

## Higginson, Chris

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**From:** Robert Garvey <rob@garvey.biz>  
**Sent:** Wednesday, 20 August 2025 2:38 PM  
**To:** Competition Taskforce  
**Subject:** Submission on Reforms to Non-Compete Clauses and other Restraints on Workers

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20 August 2025

The Competition Taskforce  
The Treasury  
Langton Crescent  
PARKES ACT 2600

We welcome the opportunity to provide feedback on the consultation paper regarding reforms to non-compete clauses and other worker restraints. We commend the government on the initiative to address the economic harms of these clauses and acknowledge that the paper contains several well-considered proposals, particularly the outright ban on non-compete clauses for low income workers.

However, we wish to express a key concern that the paper does not adequately recognize the unique advantages of the existing common law framework. While the goal of clarity and certainty is laudable, an approach based on prescriptive, "black-letter" rules may introduce more problems than it solves. Such rigid statutory definitions could be easily "gamed" or circumvented by sophisticated parties with the resources to draft agreements that technically comply with the law while still functionally restricting a worker's mobility.

The current system, while imperfect, provides the judiciary with a wide discretion to assess the reasonableness of a restraint based on the specific circumstances of each case. This flexibility is not a flaw but a crucial feature. The inherent uncertainty of whether a restraint is legally enforceable has a powerful self-policing effect. Neither the employer nor the employee can be absolutely certain of the outcome, which incentivizes employers to draft more reasonable and proportionate clauses and encourages a more pragmatic approach to negotiation. This allows for a flexible effect that accounts for the nuances of individual business interests and worker situations, a benefit that would be lost with a rigid, one-size-fits-all approach.

We therefore urge the government to consider a balanced approach. While some statutory clarifications may be beneficial, it is crucial to preserve the judiciary's discretion to assess the reasonableness of restraints on a case-by-case basis.

Sincerely  
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Publication Title: Reform to non-compete clauses and other restraints on workers.

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Related Initiative: Competition Review.

Consultation Closing Date: 5 September 2025.

Submission Methods: Electronic lodgement is preferred via the online portal or email, with postal submissions also accepted.

Online: <https://consult.treasury.gov.au/c2025-681950/consultation>.

Email: [CompetitionTaskforce@treasury.gov.au](mailto:CompetitionTaskforce@treasury.gov.au).

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