



List of consultation questions

This consultation seeks information and views to support the government's consideration of reforms to non-compete clauses and related restraints that restrict worker from moving to higher paying jobs.

You are invited to answer some or all of the questions, or to comment on the issues more broadly.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Closing date for submissions: 5 September 2025

Online	https://consult.treasury.gov.au/c2025-681950/consultation
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1. Introduction

2. Scope and purpose of consultation

3. The ban on non-compete clauses for low- and middle-income workers

3.1 Definition of a non-compete clause

1. How should a non-compete clause be defined in the Fair Work Act? Is the FTC definition appropriate for an Australian context?
2. Should any specific kinds of common contractual terms be explicitly included or excluded from this definition?

3.2 Scope of workers affected

3. Should the ban on non-compete clauses apply to workers who are not employees, such as independent contractors?
4. Are there any potential unintended consequences that may arise from a reliance on the high-income threshold in the Fair Work Act? If so, how could they be addressed?
5. At what point in the employment relationship should the high-income threshold be applied to determine whether a non-compete clause is allowable or not, and why? For example, should it be applied at the time the contract for employment is entered into or varied, the time the employment relationship ends, or some other time?
6. Would the application of the ban to all fair work instruments, as defined by the Fair Work Act, have any unintended consequences?

3.3 Enforcement

7. What is the appropriate penalty for breaches of the ban on non-compete clauses? Are the existing penalties in the Fair Work Act for other contraventions appropriate? Please consider the following matters in your feedback:
 - (a) the type of penalty
 - (b) the magnitude of the penalty, and
 - (c) the circumstances in which the penalty should apply.
8. Should there be any defences available to contraventions of the ban on non-compete clauses? If so, in what circumstances?
9. Which parties should be able to commence proceedings for a breach of the ban on non-compete clauses and why?
10. What role should the Fair Work Ombudsman have in relation to the ban on non-compete clauses? Are there particular areas where employees and employers may need assistance to understand and implement any proposed ban on non-compete clauses?
11. Are there any specific remedies that should be available to persons impacted by potential non-compliance with the ban? What role would the Fair Work Ombudsman have to enforce breaches of the ban, and would new compliance tools be necessary?
12. Should the Fair Work Commission have a role in resolving disputes that arise from the ban on non-compete clauses?

13. What additional powers, if any, would the Fair Work Commission require to deal with disputes it may be permitted to hear about non-compete clauses?

3.4 Limited statutory exemptions

14. Are there any exemptions to the non-compete ban that are justified on strong public policy or national interest grounds? How should any such exemptions be applied (e.g. permanent, temporary, by application etc)?

3.5 Transitional arrangements

15. What transitional arrangements are required to support workers, and business compliance with the ban?
16. How should the ban apply to non-compete clauses contained in existing contracts after commencement?

4. Other reforms to employee restraints of trade

4.1 Non-compete clauses for high-income employees

1. What approach for employees earning above the high-income threshold best strikes the balance between the public interest in competition, productivity, job mobility and the protection of legitimate business interests?
2. If mandatory compensation were adopted what should be the minimum compensation required?
3. If a duration limit were imposed, what would be the most appropriate maximum duration?

4.2 Non-solicitation clauses for clients and co-workers

4. Should the use of client non-solicitation clauses be restricted? If so, what sorts of restrictions are appropriate (e.g. duration, type of activity, and scope of clients).
5. When, if ever, should it be legitimate for business to use co-worker non-solicitation clauses? If these clauses can be legitimate, what restrictions would be appropriate to impose on their use?

4.3 Other requirements for valid restraint clauses

6. Should restraints with cascading duration periods and geographic extents be allowed?
7. Should severability of other parts of restraint clauses be limited in other ways?
8. Should businesses be required to specify the legitimate interests to be protected by a restraint clause?
9. Should client relationships or workforce stability ever be justified for a non-compete clause of the same duration when a more targeted non-solicitation clause could apply?
10. Should other aspects of the existing common law doctrine be clarified or amended?

5. Restraints on concurrent employment

1. Are there any other considerations or potential unintended consequences if restraints on concurrent employment were to be regulated beyond the common law?
2. If there were to be restrictions on these restraints, how should they be implemented?

6. No-poach and wage-fixing agreements

1. What civil penalty should apply to businesses that have no-poach and wage-fixing agreements in breach of the ban? Should criminal penalties also apply, in line with the cartel provisions in Part IV of the Competition and Consumer Act?
2. Should there be exemptions to the proposed ban on no-poach agreements? If yes, on what grounds? What restrictions should apply to their use?
3. Should there be exemptions to the proposed ban on wage-fixing agreements? If yes, on what grounds? What restrictions should apply to their use?