

Reform to non-compete clauses and other restraints on workers

ACCI Submission

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A. Introduction

1. The Australian Chamber of Commerce and Industry (**ACCI**) welcomes the opportunity to provide submissions to the Treasury with respect to its Consultation Paper on 'Reform to non-compete clauses and other restraints on workers' (**the Consultation Paper**).
2. On 25 March 2025, the Government announced its intention to ban non-compete clauses for workers earning less than the high-income threshold.¹ Additionally, the Government also announced that it would "*close loopholes*" in competition law to stop the fixing of wages by making anti-competitive arrangements that cap workers' pay conditions, and to stop the use of 'no-poach' agreements to block staff from being hired by competitors.
3. On 25 July 2025, Treasury released its Consultation Paper to inform the implementation of the Government's announced ban on non-compete clauses for employees earning below the high-income threshold. The Consultation Paper noted that the announcement made on 25 March 2025 was informed by the findings of the Competition Review.² ACCI notes that the findings of the Competition Review are not publicly accessible and that parties responding to the Consultation Paper have not had the benefit of reviewing those findings to inform their own submissions.

¹ The Hon Jim Chalmers MP, Senator the Hon Murray Watt, The Hon Dr Andrew Leigh, '*Cracking down on non-compete clauses to boost wages and productivity*', 25 March 2025, [Cracking down on non-compete clauses to boost wages and productivity | Ministers' Media Centre](#).

² The Treasury Consultation Paper on 'Reform to non-compete clauses and other restraints on workers,' 25 July 2025, page 1.

B. Summary of this submission

4. ACCI supports the proposition that labour mobility is a critical part of any high-functioning economy. Low friction job mobility allows resources to be deployed where they are most efficiently utilised, and assists more productive firms to expand operations with a broader benefit to the economy. Nevertheless, ACCI submits that the proposed ban on non-compete clauses is an inappropriately blunt measure and does not support it. This position is underpinned by the principle that restraint clauses have a legitimate and important role in protecting the interests of businesses, including confidential information, stakeholder relationships, investment in employees and business strategies. Commercial businesses are entitled to rely on such clauses to protect their legitimate interests.
5. Owners and operators of commercial businesses make significant financial investments to start, grow and expand their operations, often involving personal investments and the use of private assets that place their own viability and livelihood in jeopardy in order to achieve business success. It is entirely legitimate that measures be available to protect these investments, enhance the chance of business viability and encourage private enterprise to grow and create jobs.
6. If the Government seeks to achieve a policy outcome that balances the right for employers to protect legitimate business interests while enabling employee's capacity to pursue alternative employment opportunities, an outright ban on non-competes, for those below the high-income threshold, is an inappropriately blunt approach.
7. ACCI submits that the existing law already achieves this equilibrium and has done so for many decades. It is routinely achieved by the courts when tasked with enforcing restraint provisions, and there is no compelling reason why the long-standing and independent common-law approach adopted by legitimate judicial processes should be disturbed or challenged. Imposing blanket restrictions risks undermining the careful, case-by-case assessment that ensures restraints are only enforced when it is "*reasonably required*" to protect a "*legitimate interest*."³
8. Analysing the current arrangements does not sustain or evidence the need for policy intervention in this area. An ABS survey of business confirms that only one per cent of Australian businesses report that a potential employee had turned down their job offer because of a non-compete clause.⁴ The Government's commitment to banning non-competes appears to address a problem for which the evidence is slim or non-existent.
9. ACCI is concerned that the use of non-competes to protect legitimate business interests appears to have been successfully demonised by the union movement.
10. ACCI urges the Government to reconsider its commitment or, in the alternative, explore an appropriate framework that protects the rights of business to reasonably protect its interests, such as one that codifies the existing common law approach in a practical and clear way. This position underpins and informs our responses to the discussion questions in this submission.

³ See Section C of this submission.

⁴ Australian Bureau of Statistics, '*Restraint Clauses, Australia, 2023*', 21 February 2024.

C. Current Approach of Courts to Restraint Clauses

11. The courts have consistently approached restraint of trade clauses on the basis that they are contrary to public policy and are therefore prima facie unenforceable.⁵ However, importantly, the courts retain discretion to enforce such clauses in circumstances where:
 - (1) An employer has a “*legitimate business interest*”; and
 - (2) The restraint of trade clause is “*no more than reasonable*” to protect that interest.⁶
12. In considering item (1), this necessitates a consideration of circumstances that are unique to a particular business, such as knowledge of assets or advantages that are unique to the particular business.⁷
13. Regarding (2), this necessitates a determination that a restraint must:
 - (a) Not be for an unlimited period of time;⁸ and
 - (b) Be limited to a geographical area within which it genuinely protects the specific interests of a given business.⁹
14. In practical terms, when consideration is given to the above factors, it is the responsibility of the employer to demonstrate that a restraint clause goes no further than is reasonably necessary to protect their legitimate business interests.¹⁰ ACCI asserts that this is a critical consideration that ought to have been given greater weight in the Consultation Paper. The repeated references to the “*chilling effect*”¹¹ of non-compete clauses on employee mobility fail to acknowledge the practical operation of the law, namely, that non-compete clauses only have work to do when a business seeks to enforce such a term. In these circumstances, it is the employer who must initiate proceedings and bear the associated costs.
15. Further, an employer must act quickly to take court action to enforce a restraint. If it does not, a court will not likely be persuaded that the balance of convenience favours the granting of an interlocutory injunction in favour of the employer.
16. ACCI therefore submits that the full onus lies with the employer when attempting to enforce a restraint clause.
17. ACCI also submits that the courts have historically upheld the presumption that non-compete clauses, or other forms of restraint clauses are prima facie unenforceable, only upholding those clauses where there has been egregious employee conduct, as well as giving due consideration to the nature of the employee’s role with the employer. Again, this requires careful and objective

⁵ *Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd* [1894] 1 AC 535 at 565

⁶ *Allied Express Transport Pty Ltd v Braim* [2022] NSWSC 1298.

⁷ See, for example: *DP World Sydney Ltd v Guy* [2016] NSWSC 1072,

⁸ *Habitat 1 Pty Ltd v Formby [No 2]* [2017] WASC33.

⁹ *ECI Australia Pty Ltd v Convey* [2020] QSC 207.

¹⁰ See, for example: *Adamson v New South Wales Rugby League Limited* [1991] FCA 9, *Just Group Limited v Peck* (2016) 264 IR 425, *Commsupport Pty Ltd v Mirow* [2018] QDC 134, *Australian Regional Wholesalers v Stafford* [2007] NSWSC 572, *Lochdyl Ltd v Lind* [2024] SAMC 43.

¹¹ The Treasury Consultation Paper on ‘Reform to non-compete clauses and other restraints on workers,’ 25 July 2025, page 3.

consideration of facts and evidence on a case-by-case basis. Seeking to address non-competes by way of an outright ban does not in any way address the nuances naturally associated with individual circumstances and facts as appropriately considered by courts.

18. This is especially the case when considered conjunctively with the extremely limited circumstances in which these clauses are tested before the court. ACCI provides a list of cases where employers have sought to enforce restraint clauses at **Annexure A**. ACCI notes that this list is not limited to non-competes and includes any restraint clause. Notably, there are very few cases determined by courts relating to restraint clauses. Even fewer of those cases relate to non-competes, with many referring to non-solicitation clauses as well as confidential information.

D. Concerns about the Consultation Paper and Proposals

19. The Government's commitment is to implement a ban on non-competes, as well as "*closing loopholes*" in competition law that the Government claims allow businesses to fix wages and engage in no poach agreements.

Non-compete clauses

20. As noted above, non-compete clauses serve a legitimate purpose in protecting a business's interests once an employee concludes their employment with an employer. This is because employees will inevitably develop significant knowledge about that employer's relationships, strategies, operations, and various other matters.
21. It should also be noted that employees are free to reject or renegotiate offers of employment which contain non-compete clauses. However, the acceptance of such clauses allows employees to demonstrate that they are committed to fulfilling their common law obligation to act in the best interests of their employer and are willing to contribute to the ongoing viability of their employer's future business viability. Such factors are important considerations for employers when deciding to establish a formal employment relationship.
22. Banning non-competes for employees below the high-income threshold sends the message that the important role these clauses serve are not important or legitimate in circumstances in which courts are willing to enforce them. It is ACCI's view that the courts resolve related disputes in a fair and reasonable fashion. This policy intervention fails to employ the nuanced approach to the application of non-competes adopted by courts and appears to be a solution in search of a problem.
23. Additionally, ACCI submits that this proposal will have a disproportionate impact on small businesses. In smaller companies and startups, where the workforce is limited, employees are more likely to have intimate knowledge of the business while still earning below the high-income threshold. A blunt ban on non-competes sends a message to small businesses that the Government does not consider their legitimate business interests should be protected.
24. In these cases, non-compete clauses are particularly important. For example, if a key employee is poached by a larger competitor, the absence of a non-compete could allow them to transfer critical business knowledge and trade secrets.
25. While larger companies may be able to implement costly measures such as "garden leave" to protect themselves, smaller businesses often lack the resources to do so. Restricting non-competes in this context risks undermining the ability of small businesses to compete effectively, potentially stifling innovation and reducing productivity in the market.
26. Additionally, a move to implement a blunt ban on non-competes based on the high-income threshold creates a range of practical difficulties and complex legal considerations. For example, non-competes appear in contracts of employment, which are typically signed by an employee prior to their commencement with an employer. The non-compete itself, however, may only be enforced after the employment relationship has ended. Of course, at the time of entering an employment relationship, an employee may be earning below the high-income threshold, and during their tenure, may have their remuneration increased, taking them above the high-income threshold upon the termination of their employment. Similarly, an employee who commences employment on a

remuneration package that exceeds the high-income threshold may fall below that threshold as it is adjusted each year per the Fair Work Regulations. A strict ban on non-competes does not reflect the nuances and movement of the employment relationship and is an inappropriate mechanism to introduce to regulate the use of these terms.

27. Further, the use of a blunt financial threshold creates a range of additional problems. For example, it implies that persons earning below the high-income threshold will not be involved in matters that a business may legitimately need to protect in the future, but that those earning above the threshold will. This is a grossly generalised outcome and is not in any way reflective of the reality of actual businesses on the ground.
28. In ACCI's view, the high-income threshold is being considered only because it provides for a convenient regulatory intervention utilising the provisions of the *Fair Work Act 2009*. This would represent a continuance of the worrying trend observed in recent years whereby the Fair Work regime (and actors within it) are given more power and scope to deal with matters (such as commercial contractual disputes) that far exceed its stated, proper and historical purpose.
29. ACCI submits that this trend has not in any way addressed the purported policy mischief giving rise to such a trend and has in fact only led to a significant increase in the regulatory burden, level of complexity and associated compliance cost, all of which has been unfairly born by business.
30. Further, this trend has operated in such a way as to have opened the door to a sustained erosion of managerial prerogative which is both unreasonable and unwarranted, hindered the capacity of business to make decisions about its own operational affairs, and limited the capacity for employers to drive productivity in the interests of overall national economic growth.
31. ACCI submits that the Fair Work Commission, Fair Work Ombudsman or others holding functions under the FW Act, should have no role or powers in relation to a determination of matters hereto governed by common law, such as determining if a non-compete clause is valid or enforceable. They are not equipped to make such decisions which should properly be vested in courts of competent jurisdiction operating to known parameters in an objective, forensic and evidence-based way.
32. Likewise, registered organisations of employees should have no role in relation to the operation of the proposed law. The extent to which they are ill-equipped to deal with matters involving a determination of a legitimate business interest is even more acute compared to others under the Fair Work system, if not entirely non-existent. History also shows that when the scope of powers available to registered organisations of employees is increased, it gives rise to further disputation and opens the door to potential exploitation and misuse as a tool to achieve unrelated, industrial purposes.¹²
33. As such, ACCI foreshadows that any moves to achieve the above effect would represent an unreasonable and disproportionate response and thus be strongly opposed. Put simply, it will guarantee that the intent behind any policy outcome sought will not be efficiently or effectively achieved while unfairly and unreasonably imposing a new regulatory burden on a significant part of the business community on grounds that are unjustified.

Wage-fixing and no-poach agreements

34. Wage-fixing and no-poach agreements contravene existing Competition Laws. It is incorrect to suggest or imply that business is 'allowed' to engage in these practices when this is clearly untrue.

¹² For example, the CFMEU Construction and General Division see: <https://www.afr.com/topic/building-bad-6gug>

35. Further, ACCI has previously made substantial submissions in its response to Treasury regarding these practices, in which we have noted an ongoing absence of any evidence to substantiate widespread use of wage fixing or no-poach agreements. This current Consultation Paper has provided no evidence to contradict this assertion and there is no evidence provided demonstrating the impact of any such arrangements.
36. The Australian Competition and Consumer Commission (ACCC), despite its priority of addressing cartel behaviour, has extremely low reports of investigations into anti-competitive behaviour that may include wage-fixing or no-poach practices.
37. At **Annexure B**, ACCI has included a high-level table of the performance of the ACCC in addressing anti-competitive conduct. It is in these metrics that investigations involving wage fixing and no poach agreements would appear. The data in this table shows that the ACCC has not managed to conduct any more than 28 in-depth investigations per year since 2017-18, despite the steady growth of staffing levels by almost 75 per cent over the same period.
38. To inform an evidence-based response to concerns expressed in the Consultation Paper, ACCI submits that the ACCC should provide detailed reporting of their investigations into wage fixing and no-poach agreements to ascertain objective data regarding the prevalence of such behaviour. Without a comprehensive review into the current factual environment of the prevalence and impact of wage fixing and no-poach agreements, ACCI submits there is no rationale behind making any legislative amendments.
39. It is therefore ACCI's position that neither type of arrangement should be included within the scope of this Consultation and any reference to the term 'restraint of trade' or 'restraint clauses' in this paper should not be interpreted to include wage-fixing or no-poach agreements.
40. If, after the above data is objectively analysed, concerns around these types of arrangements remain, Government should consider improvements to the efficacy of the ACCC as the regulator of anti-competitive behaviour.
41. ACCI also takes this opportunity to reject the assertion made in the Consultation Paper that multi-enterprise bargaining does not amount to wage-fixing. The Consultation Paper makes an exception for multi-enterprise agreements by stipulating that such agreements serve to set a "*floor*" on wages rather than a "*cap*". The Consultation Paper failed to provide any examples of a multi-enterprise agreement acting as a "*floor*" on wages. Additionally, the same logic that is applied to unlawful wage-fixing agreements can be made, that is that businesses are able to pay employees an amount outside of and greater than that agreement.
42. ACCI would also comment on the practice of pattern bargaining, particularly common in the building and construction industry, as a mechanism by which unions deploy a template agreement in multiple negotiations, effectively fixing wages amongst those businesses.
43. Given the prevalence of pattern bargaining, ACCI suggests that any changes being made to Competition Laws, should be limited to removing the exemptions for multi enterprise and pattern bargaining.

Non-Solicitation clauses

44. Non-solicitation clauses again operate as a post-employment restraint, preventing employees enticing their former colleagues or clients of their employer to their new place of employment or business. Like non-compete clauses, they can only operate to protect an employer's legitimate business interests to the extent that it is reasonable.
45. ACCI submits that it is legitimate for an employer to protect client relationships, prevent targeted interference within their workforce, and ensure continuity of operations. A well-drafted non-

solicitation agreement provides clarity by setting clear boundaries on acceptable conduct after employment concludes, helping employees avoid unintentionally breaching their obligations, while also giving businesses confidence that their client relationships and workforce will not be unfairly targeted. They do not prevent employees from using their skills and experience in any new roles.

46. These clauses do not, of themselves, prevent worker mobility and it is misleading to suggest that they do so.¹³ Additionally, the notion that non-solicitation clauses impact third parties that are not party to those clauses is likewise an unsubstantiated claim. Fundamentally, non-solicitation clauses restrict the actions of the individual party to them. This does not prevent a former colleague from applying for a role through a fair recruitment process of their own volition, nor does it prevent a client from electing where to take their business. It merely restrains the employee from soliciting those third parties into a particular course of action.
47. Any policy justification for potentially limiting the use of non-solicitation clauses must be considered independently and not conflated with non-competes, given the fundamentally different purposes they serve.
48. The Victorian Supreme Court recently acknowledged this important and distinctive role in *International Cleaning Services v Davitt*.¹⁴ On 8 April 2025, the court effectively upheld a client non-solicitation agreement by granting ICS a temporary injunction to prevent a former manager, notably earning below the high-income threshold, from continuing to solicit their clients. Her Honour was “satisfied that ICS may suffer irreparable harm if the non-solicitation and confidential information applications are not granted.”¹⁵
49. Further, any changes to non-solicitation clauses would disproportionately affect small businesses, and ACCI strongly urges Treasury to consider these impacts. Small businesses and startups, with limited staff and client bases, are particularly vulnerable to client or employee solicitation.
50. These businesses have a higher vulnerability to client loss, greater exposure to worker poaching, and ultimately a lower ability to absorb any shocks. Accordingly, any adjustment to these protections could undermine their ability to compete and stifle market competition and productivity.

Insufficient Casual Evidence

51. The Consultation Paper heavily relies on ABS data to make inferences that “there is a growing prevalence of unreasonable non-compete clauses.”¹⁶ For example, the paper cites statistics on the presence of restraint clauses nationwide but provides no casual evidence to show that these clauses are unreasonable and harmful, only that they exist.¹⁷
52. ACCI submits that this evidential basis for legislative change is highly problematic, as it relies solely on the existence of restraint clauses rather than any assessment of their actual impact on employees and of the business interests the clauses were designed to protect. As a result, it provides minimal meaningful insight into the policy discussion of whether non-compete clauses are being abused.
53. ACCI maintains that the Consultation Paper fails to demonstrate that a significant problem exists in Australia, and, in fact, overstates the issue. This is supported by an ABS survey confirming that

¹³ The Treasury Consultation Paper on ‘Reform to non-compete clauses and other restraints on workers,’ 25 July 2025, page 28.

¹⁴ *International Cleaning Services (Aust) Pty Ltd v Davitt* [2025] VSC 176.

¹⁵ *Ibid.*

¹⁶ The Treasury Consultation Paper on ‘Reform to non-compete clauses and other restraints on workers,’ 25 July 2025, page 2,

¹⁷ *Ibid.*

only 1 per cent of Australian businesses reported a potential employee declining a job offer due to a non-compete clause.¹⁸ In addition, of the minority of Australian businesses that use at least one form of restraint clause, only 5.1 per cent of that minority indicated having threatened to take or had taken legal action to enforce a restraint clause.¹⁹

Overreliance on Overseas Evidence

54. Despite ACCI expressing concerns in its submission to the Issues Paper about the reliance on international comparisons, it is disappointing to see Treasury once again using these examples to justify reform in the Australian context.
55. Australia has a unique system, and comparisons should not be made with countries that have entirely different labour market and economic contexts. Importing overseas examples risks distorting the debate and overlooking Australia's distinctive regulatory settings, which are not comparable to the countries cited by Treasury as models for change.

Exceeding the Government's Election Mandate

56. The inclusion of non-solicitation, no-poach and wage fixing agreements represents an unnecessary and unjustified expansion of the Consultation Paper's scope, conflating issues that are fundamentally distinct from non-compete clauses.
57. The Government's commitment, while not supported by ACCI, was limited to a ban on non-compete clauses for workers earning below than the high-income threshold in the *Fair Work Act (the FW Act)*. ACCI rejects any attempt to broaden this scope and if the Government wishes to engage in further consultations on such matters, it should be done via a process that is separate and distinct from a consultation on a discrete commitment.

¹⁸ Australian Bureau of Statistics, 'Restraint Clauses, Australia, 2023', 21 February 2024.

¹⁹ Australian Bureau of Statistics, 'Restraint Clauses', *Australia, 2023*, 21 February 2024.

E. Alternative Approach – Codification of the Common Law

58. As noted herein, the primary position of ACCI is to not support the blunt approach of a proposed outright ban.
59. However, if the Government continues to hold genuine concerns about the impact of non-compete clauses on labour mobility, ACCI submits that there may be alternative approaches which can be more effective and efficient in achieving the stated policy intention.
60. One such approach is outlined below by way of example. ACCI submits that a more considered evaluation of alternatives such as this will likely facilitate an outcome that has many significant advantages, including:
 - a. Avoiding the plethora of problems outlined above;
 - b. Enabling a more flexible, simple and clear approach;
 - c. A greater apprehension of issues to better maintain balance between the right for businesses to protect legitimate business interests while enabling employee's capacity to pursue alternative employment opportunities; and
 - d. Empowering those parties subject to non-compete terms to make more informed and clear decisions about the use, impact and enforceability of such terms.
61. Instead of a blunt and ineffective ban on non-competes, it is open for the Government to acknowledge the reasonable circumstances in which non-competes may exist and instead formulate a framework that would better target unreasonable non-compete clauses absent the problems noted above.
62. This, in essence, would involve a codification of the common law principles conventionally adopted by Courts and represent them in a way that enables a clear and accessible point of reference by which business and employees can better understand their rights. Such a framework would enhance transparency and minimise the risk of misinformed assumptions about the enforceability of restraint clauses.
63. Achieving this would require a trichotomous approach, combining codification, enhanced educational initiatives and a simple dispute resolution option. This would provide three key benefits. One, it would inform workers to be aware of restraint clauses that may be unreasonable. Two, it would assist employers to understand that some clauses are unreasonable and should not be included in future contracts. Three, it would provide parties with a low-cost and timely option within which they can resolve disputes about the validity of non-compete clauses.
64. This approach ensures that the interests of both businesses and employees are satisfied, without an unreasonable and imprecise blanket ban on non-compete clauses.
65. The approach could involve the following key elements, greater detail of which is further provided in the section later herein responding to the Consultation Papers specific questions.

Codification of common law

66. Government should establish a framework that codifies the existing common law doctrine covering non-compete clauses outlined at paragraphs [12] – [19] above. This would involve a clear and simple statement that enables business and employees to understand the conventional common-law approach and what factors are relevant to how that approach should be considered and applied, including information covering factors such as:
- a. legitimate business interests;
 - b. what is no more than reasonable to protect those interests;
 - c. what may be contrary to the public interest; and
 - d. elements relevant to time and geographical considerations.
67. The framework would seek to reflect the common law doctrine as far as possible and reflect the various key elements it has established.

Education and information

68. The second element of this framework is the need for it to be supported by clear and simple educative materials that involve information and guidance about the formulation and negotiation of such clauses, and how this can ensure that parties are properly informed and protected.
69. This element will ensure that all parties have clear and concise information that enables improved compliance while balancing the rights of both parties.
70. The role of developing and promoting this element should be given to the Australian Small Business and Family Enterprise Ombudsman (see more below).

Low-cost and timely dispute resolution

71. The third element of this framework should involve access to a low-cost and timely process to resolve disputes about the enforceability or validity of non-compete clauses.
72. In this regard, ACCI submits that the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) is well placed to be the provider of such a process. ASBFEO is appropriate because:
- a. It already holds independent ADR powers and processes to assist in resolution of disputes;
 - b. The key element involved in enforcing non-compete clauses involves determining what is a legitimate business interest, and ASBFEO is best placed and experienced to assist in making this assessment; and
 - c. ASBFEO is a recognised and existing statutory body that is well known in the business community.
73. ASBFEO should be provided with additional resources to allow it to deploy and apply existing dispute resolution processes to assist parties in dispute about the validity and enforceability of a non-compete provision. ACCI further notes that given the extremely low rate of disputes relating to the enforcement of restraint clauses, the caseload that would be inherited by ASBFEO would likely be quite modest, referring again to Annexure A demonstrating minimal disputes.
74. We propose that parties should be able to access ASBFEO dispute resolution processes, and that such a process involve an independent person conducting an informal, rapid and low-cost process aimed at resolving any dispute.

75. If the dispute is not resolved satisfactorily to the satisfaction of both parties, the independent practitioner should be empowered to make an 'adjudication statement' or similar that contains independent findings and recommendations as to the validity and enforceability of a non-compete clause in dispute.
76. It would then be open to parties to either:
 - a. Abide by the adjudication statement; or
 - b. Seek to enforce the adjudication statement if one party does not comply with its terms.
77. Such an enforcement application would be made to a court of competent jurisdiction, in much the same way that adjudication outcomes made under various Security of Payment regimes can be enforced in a low-cost way.
78. More information on this proposal can be found in the following sections responding to the questions set within the Consultation Paper.

F. Discussion Questions

The Ban on non-compete clauses for low- and middle-income workers

Question 1

How should a non-compete clause be defined in the Fair Work Act? Is the FTC definition appropriate for an Australian context?

79. As discussed, ACCI's primary position is that courts should continue to assess the validity of a non-compete clause in accordance with common law principles. This means it would not need to be defined in the FW Act.
80. However, if Government were to take an alternative approach, such as that outlined in Section E, this would negate the need to create a definition as this would be covered by the framework outlined above which involves a codification of the existing common law.

Question 2

Should any specific kinds of common contractual terms be explicitly included or excluded from this definition?

81. ACCI is supportive of the existing common law approach regarding the enforceability of non-compete clauses. This means that a clause will be prima facie unenforceable unless the employer has a legitimate business interest and the clause is reasonable to protect that interest. This is discussed at Paragraphs [12] – [19].
82. However, if Government were to take an alternative approach such as that outlined in Section E, this would negate the need to specify particular types of contractual terms as this would be covered by the codification of existing common law.

Question 3

Should the ban on non-compete clauses apply to workers who are not employees, such as independent contractors?

83. While ACCI does not support the Government's proposed ban on non-competes, it is essential that any such ban be limited to employees and not extend to other types of workers, such as independent contractors.
84. Independent contractors operate as separate businesses and have the freedom to negotiate the terms of their engagements. They often provide specialized expertise and may work with multiple clients concurrently, making them distinct from employees in both role and legal status. This arrangement inherently exposes businesses to greater risks than would ordinarily arise with employees.
85. Consequently, imposing a blanket ban on non-compete clauses for contractors could create unnecessary uncertainty and discourage businesses from engaging contractors on projects that involve sensitive information. Protecting the ability to use reasonable non-compete provisions in contractor agreements ensures that legitimate business interests safeguarded without impeding market competition.

Question 4

Are there any potential unintended consequences that may arise from a reliance on the high-income threshold in the Fair Work Act? If so, how could they be addressed?

86. It is ACCI's position that non-competes should remain available for all workers where they are reasonably necessary to safeguard a legitimate business interest.
87. As discussed at Paragraphs [21] – [34], imposing a blanket ban on non-competes for workers below the high-income threshold risks undermining a business's ability to protect their confidential information and trade secrets when employees outside this threshold have access to them. This would have a disproportionate impact on small businesses.
88. These concerns can be addressed by codifying the common law approach, as identified at Paragraph's [12] – [19]. Were the Government to pursue such an approach, the high-income threshold should be used to determine a point where a codified framework would have application – e.g. Apply only to any non-compete clause applicable to an employee earning below the threshold and not apply to those earning above the threshold.
89. If the Government is inclined to persevere with reliance on the high-income threshold in conjunction with a blunt ban, ACCI submits that the calculation of the high-income threshold must include commissions and incentive-based payments and bonuses, which are currently excluded from the regular calculation of the high-income threshold.
90. ACCI makes this submission on the basis that an employee's commissions or bonuses can be calculated at the conclusion of the contract, which is when ACCI stipulates the high-income threshold should, if retained, apply. Additionally, bonuses and commissions are sums that directly impact whether an assessment of reasonableness when assessing the protection of legitimate business interests, noting that some industries offer significant commissions or bonuses to employees.
91. ACCI submits that any threshold to be applied to a ban ought to address the disproportionate impact on small business (i.e. for small businesses to be subject to an exemption), and that it ought to deviate from the FW Act definition to reflect an employee's remuneration including any commissions or bonuses. ACCI also submits that it's proposal for the codification of the common law is preferable as it would not require any exemptions, would apply to all employees, and would provide a clear framework.

Question 5

At what point in the employment relationship should the high-income threshold be applied to determine whether a non-compete clause is allowable or not, and why? For example, should it be applied at the time the contract for employment is entered into or varied, the time the employment relationship ends, or some other time?

92. ACCI submits that the only logical and practical time for the high-income threshold to be applied is at the conclusion of the contract, as this is the point at which the non-compete clause takes effect.
93. Alternatives, such as applying the threshold at the commencement of employment, are simply not viable as the high-income threshold increases annually and could unintentionally place employees outside the scope of the proposed ban.

Question 6

Would the application of the ban to all fair work instruments, as defined by the Fair Work Act, have any unintended consequences?

94. ACCI does not support the application of the ban to all fair work instruments as defined by the Fair Work Act.
95. Such instruments do not generally contain provisions such as those subject to the ban proposed and therefore there are no grounds to justify extension of the ban.

Question 7

What is the appropriate penalty for breaches of the ban on non-compete clauses? Are the existing penalties in the Fair Work Act for other contraventions appropriate? Please consider the following matters in your feedback:

- (a) the type of penalty;***
- (b) the magnitude of the penalty, and***
- (c) the circumstances in which the penalty should apply.***

96. ACCI submits that penalties only apply in limited circumstances, such as where a non-compete clause exists that is:
97. Where an employer has knowingly and recklessly included a non-compete clause in circumstances that are not in accordance with, or is inconsistent with, the codified framework; and
98. Where an employer has knowingly or recklessly engaged in conduct that implies or creates a circumstance, impression or inference that they intend to rely on such a provision; or
99. Where a party has unreasonably not complied with an 'adjudication statement' arising from the ASBFEO dispute resolution process outlined earlier above.

Question 8

Should there be any defences available to contraventions of the ban on non-compete clauses? If so, in what circumstances?

100. As stated, penalties should only apply in the circumstances identified under Question 7. Where this is not the case, a defence would be applicable to the employer, and no penalty would arise.

Question 9

Which parties should be able to commence proceedings for a breach of the ban on non-compete clauses and why?

101. Under the alternative approach outlined above at Section E, either party should be free to seek dispute resolution using ASBFEO processes.
102. ACCI acknowledges that parties to the contract may wish to be represented during such processes and does not oppose any such representations. However, no third-party should be able to commence proceedings for the breach of the ban on non-compete clauses considering they are unaffected, and it could give rise to an increase in frivolous proceedings.

Question 10

What role should the Fair Work Ombudsman have in relation to the ban on non-compete clauses? Are there particular areas where employees and employers may need assistance to understand and implement any proposed ban on non-compete clauses?

103. ACCI believes ASBFEO are best placed to deal with the implementation of our preferred reform option as outlined at Section E above.
104. Pursuant to our comments at Section D above, ACCI submits that entities under the broader Fair Work regime are not appropriate to have any functions involving matters that require the determination of legitimate business interests.

Question 11

Are there any specific remedies that should be available to persons impacted by potential non-compliance with the ban? What role would the Fair Work Ombudsman have to enforce breaches of the ban, and would new compliance tools be necessary?

105. Where dispute resolution processes outlined above at Section E are the subject of an 'adjudication statement' which determines the clause in question does not satisfy the common law requirements, then it should be rendered unenforceable.
106. Where a party continues to act in a manner that is inconsistent with the 'adjudication statement' then it should be open to a court of competent jurisdiction to determine any remedy when the other party seeks an order to enforce said statement.

Question 12

Should the Fair Work Commission have a role in resolving disputes that rise from the ban on non-compete clauses?

107. ACCI believes ASBFEO are best placed to deal with the implementation of our preferred reform option as outlined at Section E above.
108. Pursuant to our comments at Section D above, ACCI submits that entities under the broader Fair Work regime are not appropriate to have any functions involving matters that require the determination of legitimate business interests.

Question 13

What additional powers, if any, would the Fair Work Commission require to deal with disputes it may be permitted to hear about non-compete clauses?

109. ACCI believes ASBFEO are best placed to deal with the implementation of our preferred reform option as outlined at Section E above.
110. Pursuant to our comments at Section D above, ACCI submits that entities under the broader Fair Work regime are not appropriate to have any functions involving matters that require the determination of legitimate business interests.

Question 14

Are there any exemptions to the non-compete ban that are justified on strong public policy of national interest grounds? How should such exemptions be applied (e.g. permanent, temporary, or by application etc)?

111. There is no need to provide any specific exemptions if the Common Law approach is adopted, beyond the circumstances identified under Question 7.

Question 15

What transitional arrangements are required to support workers, and business compliance with the ban?

112. A 2027 commencement date should apply to any legislative changes concerning non-compete clauses, with penalty provisions deferred for a further two years. This staged approach would ensure businesses have sufficient time to amend their contractual frameworks without facing immediate exposure to penalties.

Question 16

How should the ban apply to non-compete clauses contained in existing contracts after commencement?

113. It is ACCI's position that any ban should only apply prospectively, with non-compete clauses in existing contracts grandfathered and left unaffected. This will prevent excessive disruption, legal uncertainty and retrospective penalties for businesses that entered into agreements in good faith under the existing framework.

Other reforms to employee restraints of trade

Question 1

What approach for employees earning above the high-income threshold best strikes the balance between the public interest in competition, productivity, job mobility and the protection of legitimate business interests?

114. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach for employees earning above the high-income threshold.

Question 2

If mandatory compensation were adopted what should be the minimum compensation required?

115. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach for employees earning above the high-income threshold.

Question 3

If a duration limit were imposed, what would be the most appropriate maximum duration?

116. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach for employees earning above the high-income threshold.

Question 4

Should the use of client non-solicitation clauses be restricted? If so, what sorts of restrictions are appropriate (e.g. duration, type of activity, and scope of clients)?

117. No.
118. ACCI considers that non-solicitation clauses are beyond the scope of this Consultation Paper. As such, ACCI does not support any restrictions on the use of client non-solicitation clauses.

119. The Consultation Paper does not provide any evidence to suggest that these clauses are having a disproportionately negative impact on labour mobility, noting of course, that while employed, employees are operating in the interests of their employer, and that the client relationships engaged in in service of an employer are not intended to be taken with them to future employment or business opportunities. Businesses are entitled to and should not be restricted in protecting their reasonable business interests, noting that the onus to prove that the clause is reasonable is an onus that lies on the employer.

Question 5

When, if ever, should it be legitimate for business to use co-worker non-solicitation clauses? If these clauses can be legitimate, what restrictions would be appropriate to impose on their use?

120. ACCI refers to our answer to Question 4 above.

Question 6

Should restraints with cascading duration periods and geographic extents be allowed?

121. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach.

Question 7

Should severability of other parts of restraint clauses be limited in other ways?

122. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach.

Question 8

Should businesses be required to specify the legitimate business interests to be restricted by a restraint clause?

123. While it is necessary for a restraint clause to identify the specific nature of the restraint, it is ACCI's position that it would be unreasonable for the business to have to specify the exact protected interest. This is because the range of legitimate business interests (i.e. confidential information or client relationships) may not be known in advance or may only become apparent at the time the restraint is challenged. It would therefore be unreasonable for a business to pre-emptively presume the interest they are trying to protect and, as a consequence, inadvertently limit the interests that can be protected.
124. As correctly identified in the Consultation Paper, courts are already well placed to assess whether a legitimate interest exists and whether the restraint is proportionate to protecting it. Accordingly, it is unnecessary for a legitimate interest to be expressly defined in advance, given the well-established framework that enables courts to make this assessment on a case-by-case basis.

Question 9

Should client relationships or workforce stability ever be justified for a non-compete clause of the same duration when a more targeted non-solicitation clause could apply?

125. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach.

Question 10

Should other aspects of the existing common law doctrine be clarified or amended?

126. ACCI submits that the Government should respect the separation of powers and avoid intervening in the common law at every opportunity it gets. The questions raised under this section of the Consultation Paper do not require statutory clarification when the common law is already capable of addressing them as cases arise.
127. Introducing statutory amendments to resolve every question yet to be tested by the courts would only add unnecessary complexity and red tape to an already overburdened regulatory environment. This approach risks making it even harder to do business in Australia, where regulatory overreach is already a significant concern.

Restraints on concurrent employment

Question 1

Are there any other considerations or potential unintended consequences of restraints on concurrent employment were to be regulated beyond the common law?

128. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach.

Question 2

If there were to be restrictions on these restraints, how should they be implemented?

129. For the reasons outlined above in Section D, ACCI does not support any change being made to the existing common law approach.

No-poach and wage-fixing agreements

Question 1

What civil penalty should apply to businesses that have no-poach and wage-fixing agreements in breach of the ban? Should criminal penalties also apply, in line with cartel provisions in Part IV of the Competition and Consumer Act?

130. As ACCI has previously discussed, questions relating to no-poach and wage-fixing arrangements are premature. ACCI considers that it would be of far greater utility for research to be undertaken which would indicate the prevalence of these arrangements and the circumstances in which they are being used. It is unclear whether any legislative reform is required as no demonstration of these arrangements actually occurring has been provided in the consultation paper. ACCI submits that before any consultation on legislative reform occurs, Treasury needs to undertake significant research to get an accurate view on whether a problem exists, which will then assist parties to consult on the best way to address that problem. At this time, there is no such evidence provided.
131. Predominantly with respect to no-poach arrangements, it is unclear if the ACCC has identified any cases of this behaviour and whether any assessment was given to whether any such behaviour was anti-competitive in the circumstances. Further, it is unclear whether the current legislative framework cannot apply to matters of no-poach and wage-fixing agreements and their rates of success after investigation. No evidence has been provided to demonstrate any impacts of no-

poach or wage-fixing arrangements. Until such research has been conducted, ACCI does not consider that it is appropriate to make any comments on the nature of penalties and considers that this consultation is entirely premature.

Question 2

Should there be exemptions to the proposed ban on no-poach agreements? If yes, on what grounds? What restrictions should apply to their use?

132. ACCI again reiterates that it is premature to make comments on this question, noting that the discussion paper has not canvassed actual circumstances where no-poach agreements exist in Australia and have resulted in anti-competitive outcomes. ACCI notes that the Consultation Paper already acknowledges that there are circumstances in which no-poach agreements will be not be considered as anti-competitive.

Question 3

Should there be exemptions to the proposed ban on wage-fixing agreements? If yes, on what grounds? What restrictions should apply to their use?

133. ACCI again reiterates that it is premature to make comments on this question, noting that the discussion paper has not canvassed actual circumstances where wage-fixing agreements exist in Australia and have resulted in anti-competitive outcomes. ACCI notes that the Consultation Paper already acknowledges that there are circumstances in which wage-fixing agreements will be not be considered as anti-competitive.

Annexure A

ACCI used the AustLII database for its legal research, specifically the auto search function for the term 'restraint of trade' between 1 January 2021 and 28 August 2025. The only selected database was "All Case Law Databases".

ACCI has only included those cases which are related to restraint of trades in an employment context and for which there has been a judgement. This therefore does not include those cases involving a contractor, a business sale, or where a complaint has been lodged and withdrawn or settled. This list also does not reference costs decisions arising from finalised cases.

This list, however, does include those cases where interlocutory hearing occurred, and an injunction or interim injunctive relief was granted to enforce a restraint.

List of Cases

11 cases thus far in 2025

Devine Real Estate Concord Pty Limited v Agha [2025] NSWSC 837 (29 July 2025)²⁰
Premprop Sales Neutral Bay Pty Ltd atf Neutral Bay Sales Unit Trust t/a Belle Property Neutral Bay v Davies [2025] NSWSC 725 (8 July 2025)²¹
Monarch Advisory Group Pty Ltd v Puxty (No 4) [2025] FCA 534 (23 May 2025)²²
Care Legion Pty Ltd v Addo [2025] VCC 634 (23 May 2025)²³
Lamson Concepts Pty Ltd v Schmidt [2025] FCA 677 (21 May 2025)²⁴
Perpetual v Epplert & Ors [2025] VSC 193 (11 April 2025)²⁵
International Cleaning Services (Aust) Pty Ltd v Davitt [2025] VSC 176 (8 April 2025)²⁶
Perpetual Limited v Maglis [2025] QSC 71 (7 April 2025)²⁷
C21 Pty Ltd (Trustee) v Hou (No 5) [2025] FedCFamC2G 479 (4 April 2025)²⁸
Blue Rock Australia Pty Ltd v Kaushik [2025] FCA 176 (11 March 2025)²⁹
MAJORS GROUP AUSTRALASIA PTY LTD -v- GHIRINGHELLI [2025] WASC 61 (4 March 2025)³⁰

8 cases in 2024:

Jackson Power Real Estate Pty Ltd v Jones [2024] NSWSC 1665 (20 December 2024)³¹
Trademax Australia Limited v Xiang Huang [2024] NSWSC 1459 (15 November 2024)³²
Metrohm Australia Pty Ltd v Arumugam [2024] NSWSC 1361 (28 October 2024)³³

²⁰ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2025/837.html>

²¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2025/725.html>

²² <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/534.html>

²³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2025/634.html>

²⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/677.html>

²⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2025/193.html>

²⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2025/176.html>

²⁷ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qlt/QSC/2025/71.html>

²⁸ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC2G/2025/479.html>

²⁹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/176.html>

³⁰ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/wa/WASC/2025/61.html>

³¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2024/1665.html>

³² <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2024/1459.html>

³³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2024/1361.html>

LCA Traralgon Pty Ltd v Johnson Pty Ltd [2024] VSC 612 (7 October 2024)³⁴
AEI Insurance Group Pty Ltd v Martin (No 4) [2024] FCA 1110 (24 September 2024)³⁵
Broadband Solutions Pty Ltd v Ramirez [2024] FCA 1009 (30 August 2024)³⁶
Samsung Electronics Australia Pty Ltd v Grenville [2024] NSWSC 608 (21 May 2024)³⁷
Scyne Advisory Business Services Pty Ltd v Heaney [2024] NSWSC 275 (20 March 2024)³⁸

12 cases in 2023:

Techforce Personnel Pty Ltd v Jaffer [2023] FCA 1674 (21 December 2023)³⁹
2nd Chapter Pty Ltd & Ors v Sealey & Ors [2023] VSC 599 (10 October 2023)⁴⁰
Smart EV Solutions Pty Ltd v Guy [2023] FCA 1580 (6 October 2023)⁴¹
Pellet Experts Pty Ltd v Smith [2023] NSWSC 1170 (28 September 2023)⁴²
AEI Insurance Group Pty Ltd v Martin [2023] FCA 914 (1 August 2023)⁴³
Cushman & Wakefield Agency (NSW) Pty Ltd v Hudson (No 2) [2023] NSWSC 884 (28 July 2023)⁴⁴
Avant Group Pty Ltd v Kiddle [2023] FCA 685 (23 June 2023)⁴⁵
KPW Law Pty Ltd v Patel [2023] NSWSC 617 (9 June 2023)⁴⁶
Janala Pty Limited v Hardaker (No 3) [2023] NSWSC 446 (2 May 2023)⁴⁷
Cushman & Wakefield Agency (NSW) Pty Ltd v Hudson [2023] NSWSC 218 (14 March 2023)⁴⁸
W284 Pty Ltd v MRES Pty Ltd & Ors [2023] VCC 181 (17 February 2023)⁴⁹
Fortrend Securities Pty Ltd v Wollermann [2023] FCA 70 (9 February 2023)⁵⁰

11 cases in 2022:

Your Nurse Australia Pty Ltd v Carpenter [2022] NSWSC 1788 (29 December 2022)⁵¹
Luvalot Clothing Pty Ltd v Dong [2022] FCA 1411 (28 November 2022)⁵²
Singh v Khanna & Ors [2022] VCC 1726 (13 October 2022)⁵³
McMurphy v Employsure Pty Ltd; Kumaran v Employsure Pty Ltd [2022] NSWCA 201 (11 October 2022)⁵⁴
One Stop Warehouse Pty Ltd v Zhang [2022] QSC 207 (28 September 2022)⁵⁵
Allied Express Transport Pty Ltd v Braim [2022] NSWSC 1298 (27 September 2022)⁵⁶

³⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2024/612.html>
³⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2024/1110.html>
³⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2024/1009.html>
³⁷ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2024/608.html>
³⁸ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2024/275.html>
³⁹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1674.html>
⁴⁰ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2023/599.html>
⁴¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1580.html>
⁴² <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2023/1170.html>
⁴³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/914.html>
⁴⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2023/884.html>
⁴⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/685.html>
⁴⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2023/617.html>
⁴⁷ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2023/446.html>
⁴⁸ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2023/218.html>
⁴⁹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2023/181.html>
⁵⁰ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/70.html>
⁵¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2022/1788.html>
⁵² <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2022/1411.html>
⁵³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2022/1726.html>
⁵⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSCA/2022/201.html>
⁵⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qlt/QSC/2022/207.html>
⁵⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2022/1298.html>

Label Manufacturers Australia Pty Ltd v Chatzopoulos [2022] NSWSC 1059 (6 September 2022)⁵⁷
Janala Pty Ltd v Hardaker [2022] NSWSC 822 (22 June 2022)⁵⁸
TALENT KONNECTS PTY LTD -v- MARVELLI [2022] WASC 128 (12 April 2022)⁵⁹
Nexgen Sydney Pty Ltd v Barakat [2022] NSWSC 312 (24 March 2022)⁶⁰
United Petroleum Pty Ltd v Barrie [2022] FCA 818 (21 March 2022)⁶¹
Allied Express Transport Pty Ltd ACN 001 787 962 v Braim [2022] NSWSC 286 (10 March 2022)⁶²

13 cases in 2021:

Virtual IT Services Pty Ltd v Hamilton [2021] FCA 1637 (22 December 2021)⁶³
NOVA Employment Ltd v Michelle Hira & Ors [2021] NSWSC 1337 (15 October 2021)⁶⁴
Australian Timber Supplies Pty Ltd v Duncan Welsh [2021] QSC 266 (15 October 2021)⁶⁵
HiTech Group Australia Ltd v Riachi [2021] NSWSC 1212 (24 September 2021)⁶⁶
Shire Real Estate Pty Limited v Kersten [2021] NSWSC 1255 (23 September 2021)⁶⁷
Employsure Ltd v McMurchy; Employsure Ltd v Kumaran [2021] NSWSC 1179 (17 September 2021)⁶⁸
Harden v Willis Australia Group Services Pty Ltd; Willis Australia Group Services Pty Ltd v Harden [2021] NSWSC 939 (30 July 2021)⁶⁹
Liberty Financial Pty Ltd v Jugovic [2021] FCA 607 (4 June 2021)⁷⁰
Cushman & Wakefield v Patterson [2021] NSWSC 672 (3 June 2021)⁷¹
R T Forsyth Real Estate Pty Ltd v Psaltis [2021] NSWSC 332 (6 April 2021)⁷²
Qantas Airways Ltd v Rohrlach [2021] NSWCA 48 (26 March 2021)⁷³
Agha v Devine Real Estate Concord Pty Ltd & Ors [2021] NSWCA 29 (9 March 2021)⁷⁴
Employsure Pty Ltd v McMurchy [2021] NSWSC 139 (24 February 2021)⁷⁵
Vergara v Chartered Accountants ANZ [2021] VSC 34 (23 February 2021)⁷⁶

⁵⁷ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2022/1059.html>

⁵⁸ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2022/822.html>

⁵⁹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/wa/WASC/2022/128.html>

⁶⁰ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2022/312.html>

⁶¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2022/818.html>

⁶² <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2022/286.html>

⁶³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2021/1637.html>

⁶⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/1337.html>

⁶⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2021/266.html>

⁶⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/1212.html>

⁶⁷ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/1255.html>

⁶⁸ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/1179.html>

⁶⁹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/939.html>

⁷⁰ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2021/607.html>

⁷¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/672.html>

⁷² <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/332.html>

⁷³ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2021/48.html>

⁷⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2021/29.html>

⁷⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2021/139.html>

⁷⁶ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2021/34.html>

Annexure B

The below table refers to ACCC performance reporting as referenced in earlier in these submissions.

Performance Measure	2017-18		2018-19		2019-20		2020-21		2021-22		2022-23		2023-24	
	Target	Result	Target	Result	Target	Result	Target	Result	Target	Result	Target	Result	Target	Result
In-depth competition investigations completed	40	28	40	23	40	28	30	18	30	20	18	19	15	15
% of in-depth competition investigations completed within 12 months	60	73	60	78.3	60	71.4	60	44	70	45	70	42	-	-
% of initial investigations completed within 3 months	60	60.6	60	44.7	60	33.3	60	42	60	56	60	34	-	-
Number of competition enforcement interventions (court proceedings commenced, section 87B undertakings accepted, administrative resolutions)	8	8	6	5	6	6	4-6	7	6+	5	6+	7	6	7
Staffing Level	874		976		1113		1172		1201		1346		1517	

About ACCI

The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people.

ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth, and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education, and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

ACCI Members

State and Territory Chambers



Industry Associations



