

Reform to non-compete clauses and other restraints on workers

Tech Council of Australia Submission

September 2025



1. Introduction

The Tech Council of Australia welcomes the Government's consideration of worker non-compete clauses as part of Treasury's Competition Review, and in particular, its consideration of the impact of non-compete clauses on labour market mobility and competition. The Tech Council recognises the importance of strong competition laws as a foundation for economic growth and driver of innovation across all industries. Competitive markets result in enhanced choices, reduced costs and improved quality for consumers.

The Tech Council supports the Government's objectives to create a stronger, more productive economy and to improve competition across the economy, resulting in more dynamic and innovative growth, including in the tech sector. To achieve these objectives, Australia needs to create the right conditions to boost productivity growth, which the Productivity Commission notes is at a 60-year low. Growing our tech sector will be a key part of the solution.

The Tech Council is Australia's peak industry body for the tech sector. The Australian tech sector is a key pillar of the Australian economy, employing 935,000 people. This makes the tech sector equivalent to Australia's seventh largest employing sector.

We represent around 160 companies from a diverse cross-section of Australia's tech sector, including companies working in business enterprise software, consumer software, telecommunications, fintech, venture capital and digital platform services. The organisations in our membership help to facilitate digitisation and productivity growth in our economy by providing core business functions to other companies of all sizes.

Australia's tech sector has some unique challenges when it comes to talent and workforce issues, that sets the tech sector apart from other sectors across the economy.

While Australia has some of the best tech talent in the world, we do not have enough tech workers. Tech skills shortages are particularly acute in technical occupations like software engineering, and it is especially hard to find experienced tech talent. Tech sector jobs are also outpacing growth in other occupations, as demonstrated in Figures 1 and 2 below. As a result, tech workers are in high demand in Australia, and are in a strong bargaining position when it comes to engaging with employers and future employers.

Figure 1: Long term growth in tech occupations¹

Index, where number of workers in August 1986 is equal to 100.

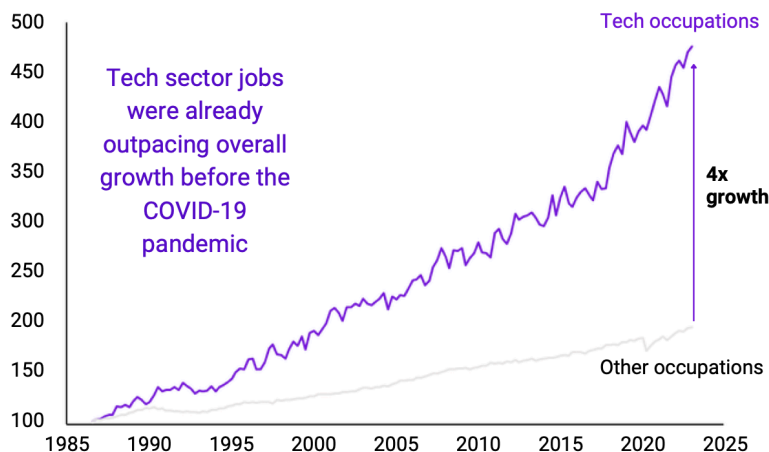
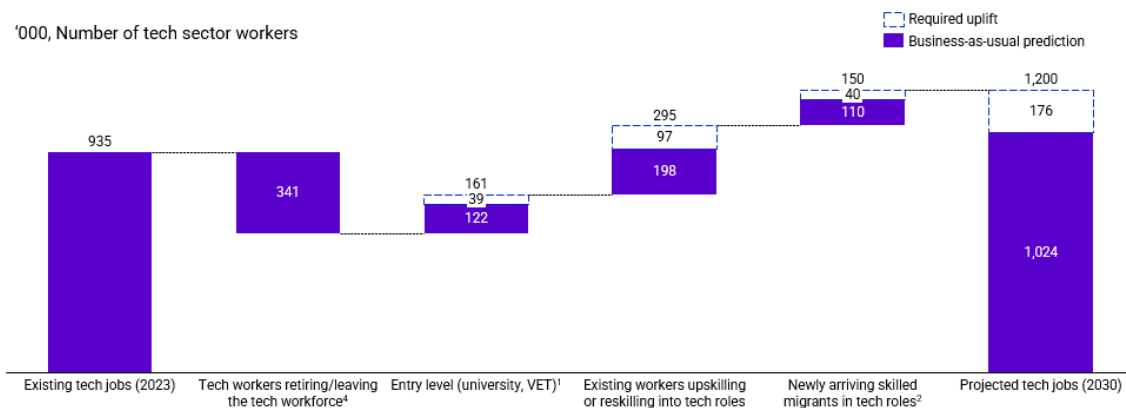


Figure 2: Projected tech sector jobs in 2030²



Sources: ABS, [Tech Council of Australia](#)

Further, Australia's tech sector is unique in the way that successful tech companies have a history of their employees starting new tech companies, driving innovation and dynamism in the sector.³ This trend has created a generational effect, which enriches the tech landscape and broader economy with fresh ideas and entrepreneurial drive.

Tech jobs are highly desirable due to a combination of high salaries and increasing importance to the national economy. The sector is consistently one of the highest-paying in the economy, with tech professionals often earning significantly more than the national average across various roles. Tech companies are tackling some of the most exciting problems and issues across our economy: driving productivity in healthcare, business software and world-leading innovation in quantum computing.

¹ Tech Council of Australia, [The State of Australia's Tech Ecosystem](#), March 2024

² Tech Council of Australia, [Tech Jobs Update](#), May 2023

³ Sydney Morning Herald, [Atlassian alumni launch next generation of startups](#), 3 August 2020 and Sydney Morning Herald, [Not sure what to cook with what's left in the fridge? There's AI for that](#), 11 December 2023

We strongly support job mobility for tech sector workers and consider that it is important that opportunity and growth is not restricted in the tech ecosystem. Further, we consider that as a matter of principle, employees should want to stay working for an employer rather than being prevented from leaving because of the operation of a non-compete. Australian companies have benefited from talent mobility to Australia, which has had broader economic impacts across the economy.⁴

However, non-compete clauses in employment contracts can play an important role in employment agreements for the tech sector in Australia, in particular to innovative startups, and for high-income earners.

We make **six recommendations**:

1. **Recommendation 1:** a blunt ban on non-competes for employees under the high-income threshold does not adequately protect businesses, especially startups, or recognise the importance of the information that employees, even at relatively junior levels, can access or are privy to. Other restraints of trade, such as NDAs, are ineffective at protecting the legitimate interests of an employer
2. **Recommendation 2:** Government should not introduce any ban on non-competes for high-income employees.
3. **Recommendation 3:** contractors should be exempted from any ban on non-compete clauses or other restraints of trade.
4. **Recommendation 4:** penalties should not apply for the use of non-competes where they are banned. The clauses should be declared void and unenforceable.
5. **Recommendation 5:** co-worker non-solicitation clauses should not be banned.
6. **Recommendation 6:** existing employment contracts should be preserved to avoid retrospective loss of value for employers who have already struck a bargain with their employees in exchange for agreed restraints.

2. Non-compete clauses play an important role in the tech ecosystem

Tech jobs tend to be well remunerated and involve a highly skilled workforce that is in high demand. At present, where non-competes are present, they form part of the overall employment contract with the employee, in which employees are paid well for their employment. Any consideration of the effect of non-competes in Australia's tech should take account of the broader employment context for tech workers in Australia.

However, when non-competes are relevant, they can serve an important role to tech companies. Non-competes can legitimately protect an employer's customer or client base and protect confidential information. This is particularly the case where the IP generated by a tech company is held in the minds of employees. In this critical respect, non-competes offer employers in the tech sector with an important layer of contractual protection that other obligations (such as statutory prohibitions on the misuse of confidential information)

⁴ Tech Council of Australia, [Harnessing the hidden value](#), August 2023

cannot secure. Tech companies also have significant customer bases and customer lists where trade secrets (for example, pricing) is easily misappropriated by staff. This is why non-competes are particularly important, with non-disclosure agreements insufficient to adequately protect the legitimate interests of an employer.

Even relatively junior levels can have access to highly commercially sensitive material in tech companies, for example where a junior software engineer has visibility over the algorithms that drive functionality on a tech company's platform. This means that the restriction on use of non-competes on the basis of remuneration is not appropriate for use in the tech sector.

For start-ups, non-compete clauses in employee contracts can have varied impacts which could be positive or negative, depending on the circumstance:

- They can play a crucial role in protecting a start-up's IP and prevent competitors from acquiring that IP by simply employing another business' employees and allowing those individuals to make use of their former employers' IP (as opposed to the start-up receiving the benefit of that IP through either becoming a customer, or purchasing the start-up altogether); and
- Alternatively, they can prevent founders from being able to start a start-up, where that start-up is in direct competition with founders' previous employment, and that start-up benefits from the skills and information as a result of founders' previous employment.

The impact of non-competes on competitiveness is not straightforward. In some instances, they may have a detrimental impact, and in other instances, they can be an essential safeguard to protecting legitimate business interests such as confidential information (which in turn can attract investment to startups, where investors can have confidence that the value of the startup is sufficiently protected). Having robust restraints in key employee contracts can be a significant component of investor due diligence on a start-up before investment.

We note that the Consultation Paper draws heavily on US experience, which is a poor basis for Australian reform:

- The US Federal Trade Commission rule has been struck down by the courts.
- Most US jurisdictions that limit non-competes do so only for low-income workers.
- States seeking to attract investment, such as Florida, have recently moved to strengthen enforceability of non-competes for higher-income workers.

A more relevant comparison is with neighbouring jurisdictions in Asia that Australia competes with directly for investment and talent. Singapore and Hong Kong allow non-competes, where they are reasonable or protect legitimate business interests.

Recommendation 1: a blunt ban on non-competes for employees under the high-income threshold does not adequately protect businesses, especially startups, or recognise the importance of the information that employees, even at relatively junior levels, can access or are privy to. Other restraints of trade, such as NDAs, are ineffective at protecting the legitimate interests of an employer.

3. Commentary on specific aspects of the proposal

Non-competes should continue to apply to high income earners

For high income earners, the existing legal framework strikes a reasonable balance between employee mobility, competition, and the protection of legitimate interests. Changing this balance risks undermining productivity growth, investment confidence, and the development of high-value, knowledge-intensive sectors in Australia.

High income employees often have access to significant confidential information, including intellectual property, trade secrets, unreleased product roadmaps and strategic business plans. This unique access to sensitive data means that these employees can cause serious harm to a business if they move immediately to a direct competitor. In this context, non-compete clauses act as a safeguard to ensure that the departing employee does not use proprietary knowledge or information gained at one company to give a competitive advantage to a rival. High income earners are generally also well equipped and resourced to negotiate their terms of employment, considerably more so than other employees.

If the Government proceeds with a threshold-based approach, it should reflect total average income over 2–3 years, including compensation beyond base salary (for example, bonuses, commissions and equity participation). This ensures that:

- Highly paid employees are captured even where base salary is modest.
- Both employers and employees have greater certainty.
- The test is fairer and consistent with precedents in Australian and overseas legislation.

Blanket limits on duration or mandatory compensation models would be blunt tools that fail to reflect this diversity.

Recommendation 2: Government should not introduce any ban on non-competes for high-income employees.

Contractors should be exempted from any ban on non-competes

A ban on non-compete clauses for contractors is inappropriate because of the unique nature of the contractor-client relationship and the sensitive information contractors often handle. Unlike full-time employees who are typically on a long-term, exclusive engagement with a single employer, contractors often work on short-term, project-based assignments for multiple clients. This dynamic makes it essential for tech companies to use non-competes to protect their proprietary technology and trade secrets. Contractors are hired for their specific expertise, which often requires them to be privy to highly confidential information, such as intellectual property, unreleased product details, and business strategies. Without non-compete agreements, nothing prevents a contractor to start working for a direct competitor, using the knowledge they gained to create a similar product or give the competitor a significant market advantage.

Contractors are generally in a stronger position to negotiate their terms than typical employees. The demand for specialised tech skills mean contractors often possess unique, in-demand expertise, giving them leverage to negotiate favorable contracts, including in relation to compensation and project scope. Because they have more bargaining power, a

ban on non-competes would be an unnecessary government intervention into a market where the parties are already capable of negotiating fair terms.

A non-compete clause in a contractor's agreement is a fundamental part of the value exchange: in return for access to a company's confidential information and business processes, and high project fees, the contractor agrees not to use that knowledge to the direct benefit of a competitor. Removing this tool would disrupt this and leave companies vulnerable, disincentivising them from hiring contractors for sensitive projects, which could have broader consequences.

Recommendation 3: contractors should be exempted from any ban on non-compete clauses or other restraints of trade.

Penalties

The TCA does not support the introduction of penalties for the use of non-competes. Declaring unenforceable clauses void is sufficient to achieve the outcomes that the government is seeking to achieve. This reduces the reliance on litigation to provide certainty about use of non-competes.

Recommendation 4: penalties should not apply for the use of non-competes where they are banned. The clauses should be declared void and unenforceable.

Non-solicitation clauses

Non-solicitation clauses are crucial for tech companies because they prevent former employees from actively poaching clients and colleagues, protecting the relationships and teams that are often a business's most valuable assets. Banning them would not necessarily improve labor market mobility or competition for employees.

A non-solicitation agreement is a more targeted restriction on behavior. It does not stop an employee from leaving for a competitor or starting their own company; it simply prevents them from using insider knowledge to acquire their former employer's clients or workforce. This distinction means that banning them would not improve competition for employees, but rather leave businesses vulnerable to losing key staff and clients, which would in turn discourage investment in training and employee development.

Recommendation 5: co-worker non-solicitation clauses should not be banned.

Transitional Arrangements

If government makes changes in relation to non-compete clauses or other restraints of trade, it is important to adopt transitional arrangements to ensure a clear transition between existing laws and the introduction of new regulation. Transitional arrangements must recognise the contractual bargains already struck between employees and employers. Existing contracts should be preserved to avoid retrospective loss of value for employers who have already paid remuneration in exchange for agreed restraints.

Recommendation 6: existing employment contracts should be preserved to avoid retrospective loss of value for employers who have already struck a bargain with their employees in exchange for agreed restraints.