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The Australian HR Institute

Submission to the Treasury

September 2025

The Australian HR Institute

The Australian HR Institute (AHRI) is the professional body for Human Resources in Australia, with 18,000 members from Australia and internationally.

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1. Summary

1.1 AHRI believes that non-compete clauses (which prevent an employee from joining a competitor organisation within a period of time), used for the right reasons and applied in the right way, can work for both individuals and employers.

1.2. AHRI agrees with the introduction of a high-income threshold below which non-compete clauses are not permitted. We believe that a threshold will make it easier for firms to improve workforce skills and productivity through increased job mobility while still protecting the business interests of other firms. The proposal is also simple to understand for employers and employees.

1.3 AHRI supports the introduction of a 12-month duration limit for non-compete clauses for high-income earners who are exempt from the ban. We believe that such a limit could support job mobility.

1.4. At the same time, AHRI cautions against introducing shorter duration limits, which could have negative unintended consequences for organisational performance. In particular, there is a risk that short duration limits may make some employers hesitant to share confidential but vital information with employees. AHRI research shows that information sharing, when adopted effectively alongside five other HR practices, lead to higher levels of financial performance¹.

1.5. AHRI believes that non-solicitation clauses in employment contracts should remain available to all employers. These clauses could be included in the employment contracts of lower-income earners, as well as higher-income earners. These clauses would impose on employees the obligation to refrain from stealing company information, intellectual property, or enticing clients or colleagues away from the organisation. AHRI believes that these clauses should remain at the discretion of the employer.

¹ [AHRI-HPWS-Report.pdf](#)

2. The case for tighter regulation

2.1 Introducing tighter regulation on non-compete clauses makes job matching more efficient and effective because it allows employees greater flexibility to move roles and provides greater access to labour for employers to help fill vacancies and attract better candidates². As recent AHRI research shows, recruitment difficulties continue to pose challenges for around a third of employers³.

2.2 AHRI therefore believes that it is fair to ban non-compete clauses for employment agreements of individuals at or below the high-income threshold (as defined under s.382 of the Fair Work Act 2009). We also believe that restricting non-compete clauses to high earners would improve productivity. This is because a reduction in the number of such clauses would free up management time to focus on innovation and efficiencies rather than complex legal considerations.

3. The case for introducing some restrictions for high-income earners

3.1 At the same time, AHRI believes that the use of non-compete clauses for those on high incomes should be permitted in all organisations. Soundings from members suggest that such clauses are essential to protecting the employer's business interests. These interests include protecting confidential information, trade secrets, and client relationships.

3.2 These views were broadly echoed in a poll of 203 AHRI members conducted in 2024. The results show that over half of respondents do not agree with banning non-compete clauses for all workers.

3.3 High-income earners typically possess specialised skills or knowledge directly related to their organisation and industry. Non-compete clauses for these employees may be effective

² Z Durrett, O Majeed and J Hambur, 'Overview: Understanding productivity in Australia and the global slowdown', Treasury Round Up, 2022; F Calvino, C Criscuolo, and R Verlhac, 'Declining business dynamism: structural and policy determinants', OECD, 2020

³ Australian HR Institute. *Australian Quarterly Work Outlook* (September quarter), 2025

in protecting company intellectual property and preventing competitors from gaining an unfair advantage by poaching talent.

3.4 With this in mind, AHRI believes that a reasonable policy would be to introduce a duration limit of 12 months for non-compete clauses for high-income earners. This limit is shorter than similar limits in other countries such as Germany.

3.5 A duration limit of less than 12 months could compromise the protection of confidential information, trade secrets and client relationships; especially among small businesses. In turn, some employers may hesitate to share confidential information, trade secrets and client information with team leaders, due to the risk this information might be passed on to a competitor.

3.6 This could have negative unintended consequences for organisational performance. Recent AHRI research shows that information sharing is a key component of high-performance working, which drives improved business outcomes, such as financial performance⁴.

3.7 In addition, small businesses are particularly vulnerable to the limited protections for employers once employment ends where it later emerges an employee was not acting in good faith during their employment, with consequences that materially affect the organisation.

3.8 We therefore believe that a 12-month duration limit strikes the right balance between protecting business interests, supporting job mobility and boosting productivity.

3.9 Additionally, AHRI proposes the following suggestions in terms of how the ban on non-compete clauses for employment agreements of individuals at or above the high-income threshold might operate:

- The high-income earner threshold should operate on a pro rata basis, in exactly the same way that it works for fixed-term contracts work.

⁴ [Improving Organisational Performance Through High-Performance Work Systems | Australian HR Institute](#)

AHRI Submission to The Treasury: Reform to non-compete clauses and other restraints on workers

- AHRI believes that awareness and understanding of non-compete clauses among employers and employees could be improved further by strengthening legislative protections around confidentiality, fidelity and intellectual property. This would give employers more effective and accessible remedies than the current system, which often requires costly legal action that small businesses in particular cannot pursue.
- A further option could be to confer jurisdiction on the Fair Work Commission (FWC) to deal with disputes about these clauses, providing a more timely and cost-effective mechanism than the courts.

4. The case against non-solicitation clauses

4.1 AHRI also believes that non-solicitation clauses in employment contracts should not be changed. We oppose regulation for similar reasons to those outlined in relation to non-compete clauses; namely higher costs and the potential reluctance for employers to share critical information among team leaders, such as trade secrets and client relationships, which is essential to support high levels of organisational performance.

Prepared by:

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