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Non-competes Reform Unit  
Competition and Consumer Policy Division  
The Treasury  
Langton Cres  
PARKES ACT 2600

Online submission: [competitiontaskforce@treasury.gov.au](mailto:competitiontaskforce@treasury.gov.au)

### **CPA Australia submission on proposed reforms to non-compete clauses and other restraints on workers**

As one of the world's largest professional accounting bodies, CPA Australia represents more than 175,000 members working in over 100 jurisdictions and regions around the world. We make this submission on the '[Reform to non-compete clauses and other restraints on workers consultation paper](#)' on behalf of our members and in the broader public interest.

#### **High-level observations:**

##### **1. Non-compete clauses are common, but rarely enforced**

Engagement with members operating small to medium-sized accounting practices indicates that while non-compete clauses are frequently included in employment contracts, they are rarely enforced. Members, both as employers and employees, report that these clauses have limited impact on labour mobility, especially amid persistent skills shortages in many occupations. Consequently, we question whether prohibiting these clauses will generate the level of productivity and economic uplift anticipated.

##### **2. Potential unintended consequences of a ban**

Although employers are generally reluctant to enforce non-compete clauses, members expressed concerns that their ban could have unintended consequences. Specifically, employers may become less willing to hire junior staff or invest in their development, fearing competitors could benefit from the training and experience they provide to employees. This in turn could negatively impact the earning potential of such employees.

##### **3. Other proposed reforms to restraints on workers**

CPA Australia does not support restrictions on the use of employment contract clauses aimed at protecting intellectual property or prevent client solicitation. These clauses play an important role in safeguarding commercially sensitive information and preserving client relationships, both of which are key to the sustainability and competitiveness of business.

Attached are our responses to selected questions from the consultation paper.

If you require further information, please contact me on [gavan.ord@cpaaustralia.com.au](mailto:gavan.ord@cpaaustralia.com.au)

Yours sincerely



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Encl.

## RESPONSES TO CONSULTATION QUESTIONS

*Please note, CPA Australia limits its responses to the following selected questions.*

### Section 3: The ban on non-compete clauses for low- and middle-income earners

#### **Q2. Should any specific kinds of common contractual terms be explicitly included or excluded from this definition?**

As discussed below, employers should be allowed to continue to use clauses in employment contracts that protect their intellectual property and prevent client solicitation.

#### **Q3. Should the ban on non-compete clauses apply to workers who are not employees, such as independent contractors?**

No. CPA Australia does not support extending the ban to independent contractors.

Organisations and contractors should retain the flexibility to negotiate fees and working arrangements without unnecessary restrictions. Existing mechanisms already exist to address concerns such as sham contracting.

#### **Q7. 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.**

While penalties are important to ensuring compliance, CPA Australia recommends that the Fair Work Ombudsman (FWO) prioritise education and guidance, especially during the transition period. For example, suggesting employers remove non-compliant clauses rather than imposing penalties. Penalties should be reserved for exceptional cases, such as repeated, intentional non-compliance.

#### **Q10. 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?**

As outlined above, the FWO should focus on educating employers and employees on the ban. Clear guidance will be essential to support compliance.

We recommend the FWO engage with stakeholders on designing the assistance for employers and employees following the release of exposure draft legislation.

#### **Q11. 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?**

In most cases, the FWO should inform employers of non-compliant clauses and request their removal. Enforcement actions, including penalties should be reserved for serious or repeated breaches.

#### **Q15. What transitional arrangements are required to support workers, and business compliance with the ban?**

To support the transition, we recommend:

- a start date of at least six months after Royal Assent
- a grace period of 12 to 24 months following the start date
- the FWO receive additional funding to develop and deliver education and support.

## **Q16. How should the ban apply to non-compete clauses contained in existing contracts after commencement?**

If the government proceeds with banning non-compete clauses contained in existing employment contracts, we suggest a staged implementation. Stage one would apply the ban to employment contracts made or varied after the start date. Stage two would extend the ban to existing employment contracts, subject to the recommendations of an independent post-implementation review.

## **Section 4: Other reforms to employee restraint of trade**

### **Q1. 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?**

CPA Australia recommends that employers should retain the right to include non-compete clauses in employment contracts for employees earning above the *Fair Work Act's* high-income threshold. These employees typically occupy senior or specialised roles where the protection of business interests is likely to be more important.

Any consideration of this question should be deferred until the post-implementation review of the ban on non-compete clauses for lower-income employees.

### **Q3. If a duration limit were imposed, what would be the most appropriate maximum duration?**

While CPA Australia does not support imposing legislative restrictions on the use of non-compete clauses for higher income earners, if a duration limit is considered on such clauses, we recommend it not be more than 12 months. This gives parties the flexibility to negotiate shorter durations.

### **Q4. 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)?**

No. CPA Australia does not support restrictions on the use of client non-solicitation clauses. Such clauses protect valuable business assets and client relationships.

In some instances, solicitation by a former employee may breach existing legal obligations. For example, subsection 30.10(6) of the *Tax Agent Services Act 2009* imposes a legal duty on registered tax agents not to disclose any information relating to a client's affairs to a third party, unless authorised by the client or required by law. Accordingly, it may constitute a breach of this provision for a departing employee to copy client lists or contact details and use them to solicit business.

Subject to the above, if the government were to legislate some form of restriction on such clauses, we would recommend a duration limit of 12 months.

## **Section 5: Restraints on concurrent employment**

### **Q1. Are there any other considerations or potential unintended consequences if restraints on concurrent employment were to be regulated beyond the common law?**

CPA Australia does not support banning restraints on concurrent employment, especially for full-time employees.

As noted in the consultation paper, such a ban would likely be unreasonable for employers.

There is no compelling evidence presented that demonstrates actual harm done by such clauses. In the absence of such evidence, regulation of such activity is unwarranted and likely to introduce unnecessary complexity into employment law.