

3 May 2024

The Treasury – The Competition Taskforce

By e-mail: competitiontaskforce@treasury.gov.au

Dear Sir/Ma'am,

AWCC Submission – Non-competes and other restraints: understanding the impacts on jobs, business and productivity

The Australian Workforce Compliance Council Ltd (AWCC) makes the following submission to the consultation on non-compete clauses and other worker restraints initiated by the Government.

AWCC Ltd is the peak body representing the payroll profession and employment technology (EmployTech) sectors. We have observed the increasing prevalence of non-compete clauses, which have significant implications for professionals in our industry and the broader economy. While acknowledging the legitimate justifications for these clauses, such as protecting proprietary knowledge and encouraging investment in the workforce, we also recognise the challenges they pose.

AWCC submits the following report which includes a number of recommendations in relation to the consultation paper.

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Thank you.

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Australian Workforce
Compliance Council

AWCC Submission to Treasury

- Non-competes and
other restraints
03 May 2024



The Australian Workforce Compliance Council Ltd

Australian Company Number (ACN): 663 421 805

Australian Business Number (ABN): 1166 342 1805

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1. About AWCC Ltd

1.1 Background on the creation of AWCC Ltd

- (a) AWCC Ltd was created following three years of research into wage-theft and other payroll related non-compliance.
- (b) The Australian Workforce Compliance Council Ltd (AWCC), Australia's first and only member owned peak body association which represents payroll professionals and employment technology providers (EmployTech). AWCC Ltd was incorporated on the 27 October 2022.

1.2 Drivers and objectives

- (a) The creation of AWCC stemmed from several drivers identified through research, primarily aimed at developing solutions for wage theft. These drivers include:
- (b) Insufficient representation of payroll professionals within Australia's workforce compliance framework.
- (c) Limited understanding of payroll functions and workforce compliance issues among academic institutions and industry associations.
- (d) Regulatory misalignment between payroll, accounting, and tax agent services.
- (e) Lack of dedicated qualifications and standards for payroll professionals.
- (f) Existing intermediaries filling the representation void for payroll professionals, with limited effectiveness.
- (g) Influence of politically affiliated groups on national policy, lacking operational expertise in workforce compliance.

1.3 AWCCs purpose and strategic pillars:

- (a) In response to the drivers listed above, the Australian Workforce Compliance Council (AWCC Ltd) was formed on 27 October 2022, and work began to create the first membership-based association for payroll professionals and their EmployTech providers including payroll and industrial relations technology.
- (b) AWCCs Purpose is defined in its Constitution as follows:
 - (i) Provide a voice for the payroll practitioners and employment technology providers who operationalise Australia's labour and related legislation.
 - (ii) Endeavour to increase the public standing, credibility and capability of its payroll practitioners and employment technology providers.
 - (iii) Advocate on behalf of our members to all governments on matters of national policy in relation to the operational application of labour and related legislation.
 - (iv) Conduct and publish research to support our industry.

Executive Summary

2.1 Purpose of the Submission

- (a) The purpose of this submission is to address the consultation and issues paper and provide feedback regarding non-compete clauses and other worker restraints.
- (b) We aim to highlight the challenges posed by these clauses in the payroll industry and propose recommendations to address them effectively.

2.2 Methodology

- (a) Our submission is based on insights gathered from experts within the Certified Payroll Practitioners organisation, including professionals working in various sectors of the payroll industry. We have identified key issues related to non-compete clauses and other restraints through comprehensive reviews and analysis of industry practices.

2.3 Findings and Conclusions

- (a) Non-compete clauses in the payroll industry restrict job mobility, hinder career advancement, and inhibit innovation. These clauses often lack enforceability and are poorly written, causing professionals to remain in undesirable positions. Moreover, they pose barriers to employment and obstruct the mobility of employees, leading to unfair and unjustifiable practices.

3. Submission Details

3.1 Overview of Non-Compete Clause Challenges

- (a) Non-compete clauses in the payroll industry limit job mobility, hindering professionals from seeking better opportunities and stifling innovation. These clauses are often poorly written and lack enforceability, leading to legal uncertainty and potential disputes between employers and employees. Non-compete clauses in the payroll industry pose several challenges:
- (b) **Limited Job Mobility:** These clauses restrict the ability of payroll professionals to seek employment with competing firms or start their own businesses, hindering career advancement and exploration of new opportunities.
- (c) **Legal Uncertainty:** Non-compete agreements often involve complex legal language and varying enforcement standards across different jurisdictions, leading to uncertainty about their enforceability and potential consequences.
- (d) **Loss of Skills Development:** Payroll professionals may miss out on valuable opportunities for skills development and experience by being unable to work for certain employers or in certain roles within the industry.
- (e) **Impact on Industry Innovation:** Non-compete clauses can inhibit the flow of talent and ideas within the payroll industry, potentially stifling innovation and progress as professionals are restricted from sharing knowledge and expertise with different organisations.

- (a) **Enhance Clarity and Enforceability:** Non-compete clauses should be drafted clearly and precisely to ensure enforceability and minimise legal ambiguity. Standardised language and definitions can help alleviate confusion and facilitate compliance.
- (b) **Promote Job Mobility:** Policies should be implemented to encourage job mobility and career advancement within the payroll industry, allowing professionals to explore new opportunities without facing undue restraints. This can include promoting the use of non-solicitation clauses instead of broad non-compete agreements and providing incentives for employers to support employee mobility.
- (c) **Educate Employers and Employees:** Awareness campaigns and training programs should be conducted to educate employers and employees about the implications of non-compete clauses and other worker restraints, promoting fair and equitable employment practices. This can help foster a better understanding of fair employment practices and encourage compliance with relevant regulations.
- (d) **Implementing robust training and development programs:** Employers can invest in upskilling their workforce to enhance their capabilities and foster a culture of continuous learning. By providing opportunities for professional growth and advancement within the organisation, employers can incentivise employees to stay without relying solely on restrictive non-compete clauses.
- (e) **Strengthening intellectual property protection:** Employers can bolster their intellectual property protections through confidentiality agreements, trade secret laws, and non-disclosure agreements. By safeguarding proprietary knowledge and innovations, employers can maintain a competitive edge without impeding employees' ability to seek new opportunities.
- (f) **Offering competitive compensation and benefits:** Employers can attract and retain top talent by offering competitive compensation packages, including salary, bonuses, and benefits such as healthcare, retirement plans, and flexible work arrangements. By providing attractive incentives, employers can mitigate the need for overly restrictive non-compete clauses to retain employees.
- (g) **Fostering a positive work culture:** Employers can create a supportive and inclusive work environment that values employees' contributions and fosters loyalty. By promoting a culture of respect, recognition, and work-life balance, employers can enhance employee satisfaction and reduce turnover rates without resorting to restrictive employment contracts.
- (h) **Implementing tailored employment agreements:** Employers can negotiate individualised employment contracts with key personnel to address specific concerns related to proprietary information and competitive risks. By tailoring agreements to each employee's role and responsibilities, employers can strike a balance between protecting their interests and respecting employees' rights to pursue new opportunities.
- (i) **Create Standing Consulting Groups for non-compete agreements:** Establish a standing advisory committee dedicated to addressing issues related to non-compete clauses and worker restraints in the payroll industry. This advisory committee could consist of representatives from relevant stakeholders, including professionals from different specialisations, technology providers, industry associations, policymakers, and regulatory agencies.

Non-compete clauses and other worker restraints pose significant challenges in the payroll industry. These constraints not only hinder job mobility and innovation but also perpetuate unfair employment practices. It is essential to address these issues effectively to promote job mobility, innovation, and fair employment practices within the industry. By promoting job mobility, fostering innovation, and ensuring fair employment practices, we can create a more dynamic and inclusive payroll industry that benefits professionals and the broader economy alike.