

3<sup>rd</sup> August 2025

**I AM WRITING TO PROVIDE A CLINICAL SUMMARY AND  
RECOMMENDATION FOR CONTINUED NATIONAL SUBMISSION:  
REFORM TO NON-COMPETE CLAUSES AND OTHER RESTRAINTS ON  
WORKERS**

Submitted by: Dr. Nathan Bridger Chiropractor

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Industry: Chiropractic and Allied Healthcare

Role: Clinic Director and Employer

**OVERVIEW:**

As a healthcare employer in the chiropractic industry, I am writing to express strong concern regarding the proposed reforms to non-compete clauses and other restraints on workers. While I support worker mobility and fair remuneration, a blanket ban on restraints particularly in healthcare will have unintended and harmful consequences.

In healthcare, the relationship between a practitioner and patient is unique and built on trust over time. Without any ability to protect this relationship when an employee leaves, business models that provide high remuneration, mentorship, and patient-centered services will be at serious risk.

**RESPONSES TO CONSULTATION QUESTIONS:**

**3.1 Definition of a non-compete clause**

- Q1 & Q2:

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The FTC-style definition is broadly appropriate, but the Australian context particularly in healthcare requires a distinction between unreasonable restrictions on job movement and reasonable business protections, such as client/patient relationship safeguarding and proximity-based non-solicitation.

I propose explicit exclusion for “goodwill protection mechanisms” such as:

- A non-solicitation clause within 10–20 km for 12 months
- A buyout option for patient goodwill (e.g., if a former practitioner wishes to operate nearby and treat prior patients, a predefined goodwill fee is paid)

These should not be considered non-compete clauses.

### 3.2 Scope of workers affected

- Q3:

Independent contractors in healthcare should be included in some form of protection. Many healthcare workers are engaged under this structure but functionally operate like employees.

- Q4:

Yes, relying solely on the high-income threshold may misclassify healthcare professionals (e.g., associates earning under \$183k/year but whose patient relationships are of extremely high value).

- Q5:

The high-income threshold should apply at the time of departure (i.e., when the restraint may become activated). Many practitioners begin at lower wages but grow over time this ensures fairness and clarity for both parties.

- Q6:

Application to all fair work instruments is sensible but should exempt voluntary buyout clauses and limited non-solicitation protections from being considered restraints of trade.

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### 3.3 Enforcement

- Q7:

Breaches of unjust restraints should attract fines, but penalties should not apply where an employer has structured protection in good faith (e.g., a buyout option or a narrow non-solicit clause).

- Q8:

A defense should exist if the clause in question protects business goodwill or patient trust, or offers a buyout option or has been voluntarily negotiated.

- Q9:

Affected employees, regulators, and employers should be able to initiate proceedings. However, proceedings must protect both the employee's rights and the employer's legitimate business interests.

- Q10 & Q11:

The Fair Work Ombudsman should educate and support both employers and employees in understanding compliant restraint structures (e.g., templates for non-solicit clauses).

- Q12 & Q13:

Yes, the Fair Work Commission should be able to mediate disputes about non-compete or non-solicitation validity. It should be empowered to evaluate whether a clause is reasonable within the specific industry context.

### 3.4 Limited statutory exemptions

- Q14:

Healthcare (including chiropractic) should be a statutory exemption to blanket non-compete bans only where the clause protects patient continuity, health record

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security, or practice goodwill. This exemption should:

- Be limited in time (e.g., 6–12 months)
- Be geographically specific (e.g., 10–20 km)
- Include the option for the exiting practitioner to purchase the goodwill and transition ethically

#### 4.1 non-compete clauses for high-income employees

- Q1:

For employees above the threshold, non-compete clauses should be allowed if they are narrow in scope and geography, include a buyout or goodwill clause, and protect client/patient relationships.

- Q2:

Mandatory compensation is not appropriate for the healthcare industry. The alternative of a goodwill buyout option is a more effective and fair solution. Healthcare businesses especially allied health and chiropractic clinics often invest heavily in developing an associate's patient base. If a practitioner leaves and wishes to open nearby, offering the ability to purchase the goodwill allows for immediate movement and fair compensation.

Non-solicitation clauses do not restrict employment they merely prevent direct poaching of patients. Associates are still fully able to work elsewhere, open a business in a new area, and attract new clients by merit.

Mandatory compensation would penalize the employer unfairly, especially after significant investments.

- Q3:

A 6–12 month maximum duration remains appropriate if non-competes are to be used.

## 4.2 Non-solicitation clauses

- Q4:

Non-solicitation clauses should be preserved as a more balanced alternative to non-competes. A reasonable restriction would be:

- 12 months
- 10–20 km radius
- Only applying to active clients seen within the past 12 months

- Q5:

Co-worker non-solicitation clauses should be allowed only if the business has invested in structured team development (e.g., mentorship, training programs, IP sharing).

## 4.3 Other reforms to valid restraint clauses

- Q6–Q10:

Cascading clauses should be disallowed if they are overly vague or excessive. Businesses should specify the legitimate interest being protected. Client relationships and goodwill should justify restraints when a non-solicit clause would not sufficiently protect the business. Clarification is needed that goodwill protection (with a buyout option) is not an unlawful restraint but a fair commercial practice.

### SUMMARY:

If these reforms proceed without exemption or adjustment for healthcare, particularly small business operators, the outcome will likely be:

- A shift toward single-practitioner offices
- Reduced mentoring, training, and career development for young professionals
- Increased stress on business owners, worsening retention
- Patient care fragmentation due to sudden practitioner exits and lack of continuity

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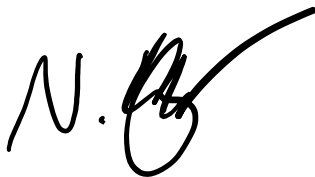


To protect business viability, patient care, and employee development, non-solicitation clauses with clear limits and a buyout option for goodwill must be allowed. Mandatory compensation, by contrast, risks undermining viable employment pathways in healthcare without improving mobility outcomes.

**SUGGESTED PATH FORWARD:**

- Statutory exemption for healthcare for limited non-solicit + goodwill protection clauses
- Clear guidelines/templates for fair restraint clauses
- Optional “goodwill buyout” clause for proximity-based practice setup
- Disallow broad, unenforceable non-competes but preserve proportional, targeted business protections
- Avoid mandatory compensation frameworks in healthcare use buyout options instead

In health,



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