

Reform to non-compete clauses and other restraints on workers

Submitted by: Dr. Stephen Ince Chiropractor

Email: steve@spchiro.com.au

Industry: Chiropractic and Allied Healthcare

Role: Practicing Chiropractor and clinic owner with associates

OVERVIEW:

As a healthcare employer in the chiropractic sector, I strongly oppose a blanket ban on non-compete clauses and related restraints. While supporting worker mobility and fair pay, removing all restraints in healthcare will produce unintended harm to patients, businesses, and the workforce.

In healthcare, the practitioner–patient relationship is personal, trust-based, and built over years. Without the ability to protect this relationship when a practitioner leaves, business models that deliver competitive remuneration, mentorship, and high-quality patient care will become unsustainable.

RESPONSES TO CONSULTATION QUESTIONS:

3.1 Definition of a non-compete clause

- Q1 & Q2:

The FTC-style definition is broadly acceptable but must be adapted to Australia's healthcare context, distinguishing between:

Unreasonable restrictions on job mobility, and

Reasonable protections for patient relationships and practice goodwill.

Goodwill protection mechanisms should be explicitly excluded from the definition of a non-compete, such as:

Non-solicitation clauses within 10 km for up to 12 months

Predefined goodwill buyout options (allowing a departing practitioner to treat previous patients nearby in exchange for a set fee)

3.2 Scope of workers affected

- Q3:

Independent contractors in healthcare should be covered, as many work under this model but function like employees.

- Q4:

Relying solely on the high-income threshold risks misclassifying healthcare professionals whose patient relationships carry high value, even if earnings are below \$183k/year.

- Q5:

Thresholds should apply at departure, when restraints would take effect. This ensures fairness for practitioners whose earnings grow over time.

- Q6:

While reforms should apply to all fair work instruments, voluntary goodwill buyouts and limited non-solicitation clauses must be exempt from restraint classifications.

3.3 Enforcement

- Q7:

Penalties should apply to unjust restraints, but not where employers have acted in good faith using proportionate protections (e.g., buyout options, narrow non-solicit clauses).

- Q8:

A defence should exist where a clause protects goodwill, patient trust, or has been voluntarily negotiated.

- Q9:

Employees, contractors, regulators, and employers should all be able to initiate proceedings, ensuring both rights and legitimate interests are upheld.

- Q10 & Q11:

The Fair Work Ombudsman should provide clear education and templates for compliant non-solicitation clauses.

- Q12 & Q13:

Yes — the Fair Work Commission should mediate disputes and assess clauses for industry-specific reasonableness.

3.4 Limited statutory exemptions

- Q14:

Healthcare (including chiropractic) should have a statutory exemption from blanket bans where clauses:

Protect patient continuity, health record security, or goodwill

Are time-limited (6–12 months)

Apply within a defined radius (eg 10km)

Offer an ethical goodwill buyout option for departing practitioners

4.1 Non-compete clauses for high-income employees

- Q1:

Above-threshold employees should be subject to narrow, geographically defined non-competes with buyout or goodwill clauses protecting patient relationships.

- Q2:

Mandatory compensation is unsuitable for healthcare. A goodwill buyout is a fairer alternative that enables immediate practitioner movement while ensuring employers are compensated for their investment in patient base development.

Non-solicitation clauses protect against direct patient poaching without preventing employment. Associates remain free to work elsewhere or build a new client base.

- Q3:

A 6–12 month maximum duration is reasonable.

4.2 Non-solicitation clauses

- Q4:

Non-solicitation clauses should remain as the preferred alternative to non-competes, limited to:

12 months

10 km radius

Patients seen in the preceding 12 months

- Q5:

Co-worker non-solicitation clauses should apply only where the business has demonstrably invested in team development.

4.3 Other reforms to valid restraint clauses

- Q6–Q10:

Ban cascading clauses that are vague or excessive. Require clear articulation of the legitimate interest being protected.

Clarify that goodwill protection — with a buyout option — is a lawful, proportionate commercial safeguard, not an unlawful restraint.

SUMMARY:

Without a tailored healthcare exemption, reforms will likely lead to:

Proliferation of single-practitioner practices

Decline in mentorship, training, and career progression for young and emerging professionals

Increased business owner stress, harming retention

Fragmented patient care due to abrupt practitioner departures

Proportionate non-solicitation clauses and goodwill buyouts safeguard patients, maintain business viability, and allow practitioner mobility — without the unintended harm of a blanket ban.

SUGGESTED PATH FORWARD:

Introduce a statutory healthcare exemption for limited non-solicit and goodwill protection clauses

Publish clear guidelines and model clauses for compliant restraints

Allow optional goodwill buyout provisions for proximity-based practice setups

Remove broad, unenforceable non-competes but retain targeted protections

Reject mandatory compensation in healthcare — use goodwill buyouts instead