

4 September 2025

Competition Task Force
Federal Treasury Department
By email to: CompetitionTaskforce@treasury.gov.au

Dear Competition Taskforce,

Re: Reform to non-compete clauses and other restraints on workers Consultation paper July 2025

Thank you for the opportunity to contribute to the above consultation on reform to non-compete clauses and other restraints on workers.

About the NT Working Women's Centre

The Northern Territory Working Women's Centre (NTWWC) is a community-based, not-for-profit organisation providing free and confidential advice, advocacy, and support on work-related matters to women and gender-diverse people across the Northern Territory since 1994.

We operate from offices in Darwin and Alice Springs, extending services into regional and remote communities. In the 2024-2025 financial year we had almost 5,000 client contacts for new and existing client matters. Our services focus on workers who are unrepresented by a union, lawyer, or other advocate. Many of our clients are economically disadvantaged, employed in insecure roles, or balancing complex caring responsibilities.

We particularly assist:

- Aboriginal and Torres Strait Islander women
- Women from culturally and linguistically diverse (CALD) backgrounds
- Trans women
- Workers in regional and remote communities
- Women living with disability

In addition to casework, NTWWC delivers workplace education through our Work Aware training arm, offering programs on domestic and family violence, bullying, sexual harassment, and psychosocial hazards. We also contribute research and systemic advocacy on issues such as childcare access, pregnancy discrimination, parental status discrimination, pay equity, and the impact of violence on workforce participation.

As part of the national alliance of Working Women's Centres, we regularly provide expert advice to government on law and policy reform.

Continuity

In 2024 NTWWC made a submission to Treasury's Competition Taskforce in relation to its Issues paper: *Non-competes and other restraints: understanding the impacts on jobs, business and productivity* that highlighted the disproportionate impact of non-compete and restraint clauses on low- and middle-income workers, particularly women in insecure and precarious employment. We documented case studies across retail, government, and community services that highlighted how restraint clauses can limit mobility, create fear of litigation and force women to accept reduced compensation, work in unrelated fields or not within their realm of expertise. Those concerns remain highly relevant in 2025.

This submission builds on that evidence with new case studies and updated analysis in light of the Treasurer's March 2025 announcement, showing a continuing pattern of misuse and reinforcing the urgent need for reform. In the last financial year (2024-2025), we noted that the majority of our clients with restraint of trade clause issues were from CALD communities.

Reform to Non-Compete Clauses

Question 1 – Definition of a non-compete clause

While the US Federal Trade Commission definition is concise, in the Australian context the phrase "with a different person" creates uncertainty given varied entity structures (sole traders, partnerships, companies). We recommend replacing this with "employer" as defined under the Fair Work Act.

We also note that the current definition fails to address multiple and/or secondary employment. Many workplaces often require disclosure of secondary jobs, citing legitimate interests and concerns for confidentiality, safety, or performance. Whilst in principle this appears reasonable, NTWWC routinely see these requirements applied in ways that unfairly restrict low- and middle-income workers who rely on second or multiple jobs to manage financial or caring responsibilities. Therefore, approval should not be withheld where:

- The secondary employment is not in competition with the primary employer's business
- Confidential or sensitive corporate information is not at risk
- The employee is performing their primary role satisfactorily

Case study 1- Abigail: On unpaid parental leave, Abigail sought weekend work in a non-competitive industry so her partner could care for their baby. Approval was denied without explanation, leaving her unable to supplement her family's income.

Case study 2- Candice: A public servant running a small online shop in her spare time was issued a formal warning for not declaring it, even though it was unrelated to her employer's business. Meanwhile, a male colleague was permitted to drive for Uber without declaration. This inconsistent application of policy unfairly penalised Candice.

These examples demonstrate how disclosure requirements can function as de facto non-competes. Reform must ensure workers can hold multiple jobs where no legitimate conflict exists with their primary employment.

Question 2 – Terms to be included or excluded

We recommend including the words 'during the employment' to ensure casual or part-time workers are not unfairly restricted from concurrent employment.

Question 3 – Application to contractors

The ban should extend to independent contractors, who face the same vulnerabilities as employees. In practice contractors often rely on multiple clients for income, and in small jurisdictions like the NT, restraints can severely limit opportunities. Confidentiality concerns can be managed through narrowly drafted terms of engagement provisions, not broad restraints.

Question 4 – Reliance on the high-income threshold

Sole reliance on the high-income threshold risks the exclusion of workers in regional and remote areas where restraints can have particularly harmful impacts. Consideration is also needed for workers who normally meet the high-income threshold but are not generating their normal income for a period of time, for example on parental leave. (See *Abigail's Case Study* above.)

Case study 4- Yvonne: Despite earning above the threshold, Yvonne was bound by a restraint that required her to move over 300 km to remain in her field and utilise her skills and experience. This disrupted her livelihood and deprived her community access to a much-needed professional service.

Question 5 – Timing of the threshold

The threshold should apply at the time the contract is entered into or varied, giving workers certainty before committing.

Question 6 – Application to all Fair Work instruments

We support consistency across instruments, noting that while risks of inconsistency exist, the benefits of a uniform approach outweigh them.

Question 7 – Penalties

Existing penalty frameworks under the Fair Work Act are appropriate, provided they remain proportionate to the seriousness of the breach and the harm caused.

Question 8 – Defences

Defences should be limited and consistent with the Fair Work Act and the Fair Work Commission's (Commission) strict approach such as to statutory timeframes. Ignorance of the law should not excuse non-compliance.

Question 9 – Who can commence proceedings

Employees should have standing to bring proceedings with access to alternative dispute resolution (ADR) processes for affordable resolution. The Fair Work Ombudsman (FWO) and Commission should also be empowered to act against systemic misuse.

Question 10 – Role of the Fair Work Ombudsman

The Fair Work Ombudsman should:

- Develop online and in-person education resources
- Partner with community organisations to deliver training
- Receive additional funding to expand its Small Business Information Line

Question 11 – Remedies

Employees should be entitled to compensation for economic and non-economic loss. Non-economic loss may include the erosion of professional skills, confidence and experience when a worker is prevented from working in their chosen field, rendering their expertise redundant and limiting future opportunities. In regional and remote areas of the NT, where industries are small and job options limited, these impacts are magnified. Workers forced out of their sector may face long-term underemployment, loss of professional identity, and reduced capacity to re-enter the workforce at their skill level. These detriments extend beyond the individual, depriving remote communities of scarce and valuable expertise.

The FWO should also be able to investigate systemic breaches without a "public interest" constraint.

Question 12 – Role of the Fair Work Commission

The Commission should have the power to consider disputes, including via arbitration, to more efficiently resolve issues at first instance and avoid reliance on the Federal Court.

Question 13 – Additional powers

The Fair Work Commission should be empowered to set aside deeds containing unlawful restraint clauses where they cannot be severed and/or struck out and render provisions invalid. This power is necessary because employees are often pressured to sign deeds under financial or personal duress, without equal bargaining power and for less favourable terms and their lawful entitlements. *Case studies 4 and 5* below demonstrates this.

It is particularly important where employers have failed to undertake due diligence following legislative or regulatory changes. Without such oversight, unlawful clauses can remain embedded in standard contracts or deeds of release, continuing to disadvantage workers. Commission oversight provides a safeguard to ensure that employers cannot rely on outdated or unlawful restraints simply because they have chosen not to update their practices.

Case study 4-Rachel: Dismissed and compelled to sign a deed with restraints in order to obtain a separation certificate needed for Centrelink benefits.

Case study 5- Cynthia: In an unfair dismissal matter, employer lawyers inserted restraints into a deed during proceedings, despite such clauses not being part of the template.

Question 14 – Exemptions

What constitutes any exemptions on “public policy or national interest” grounds should not be too widely defined with a mechanism in place to ensure this exemption is not misused.

Question 15 – Transitional arrangements

During any transitional/grace periods, comprehensive education and public awareness campaigns led by the Fair Work Ombudsman and Commission and in partnership with key stakeholders such as other Federal agencies (Australian Taxation Office, the Australian Securities and Investment Commission and the Australian Charities and Not for Profit Commission) is essential. This could involve issuing notices/communications through routine channels to employers to bring the changes to their attention. If an employee wishes to challenge a restraint clause during the transitional period, there should be a clear low-cost pathway through the FWC. This process should prioritise early resolution through ADR processes, including conciliation so workers are not disadvantaged whilst awaiting final implementation of reforms.

Question 16 – Existing contracts

The Commission should have power to review existing clauses, determine reasonableness, and order compensation for applications brought before them for affected workers.

Further, the onus of proof should rest with the employer, not the employee to demonstrate why an exemption and restraint provision is valid and reasonably necessary. Too often the burden falls on the worker who usually lacks resources and bargaining power to challenge the validity of a restraint rather than the organisation imposing it and seeking to rely upon it as a lawful term. Restraint provisions simply

contained in a contract for some workers may appear that this is a genuine lawful and binding term especially for CALD communities. Shifting the onus of justification onto employers ensures that exemptions are not misused and that workers are not unfairly disadvantaged by having to contest unreasonable, unlawful or outdated restrictions.

Other Restraints of Trade

- **High-income earners:** Exceptions must balance competition, productivity, and fairness.
- **Mandatory compensation:** Should include lost or forfeited wages and allowances which are critical in remote contexts.
- **Duration limits:** Restraints should be capped at 12 months except in circumstances where there is a significant risk to the misuse of highly sensitive commercial information such as intellectual property and trade secrets. What is reasonable should depend on the context and fairness to both parties, assessed on a case-by-case basis. To support consistent application, clear guidelines should be developed by the Fair Work Commission to outline the factors for determining reasonableness, including industry norms, the employee's role, and community impact.
- **Client non-solicitation clauses:** Should be tightly limited with clear exemptions.
- **Co-worker non-solicitation clauses:** If allowed, only for high-income earners or where there has been demonstrable misuse of highly sensitive information.
- **Cascading clauses:** Should be prohibited as they effectively operate as disguised non-competes.
- **Legitimate interests:** Employers must specify the interests being protected.

Common Law Doctrine and Concurrent Employment

Restraints on concurrent employment should be regulated to prevent unfair restrictions on workers ability to hold multiple jobs, particularly for casual, part-time, and low-income employees. While common law already allows courts to strike down unreasonable restraints, relying solely on this is insufficient and expensive. Workers in the NT rarely have the resource to test restraints in court, especially in regional and remote communities where access to justice is limited.

Whilst employers also have obligations under workplace health and safety laws, including psychosocial risk management, these obligations should not be used as a blanket justification for prohibiting secondary employment. Regulation is needed to ensure that only genuine risks are addressed, and that workers are not unfairly denied the ability to hold multiple jobs for financial support and security.

No-Poach and Wage-Fixing Agreements

- **Penalties:** Civil penalties should apply, with criminal sanctions for serious breaches aligned with cartel provisions.
- **Exemptions:** Should be minimal (including periods) temporary and tightly overseen.

Further Concerns – “Set-Off” Clauses

We remain concerned by the increasing use of broad “set-off” terms in contracts, contrary to *Jodie Tucker v MCS Holdings (Australia) Pty Ltd [2025] FWC 1855*. Such terms risk undermining minimum standards by purporting to absorb multiple entitlements into a single payment.

Example clause:

Set Off

Your TER (and any additional amounts paid to you during your employment) compensates you for all entitlements, benefits or payments that might otherwise arise under an applicable industrial instrument or statute for the purposes of your employment.

This includes, without limitation, payment for all hours worked, any minimum wage, payment for minimum periods of engagement, overtime, penalty rates for weekend or public holiday work, shift and overtime allowances, remote work, meal allowances, annual leave or other paid leave and leave loadings, and any other allowances and loadings to which you may otherwise be entitled.

You agree that any and all amounts paid to you during your employment in any and all pay periods are paid in satisfaction of any and all entitlements arising in accordance with any applicable industrial instrument, or law or NES, and you agree that any amounts paid to you will set-off any entitlements arising from any applicable industrial instrument, or law or NES, including any entitlements that arise in later pay periods or at a later time.

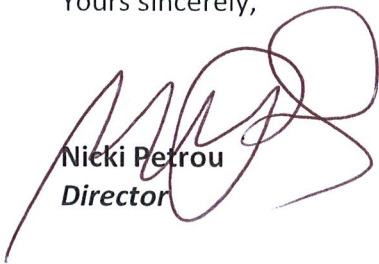
Such terms should be prohibited as they cannot be regulated and effectively operate as a restraint clause. This will protect minimum standards and fair remuneration for work.

Conclusion

NTWWC strongly supports reforms limiting non-compete clauses and other restraints of trade to what is reasonably necessary, ensuring they do not create unnecessary burdens or entrench disadvantage. These reforms are vital to workforce mobility, economic independence, and fairer working conditions particularly for vulnerable workers in the NT.

We welcome the opportunity to provide further information, including additional case studies to support these reforms.

Yours sincerely,



Nicki Petrou
Director