

I agree that non-compete clauses for low and middle income workers, no-poach agreements and wage-fixing agreements act to the detriment of workers and the broader economy by removing opportunities for higher productivity, whilst also constricting labour market supply and demand outcomes. Retainment of these clauses and agreements has a negative impact on employment conditions for workers, whilst also encouraging employers to worsen employment conditions for their employees and having a mitigative effect against the market imperative to better improve their businesses and remain competitive.

With respect to non-compete clauses for high income earners, please consider the following points:

1. Non-compete clauses can cause significant issues for employees when it comes to the time when they desire to change job. For the majority of workers and industries (speaking from experience as opposed to quoting statistics), most roles are relatively niche i.e. it would be difficult to seek employment in an alternative industry or similar role if they are barred from ascertaining that role in that industry as they lack the required skills and/or experience. This may essentially lock workers out of gaining suitable and meaningful employment for the entire duration of the non-compete clause, if it is upheld by the workers. It is not fair that for a worker and furthermore, as most workers are under some degree of financial pressure due to bills, rent, etc., this can cause serious damage to their financial situation and may lead to homelessness, among other adverse effects.

Whilst it is possible to argue that these workers are able to seek alternative employment in other industries at a significantly lower pay-grade, or via entry-level jobs, I wish to highlight that this does not necessarily remedy the above financial concerns. Furthermore, this poses a question – do we desire an economy where every X years, workers across the economy are forced to undertake mundane work for a period of Y months/years? Additionally, this undermines labour productivity in that workers that are ordinarily the most productive in their niche industry/role are forced into undertaking alternative employment in which they are not as productive.

Another alternative is that these workers may choose to move overseas instead, so as to retain employment in their relevant role/field. However, there are additionally concerns here: for most people, uprooting the family and migrating overseas because of a non-compete clause presents a severe inconvenience – if not an impossibility. Additionally, the productivity impacts as highlighted above also apply.

2. Regardless if the non-compete clauses are abided by, or not, they can act to intimidate workers from seeking better employment opportunities. On one hand this might be positively viewed by employers in some industries where labour is “hot” and it is commonplace for workers to “jump ship” between companies, thus presenting a major inconvenience to employers. However, this would not set a good precedent for our labour market to follow, given that to prevent workers from “jumping ship” employers need to make better incentives for keeping their workers – market supply and demand forces need to act so that employers are remunerating their workers so that they stay, whilst also mitigating the risk of underpayment. Also, this can discourage employees from tilting the scales of the terms of employment towards their favour, hampering negotiating power and leading to worse employment conditions. In addition, this may discourage employers from maintaining favourable working conditions for their employees as they know that employees have less ongoing negotiating power. These are also against the Better Off Overall Test (BOOT) principle that was introduced in the Fair Work Act.

With respect to non-solicitation clauses, I agree that these should be banned too. Whilst these are often included in contracts so as to prevent the case of a disgruntled employee poaching clients from a business, I would highlight that if the clients are sufficiently content with that employee’s goods and services on offer, the clients would be inclined to stick with that employee anyway and shift their business. To ban this would be to raise the risk of sub-standard provision of goods and

services to these clients and thus detract from productivity outcomes also. Furthermore, non-solicitation clauses may make it very difficult for employees to gain meaningful employment elsewhere, either with another firm or through their own business, as dependent on the role. For example, sales-people will expectedly have issues given that their role is entirely focused around solicitation of client business. Thus, for similar reasons as given above for banning non-compete clauses for higher-income workers, non-solicitation clauses can have an adverse impact on the financial wellbeing of these employees and can lead to lower productivity.

I also support that there should be bans on clauses that restrict employment in multiple jobs. The primary reason for this is that the motivation for seeking employment in multiple jobs is, as far as experience has dictated, due to financial reasons (e.g. the family is financially struggling). Whilst employers often use these clauses to ensure that the employee is not engaging in competing business-making or remains “committed” to their employment, I want to highlight that employers can achieve these objectives through other means. For example, clauses on banning an employee from undertaking simultaneous employment in the same industry or role would be better suited; and employers can use a key performance indicators or alike to ensure that the employee is satisfactorily performing.