disciplined. Julie's legal case led not only to the criminal conviction of the priest, but also to the Church of England making a commitment to no longer using NDAs and instead adopting a better external process to deal with allegations of abuse.

Which brings us to the Standing Committee report *Use of Non-Disclosure Agreements in the Diocese*.

It is fantastic that the diocese (and in particular the Standing Committee) took on this task. It is even more encouraging that they invited Uphold to be part of the process, including an Uphold member on the committee who wrote the report.

The report acknowledges the complicated history of NDA use in the Sydney Diocese, as well as the different circumstances under which NDAs are used. At times the report is forthright, articulating our God-given responsibility to care for the vulnerable, expose the truth, be transparent, and publicly rebuke abusive Christian leaders.

The report outlines a number of very limited circumstances in which NDAs can be used legitimately—for example, to protect intellectual property.⁷ It also provides recommendations that, in my opinion, we should adopt immediately as a first step. There are, however, areas where the report could have been improved. There is significant work that our diocese needs to do in order to properly grapple with this vexed issue.

One way in which the report falls short is that it holds back from explicitly acknowledging the ungodly use of NDAs in our diocese. It does not acknowledge the reality that we have used NDAs to cover up sin, or how devastating this has been to victims. This means that we as a diocese have

⁵ Paragraph 33.

⁶ 7pm Thursday 29 August 2024. In person only. [Register here](https://bit.ly/46YUc0J) (https://bit.ly/46YUc0J).

⁷ Paragraph 36.

not been given a chance to properly recognise our sin, repent of it, and seek restitution. If we want to move forward as a diocese, we need to acknowledge our past mistakes.

For example, the report recognises that NDAs “might prevent the appropriate reporting of misconduct, or even the healthy processing of the events by the people involved”,⁸ and places this use of NDAs under the category of “sensitive employment separations”.⁹ But, whilst it is common to describe such situations as a “breakdown in relationship”, this is seriously misleading.¹⁰ It makes it sound like what we are dealing with is merely a personal disagreement, when it’s not. When you have a personal disagreement with someone, you never solve it by offering to pay them money on the condition that they sign a legally binding agreement that they won’t report the disagreement to anyone or talk about it with others. What is really going on is that someone has made a complaint or an allegation about the actions, character, competence or convictions of a person in power, and the organisation they represent has stepped in and pressured the complainant to not report their concerns. There is nothing personal or relational about it. By shutting down the complainant, the organisation has moved the issue out of the realm of personal relationships within the body of Christ and into the realm of legal litigation.

Does this happen in our diocese? Without a doubt. Sadly, the use of NDAs in the Sydney Diocese is common. They are used by parishes, diocesan organisations and diocesan schools. Sometimes they are even entered into without the knowledge of the wardens, the parish council, or the relevant governing bodies. At times, wardens and council members are stunned to learn that they have been deliberately kept in the dark about allegations of abuse.

In one relatively recent case, whilst on medical leave an assistant minister was given an “intention to terminate” letter.¹¹ One of the reasons given is that he reported a workplace injury. Despite three independent medical experts agreeing that the parish workplace contributed to his mental health injury, the senior minister, with the unanimous agreement of the wardens and support of a Sydney Diocesan Services (SDS) employee, said the assistant minister was “irrational and unfounded” for making this claim.

The assistant minister was told that he had seven days in which to resign and sign a deed of release, or he would be terminated. The deed of release was passed on to him by the SDS Employment Department, on behalf of the senior minister and wardens. It included an NDA clause. Signing the deed of release would have meant that the assistant minister would not be free to report his concerns to the Office of the Director of Safe Ministry.¹² The deed also included a clause stipulating that the assistant minister’s wife and children must leave the church property immediately. Signing this deed would have meant immediate removal from their church community, discipleship groups, youth groups, kids club and other church ministries. Several days

⁸ Paragraph 30.

⁹ Paragraph 9.

¹⁰ Paragraph 12.

¹¹ This is required by the *Assistant Ministers Ordinance 2017*, which currently allows an assistant minister in our diocese to be terminated for any reason whatsoever, so long as the wardens agree and the regional bishop is notified.

¹² The Office of the Director of Safe Ministry (ODSM) was established by the Sydney Diocese’s *Ministry Standards Ordinance 2017*. It is not a discipline ordinance, but it is currently the only avenue open for discipline in the Sydney Diocese.

after the assistant minister resigned, the regional bishop allegedly called to encourage him to sign the deed of release “for his own good”. Whilst there’s every possibility that the bishop had genuine concerns for the welfare of the assistant minister, considering the power differential and context of what was happening, it was easy for this to be perceived as a threat.

This is a case of several people with significant power and influence—a senior minister, the wardens, the SDS, and the regional bishop—working together to prevent an assistant minister from sharing his concerns with the Office of the Director of Safe Ministry. This is not about caring for the assistant minister and his family, but about preserving reputations and presenting a false narrative. Furthermore, it subverts the processes that Synod has set up to deal with allegations of unacceptable behaviour, reduces transparency, and avoids accountability. How is this a good thing for our diocese? Why is it that the SDS and our regional bishops are involved in silencing those who allege abuse, and undermining the will of Synod? You can just imagine the devastating effect this sort of process has on victims and their trust in our diocese. It is no surprise that this assistant minister no longer works for a Sydney Anglican church.

I wish I could say that this example was an isolated case. Unfortunately, in my years at Uphold, I have been made aware of a large number of parishes and Sydney Anglican organisations that over decades have routinely used NDAs to silence alleged victims. The simple fact is that our use of NDAs has covered up abuse and enabled abusers to continue abusing. All those involved are culpable in some way or another. And since our Anglican organisations are overseen by the Sydney Synod, all of us on Synod hold some sort of responsibility. It is an open secret among us that NDAs are being used to silence complainants and to protect the reputation and ministries of senior men in our diocese. Our silent consent is a cause of great shame, and we need to accept responsibility for allowing it to continue for so long.

The report recommends that:

- Synod offer an apology
- we limit our use of NDAs to a very few, limited circumstances
- our parishes and diocesan organisations make a public pledge to not use NDAs in an unethical way, and adopt a policy restricting their use.¹³

Synod should adopt these recommendations without weakening them and without delay.

However, as I have suggested, there is room for Synod to strengthen our response by condemning in the strongest possible terms the unethical use of NDAs, and acknowledging not only the evil done under our watch but also how our use of NDAs has covered up and enabled abuse, and in doing so has re-abused victims.

One recommendation in particular needs to be strengthened. The report recommends that our diocesan organisations and schools, when approached by people who are subject to NDAs, consider apologizing and releasing them from the terms of those NDAs.¹⁴ I think this is the wrong way around. It should not be the responsibility of the abused victim to approach their abuser and

¹³ Paragraphs 35-41.

¹⁴ Paragraph 40.

ask for their gag to be removed. Where we have silenced complainants, we should be actively seeking them out, offering protection, releasing them from their obligations, repenting of our part in silencing them, and seeking their forgiveness. This is a matter of urgency. We have done wrong, and it has brought dishonour to God.

I am thankful for the work of the committee who wrote this report. They have done their job well. They have navigated a complex and pastorally sensitive topic with care, and have presented good and useful principles and recommendations. We should be thankful to them, and thankful to God for them.

In Psalm 32, King David sings of the joy of having one's sins forgiven. The upcoming Synod session is an opportunity to confess our sin, rightly lament, and then rejoice in the forgiveness our Lord Jesus Christ bought for us with his blood. Let us make the most of this God given opportunity.

In Christ

A handwritten signature in blue ink, appearing to read 'Mike Doyle', with a stylized flourish at the end.

Mike Doyle
Chair of Uphold