



ACTU Submission to Treasury Consultation on Reform to Non-compete Clauses and other Restraints on Workers

ACTU Submission, 4 September 2025
ACTU D. No 27/2025

Contents

Introduction	2
About the ACTU.....	2
About the Consultation.....	3
Response to Treasury Consultation Paper.....	5
1. How should a non-compete clause be defined in the Fair Work Act? Is the FTC definition appropriate for an Australian context?.....	5
2. Should any specific kinds of common contractual terms be explicitly included or excluded from this definition?	8
3. Should the ban on non-compete clauses apply to workers who are not employees, such as independent contractors?	9
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?	9
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 ended, the time the employment relationship ends, or some other time?.....	11
6. Would the application of the ban to all fair work instruments, as defined by the Fair Work Act, have any unintended consequences?	11
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?.....	12
8. Should there be any defences available to contraventions of the ban on non-compete clauses? If so, in what circumstances?	13
9. Which parties should be able to commence proceedings for a breach of the ban on non-compete clauses and why?.....	13
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?	14
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?	14
12. Should the Fair Work Commission have a role in resolving disputes that arise from the ban on non-compete clauses?	14
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?	15
14. Are there any exemptions to the non-compete ban that are justified on strong public policy or national interest grounds? How should any such exemptions be applied (e.g. permanent, temporary, by application etc)?	15
15. What transitional arrangements are required to support workers, and business compliance with the ban?	16
16. How should the ban apply to non-compete clauses contained in existing contracts after commencement?	16

17. 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?	17
18. If mandatory compensation were adopted what should be the minimum compensation required?	17
19. If a duration limit were imposed, what would be the most appropriate maximum duration?.....	18
20. 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).....	18
21. 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?	20
22. Should restraints with cascading duration periods and geographic extents be allowed?.....	21
23. Should severability of other parts of restraint clauses be limited in other ways?	21
24. Should businesses be required to specify the legitimate interests to be protected by a restraint clause?.....	23
25. 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?	23
26. Should other aspects of the existing common law doctrine be clarified or amended?.....	23
27. Are there any other considerations or potential unintended consequences if restraints on concurrent employment were to be regulated beyond the common law?	24
28. If there were to be restrictions on these restraints, how should they be implemented?	24
29. 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 the cartel provisions in Part IV of the Competition and Consumer Act?	25
30. Should there be exemptions to the proposed ban on no-poach agreements? If yes, on what grounds? What restrictions should apply to their use?	25
31. Should there be exemptions to the proposed ban on wage-fixing agreements? If yes, on what grounds? What restrictions should apply to their use?	25

Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For nearly 100 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

About the Consultation

1. Introduction

The ACTU welcomes this opportunity to respond to this Treasury consultation on the Australian Government's proposed reform to non-compete clauses and other restraints on workers. We are pleased to see the Government implementing its commitment to reform in this area, given the further evidence that has emerged about the prevalence of unreasonable non-competes and other restrictions on workers' mobility.¹

Survey evidence in a 2025 QUT study shows that 25% of respondents from small-medium enterprises (200 employees or less) currently impose post-employment restrictions on employees, while 9% have done so in the past.² Of those with current restrictions, 61% made an active decision that the restrictions were necessary, but 34% simply included the restrictions in standard contracts without any real consideration.³ Even where workers in these businesses seek to reject or negotiate proposed employment restrictions, the most common outcome is that the worker eventually accepts them.⁴

The study also provides data from interviews with hairdressers and IT professionals, both employees and self-employed/independent contractors. Hairdressers reported being subject to contractual restrictions on post-employment work with a competing business or starting their own business, along with other practices intended to stifle competition (e.g. being prevented from accessing the salon computer or being asked to leave immediately and conceal their departure from clients, including on social media).⁵ The chilling effect of post-employment restrictions in the industry is strong: "even the remote possibility of legal repercussions, or informal demands, threats or retaliation from ex-employers ... was enough to create substantial anxiety among hairdressers when contemplating a job change".⁶ For IT professionals, where "job-hopping [is] considered essential for maintaining employability", the use of cascading restraint clauses leads to conclusions such as "It's not clear in my contract how restrained I am".⁷ Further:

¹ Australian Government, The Treasury, *Reform to non-compete clauses and other restraints on workers*, Consultation Paper, 25 July 2025, pages 1-3 (Treasury Consultation Paper).

² Paula McDonald et al, *Locked In or Left Out: Assessing the Impact of Post-Employment Restraints in Australia*, Final Report, QUT & University of Adelaide, January 2025, page 33.

³ Ibid, page 35.

⁴ Ibid, page 36.

⁵ Ibid, pages 20-23, 25-27.

⁶ Ibid, page 24.

⁷ Ibid, pages 27, 29.

“The emotional stress of having to navigate restrictions was mentioned frequently, with several [IT professionals] expressing a sense of being ‘on edge’ about inadvertently breaching clauses.”⁸

This new evidence and data – along with the many sample clauses from ACTU affiliates provided with this submission – further highlight the need for reform to ban clauses which restrict job mobility and therefore the opportunity for workers to earn a living. These clauses also act as a brake on competition and innovation to the detriment of workers, consumers and the wider economy.

2. Scope and purpose of consultation

The areas of focus for this consultation are the Government’s announced ban on non-compete clauses for employees earning below the high-income threshold in the *Fair Work Act 2009* (Cth) (FW Act); whether reforms are also required for higher-income earners; whether non-solicitation clauses also need reform, along with restraints on concurrent employment; and closing loopholes that permit no-poach and wage-fixing agreements.⁹

The ACTU states at the outset our firm position that all workers, including employees and independent contractors, should be protected from non-compete and non-solicitation clauses: we do not make a distinction in terms of a worker’s classification, level or remuneration.

We note that the Treasury Consultation Paper questions do not address the issue of the legal mechanism to implement the Government’s proposed ban on non-compete clauses. The ACTU and several of our affiliates support adoption of the model that was used to implement the ban on pay secrecy clauses under the FW Act.¹⁰ The model is applicable because (prior to the ban) pay secrecy was often achieved by employers through terms in employment contracts, in a similar manner to non-compete and other restraint clauses.

This would result in non-compete or restraint clauses being addressed in two important ways in the FW Act:

1. A worker would not be bound by a non-compete clause, even if there was one in their contract or a fair work instrument; and

⁸ Ibid, page 31.

⁹ Treasury Consultation Paper, page 2.

¹⁰ FW Act, ss. 333B-333D.

2. The inclusion of a non-compete clause in an employment contract or independent contractor agreement would be prohibited, and this would be a civil remedy provision with penalties applicable for the offending employer or principal.

The first element, ensuring workers are not bound by non-compete clauses, even if entered into in a contract or fair work instrument, would protect those workers' interests and allow greater job mobility. The second element is required to provide a strong disincentive to businesses against the continued use of non-compete and restraint clauses, and overcome the chilling effect that these clauses have on a worker's decision to change jobs (even where the clauses are not legally enforceable).

Response to Treasury Consultation Paper

The Treasury Consultation Paper poses a series of discussion questions. The ACTU's responses to those questions are as follows.

3. The ban on non-compete clauses for low- and middle-income workers

3.1 Definition of a non-compete clause

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

For purposes of the 2024 US "Non-Compete Clause Rule", the US Federal Trade Commission (FTC) defines a non-compete clause as:

A term or condition of employment that either prohibits a worker from, penalises a worker for, or functions to prevent a worker from:

- a) *Seeking or accepting work with a different person where such work would begin after the conclusion of the employment that includes the term or condition.*
- b) *Operating a business after the conclusion of the employment that includes the term or condition.*

[The] term or condition of employment includes, but is not limited to, a contractual term or workplace policy, whether written or oral.

The ACTU supports adoption of the FTC definition for purposes of the Australian Government's proposed non-competes ban,¹¹ with some additions and adjustments as outlined below.

The FTC definition would cover the kinds of post-employment non-compete or restraint clauses that ACTU affiliates have indicated are commonly found in employment contracts which their members are required to agree to (for example, see Appendix 1 United Workers Union clauses and Appendix 2 Professionals Australia clauses) – i.e. clauses that prohibit a worker from seeking or accepting other work, or operating a business, after their employment ends, which as the examples show are often expressed as a series of cascading/overlapping restraint periods and geographic areas.

The FTC definition would also cover clauses which explicitly penalise a worker for seeking or accepting alternative work or operating a business post-employment, e.g. through a requirement to make a payment of some kind. The NSW Nurses and Midwives' Association provided the example of the following “penalty” clause which one of its members was subjected to, which the union estimates could see the employee having to pay the employer approximately \$90,000 per year for the balance of the contract if the employee resigns:

In the event the Employee decides to terminate this Contract for whatever reason or no reason, the Employee shall be indebted to the Employer for the nomination cost and shall include pre-agreed liquidated damages at \$50 per day for the remaining of the unserved Contract's term to be paid forthwith. The Employee acknowledges and agrees that the Employer will suffer and incur loss and damage if the Employee terminates this Contract ... The parties acknowledge and agree that all sums payable by the Employee to the Employer pursuant to this subclause are a genuine pre-estimate of the damages likely to be suffered by the Employer if the Employee terminates this Contract ...

This clause may be covered by that part of the FTC definition which relates to clauses which penalise a worker for seeking new employment etc – but the employee subject to the above clause faces a penalty for leaving, regardless of their future plans. We would therefore add para (c) below to the FTC definition to ensure that clauses which simply prevent an employee from resigning are captured.

¹¹ As proposed in Treasury Consultation Paper, page 7.

Our affiliates also report that some employers insist upon clauses which *indirectly* penalise workers to prevent them from moving. The United Workers Union provided examples of a restraint on a Team leader with a National Disability Insurance Scheme (NDIS) provider which stated that: “You acknowledge that you will be liable in damages (including punitive or special damages) arising out of the breach of any of the terms of this provision”; and a restraint imposed on a Hospitality worker including the following clause:

You agree that, in the event of a breach by you of any of clauses 18, 19 or 20, damages may not be an adequate remedy and we or any other aggrieved party may, in addition to any other remedies, obtain an injunction restraining any further violation and other equitable relief.

Clauses similar to these are found in 8 of the 14 non-compete/restraint clause examples provided by Professionals Australia (see Appendix 2 PA clauses). We would therefore add “whether directly or indirectly” to the FTC definition to ensure penalties indirectly imposed are captured.

The FTC definition also covers clauses which function to prevent a worker from seeking or accepting other work or operating a business post-employment. This could have application in a range of situations which we have seen in sample clauses, such as one provided by Professionals Australia (employee required to advise their employer if offered or invited to consider working for a competitor, and give the competitor a copy of the restraint);¹² and where we might expect employers to shift their focus in light of the non-competes ban, e.g. longer notice or garden leave periods or more extensive confidentiality clauses.¹³ To ensure these kinds of situations are covered, in circumstances where a clause does not go as far as functioning to prevent a worker from moving elsewhere but just makes this more difficult for the worker, we would add para (d) below to the FTC definition.

We also anticipate that employers might seek to circumvent the non-competes ban through the use of deeds (separate or ancillary to the main employment contract),¹⁴ agreements used to

¹² See the restraint clause for a Head of mechanical engineering in a Biosample management company, in Appendix 2 PA clauses.

¹³ An employer legal adviser has already signalled that “‘smart’ employers would increasingly rely on notice periods” and utilise existing contractual clauses enabling them to change an employee’s duties and restrict access to clients and confidential information in the notice period: David Marin-Guzman, Tess Bennett and Tom McIlroy, “Non-compete ban threatens value of business deals: investors, lawyers”, *Australian Financial Review*, 26 March 2025.

¹⁴ Noting that deeds are already commonly used to implement restraint clauses: Andrew Stewart et al, *Creighton and Stewart’s Labour Law*, Federation Press, Sydney, 7th edition, 2025, page 634.

settle claims by employees (e.g. where settlement of a dispute or claim is made conditional on a non-compete) or by making bonuses or the vesting of shares conditional on non-competes written into bonus or share plans. We would therefore add deeds, terms of settlement or agreement, bonus plans and share plans to the specific types of agreements etc to which the FTC definition applies.

Our proposed amendments to the FTC definition of a non-compete clause are shown in red type below:

A term or condition of employment that either prohibits a worker from, penalises (whether directly or indirectly) a worker for, or functions to prevent a worker from:

- a) Seeking or accepting work with a different person where such work would begin after the conclusion of the employment that includes the term or condition.*
- b) Operating a business after the conclusion of the employment that includes the term or condition.*
- c) Resigning from their employment.*

Or a term or condition of employment that:

- d) Interferes with or restricts a worker's ability to work with a different person or operate a business where such work or business activity would begin after the conclusion of the employment that includes the term or condition.*

[The] term or condition of employment includes, but is not limited to, a contractual term, a term of any deed, terms of settlement or agreement or any workplace policy including any bonus plan or share plan, whether written or oral.

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

The Treasury Consultation Paper proposes that targeted and well-drafted non-solicitation clauses would not be captured by the proposed definition of non-compete clauses.¹⁵ The ACTU's position of opposition to non-solicitation clauses is set out at section 4.2 below. The Treasury Consultation Paper also proposes that adoption of the FTC definition would not affect notice periods or garden leave, with existing employment law continuing to apply to the use and limits on these provisions.¹⁶ We have noted above that, in response to the con-competes ban, employers will resort to longer contractual notice and garden leave periods as well as wider

¹⁵ Treasury Consultation Paper, page 9.

¹⁶ Ibid.

confidentiality clauses, and suggested amendments to the non-competes definition to address this.

3.2 Scope of workers affected

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

The ACTU's position is that the ban should apply to all workers including independent contractors and contractors who meet the definition of "employee-like workers" (for digital labour platforms) under s.15P of the FW Act. The United Workers Union is aware of clauses in the contracts entered into by independent contractors engaged by platforms to perform care work under the NDIS, which restrain them from working for another platform or their own business after their engagement ends. Professionals Australia has many members engaged as independent contractors who do very similar work to employees.

In addition to employees and independent contractors, the non-competes ban should capture a broad range of other types of workers:

- We note that the US FTC Non-Compete Clause Rule was intended to apply to a "worker" (other than a senior executive), defined as: "a natural person who works or who previously worked, whether paid or unpaid, without regard to the worker's title or the worker's status under any other State or Federal laws, including, but not limited to, whether the worker is an employee, independent contractor, extern, intern, volunteer, apprentice, or a sole proprietor who provides a service to a person."
- A definition of "worker" could be adapted from that applicable under the *Work Health and Safety Act 2011* (Cth) (WHS Act) and adopted for purposes of the FW Act sexual harassment and anti-bullying jurisdictions, covering employees, contractors, subcontractors, employees of a labour hire company,¹⁷ outworkers, apprentices, trainees, work experience students and volunteers.¹⁸

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?

¹⁷ Workers engaged by labour hire companies, whether as employees or independent contractors, should not be subject to non-compete clauses.

¹⁸ WHS Act s.7; FW Act ss.527D(2), 789FC(2).

The ACTU does not support the high-income threshold as a basis for determining which workers should be covered by the ban on non-compete clauses. These clauses are a drag on the economy and stifle workers at all levels. Any solution which prohibited non-competes generally but allowed them for a specific group – for example, senior employees or highly remunerated employees – would be unsatisfactory because it:

- would allow for a loophole whereby an employer could, for example, classify a role as being more senior than it in fact is, in order to adopt a non-compete clause; and
- would be unnecessary, as the legitimate protections that might be necessary on relation to a senior employee, such as those over confidential information, are capable of protection without a non-compete.

Moreover, such a position would ignore the negative effects that non-compete clauses have on the broader economy. This is particularly the case with more senior or specialised employees, who would be locked out of driving innovation if prevented from working for a competitor or starting their own business in the future. We note that the US FTC Non-Compete Clause Rule applies to “senior executives”, defined as CEOs and other officers of a business entity in a policy-making position who earn over US\$151,164 (with different transitional rules for the application of the ban compared to other workers, see section 3.5 below).

However, if the Government proceeds with the exclusion of workers above the high-income threshold from the ban, we can see that a number of anomalies would arise that are detrimental to the interests of certain workers. These include, using examples provided in the Treasury Consultation Paper, a worker’s pre-determined overtime pay being included in their earnings and pushing them above the high-income threshold; whereas bonus payments (which could be quite large sums of money) would not be included, keeping a worker in receipt of them under the threshold. For this reason, we submit that the high-income threshold should apply to base salary only, rather than a worker’s total remuneration including overtime or other additional payments.

Again, only if the Government adopts the high-income threshold as the basis for application of the non-competes ban, the ACTU supports the suggestion made by a number of our affiliates, that the approach to determining eligibility to bring an unfair dismissal claim could be followed. That is, even if a worker was above the high-income threshold, they would still be covered by the ban if they were covered by a modern award or if an enterprise agreement applied to their employment.¹⁹ Professionals Australia has many members who earn above the high-income

¹⁹ In the unfair dismissal context, see FW Act s.382(1)(b)(i)-(ii).

threshold, but still have protection from unfair dismissal because they are employed under an award or agreement, e.g. mining engineers. Protection from non-competes should apply on the same basis.

As outlined in section 4.1 below, the high-income threshold should not be the only consideration as to whether a non-compete clause validly applies to higher paid workers. The reasonableness of such clauses, a maximum period of operation and mandatory compensation also need to be considered.

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?

The high-income threshold could be applied at the time when the circumstance arises which requires consideration of whether the threshold applies. For example, for purposes of determining whether the proposed civil remedy provision (inclusion of a non-compete clause in a contract) has been breached, the threshold could be applied as at the time when:

- A prospective employer seeks to engage a prospective employee under a contract which includes a non-compete clause.
- An employer seeks to vary an existing employment contract to include a non-compete clause.

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

The ACTU considers that non-competes should not have any effect as terms of fair work instruments, including awards, enterprise agreements, workplace determinations and individual flexibility arrangements (IFAs). This is a necessary measure to ensure maximum effectiveness of the reform. We agree with the observations in the Treasury Consultation Paper that although non-competes in enterprise agreements may not be legally enforceable, they can have a chilling effect on employees who may assume that the agreement clause is valid.²⁰ The United Workers Union provided the example of a conflict of interest, non-solicitation and restraint (for up to 6-

²⁰ Treasury Consultation Paper, page 15.

months post-employment) clause from an enterprise agreement covering a small employer in the early childhood education sector (see Appendix 1 UWU clauses).

We suggest the following options for application of the ban:

- Adopting the approach that was taken to pay secrecy clauses (under FW Act s.333C), the legislation could provide that “a term of a fair work instrument or a contract of employment”²¹ imposing a non-compete restriction on a worker has no effect.
- The prohibition of non-compete clauses could apply (as with pay secrecy under s.333D) to “a contract of employment or other written agreement²² with an employee”.
- The prohibition and consequent remedies, including penalties, would not however be applicable to terms of fair work instruments that purported to impose non-competes on workers – because instruments such as enterprise agreements and IFAs are often the product of negotiations between employers, workers and unions (rather than being imposed by the employer as is overwhelmingly the case with contractual non-compete clauses).

3.3 Enforcement

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.

The FW Act civil remedy regime is an appropriate enforcement mechanism for the non-competes ban, including the availability of civil penalties at the level of 60 penalty units for an individual (\$19,800) or 300 penalty units for a body corporate (\$99,000). The higher penalties of up to \$990,000 for large companies engaging in “serious contraventions” (i.e. knowingly or recklessly engaging in a breach) should also apply to the non-competes ban, as they do in the context of the FW Act pay secrecy and fixed-term contract prohibitions. These penalties should apply to breaches of the prohibition on including a non-compete clause in a contract of employment,

²¹ And the broader categories in the expanded FTC definition at page 9 above, e.g. deeds, bonus/share plans, policies.

²² As above.

other written agreement, deed, policy, etc²³ with an employee or independent contractor (or other workers), engaged in by an employer or a principal. The penalties should also apply when contracts/agreements are being formed, i.e. apply to the actions of a prospective employer/principal in relation to a prospective employee/contractor.²⁴ Criminal penalties are not necessary in the context of the non-competes ban.

It may also need to be made clear that the protections against unlawful non-competes are “workplace rights” of the worker, to ensure that employers face penalties for misleading a worker into thinking a non-compete is enforceable (in breach of the prohibition on misrepresentations about workplace rights under FW Act s.345).

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

The strong view of the ACTU and several of our affiliates is that a “reasonable belief” defence to the prohibition on non-compete clauses should not be available, and nor should any other defences. As the Treasury Consultation Paper notes, such defence provisions are rare in the FW Act.²⁵

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

Standing to commence proceedings for a breach of the non-competes ban should be accorded to the following parties:

- an employee, prospective employee, independent contractor or prospective contractor affected by the breach;
- a Fair Work Inspector;
- a registered employee organisation entitled to represent the industrial interests of the relevant employee/contractor.

²³ See the expanded FTC definition at page 9 above.

²⁴ We note that courts have recently determined that a breach of the workplace rights of prospective employees to make a complaint or inquiry in relation to their proposed employment under the deeming provision in FW Act s.341(3) cannot be established, where the basis or “anchor” for the ability to complain or inquire is in a contract of employment that has not yet been formed: *Australian Meat Industry Employees’ Union v Meat Inspectors Pty Ltd* [2025] FedCFamC2G 1128; *Maric v Ericsson Australia Pty Ltd* [2020] FCA 452. The legislation implementing the non-competes ban should ensure that a prospective employee can effectively challenge a proposed contract with an unlawful non-compete clause, enabling them to seek remedies and penalties, for example where the prospective employer withdraws an offer of employment after the worker raises the issue.

²⁵ Treasury Consultation Paper, page 17.

It is essential that unions have the ability to enforce the non-competes ban on behalf of their members and workers eligible to be members.

The Treasury Consultation Paper mentions the option of also providing standing to businesses that intend to hire someone subject to a restraint.²⁶ We agree that this is justifiable as these third parties also have an interest in worker mobility and, in the experience of some of our affiliates, often play a useful role in assisting a departing worker to leave their employment and challenge a restraint clause.

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?

The non-competes ban should be highly publicised in the lead-up to and following its commencement. The FWO should have a role in ensuring that all relevant parties are aware of this significant change to work regulation. In particular, the FWO could provide information and resources to ensure that employers are aware of their new obligations, and that workers know about matters such as whether a non-compete clause is enforceable or not. The FWO could also help workers to identify the union that can assist them further.

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?

The other remedies available for breaches of FW Act civil remedy provisions, including injunctions and compensation orders, should be available to a worker subject to a non-compete clause in breach of the ban (as is the case with the pay secrecy prohibition). As noted above, the FWO should have standing to bring proceedings, as part of its broader enforcement role using current compliance tools.

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

²⁶ Ibid, page 18.

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?

The ACTU supports the FWC having the jurisdiction to deal with and arbitrate disputes about non-compete clauses, providing parties with an alternative to costly court proceedings. This could include disputes about whether a particular clause meets the statutory definition of a non-compete clause, and therefore whether or not the ban applies to the clause; and about the application of the high-income threshold or any exemptions to the ban²⁷ (if, contrary to our submission, the threshold or exemptions do end up applying).

The FWC should be able to utilise its current conciliation powers, which could prove useful to parties in resolving the underlying dispute – e.g. when a departing employee seeks clarification as to whether the non-compete clause in their contract is or is not covered by the ban. The FWC should also have the power to arbitrate those disputes over which it is given jurisdiction in relation to non-competes. These conciliation and arbitration functions would need to be clearly specified, to meet the requirement in FW Act s.595 that the FWC can only deal with disputes (including by arbitration) where authorised by another provision in the legislation.

The FWC should have powers to deal with similar types of disputes in relation to independent contractors covered by the non-competes ban. This may require adopting a similar definition of the term “services contract” which applies for purposes of the provisions in FW Act Part 3A-5 relating to FWC review of unfair contract terms, including the necessary constitutional connection as set out in s.15H.

3.4 Limited statutory exemptions

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

In the ACTU’s view, the prohibition on non-compete clauses should be absolute, with no exceptions based on factors such as “reasonableness” or the “public interest”, time-based exemptions, or exemptions available on application. The lessons of the new limits on fixed-term contracts²⁸ should be observed here: too many categories of temporary and permanent exemptions have been made available, with the result that fixed-term contract use has

²⁷ Ibid, page 19.

²⁸ FW Act, ss.333E-333H, introduced by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth).

increased, contrary to the Government's policy intention.²⁹ The only permissible exceptions to the non-competes ban should be those based on national security or defence grounds, such as the statutory restrictions on post-employment engagement with foreign militaries or governments mentioned in the Treasury Consultation Paper.³⁰

3.5 Transitional arrangements

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

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

The Treasury Consultation Paper indicates that the ban on non-compete clauses is expected to apply prospectively to contracts made or varied after the commencement date. It also notes that the pay secrecy changes commenced from 7 December 2022, but employers were given a 6-month grace period to review and remove pay secrecy clauses from employment contract templates. Pay secrecy clauses in existing contracts made before 7 December 2022 continued to have effect until the contract was varied.³¹

The ACTU and several of our affiliates may be open to a 6-month grace period from commencement of the non-competes ban, during which employers are not penalised if they have non-compete clauses in existing contracts – depending on the final shape of the transitional provisions for application of the ban. We do not support the pay secrecy approach, whereby an existing non-compete clause would continue to be enforceable until a variation of a contract is agreed. Instead, we propose adoption of the approach taken with the US FTC's Non-Compete Clause Rule: the ban was to apply to existing contracts and employers were required to inform employees that existing non-competes were no longer enforceable.³² However, existing causes of action under a non-compete clause could proceed to be determined.

²⁹ See Emeritus Professor Mark Bray and Professor Alison Preston, *Secure Jobs Better Pay Review: Report*, 31 March 2025, pages 262-263, 269.

³⁰ Treasury Consultation Paper, page 20.

³¹ Ibid, pages 20-21.

³² Except in relation to senior executives, for whom the ban would only apply to non-compete clauses entered into after the commencement date.

4. Other reforms to employee restraints of trade

4.1 Non-compete clauses for high-income employees

17. 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?

As noted earlier, in our submission the non-competes ban should apply to all workers regardless of their level of income. However if the ban were to apply only to workers below the high-income threshold, then for workers earning above that level some restrictions or limitations should apply in addition to the existing common law requirement that a restraint must be reasonable and in the public interest. For example, Professor Joellen Riley Munton argues that the common law restraint of trade approach:

*... is justifiable only in respect of contracts with persons whose seniority is such that they have enjoyed special benefits from participation in the employing enterprise. Company directors, who owe fiduciary duties not to engage in conflicts of interest, and who typically earn high levels of remuneration including performance-based incentives, might be appropriately restrained from taking any steps that would impair the fortunes of the company to whom they owe these duties, but only for so long as the company would need to replace their services, and shore up client relationships.*³³

The ACTU considers that, for higher-income employees, non-compete clauses must be demonstrated to be reasonable in terms of the nature of the restraint imposed, its duration and geographic application, and its necessity. A combination of mandatory compensation for being subject to a non-compete clause and a limit on the duration of such a clause are necessary measures to ensure that restraints are targeted to protect the legitimate interests of a business.

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

Dr Iain Ross and Professor Andrew Stewart have proposed that: “for higher-paid workers, non-competes should be valid only if the worker receives adequate compensation from the employer proposing the restraint, measured by reference to a percentage of their previous earnings. The German requirement of at least 50% would seem a reasonable standard to adopt in this

³³ Joellen Riley Munton, *Submission to the Competition Taskforce*, page 6.

regard.”³⁴ The Treasury Consultation Paper notes that out of 11 jurisdictions with statutory minimum compensation, 8 have set it within a range of 40-60%.³⁵ In Spain “adequate compensation” for a restraint must be provided, generally between 20%-70% of earnings.³⁶ The ACTU supports a mandatory compensation requirement at the higher end of these international regulatory examples.

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

Ross and Stewart propose a duration limit on restraint clauses of 6 months, as this is in most instances the maximum restraint term that Australian courts tend to regard as reasonable.³⁷ The Treasury Consultation Paper provides international examples of duration limits: 12 months in Belgium, Denmark, Finland, Norway, Netherlands, Massachusetts, Oregon (all alongside mandatory compensation provisions); and 24 months in Germany, Romania, Poland and China.³⁸ In the ACTU’s view, the maximum duration should be at the lower end, such as the limit of 3 months that has been proposed (but not yet implemented) in the UK.³⁹

In addition, Ross and Stewart argue that any period of “garden leave” should be taken into account, and deducted from, the maximum permissible period of a restraint. For example, if the maximum restraint period was 6 months, that period should not only apply after termination of the employment. If the employer places the employee on garden leave once they give notice, then the period of garden leave should be deducted from the operative period of the restraint.⁴⁰ The ACTU supports this proposal.

4.2 Non-solicitation clauses for clients and co-workers

20. 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).

³⁴ Iain Ross and Andrew Stewart, *Submission to the Competition Taskforce on post-termination worker restraints*, page 6.

³⁵ Treasury Consultation Paper, page 25.

³⁶ Australian Government, The Treasury, *Non-competes and other restraints: understanding the impacts on jobs, business and productivity*, Issues Paper, April 2024, page 25.

³⁷ Iain Ross and Andrew Stewart, *Submission to the Competition Taskforce on post-termination worker restraints*, pages 5-6.

³⁸ Treasury Consultation Paper, page 26.

³⁹ Ibid.

⁴⁰ Iain Ross and Andrew Stewart, *Submission to the Competition Taskforce on post-termination worker restraints*, pages 6-7.

The ACTU's position is that client non-solicitation clauses should be banned, as they are unnecessary given the ability of employers to protect their interests through measures such as confidentiality clauses and s.183 of the *Corporations Act 2001* (Cth) (the duty of directors, other officers and employees of a company not to make improper use of corporate information). We note that non-solicitation clauses are increasingly extending to prohibit solicitation not only of clients of the employer, but also prospective clients or customers (where the departing employee had been involved in developing a relationship with them) and suppliers to the employer's business.⁴¹ They can also now seek to prevent not only active solicitation of clients by a departing employee, but also that employee's acceptance of proposals or approaches made by clients to continue working with them in their new role. A particularly egregious example is provided by the United Workers Union's member case study at Appendix 3. In summary, the member – a disability support worker – was sued by their former employer for alleged breaches of confidentiality and non-solicitation clauses, relating to their engagement with a platform provider. The non-solicitation clause purported to require the former employee not to “directly or indirectly ... solicit, canvass or approach ... or accept an approach from a client of the Employer” for a maximum 12-month period. The employer sought approximately \$180,000 in damages for the loss of two clients, in circumstances where the former employee asserted they did not approach or solicit the clients, who independently found the former employee via the platform. The contract also included a restraint of trade clause with a maximum 12-month period and 50 km coverage.

Professionals Australia supports the ACTU's position that client non-solicitation clauses are anti-competitive, providing examples of such clauses applying to the following workers earning well under the high-income threshold (see Appendix 2 PA clauses):

- Product development manager in food services;
- Architectural graduate;
- Technical sales support employee;
- Head of mechanical engineering;
- Pharmacist;
- Research scientist in food production;
- Business development manager in medical and food science;

⁴¹ See Hospitality worker, Food production worker, and Team Leader at NDIS provider restraint clauses in Appendix 1 UWU clauses; and Architectural graduate, Technical sales support, Senior software engineer restraint clauses relating to prospective clients in Appendix 2 PA clauses – many of the Professionals Australia clauses also include the restraint on soliciting suppliers.

- Associate consultant in software company.

The United Workers Union also provided examples of client non-solicitation clauses applying to a Team leader at an NDIS provider, a Hospitality worker, a Food production worker, and a Disability support worker (see Appendix 1 UWU clauses). The last of these includes restrictions which are common in NDIS provider contracts, purporting to prevent the employee from approaching or soliciting business from individuals and families supported by their former employer.

However if client non-solicitation clauses are to be permitted, they should be restricted to as short a period as is necessary to enable a business to shore up the relationships which a departing employee had with its clients. Riley Munton suggests a period of 2-3 months or the applicable notice period under the employment contract (e.g. 1 month),⁴² and contends that: “the restraint should be limited to preventing the former employee from contacting particular clients for a limited period. Restraints should not be permitted to prevent or delay them from taking up a new position.”⁴³ Non-solicitation clauses should not be permitted to prevent departing workers from engaging in customer or client-initiated interactions, and should not be so broad as to limit a departing worker’s contact with prospective clients of or suppliers to their former employer. In addition, non-solicitation clauses should not apply at all in aged care or health care settings, such as the NDIS, where patients and recipients of care must be able to choose their preferred provider.

21. 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?

In the ACTU’s view, co-worker non-solicitation clauses should not be permitted because they restrict job mobility in the same way as non-compete clauses. All of the examples of clauses provided by Professionals Australia and the United Workers Union, referred to in the section above, include significant post-employment restrictions on workers encouraging or soliciting co-workers (e.g. employees, contractors, consultants, advisors) to leave their position or cease providing services to the business that engaged them. We also note the dubious legal basis for court decisions recognising an employer’s “protectable interest” in preventing a departing employee from approaching its staff.⁴⁴

⁴² See also Treasury Consultation Paper, page 29.

⁴³ Joellen Riley Munton, *Submission to the Competition Taskforce*, page 5.

⁴⁴ Andrew Stewart et al, *Creighton and Stewart’s Labour Law*, Federation Press, Sydney, 7th edition, 2025, page 635.

There is wide support for a prohibition on co-worker non-solicitation clauses, for example Riley Munton argues that:

There should be no recognition of any legitimate interest in a ‘stable workforce’. Employers have adequate means to protect their interest in maintain[ing] their staff by providing attractive employment conditions to retain staff, and sufficiently long notice periods in employment contracts to allow them sufficient time to recruit replacement staff. It should definitely never be permissible for a restraint in a contract between the employer and employee A to be enforced in such a way as to limit the future employment opportunities of employee B (a former colleague).⁴⁵

Similarly, Ross and Stewart contend that co-worker non-solicitation clauses: “should be prohibited outright, not least because they may limit the mobility and job opportunities of workers without their direct agreement and with no requirement for compensation.”⁴⁶

4.3 Other requirements for valid restraint clauses

The ACTU supports reform of the common law approach to determining the validity of restraint clauses because, firstly, some restraints which should be considered void are upheld as valid, in part due to the ability of courts to sever the invalid parts of a clause; and secondly, because the common law restraint of trade doctrine is an insufficient brake on the use of these clauses given the power disparity between an employer and a worker and the various barriers to court proceedings that most workers face.

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

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

Severability – that is the ability of courts to excise invalid parts of a restraint of trade clause while retaining such parts as might be valid – is one reason that restraints are sometimes upheld as valid by courts. It leads to a practice of drafting cascading clauses, which in many cases is dissuasion enough for workers who might otherwise seek alternative employment. Many workers faced with a cavernous set of unclear obligations that appear to be drafted in accordance with legal principles simply do not do so for fear of

⁴⁵ Joellen Riley Munton, *Submission to the Competition Taskforce*, page 5.

⁴⁶ Iain Ross and Andrew Stewart, *Submission to the Competition Taskforce on post-termination worker restraints*, page 7.

contravening a contractual obligation. It is somewhat audacious that employers are able to draft excessively wide clauses and leave it to the courts to work out their enforceability.

The legal intricacies of non-compete clauses, and their potential unenforceability, is not something that can be readily expected to be known by workers. This was recently acknowledged by the FWC when considering a worker's failure to seek work in his field and thereby mitigate loss of income following dismissal, based on his belief as to the validity of a 12-month restraint of trade clause. Colman DP observed as follows:

One wonders why such restraint of trade provisions are so commonly found in the contracts of ordinary workers and whether they really protect any legitimate business interest of the employer, or merely serve to fetter the ability of workers to ply their trade, and to reduce competition for labour and services. Ordinarily, one would expect a person to have applied for jobs in the sector of their expertise as a reasonable step in mitigating loss. However the presence of a non-compete provision in his contract explains Mr Goddard's decision not to do so. Although the provision is most likely unenforceable on the basis that its scope is unreasonable, an ordinary worker cannot be expected to know this, and it is understandable that Mr Goddard would not want to risk embroiling himself in a legal controversy by acting contrary to an express provision in his contract.⁴⁷

The difficulties for workers are exacerbated in NSW because the *Restraints of Trade Act 1976* enables a court in that state to read down restraint clauses, to preserve the application of any part which the court considers valid (where other parts are found to be invalid) without the need for a cascading clause. As a result, "post-employment restraints are much more frequently upheld in [NSW] compared to other jurisdictions."⁴⁸ We agree with Riley Munton that the NSW legislation should be repealed.⁴⁹

The ACTU and several of our affiliates support the idea of a "one-shot rule" as proposed in the Treasury Consultation Paper,⁵⁰ and in particular the first of the two options for such a rule – i.e. that an entire restraint clause would be invalidated if it specifies intentionally overlapping duration periods and/or geographic areas.⁵¹ This would effectively prohibit cascading restraint

⁴⁷ *Goddard v Richtek Melbourne Pty Ltd* [2024] FWC 979 at [27].

⁴⁸ Andrew Stewart et al, *Creighton and Stewart's Labour Law*, Federation Press, Sydney, 7th edition, 2025, page 639.

⁴⁹ Joellen Riley Munton, *Submission to the Competition Taskforce*, pages 5-6.

⁵⁰ Treasury Consultation Paper, pages 33-34.

⁵¹ See also Iain Ross and Andrew Stewart, *Submission to the Competition Taskforce on post-termination worker restraints*, page 8, proposing "an incentive for more moderate drafting by providing that an employer may not seek to

clauses altogether. The second proposed option – to interpret a restraint as if only the narrowest of the cascading clauses applied – would not deter the use of such clauses to the same extent. Deterrence is necessary, in our view, given the proliferation of cascading clauses and their application to workers across the economy, including (according to ACTU affiliates) their inclusion in template employment contracts provided by lawyers and HR advisors.

24. Should businesses be required to specify the legitimate interests to be protected by a restraint clause?

25. 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?

There is merit in the Treasury Consultation Paper's suggestion of codifying the existing common law requirement that a non-compete clause extend no further than is reasonably necessary to protect "legitimate business interests", including trade secrets/other confidential information and client relationships where the departing worker had some connection with those clients⁵² (subject to the limitations on client non-solicitation clauses we have argued for in section 4.2 above). We agree that this would provide greater certainty to the parties, and potentially reduce the use of disproportionate restraint clauses and consequent litigation. Consistent with our position outlined earlier, there is no justification for a non-compete or non-solicitation clause aimed at restraining a departing worker's contact with former co-workers.

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

The ACTU supports the views on interlocutory injunctions and reforms to limit their availability put forward by Ross and Stewart. They point out that an employer can fairly easily obtain an interlocutory injunction compelling an employee to comply with a post-termination restraint, pending a full trial where the validity of the clause will be assessed but which often does not end up taking place. The employer only needs to show it is arguable that the clause is valid, and that the balance of convenience favours an injunction, a position which is usually accepted based on a court's concern about damage to the employer's business. They propose that the bar for an interlocutory injunction should be set higher: an employer should have to establish it is *likely* that the clause will be found to be valid, and that the public interest in promoting competition and the

enforce a post-employment restraint if *any* invalid restraint is imposed on the same worker, whether in the same contract or a different one".

⁵² Treasury Consultation Paper, page 34.

interests of affected employees also be taken into account in applying the balance of convenience test.⁵³

We also consider that non-compete and non-solicitation clauses should not be enforceable against an employee whose employment has been terminated for reason of involuntary redundancy.⁵⁴ Legislation could helpfully affirm that this is the legal position, along with the inability of an employer to enforce a restraint where the employee has been wrongfully dismissed.⁵⁵

5. Restraints on concurrent employment

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

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

The common law implied duties of fidelity and faithful service operate to assist employers wishing to prevent employees from undertaking concurrent employment, although with some latitude afforded to casual or more junior workers seeking to earn additional income. Many employers seek to obtain even greater restrictions on concurrent employment through express contractual clauses.⁵⁶ The ability of employers to do so therefore needs to be limited.

The position of the ACTU and several of our affiliates is that restraints on concurrent employment or engagement:

- For full-time workers, should operate subject to a test of reasonableness, based on factors such as the nature, seniority and remuneration of the employee, and the nature of the industry in which they work; and should only be applicable to related positions in the same industry.
- Are never appropriate for part-time or casual employees, or for workers in the gig economy. Employers should not be able to demand undivided loyalty while only paying for a portion of a person's working time. Many part-time, casual and gig workers must inevitably work multiple jobs to make ends meet. Clauses restraining them from doing so

⁵³ Ibid, page 8. See also Joellen Riley Munton, *Submission to the Competition Taskforce*, page 4 on the ease with which employers are currently able to obtain interlocutory injunctions.

⁵⁴ See e.g. the NSW Supreme Court decision in *Ecolab Pty Ltd v Garland* [2011] NSWSC 1095 (restraint on redundant worker to prevent him working for competitor not upheld, but clause preventing him soliciting former clients was upheld).

⁵⁵ Andrew Stewart et al, *Creighton and Stewart's Labour Law*, Federation Press, Sydney, 7th edition, 2025, page 641 referring to the "outcomes in Australian appellate cases for the past century".

⁵⁶ Ibid, pages 623-626.

(and linked requirements to notify employers when an employee is considering or has taken up concurrent employment) should be prohibited. However if such clauses are to be considered lawful, they should be strictly limited to situations where the secondary engagement would conflict with the proper performance of the worker's duties in their primary job or otherwise present a conflict of interest (as suggested in the Treasury Consultation Paper⁵⁷).

6. No-poach and wage-fixing agreements

29. 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 the cartel provisions in Part IV of the Competition and Consumer Act?

The ACTU supports the banning of no-poach and wage-fixing agreements, which operate as unfair limitations on competition and distort wage markets, to the detriment of workers. An option proposed in the Treasury Consultation Paper is to proscribe no-poach and wage-fixing agreements as their own form of anti-competitive conduct which would not benefit from the broader exemption for employment conditions in Part IV of the *Competition and Consumer Act 2010* (CC Act).⁵⁸ If this approach were to be adopted, it would make sense to apply the same civil penalties as those applicable to other forms of anti-competitive conduct under Part IV of the CC Act; and the same criminal penalties as those applicable to serious cartel conduct (e.g. where the conduct is covert, causes large-scale economic harm or significant detriment to the public, etc).

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

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

In discussing possible exemptions, the Treasury Consultation Paper suggests that: "some legitimate, publicly beneficial business transactions or collaborations require restraints on competition to make them efficient, or even possible (i.e. 'ancillary restraints'). This could include circumstances where the process is sufficiently transparent, and the workers have an adequate opportunity to influence the agreement."⁵⁹ However, a major concern expressed by a number of

⁵⁷ Treasury Consultation Paper, page 37; see also Joellen Riley Munton, *Submission to the Competition Taskforce*, page 9.

⁵⁸ Treasury Consultation Paper, page 40.

⁵⁹ Ibid, pages 40-41.

our affiliates is that there is no transparency around no-poach and wage-fixing agreements that businesses are currently utilising. Therefore it is difficult to precisely establish the nature and extent of their harmful effects, or whether in some instances they have more of the character of ancillary restraints which Treasury indicates could be exempt from the ban. To the extent that any no-poach and wage-fixing agreements will not be covered by the proposed ban, there should be a requirement for the parties to these agreements to publicly disclose them.

The ACTU supports the proposal in the Treasury Consultation Paper to exempt collective agreements including multi-employer agreements from the ban on wage-fixing agreements.⁶⁰ Multi-employer bargaining under the FW Act provides an open and transparent means of setting wages for multiple employers, and contains appropriate safeguards for employees including the requirement that they have genuinely agreed to the bargained outcome. Single-enterprise bargaining is also made available specifically for joint venture employers, enabling them to negotiate common wages and conditions with employees and unions.⁶¹

Beyond this, the ACTU is wary of exemptions being made available to the proposed ban on no-poach and wage-fixing agreements. For any exemptions from the ban to apply, businesses should have to demonstrate how a no-poach or wage-fixing agreement could possibly benefit workers.

⁶⁰ Ibid, page 41.

⁶¹ FW Act s. 172(2) and (5A)(a).

Appendix 1

United Workers Union – Restraint of Trade clause examples

Hospitality worker

Hospitality Worker 1

19. Restraint During Employment

19.1 During your employment, you must not, without our prior written consent:

- a. act as an officer or employee of, or as a consultant or adviser to, any other corporation, firm, organisation or person;
 - b. take up any other position with any other corporation, firm, or organisation (whether paid or unpaid); or
 - c. hold any shares or securities which create or may create a conflict of interest.
-

20. Restraint After Employment Ceases

20.1 After termination of your employment, you must not, without our prior written consent:

- a. for the Restraint Periods; and
- b. in the case of clause 20.1(c), within the Restraint Areas,

either directly or indirectly do or engage in any of the following:

- c. alone or jointly with, or on behalf of, anybody else in any Capacity, carry on, operate or be engaged, interested or employed in a Competing Business;
- d. interfere with, disrupt or attempt to disrupt, or procure or solicit anybody else to interfere with, disrupt or attempt to disrupt, the relationship (contractual or otherwise) between us and any of:
 - i. our customers in respect of whom you have carried out work or have had a business relationship at any time during the last 12 months of your employment; or
 - ii. our Identified Prospective Customers with whom you have been involved in developing a business relationship for our benefit, at any time during the last 12 months of your employment;
- e. induce, encourage or solicit any of our employees, contractors or agents, with whom you have worked or have had a business relationship at any time during the last 12 months of your employment, to leave our employment or agency or to cease providing services to us; or
- f. procure or solicit any other person to induce, encourage or solicit any of our employees, contractors or agents, with whom you have worked or have had a business relationship at any time during the last 12 months of your employment, to leave our employment or agency or to cease providing services to us.

20.2 This restraint does not prevent you from owning less than 5% of the shares in a publicly listed company.

20.3 You agree that:

- a. the restraints set out above will apply as if they consisted of several separate, independent and cumulative covenants and restraints consisting of:
 - i. each of clauses 20.1(c), 20.1(d) and 20.1(e) combined with each separate Restraint Period; and
 - ii. clause 20.1(b) combined with each separate Restraint Period, and each such combination with each separate Restraint Area;
- b. if any separate covenant and restraint referred to in clause 20.3(a) is unenforceable, illegal or void, that covenant and restraint is severed and the other covenants and restraints remain in force;
- c. each of these separate provisions is a fair and reasonable restraint of trade, that goes no further than reasonably necessary to protect our Confidential Information, staff and client connections, goodwill and business;
- d. substantial and valuable consideration has been received for each separate covenant and restraint in this clause directly and indirectly by you, including your employment, remuneration and leave entitlements; and
- e. any combination of the acts referred to above for each separate Restraint Period and, if applicable, Restraint Area would be unfair and calculated to damage our Confidential Information, staff and client connections, goodwill and business, and would lead to substantial loss to us.

20.4 Any reference to “us” or “our” in this clause includes our Related Bodies Corporate.

20.5 This provision continues to apply after this Contract comes to an end.

21. Remedies for Breach

21.1 You agree that, in the event of a breach by you of any of clauses 18, 19 or 20, damages may not be an adequate remedy and we or any other aggrieved party may, in addition to any other remedies, obtain an injunction restraining any further violation and other equitable relief.

Schedule 2

General

Item 4 Restraint Areas

- a. within the Melton City and surrounding suburbs
- b. 60km radius of company outlets

Item 5 - Restraint Periods

- a. 12 months after termination of the employment.
- b. 6 months after termination of the employment.
- c. 3 months after termination of the employment.

Food production worker

1. Restraint of Trade

- a) The Employee covenants with the Employer that the Employee shall not, whether individually or as principal, agent, partner, joint venture, shareholder (except as shareholder in a company whose shares are quoted on an Australian Stock Exchange) directly or indirectly without the previous consent in writing of the Employer be concerned or interested or employed in, or manage or operate or participate in the management or operation of any activities which are likely to be in competition with the Employer's business activities during the Employee's employment, and for a period of 6 months following the termination of employment with the Employer.
- b) During the term of the Employee's employment with the Employer and for a period of six (6) months following the termination of such employment for any reason whatsoever, the Employee will not, either direct or indirectly, on the Employee's behalf or on behalf of others, solicit, divert or hire, or attempt to solicit, divert or hire any person employed by the Employer.
- c) While the Employee will retain the absolute right to pursue any claim, demand, action or cause of action that the Employee may have against the Employer, the existence of any claim, demand, action or cause of action by the Employee against the Employer shall not constitute a defence to the enforcement by the Employer of any of the Employee's promises contained in this Agreement.
- d) During the term of your employment by the Employer and for a period of six (6) months following the termination of this Agreement for any reason whatsoever, the Employee shall not (except on behalf of or with the prior written consent of the Employer), either directly or indirectly, on your behalf or on behalf of others:

- (i) Solicit, divert, appropriate to or accept on behalf of any competing business; or
- (ii) Attempt to solicit, divert, appropriate to or accept on behalf of a competing business,

Any business from any customer or actively sought prospective customer of the Employer with whom the Employee has dealt, whose dealings with the Employer have been supervised by the Employee or about whom the Employee has acquired proprietary information in the course of the Employee's employment.

- e) For the purpose of this sub-clause a competing business is any business, organisation or enterprise that offers services of a similar nature to the services provided by the Employer.

Disability Support Worker

Other Employment

Prior to commencing employment, you must disclose all / any existing employment or engagements. During

the course of your employment with the Employer, you may not undertake any additional employment or

engagement without prior permission from the Chief Executive Officer. You may not undertake any

employment or engagement that:

- a. Results in you competing with the Employer;
- b. Adversely affects the Employer; or
- c. Hinders your performance of duties owed to the Employer.

...

Commitment to the Employer

You agree that at no time during your employment at the Employer or within 12 months of ceasing employment

at the Employer will you:

a. Approach, directly or indirectly, any individuals and families supported by The Employer to

influence them to cease or refrain from using the services of the Employer

b. Approach, directly or indirectly, any employee of the Employer to influence that person to cease employment with the Employer or otherwise entice them away from the Employer; and

c. Solicit, canvass or in any way seek the custom, business or referral of any individuals and families supported by the Employer whether on your own accord or behalf of another service provider either directly or indirectly.

You agree that at no time within 12 months of ceasing employment with the Employer will you directly or indirectly provide support services to any individuals and families currently or previously supported by the Employer, unless given specific permission in writing by the CEO.

Team leader at an NDIS provider

25. NON-SOLICITATION AND POST-TERMINATION RESTRAINT

25.1 From the date your employment ends, you agree not to solicit or attempt to solicit business from any client for the duration of the Restraint Period.

25.2 From the date your employment ends, you agree not to engage or prepare to engage in a business that competes with the business of the Employer or any Associated Entities for the duration of the Restraint Period within the Restraint Area.

25.3 From the date your employment ends, you agree not to solicit, attempt to solicit, entice or encourage any employee of the Client or the Employer or any Associated Entities to leave their engagement with the Employer for the duration of the Restraint Period within the Restraint Area.

25.4 From the date your employment ends, you agree not to interfere or attempt to interfere with the relationship between the Employer or any Associated Entities and its Clients, employees or suppliers for the duration of the Restraint Period.

25.5 In this provision:

(a) Client means any person, firm or company who at any time during the period of 12 months prior to the termination of your employment was a Client of the Employer or any Associated Entities, in respect of the part or parts of the business in which you were employed.

(b) Restraint Period means:

- (i) 12 months or
- (ii) 6 months or
- (iii) 3 months.

(c) Restraint Area means:

- (i) 50 km radius from the location described in Item 6 of the Schedule or
- (ii) 25 km radius from the location described in Item 6 of the Schedule or
- (iii) 10 km radius from the location described in Item 6 of the Schedule.

25.6 The restrictions in this clause apply to conduct which is either direct or indirect (eg done

through an agent of any kind) and regardless of whether the conduct is engaged in for your own benefit or for the benefit of any other person or entity.

25.7 Each of the covenants in this clause will have effect as if it were the number of separate covenants resulting from combining each covenant with each subsection of the defining terms, referred to in the covenant. Each of the above obligations are separate and independent obligations. In the event that one or more of the obligations are found to be unenforceable, the remaining obligations will continue to apply.

25.8 You acknowledge that each of the above restrictions are reasonable and necessary to protect the Employer's legitimate interest.

25.9 You acknowledge that you will be liable in damages (including punitive or special damages) arising out of the breach of any of the terms of this provision

Clause in an enterprise agreement covering a small employer in the early childhood education sector

CONFLICT OF INTEREST, NON-SOLICITATION AND RESTRAINT

1. During employment, an Employee should at all times endeavour to avoid situations where a conflict of interest may arise between their activities as an Employee of the Employer and their dealings with other parties. Should an Employee potentially be in such a situation, the Employee must take action to avoid the conflict of interest (including notifying your Employer immediately) unless the Employee has obtained the written consent of the Employer.
2. Failure to make a declaration to the Employer where a conflict of interest arises may result in termination of the Employee's employment.
3. While employed by the Employer and for a period of up to six months following termination of employment, the Employee will not:
 - (a) encourage or persuade any other Employee of the Employer (or its related entities) to resign; and
 - (b) encourage or persuade any of the Employers, clients or suppliers to terminate or restrict their relationship or trade relationship with the Employer.
4. The conflict of interest, non-solicitation and restraint of trade provisions referred to in this clause are
5. to protect the legitimate business interests of the Employer and its related entities.

6. A breach of this clause by the Employee may be grounds for summary dismissal and or enable the Employer to seek legal remedies for such breach.
7. If any provision of this clause or any part of this clause is deemed invalid, illegal or unenforceable for any reason, then such part of the provision may be severed and the rest of this clause will remain in full force in effect.

Appendix 2

Professionals Australia – Restraint of Trade clause examples

Members role	Remuneration	Industry	Restraint of trade clause
Product development manager	\$100,000	Food services	<p>21. POST-EMPLOYMENT RESTRAINT</p> <p>21.1 You agree that you will not in any Capacity:</p> <ul style="list-style-type: none"> a) during the Restraint Period and in the Restraint Area, participate in, be interested in, assist with or otherwise be directly involved, engaged, concerned or interested in a business, activity or operation which is the same as, substantially similar to, or competitive with the business carried on by the Employer or any Related Body Corporate of the Employer, or any material part of those business; b) during the Restraint Period and in the Restraint Area, participate in, be interested in, assist with or otherwise be directly involved, engaged, concerned or interested in a business, activity or operation in any Capacity for a Specified Competitor; c) during the Restraint Period solicit, entice away, interfere with, or endeavour to solicit, entice away, or interfere with any Client, with any purpose of, or having the effect of, obtaining the custom or services of the Client; d) during the Restraint Period utilise the services of Suppliers in a business, activity or operation which is the same as, substantially similar to, or competitive with the business carried on by the Employer or any Related Body Corporate of the Employer; e) during the Restraint Period solicit, canvas, encourage, approach or accept an approach from, induce, or endeavour to do so, any person who is or was a director, employee, agent, associate, contractor or advisor of the Employer or any Related Body Corporate of the Employer, and with whom you had direct dealings in the course of the Employment in the 12 month period ending on the Termination Date, to leave the office, employment or agency of, or association with, the Employer; f) during the Restraint Period interfere or attempt to interfere with the relationship between the Employer or any Related Body Corporate and its Clients, employees or Suppliers. <p>21.2 In this provision:</p> <ul style="list-style-type: none"> a) Capacity includes on your own account or as a member, shareholder, unit holder, partner, joint venture, employee, trustee, beneficiary, principal, agent adviser, contractor, consultant, manager, associate, representative or financier.

Members role	Remuneration	Industry	Restraint of trade clause
			<p>b) Client means any person, firm, company or entity who at any time during the period of 12 months prior to the termination of your employment was a client or customer of the Employer or any Related Body Corporate, in respect of the part or parts of the business in which you were employed and with whom you had contact or dealings.</p> <p>c) Supplier means any person, firm, company or entity who at any time during the period of 12 months prior to the termination of your employment was a supplier to the Employer or any Related Body Corporate, in respect of the part or parts of the business in which you were employed and with whom you had contact or dealings.</p> <p>d) Restraint Period means:</p> <ol style="list-style-type: none"> 12 months from the Termination Date, or if that period is invalid 6 months from the Termination Date, or if that period is invalid 3 months from the Termination Date. <p>e) Restraint Area means:</p> <ol style="list-style-type: none"> All States and Territories in which the Employer or any Related Body Corporate operates; or if that area is invalid The State or Territory in which you are employed. <p>21.3 The restrictions in this clause apply to conduct which is either direct or indirect (eg done through an agent of any kind) and regardless of whether the conduct is engaged in for your own benefit or for the benefit of any other person or entity.</p> <p>21.4 Each of the covenants in this clause will have effect as if it were the number of separate covenants resulting from combining each covenant with each subsection of the defining terms, referred to in the covenant. Each of the above obligations are separate and independent obligations. In the event that one or more of the obligations are found to be unenforceable, the remaining obligations will continue to apply.</p> <p>21.5 You acknowledge that each of the above restrictions are reasonable and necessary to protect the Employer's legitimate interest.</p> <p>21.6 You acknowledge that you will be liable in damages (including punitive or special damages) arising out of the breach of any of the terms of this provision.</p>
Architectural Graduate	\$72,718	Architecture	39. Restraint of trade

Members role	Remuneration	Industry	Restraint of trade clause
			<p>(a) Nothing in this agreement will be construed to limit the duty or duties owed by the employee to the employer at law, in equity or by statute.</p> <p>(b) During the restraint period the employee must not within the restraint area:</p> <ul style="list-style-type: none"> (i) Prepare to be, or be, involved in any competing business; or (ii) Canvass, solicit, induce or encourage any person who was an employee or contractor of the employer to leave the employer; or (iii) Canvass, solicit, approach or accept any approach from any person who was at any time an existing or prospective client or customer of the employer; or any person who refers business to the employer on a regular or ongoing basis, with a view to obtaining custom or any business introduction from that person in a competing business; or Page 16 of 20 (iv) Interfere in any way with the relationship between the employer and its employees, clients, customers, contractors, or suppliers; or (v) Act in any restricted way as defined above. <p>(c) The employee acknowledges that:</p> <ul style="list-style-type: none"> (i) Each agreed restraint specified above is, in the circumstances, reasonable and necessary to protect the genuine business interests of the employer; (ii) Damages are not necessarily an adequate remedy if the employee breaches this restraint clause; and (iii) The employer may apply for injunctive relief if the employee breaches or threatens to breach this restraint clause or the employer believes the employee is likely to breach this restraint clause. <p>(d) Each party agrees that if:</p> <ul style="list-style-type: none"> (i) A court of competent jurisdiction finds that any provision of this restraint clause is an unenforceable provision not enforceable at law or in equity; and (ii) The unenforceable provision would be enforceable if: <ul style="list-style-type: none"> (1) One or more restricted ways included in the definition of restricted way were deleted; or (2) One or more of the alternate periods referred to in the definition of restraint period were deleted; or (3) One or more of the alternate areas referred to in the definition of restraint area were deleted, then the unenforceable provision must be made enforceable by making those deletions.
Technical Sales Support	\$75,000 (plus super)	Tech	<p>16. Post-Employment Obligations</p> <p>16.1. You acknowledge and agree that In the course of your employment, you will:</p> <ul style="list-style-type: none"> a. have access to and knowledge of The Company's Products, Services, skills and techniques. b. become acquainted with the Clients and Suppliers of The Company and their special needs and requirements.

Members role	Remuneration	Industry	Restraint of trade clause
Contract:			<p>c. become aware of the identity of prospective Clients whose business The Company is attempting to attract.</p> <p>d. generally, be privy to Confidential Information and Intellectual Property concerning The Company, its Clients, Suppliers, and its methods of doing business.</p> <p>16.2. The only effective, fair, and reasonable way the interests of The Company can be protected is by the restraints imposed upon you in this Contract. The duration, extent and application of the restrictions contained in this Contract are not greater than is reasonably necessary to protect The Company's legitimate business interests, including the preservation of its relationships with its Clients, Suppliers, employees, agents, directors, officers, partners, contractors, advisors and consultants, the goodwill of its business, its Confidential Information, and Intellectual Property; and</p> <p>16.3. The level of your benefits, including remuneration and bonuses (if any) constitutes adequate consideration for the restraint obligations imposed under this Contract.</p> <p>16.4. You agree that having regard to the circumstances set out in clause 17 you will not, directly or indirectly, either as a principal, employee, agent, director, officer, partner, consultant, contractor, advisor or otherwise, for your own benefit or the benefit of any other Person, directly or indirectly, engage in any of the activities specified in clause 17, within the State or Territory of your employment, for 12 months after your Termination Date, without the prior written consent of The Company.</p> <p>16.5. The activities are: a. canvass, solicit, or entice away (or attempt to do any of the foregoing), the business or custom of any Client, or provide Products or Services to any Client with whom you or a Person reporting to you, has performed work, or had dealings with during the 12 months preceding the Termination Date. b. induce or encourage any Client (or attempt to do any of the foregoing), with whom you or a Person reporting to you have performed work or had dealings with, during the 12 months preceding the Termination Date, to terminate or to not renew or maintain or alter, any business relationship, contract, or arrangement, that Client has with The Company or disclose any Confidential Information. c. induce or encourage any Supplier (or attempt to do any of the foregoing), with whom you have performed work or had dealings with, during the 12 months preceding the Termination Date, to terminate or to not renew or maintain or alter, any business relationship, contract, or arrangement, that Supplier has with The Company or disclose any Confidential Information. d. induce or encourage (or attempt to do any of the foregoing), any employee, agent, director, officer, partner, contractor, advisor, or consultant with The Company, with whom you or a Person reporting to you had dealings with, during the 12 months preceding the Termination Date, to terminate or to not renew or maintain or alter,</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>any business relationship, contract, or arrangement, they have with The Company, or disclose any Confidential Information.</p> <p>16.6. During the period from the Termination Date, until you are no longer subject to the restraints in this clause, you agree to disclose to all Persons with whom you may directly or indirectly perform work, the fact that you are subject to the restraints imposed in clause 16.3.</p> <p>16.7. If any of the restraints in clause 16.2 is or becomes void, invalid, or otherwise unenforceable for any reason, by a Court of competent jurisdiction, that unenforceability does not in any way affect the enforceability of the other separate covenants.</p> <p>16.8. If any of the covenants in this Contract are found by a Court of competent jurisdiction to be void, invalid or otherwise unenforceable, but would be valid and enforceable if: a. part of the wording was deleted; or b. the activities were reduced; or c. the geographical area was reduced; or d. the period was reduced; or e. any combination of the actions specified in clauses a, b or c were undertaken, f. the covenant applies with such modifications as may be necessary to make the covenant valid and enforceable</p>
Head of Mechanical Engineering	\$135,000 plus discretionary bonuses	Biosample management company	<p>16. Approaches by Competitors</p> <p>16.1 If you are offered, or invited to consider, working for a Competitor (as an employee or otherwise), you must</p> <p>(a) advise the Company (and identify the Competitor); and</p> <p>(b) give the Competitor a copy of the restraints in clause 18 of this Agreement.</p> <p>16.2 If you become aware that any Group Personnel has been offered, or invited to consider, working for a Competitor (whether as an employee or otherwise), you must immediately advise the Company (and identify the person and the Competitor).]</p> <p>7. Restraint</p> <p>17.1 During the Restraint Period, you must not Work for, or prepare to Work for, a Competitor within, or in respect of its business conducted within, the Restraint Area.</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>17.2 During the Restraint Period, you must not be Involved With, or prepare to be Involved With, a Competitor's business conducted within the Restraint Area.</p> <p>17.3 During the Restraint Period, you must not solicit, canvass, approach or accept any approach from any Client with a view to obtaining their custom or business for a Competitor, where the custom is either:</p> <p>(a) from the Client's business conducted within the Restraint Area; or</p> <p>(b) for the Competitor's business conducted within the Restraint Area.</p> <p>17.4 During the Restraint Period, you must not solicit, canvass, approach or accept any approach from any Supplier with a view to obtaining their supply to a Competitor, where the supply is either:</p> <p>(a) from the Supplier's business conducted within the Restraint Area; or</p> <p>(b) to the Competitor's business conducted within the Restraint Area.</p> <p>17.5 During the Restraint Period, you must not work for or be interested or engaged in the business of any Supplier if such employment, interest or engagement would cause the Supplier to cease or materially reduce its supplies to the Company or any other Group Member.</p> <p>17.6 During the Restraint Period, you must not work for or be interested or engaged in the business of any Client if such employment, interest or engagement would cause the Client to cease or materially reduce its custom with the Company or any other Group Member.</p> <p>17.7 During the Restraint Period, you must not induce, assist in inducing, or assist any Group Employee who is employed within the Restraint Area to leave their employment with a Group Member.</p> <p>17.8 During the Restraint Period, you must not induce, assist in inducing or assist any Contractor who is based within the Restraint Area to cease to be engaged by a Group Member.</p> <p>The restraints in clauses 18.1 to 18.8 each have effect as if they consist of separate provisions, each resulting from combining each geographic area in the definition of Restraint Area with each time period in the definition of Restraint Period. If any of those separate provisions is invalid or otherwise unenforceable for any reason, the invalidity or unenforceability shall not affect the validity or enforceability of any of the other separate provisions or other combinations of those separate provisions.</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>7.9 The Company holds the benefit of this clause on trust for the Group Members.</p> <p>17.10 You acknowledge and agree that:</p> <p>(a) this clause is reasonable and necessary to protect the Company's legitimate business interests, including without limitation the interests of the Company and the Group in protecting:</p> <p>(i) confidential information;</p> <p>(ii) the Group's relationships with Clients, Suppliers, Group Employees and Contractors; and</p> <p>(iii) the goodwill of the business;</p> <p>(b) damages are not an adequate remedy for a breach of this clause; and</p> <p>(c) regardless of the governing law of this Agreement, this clause will be governed by the law applicable in, and any enforcement of it will be subject to the exclusive jurisdiction of the Courts of, New South Wales.</p> <p>17.11 This clause survives the termination of this Agreement for any reason.</p> <p>17.12 In this clause:</p> <p>(a) Business means any business carried on by any Group Member in which you worked or were employed at any time during the Relevant Time;</p> <p>(b) Competitor means:</p> <p>(i) a direct competitor of a Business;</p> <p>(ii) a business which is in the process of preparing to become a direct competitor of the Business;</p> <p>(c) Client, Supplier, Group Employee and Contractor means any client or customer, supplier, employee or contractor (as the case may be) of any Group Member in any Business with whom you had dealings during your employment at any time during the Relevant Time;</p> <p>(d) Group Member means any Group Member, provided it was also a Group Member at any time during the Relevant Time;</p> <p>(e) Involved With means to participate, assist or otherwise be directly involved including as a member, shareholder, unitholder, director, adviser, principal, agent, beneficiary, partner, associate, trustee or financier. However, it does not include:</p> <p>(i) to Work for; or</p> <p>(ii) to hold shares of up to 5% in a company listed on a recognised stock exchange;</p> <p>(f) Relevant Time means the period of 12 months before the date of termination of your employment;</p>

Members role	Remuneration	Industry	Restraint of trade clause
			(g) Restraint Area is specified in Schedule 1; (h) Restraint Period is specified in Schedule 1; (i) Work means work (as an employee or as or through a contractor), where you could, in the Company's reasonable opinion, potentially use either Confidential Information or your relationships with Clients or Suppliers against the interests of a Business].
<u>Pharmacist</u>	Salary unknown Likely close to Award rates	Common Pharmacy business	The employee agrees that for 24 months after the cessation of this agreement with the employer, he/she will not directly or indirectly participate, assist or be interested in (whether as a sole operator partner associate, consultant, employee, independent contractor, employer or in any other capacity) or be in any way employed in a business whose products and /or services compete with the employer within a 3 km radius of [common pharmacy trading name not limited to franchise]
			1. Protection of Business 1.1 The Employee agrees that after the Employee's employment with the Company ends, the Employee will not, either on the Employee's own account or for, or in conjunction with, any other person or entity, do any of the following without the Company's prior written consent: Non-compete (a) in the Restraint Area and for the Restraint Period: (i) sell or supply, or be involved in the selling or supply of, the Protected Products for, or in conjunction with a business (whether operated as a company, partnership, trust or sole trader) that carries on the same, or substantially the same, business as the Company and competes with the Company; (ii) provide, or be involved in the provision of, the Protected Services for, or in conjunction with a business (whether operated as a company, partnership, trust or sole trader) that carries on the same, or substantially the same, business as the Company and competes with the Company; (iii) sell or supply, or be involved in the selling or supply of, the Protected Products to any person or entity; (iv) provide, or be involved in the provision of, the Protected Services to any person or entity;

Members role	Remuneration	Industry	Restraint of trade clause
			<p>No dealing with Customers (b) for the Restraint Period:</p> <p>(i) directly or indirectly solicit, encourage or entice any Customer to cease doing business with the Company or reduce the amount of business which the Customer does with the Company; (ii) accept, or act upon, any approach or instructions from any Customer;</p> <p>(c) for the Restraint Period, accept employment or engagement with a Customer in order to provide the Protected Services for that person or entity;</p> <p>No dealing with Suppliers (d) for the Restraint Period: (i) obtain the Protected Products from any Supplier; (ii) obtain the Protected Services from any Supplier; Non-solicitation of Company employees (e) for the Restraint Period, directly or indirectly solicit, encourage or entice any person who the Employee know to be the Company's employee (excluding any employee performing a secretarial, clerical or similar minor support role) to terminate their employment with the Company; and</p> <p>No assisting others (f) for the Restraint Period, counsel, procure or assist any person or entity to do any of the acts referred to in clause 1.1 of these Terms and Conditions. 1.2 Clause 1.1 of these Terms and Conditions is to be read and take effect as if it consists of several separate, independent and cumulative restraints consisting of each act in clause 1.1 of these Terms and Conditions combined with each</p> <p>Restraint Period and, where applicable, each Restraint Area. 1.3 If any separate restraint set out in clause 1.1 of these Terms and Conditions is unenforceable, illegal or void for any reason, that restraint will be severed from</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>these Terms and Conditions and the other restraints will remain in force.</p> <p>1.4 If there is any inconsistency or contradiction between several restraints which are not invalid or unenforceable, the restraint with the longest Restraint Period and, if applicable, the widest Restraint Area will be the restraint agreed by the Parties to the exclusion of any other restraint.</p> <p>1.5 The Employee agrees that each of the restraints imposed by clause 1.1 of these Terms and Conditions are reasonable and extend no further than is reasonably necessary to protect the Company's legitimate business interests and agrees that there is valuable consideration for each restraint imposed by clause 1.1 of these Terms and Conditions.</p> <p>1.6 The Employee acknowledges that monetary damages alone may not be adequate compensation for a breach of clause 1.1 of these Terms and Conditions and that the Company has the right to enforce clause 1.1 by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach of that clause.</p> <p>1.7 The Employee agrees to indemnify and keep indemnified the Company and its officers, employees and agents from and against all Liabilities arising directly or indirectly from any breach by the Employee of clause 1.1 of these Terms and Conditions.</p> <p>2. Severability Any clause of these Terms and Conditions which is, or becomes, illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining clauses.</p> <p>3. Definitions</p> <p>Customer or Customers means any person or entity to whom the Employee directly or indirectly provided services and/or sold or supplied products during the last 12 months of the Employee's employment with the Company.</p> <p>Liabilities means all liabilities (whether actual, contingent or prospective), losses, damages, costs, outgoings and expenses of whatever description (including without limitation, legal costs on a solicitor-client indemnity basis).</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>Parties means the Company and the Employee collectively</p> <p>Protected Services means services which are the same as, or substantially similar to, the services that the Employee provided directly or indirectly to any Customers and Suppliers, or the Company, during the last 12 months of the Employee's employment with the Company.</p> <p>Related Body Corporate or Related Body Corporates has the same definition as that in section 50 of the Corporations Act 2001 (Cth).</p> <p>Restraint Period means, from the date of termination of the Employee's employment:</p> <p>(a) 12 months or, if held to be invalid;</p> <p>(b) 6 months or, if held to be invalid;</p> <p>(c) 3 months.</p> <p>Restraint Area means:</p> <p>(a) Australia, or if held to be invalid;</p> <p>(b) the States of Queensland, New South Wales and Victoria, or if held to be invalid;</p> <p>(c) Victoria</p> <p>Supplier or Suppliers means any person or entity with whom the Employee had direct dealings during the last 12 months of the Employee's employment with the Company and who supplied, or was involved in the supply of, the Protected Products or Protected Services to the Company or a Related Body Corporate</p>
<u>Finance Manager</u> <u>Example – Damages inadequate re breach</u>	\$165k	<u>Logistics company</u>	<p>Termination</p> <p>Except where your employment is terminated for reasons of serious misconduct, either The company or you may terminate your employment by giving the period of notice of 4 weeks</p> <p>The company may elect to pay you in lieu of part or all your notice period.</p> <p>Alternatively, The company may require you not to report for work, or provide you with altered duties, during part or all your notice period.</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>The company may terminate your employment at any time without notice or payment in lieu of notice in the case of serious misconduct.</p> <p>Serious misconduct will include, but is not limited to: ongoing breach of your obligations as set out in this Contract without rectifying such breach within 7 days of receiving notice of the breach; breach of Clause (Confidential Information) of this Contract; breach of clause (Intellectual property) of this Contract; performing your work in a manner reasonably considered by the company to be unprofessional; gross negligence; disobeying or refusing to follow a lawful and reasonable direction of the company or The company' Related Entities;</p> <p>engaging in conduct which the company reasonably considers is likely to damage the company reputation; or committing any act of dishonesty including acts of embezzlement, theft or fraud involving the company' assets or property; or A safety breach or failure to meet your obligations as an executive officer under WHS laws being found guilty of a criminal offence which, in the reasonable opinion of the company, prevents or impedes the further performance of your duties or is otherwise incompatible with your position as an employee of The company; or any conduct that would justify summary dismissal at common law.</p> <p>If your employment is terminated summarily without notice or payment in lieu of notice, you will only be paid up to the date of termination. The company may direct you to not attend work and not to undertake any of your work duties at any time (e.g. a period of suspension), provided that the company provides you with payment of your entitlements under your remuneration package during the period you are not required to work or whilst otherwise suspended.</p> <p>Special Information You acknowledge and agree that: During your employment you will have access to information about the company position on (among other things) liabilities, indemnities, insurance and risk, along with the company policies, positions and negotiation strategies for customer agreements (Special Information);</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>The Special Information would be valuable to customer or competitor of the company and any disclosure to, or use for, customers or competitors would (among other things): (i) give the customer an advantage when negotiating agreements with the company; and/or (ii) put the company at a disadvantage, particularly when responding to tenders or negotiating with customers;</p> <p>The directed leave provisions in Directed Leave Clause are reasonable in scope and duration and are reasonably necessary to protect the legitimate business interests of the company, particularly in relation to their current (and potential future) customers</p> <p>Your remuneration includes consideration for agreeing to the Directed Leave Clause Damages may be an inadequate remedy for a breach of a a Directed Leave Clause; and</p> <p>You irrevocably consent to any orders that we may seek (including urgent injunctive relief) to restrain you from breaching a Directed Leave Clause.</p> <p>This clause survives the expiry, or termination for any reason, of this Agreement</p> <p>If we issue a notice of termination of your employment, or you resign, then your employment with us continues for the Directed Leave Period and we may, from time to time during the Directed Leave Period, do any of the following: Direct that you not attend the workplace but instead remain predominantly at home during the Company's normal business hours, being available to attend work and perform any duties as required by the Company</p> <p>Direct that you perform duties other than your normal duties, including less senior or significant duties</p> <p>Direct that you not contact any employees, contractors, agents, suppliers or customers of the Company; or</p> <p>Do any combination of the above, which you agree will not constitute a repudiation of this contract.</p> <p>You will continue to receive your remuneration during this period.</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>During any Directed Leave Period you will continue to receive your remuneration, and all of your other benefits and entitlements, as set out in this Agreement.</p> <p>To avoid doubt, you are not required to be idle during any Directed Leave Period and you may undertake any activities provided that they do not breach any provision in this Agreement (including, to avoid doubt, the provisions in this clause and in the Restraint Clauses)</p> <p>Direct Leave Period means (a) where we have issued a termination notice, the notice period in that notice; and (b) where you have resigned, the minimum notice period that you are required to give (see clause Resignation)</p>
Senior Software engineer Example damages inadequate Non solicitation Clients and coworkers	180k (pre July 2025 so above HIT)		<p>12. Obligations during Employment and after Employment</p> <p>12.1 Confidential Information</p> <p>(a) During and after the Employment, you must:</p> <p>(i) keep any Confidential Information secret and confidential, except to the extent you are required by law to disclose it;</p> <p>(ii) take all reasonable and necessary precautions to maintain the secrecy and prevent the disclosure of any Confidential Information;</p> <p>(iii) not use any Confidential Information except as is strictly necessary in the ordinary and proper course of the Employment; and</p> <p>(iv) not disclose Confidential Information to any third party except as is strictly necessary in the ordinary and proper course of the Employment and having first ensured that the third party agrees to keep the Confidential Information confidential in terms reasonably approved by the Board being no less restrictive than those terms set out in this clause.</p> <p>(b) The parties acknowledge that a breach of this clause may cause the Company irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the Company may seek and obtain an injunctive relief against such a breach or threatened breach of this clause.</p> <p>(c) Nothing in this clause shall prohibit you from seeking legal and accounting advice in relation to this agreement</p> <p>12.2 Conflict of interest</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>(a) During the Employment, you shall not:</p> <p>(i) without the Board's prior written permission hold any Material Interest which:</p> <p>(a) is or shall be wholly or partly in competition with the Business or may divert Business away from the Group;</p> <p>(b) impairs or might reasonably be thought by the Company to impair your ability to act at all times in the best interests of the Company; or</p> <p>(c) requires or might reasonably be thought by the Company to require you to disclose or make use of any Confidential Information in order to properly to discharge your duties to or to further your interest in that person;</p> <p>(ii) make contact with any of the Group's clients, prospective clients or suppliers for any purpose which might conflict with the interests of the Group (including, but not limited to, with the intention of establishing, or working for a competing business after the termination of the Employment);</p> <p>(iii) directly or indirectly at any time make any untrue or misleading statement in relation to the Company or any Group Company or any of its or their employees, officers or directors;</p> <p>(iv) make any statement (written or oral), or provide (in any form and by any means) any information, for the press or otherwise for publication on any matter connected with the business of the Company or the Group (including but not limited to matters relating to any client or connection of the Company or the Group) without express permission from the Board;</p> <p>(v) make any statement (written or oral), or provide (in any form and by any means) any information, on any matter connected with the business of the Company or any Group Company to any person in circumstances such that you ought reasonably to be aware or suspect or believe that any such person might pass it (or any part of it) on for publication;</p> <p>(vi) directly or indirectly carry out any public or private work other than the Duties (whether for profit or otherwise and whether during or outside normal working hours) except with the prior written permission of the Board;</p> <p>(vii) directly or indirectly receive or obtain in respect of any goods or services sold or purchased or other business transacted (whether or not by you) by or on behalf of the Company or any Group Company any discount, rebate, commission or other inducement (whether in cash or in kind) which is not authorised by any company rules or guidelines from time to time and if you or any person in which you hold any Material Interest shall obtain any such discount, rebate, commission or inducement, you shall immediately account to the Company for the amount so received.</p> <p>(b) You shall, at any time during the Employment and in any event following its termination return to the Company or, at the Company's request, destroy:</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>(i) any documents, drawings, designs, computer files or software, visual or audio tapes or other materials containing information in any form (including, without limitation, Confidential Information) relating to the Company's business created by you, in your possession or under your control; and</p> <p>(ii) any other property of the Company in your possession or under your control.</p> <p>(c) You shall not make or keep or permit any person to make or keep on your behalf any copies or extracts of the items referred to in sub-clause 12.2(b)(i) in any medium or form.</p> <p>12.3 You will on request by the Company confirm in writing delivery under sub-clause 12.2. If you fail to comply with clause 12 in full, the Company may withhold any or all sums payable to you until clause 12 has been complied with in full.</p> <p>12.4 For the avoidance of doubt, references to the Company in (without limitation) this clause 12 shall be deemed to be to any Group Company where the context permits.</p> <p>12.5 Post Employment Restraints</p> <p>You agree that during the Employment and the Restraint Period, you shall not, whether directly or indirectly, on your own account or jointly with or on behalf of any other person or corporation, in any capacity including as principal, partner, agent, officer, consultant, employee, advisor or shareholder (excluding the holding of less than 5% of the stock of a public company) or otherwise on any account or pretence:</p> <p>(a) within the Restraint Area carry on, assist or be employed, engaged or concerned in any business which is engaged, whether directly or indirectly, with any person who competes with the Business;</p> <p>(b) solicit, employ or engage any director, manager, employee, contractor or consultant of the Company or any Group Company;</p> <p>(c) entice away, provide services to, accept services from or in any other manner persuade any customer, client, contractor or supplier to the Company or any Group Company to discontinue his, her or its relationship with the Company or any Group Company or to otherwise reduce the amount of business they do with the Company or any Group Company; and/or</p> <p>(d) offer, attempt or prepare to do any of the above.</p> <p>12.6 You acknowledge and agree that:</p> <p>(a) the Employment gives you unique and substantial access to the Confidential Information;</p> <p>(b) in the event you breach this clause 12, including but not limited to the disclosure of the Confidential Information to a competitor of the Company, the Company would be exposed to significant and potentially irreparable damage to its business;</p> <p>(c) the undertakings in this clause 12 are reasonable in scope and duration and necessary for the protection of the Confidential Information, goodwill and legitimate business interests of the</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>Company and any Group Company;</p> <p>(d) each of the restraint obligations imposed on you by clause 12.5, resulting from the combinations of Restraint Areas and Restraint Periods, is a separate and independent obligation from the other restraint obligations imposed, but they are cumulative in effect. The parties intend this clause 12 to operate to its maximum extent and the Employment is adequate consideration for the restraints;</p> <p>(e) the remedy of damages at law for breach of this clause 12 would be inadequate and that temporary and permanent relief by way of injunction against you may be granted in any proceedings which the Company may bring to enforce any of the provisions of those clauses without necessity of proof of actual damage suffered by the Company or any Group Company; and (f) you will, if required by the Company, provide evidence to the reasonable satisfaction of the Company that you are not in breach of this clause 12.</p> <p>12.7 If you are placed on Garden Leave in accordance with clause 10.5, and you comply with the provisions of that clause 10.5 throughout the period of garden leave, then any period contained in any restraint (or in any definition referred to in any restraint) in this clause 12 which is expressed to run from the Termination Date shall be reduced by a period equivalent to that during which you were on garden leave.</p>
Business development manager Eg Coworker non solicitation & Requirement to inform company of applications / offers for employment AFTER employment	160k (2024)	Refrigeration/ cooling industry	<p>14 RESTRICTIVE COVENANTS</p> <p>14.1 Since the Employee has obtained and is likely to obtain in the course of his employment with the Company knowledge of trade secrets of the Company and of Members of the Group, the Employee hereby agrees that he will not for the Relevant Period:</p> <p>14.1.1 in any Relevant Capacity within the Prohibited Area be involved in any business which is of the same nature as or in competition with any aspect of the Relevant Business which the Employee was materially concerned or involved with at any time during the 12 months prior to the Termination Date;</p> <p>14.1.2 in any Relevant Capacity within the Prohibited Area seek or solicit any business, orders or custom from, any person, firm or company who at any time during the 12 months prior to the Termination Date was a customer or client of or in the habit of dealing with the Company or any Member of the Group in relation to any aspect of its or their business (as the case may be) and in respect of which the Employee had access to confidential information or personal dealings or in respect of whose custom or business the Employee was personally concerned; for the avoidance of doubt, the Employee is prohibited from attempting to contact customers or active prospects of the Company or any other Member of the Group in view to engage in business with them;</p>

Members role	Remuneration	Industry	Restraint of trade clause
has ended & restrictions in force			<p>14.1.3 in any Relevant Capacity solicit, interfere with or entice away from the Company or any Member of the Group or offer to employ or engage any employee or person employed or engaged by the Company or any Member of the Group who because of his or her seniority or knowledge of Confidential Information or influence over a customer of the Company or any Member of a Group is likely to be able to assist a business in or proposing to be in competition with the Company or any Member of the Group;</p> <p>14.1.4 interfere or seek to interfere with the continuance of (or any of the terms of) the supply of goods or services to the Company.</p> <p>Collectively, the "Restrictive Covenants".</p> <p>14.2 For the avoidance of doubt, the Relevant Period in respect of which the Restrictive Covenants apply shall be reduced by any period the Employee spends on Garden Leave prior to the termination of his employment under this Agreement.</p> <p>14.3 Where during employment by the Company or at any time after termination of employment while this restriction is in force, the Employee applies for employment, is offered employment, has discussions in relation to potential employment or otherwise participates in any recruitment process with another employer, the Employee shall bring this clause on 'Restrictive Covenants' expressly to the attention of such other employer or potential employer.</p> <p>14.4 None of the restrictions in clause 14.1 shall prevent the Employee from:</p> <p>14.4.1 holding an investment by way of shares or other securities of not more than 5% of the total issued share capital of any company, whether or not it is listed or dealt in on a recognised stock exchange; or</p> <p>14.4.2 being engaged or concerned in any business concern, provided that the Employee's duties or work shall relate solely to services or activities of a kind with which you were not concerned to a material extent in the twelve months before</p> <p>Termination.</p> <p>14.5 In the event that any of the Restrictive Covenants shall be determined to be void or unenforceable in whole or in part for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining Restrictive Covenants or parts thereof and such void or unenforceable Restrictive Covenants shall be deemed to be severable from any other Restrictive Covenants or parts thereof. In the event that any of the Restrictive Covenants are held unreasonable by reason of the area, duration, type, scope of service covered by such Restrictive Covenants or otherwise, then such Restrictive Covenants shall be given effect to in such reduced form as may be decided by any court of competent jurisdiction.</p>

Members role	Remuneration	Industry	Restraint of trade clause
			14.6 The Employee hereby acknowledges and agrees that all of the Restrictive Covenants are reasonable and valid and waives any and all defences to the strict enforcement thereof by the Company. The Employee further agrees to accept and observe such substituted restriction(s) (in place of all or any of the Restrictive Covenants) as the Company may from time to time specify in writing, provided that such substituted restriction(s) are no more restrictive in extent than the Restrictive Covenants which they replace.
Chief Sustainability Officer	\$154,700 (incl super 2022)	Recycling / Sustainability Industry	<p>POST-EMPLOYMENT RESTRICTIONS</p> <p>To reasonably protect the goodwill and legitimate business interests of the Employer, you agree that, without the prior written consent of the Employer, you will not, whether directly or indirectly, both during your employment with the Employer and during the Restraint Period:</p> <p>(a) carry on, be concerned with, involved in, engage in or interested in any business or activity within the Restraint Area which is:</p> <ul style="list-style-type: none"> (i) the same as or similar to the business carried on by the Employer as at the commencement of the Restraint Period; or (ii) in competition with the business as it is carried on by the Employer as at the date of commencement of the Restraint Period, which specifically includes, but is not limited to, our direct competitors [competitor name], [competitor name], [competitor name] and [competitor name]. (iii) canvas, approach, induce, encourage or solicit any employee or contractor of the Employer to leave their employment or engagement with the Employer, (iv) canvas, approach, induce, encourage or solicit the custom of an the Employer customer, for your benefit or the benefit of a third party in competition with the Employer and with whom you, within a 12-month period immediately prior to cessation of your employment, had personal dealings with or personal knowledge of, in the course of your employment, and/or (v) cause a customer, with whom you, within a 12-month period immediately prior to cessation of your employment, had personal dealings with or personal knowledge of in the course of your employment, to cease or materially reduce or alter their commercial dealings with the Employer. <p>'Restraint Area' means the maximum enforceable area from the following:</p> <ul style="list-style-type: none"> (a) Australia; (b) Victoria;

Members role	Remuneration	Industry	Restraint of trade clause
			<p>(c) Melbourne metropolitan area; or</p> <p>(d) a radius of 10 kilometres from the Employer's office at which you were predominantly employed in the 6 months prior to the termination of employment</p> <p>'Restraint Period' means, from the date of termination of your employment with the Employer's, the maximum enforceable period from the following:</p> <p>(a) 12 months;</p> <p>(b) 9 months,</p> <p>(c) 6 months; or</p> <p>(d) 3 months.</p> <p>If a restraint described in Restraint Area or Restraint Period above are held by any Court of competent jurisdiction to be void or unenforceable, it shall be severed from this agreement and replaced with the next following Restraint Area and/or Restraint Period as set out in this agreement.</p> <p>You acknowledge and agree:</p> <p>(e) that the only effective and reasonable manner in which the Employer's rights in respect of its business secrets and customer lists, contracts and business affairs can be protected is by the imposition of the above restraints; and</p> <p>(f) that each of the restraints contained above is reasonable in its scope and duration having regard to the interests of each party to this agreement and goes no further than is reasonably necessary to protect the legitimate business interests of the Employer.</p>
Graduate Engineer	\$63,000 (2014)	Logistics	<p>Restraint of Trade</p> <p>15.1 Definitions</p> <p>In this clause 15:</p> <p>(a) engage in means to carry on, participate in, provide finance or services, or otherwise be directly or indirectly involved as a shareholder, unitholder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.</p> <p>(b) Business means the business of the Employer.</p> <p>15.2 Covenants</p> <p>The Employee undertakes to the Employer that the Employee will not:</p> <p>(a) engage in any business or activity which:</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>(i) is the same or similar to the whole or any part or parts of the Business; and\</p> <p>(ii) is in competition with the Business or any material part of it;</p> <p>(b) solicit, canvass or approach any person who was at any time during the twelve month period ending on the termination of the Employee's employment a client of the Business with a view to obtaining the custom of that person in a business that is the same or similar to the Business and is in competition with the Business;</p> <p>(c) interfere with the relationship between the Business and its clients, customers, employees or suppliers; or</p> <p>(d) induce or assist in the inducement of any employee of the Business to leave that Employment.</p> <p>15.3 Duration of covenants The undertakings in clause 15.2 begin on the termination of this Agreement and end on;</p> <p>(a) 12 months after the termination of this Agreement;</p> <p>15.4 Geographic application of covenants The undertakings in clause 15.2 apply within:</p> <p>(a) Victoria</p> <p>15.5 Interpretation Clauses 15.2, 15.3 and 15.4 have effect together as if they consisted of separate provisions, each being severable from the other. Each separate provision results from combining each undertaking in clause 15.2 with each period in clause 15.3 and combining each of those combinations with each area referred to in clause 15.4. If any of those separate provisions is invalid or otherwise unenforceable for any reason, the invalidity or unenforceability does not affect the validity or enforceability of any of the other separate provisions or other combinations of those separate provisions of clauses 15.2, 15.3 and 15.4.</p> <p>15.6 Acknowledgments The parties acknowledge that:</p> <p>(a) all the prohibitions and restrictions contained in clause 15 are reasonable in the circumstances and necessary to protect the goodwill of the Business;</p> <p>(b) damages are not an adequate remedy if the Employee breaches clause 15; and</p> <p>(c) the Employer may apply for injunctive relief if:</p> <p>(i) the Employee breaches or threatens to breach clause 15; or</p>

Members role	Remuneration	Industry	Restraint of trade clause
			(ii) it believes the Employee is likely to breach clause 15.
Research Scientist	\$99,100 (2023)	Food Production	<p>1.3 Ability to perform</p> <p>(a) In accepting your employment with us, you confirm that you:</p> <p>(1) are lawfully entitled to work in Australia and for us, and will produce documentation evidencing this at our request;</p> <p>(2) have disclosed to us any pre-existing contractual restraints or restrictions which may affect you performing your role; and</p> <p>(3) hold, and will maintain, the licences, qualifications and skills as represented by you to us and as necessary to fulfil your role.</p> <p>18.1 Restraints on activities</p> <p>(a) You represent and warrant that you will not, without our prior written consent, at any time during your employment and for the duration of the Restraint Period in the Restraint Area:</p> <p>(1) undertake, carry on, or be engaged in any business or activity that is the same or similar to the part(s) of our business in which you worked during the 12 months prior to the termination of your employment and which competes with our business; or</p> <p>(2) be employed, appointed or engaged (in whatever capacity whether as a director, shareholder, employee, contractor, agent or consultant) by any of our Competitors in a role in which you may compete with our business; or</p> <p>(3) solicit, canvass, approach or accept any approach from any person or organisation who was at any time during the 12 months prior to the termination of your employment, a client or customer of, a supplier or contractor to, or investor in us; or</p> <p>(4) solicit or entice away from us any of our employees, contractors or consultants; or</p> <p>(5) interfere with the relationship between us and any person or organisation who was at any time during the 12 months prior to the termination of your employment a client, customer, employee, contractor, consultant or supplier of ours; or</p> <p>(6) attempt, counsel, procure or otherwise assist any person, to do any of the acts referred to in this clause 18.1.</p> <p>(b) Nothing in this clause 18.1 prevents you from owning up to five (5) percent of the shares or securities in any publicly listed company.</p> <p>(c) Each of the restraints contained in this clause 18.1 has effect as a separate, severable and independent restraint and is enforceable accordingly, so that the invalidity or unenforceability of any restraint, in whole or in part, does not affect the validity or enforceability of any other restraint.</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>(d) The restraints in this clause 18.1 apply to conduct which is direct or indirect (including conduct performed through an agent of any kind) and regardless of whether the conduct is engaged in for your own benefit or for the benefit of another person.</p> <p>(e) If there is any inconsistency or contradiction between several restraints which are not invalid or unenforceable, the restraint with the widest Restraint Area and longest Restraint Period, to the exclusion of any other restraint, constitutes the restraint agreed between the Parties.</p> <p>18.2 Acknowledgments</p> <p>(a) You acknowledge and agree that the restraints contained in this Agreement are fair and reasonable to protect our legitimate business interests and we are relying upon this acknowledgement in entering into this Agreement.</p> <p>(b) You acknowledge and agree that the Remuneration is fair and valuable consideration for the restraints contained in this Agreement.</p> <p>(c) You acknowledge and agree that you will be liable in damages (including punitive or special damages) arising out of the breach of any of the terms of this clause 18.</p> <p>(d) You acknowledge and agree that this clause 18 does not unreasonably restrict your right to carry on your profession or trade.</p> <p>18.3 Continuing restraints Your obligations under this clause 18 survive termination of your employment or this Agreement.</p>
Business Development Manager	\$132,000 (2023)	Medical and Food Science	<p>18.1 Employee's acknowledgments</p> <p>The Employee acknowledges that:</p> <p>(a) during the Employee's employment the Employee will have access to Confidential Information, and acquire a detailed knowledge of the Employer's clients and their businesses, and have the opportunity to build relationships with those clients, employees and others engaged in the Employer's business; and</p> <p>(b) it is reasonable and necessary for the Employer to protect its goodwill, Confidential Information, customer connections and workforce by the restraints in this clause.</p> <p>18.2 Restraint during employment</p> <p>The Employee must not during the Employee's employment, otherwise than in the normal course of carrying out the Employee's duties:</p> <p>(a) induce, encourage or solicit any employee, contractor or agent of the Employer to terminate their engagement with the Employer; and</p> <p>(b) induce, encourage or solicit any customer, client or supplier of the Employer to end or restrict their trade relationship with the Employer.</p> <p>18.3 Restraint after employment</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>Based on the acknowledgments in clause 18.1 and in consideration of the Employee's employment and the Remuneration, the Employee must not, in any capacity, directly or indirectly:</p> <p>(a) do any of the following:</p> <ul style="list-style-type: none"> (i) induce, encourage or solicit any officer or employee of the Employer or any officer or employee of the Group (including any manager, senior manager or senior Employee) or any person who was such an officer or employee with whom the Employee has had contact with in the 12 months preceding the termination of the Employee's employment, to terminate their engagement with the Employer; (ii) induce, encourage or solicit any of the Employer's customers, clients or suppliers with whom the Employee has had contact in the 12 months preceding the termination of the Employee's employment, to end or restrict their trade relationship with the Employer; (iii) become an employee of any customer or client of the Employer with whom the Employee has had contact in the 12 months preceding the termination of the Employee's employment in order to perform work or provide services which the Employer might reasonably expect to otherwise perform or provide; (iv) be associated with or engaged or interested in a business which competes with the business of the Employer, including genomics sequencing and research, where the purpose of the Employee's engagement or interest is to perform work in relation to genomics or genomics sequencing; (v) notwithstanding clause 18.3(a)(iv), be employed by or associated with or engaged or interested in a business of any of the following companies, including their Related Bodies Corporate, where the purpose of the Employee's engagement or interest is to perform work in relation to genomics or genomics sequencing: <ul style="list-style-type: none"> A. [specific competitor] Pty Ltd (ACN xxx); B. [specific competitor] Pty Ltd (ACN xxx); or C. [specific competitor] Pty Ltd (ACN xxx); <p>(b) for the following periods after the Employee's employment ends:</p> <ul style="list-style-type: none"> (i) six months'; (ii) three months'; (iii) one month. <p>18.4 Cumulative effect Clause 18.3 will have a cumulative effect as several separate restraints for each activity listed in clause 18.3(a) combined with each period listed in clause 18.3(b) and in relation to the activity restrained by clauses 18.3(a)(iv) and 18.3(a)(v) only, combined with each area listed in clause 18.3(c). The Employee must comply with all possible combinations.</p> <p>18.5 Severability</p>

Members role	Remuneration	Industry	Restraint of trade clause
			<p>The validity of each separate restraint in this clause will not be affected by the invalidity of any other restraint.</p> <p>18.6 Release from restraint</p> <p>The Employee:</p> <ul style="list-style-type: none"> (a) may seek the Employer's consent in writing to be released from any restraint; and (b) must execute any non-disclosure or confidentiality agreement required by the Employer to be released from any restraint. <p>18.7 Continuing obligations</p> <p>The Employee's obligations under this clause continue after termination of the Employee's employment.</p>
Associate Consultant	\$110,000 (2021)	Software Company	<p>Client Contact Restriction</p> <p>You acknowledge and agree that, for a period of (twelve) 12 months from the date you leave the employ of the Company, you will not persuade or attempt to induce or persuade any client or clients of the Company with whom you have had contact or dealings in the 12 months immediately preceding the termination of your employment, to place business with you or anyone for whom or with whom you work subsequent to leaving the employ of the Company where that has the effect of the client reducing or removing their business from TCS. This includes, but is not limited to, approaching them with a proposal or facilitating a client (as described by the terms of this clause) of the Company, inviting or otherwise obtaining a proposal for business from you or third party with whom you are or become associated following the termination of your employment with the Company. This restriction applies for a period of 12 months from the date that you leave the employ of the Company exclusive of any notice period.</p> <p>Non-Competition</p> <p>Upon the termination of this Employment Agreement, for any cause or by any means whatsoever you covenant, that you shall not during a period of 12 months from the termination of this Agreement either personally or by your agent or by letters, circulars or advertisements, whether on your behalf or on behalf of any other person, firm or company, encourage, canvass or solicit employees of the company to leave the Company and join yourself or another firm or company.</p>
Engineering Manager	\$156,785 (2009)	Food / Farming	<p>4.6 You further agree that in order to protect the Employer's Confidential Information, Goodwill and Client and Grower Connection, you will not, at all times during your employment and for the period of 6 months after your employment ends for any reason:</p> <ul style="list-style-type: none"> i. Solicit, canvas, induce or encourage any person or entity who is an Employee or agent of the Employer to leave the employment or contract of the Employer.

Members role	Remuneration	Industry	Restraint of trade clause
			<p>ii. Solicit, canvass, approach or accept an approach, either in your personal capacity or as an employee, agent, contractor, director, officer or partner of another entity, from any person or entity who was during the term of your employment a client, grower, customer or patron of the Employer, with a view to establishing a relationship with or obtaining the custom of that person or entity, in order to provide services the same or similar to our business;</p> <p>iii. Interfere or seek to interfere, directly or indirectly, with the relationship between the Employer and any person or entity who was during the term of your employment a client, grower, patron or supplier of the employer with a view to establishing a relationship with, or obtaining the custom of that person or entity, in order to provide services the same as or similar to the Employer's.</p> <p>4.7 The restrictions in 4.6(i) to 4.6(iii) apply to any person or entity conducting business within 150km of your place of work as specified in Schedule A.</p>

Appendix 3

UWU Case Study: Secondary Employment and Restraint of Trade

Background

- A disability support worker was employed by a regional disability services provider (“the Employer”) from mid-2022 until December 2024.
 - In early 2024, the worker also commenced casual employment working ad hoc shifts with an online platform (“the Platform”), after being contacted by a former client who had difficulty securing stable support.
 - The client occasionally received services from the Employer, but on an irregular basis.
 - In October 2024, the Employer asked staff to declare secondary employment. The worker disclosed that they were performing 10–15 hours per week through the Platform.
 - In November 2024, the worker gave notice of resignation from the Employer.
-

Employer’s Claim

- In February 2025, the worker received a legal notice from the Employer’s lawyers, stating an intention to pursue a claim of approximately \$180,000.
 - The claim was based on allegations that the worker:
 1. Misused confidential information to contact clients; and
 2. Breached a restraint of trade clause in their contract, which prohibited soliciting or accepting work from the Employer’s clients for 12 months post-employment.
 - The Employer argued that the amount claimed represented one year of lost income from two clients who had engaged the worker through the Platform.
-

Worker’s Position

- The worker denied ever soliciting clients of the Employer or encouraging them to use the Platform.
- Both clients had already joined the Platform independently due to the Employer’s inability to provide consistent support.

- It was common in the region for clients to rely on multiple providers, including ad hoc platform workers, because single providers were often unable to meet their full needs.
- It is common for disability support workers to work for multiple employers as an employee and/or as an independent contractor to get enough work.

Specific circumstances:

- *Client A:* Required extensive daily support which the Employer could not provide. Another client recommended the Platform, and Client A signed up independently. On some occasions, the worker provided 10 hours of support through the Employer, then an additional 3 hours via the Platform. This arrangement occurred intermittently for about 8 weeks and ceased before the worker resigned.
- *Client B:* Was directly encouraged by the Employer to use the Platform when the Employer could not reliably fill shifts.
- The worker believed they were not in breach of their restraint clause because:
 - They had not approached or solicited clients;
 - Clients were already using the Platform independently; and
 - To their knowledge, the clients were no longer receiving services from the Employer.

Clauses in employment contract

There are two provisions relating to solicitation and restraint of trade. The first provides as follows:

“26. NON-SOLICITATION AND POST-TERMINATION RESTRAINT

26.1 From the date your employment ends, you agree not to solicit or attempt to solicit business from any client for the duration of the Restraint Period.

26.2 From the date your employment ends, you agree not to engage or prepare to engage in a business that competes with the business of the Employer or any Associated Entities for the duration of the Restraint Period within the Restraint Area.

26.3 From the date your employment ends, you agree not to solicit, attempt to solicit, entice or encourage any employee of the Client or the Employer or any Associated Entities to leave their engagement with the Employer for the duration of the Restraint Period within the Restraint Area.

26.4 From the date your employment ends, you agree not to interfere or attempt to interfere with the relationship between the Employer or any Associated Entities and its Clients, employees or suppliers for the duration of the Restraint Period.

26.5 In this provision:

(a) **Client** means any person, firm or company who at any time during the period of 12 months prior to the termination of your employment was a Client of the Employer or any Associated Entities, in respect of the part or parts of the business in which you were employed.

(b) **Restraint Period** means:

i 12 months or

i 6 months or

i 3 months.

(c) **Restraint Area** means:

i 50 km radius from the location described in **Item 6** of the Schedule or

i 25 km radius from the location described in **Item 6** of the Schedule or

i 10 km radius from the location described in **Item 6** of the Schedule.

26.6 The restrictions in this clause apply to conduct which is either direct or indirect (eg done through an agent of any kind) and regardless of whether the conduct is engaged in for your own benefit or for the benefit of any other person or entity.

26.7 Each of the covenants in this clause will have effect as if it were the number of separate covenants resulting from combining each covenant with each subsection of the defining terms, referred to in the covenant. Each of the above obligations are separate and independent obligations. In the event that one or more of the obligations are found to be unenforceable, the remaining obligations will continue to apply.

26.8 You acknowledge that each of the above restrictions are reasonable and necessary to protect the Employer's legitimate interest.

26.9 You acknowledge that you will be liable in damages (including punitive or special damages) arising out of the breach of any of the terms of this provision."

*Notably, the restraint area, although unclear, applies to a maximum of a 50km radius from the address in the schedule (**Restraint Address**). The worker only provided disability services within an area well in excess of 200km from the Restraint Address.

The second of the two provisions is as follows:

27 *“During your employment and from the date this Contract ceases, you agree that you will not directly or indirectly, whether for your own benefit or for the benefit of another entity, solicit, canvass, approach (or attempt to solicit, canvass or approach) or accept an approach from a client of the Employer for a period of:*

- I. 12 months*
- II. 6 months or*
- III. 3 months.*

27.1 *Each of the above obligations are separate and independent obligations. In the event that one or more of the obligations are found to be unenforceable, the remaining obligations will continue to apply.”*

address

ACTU

Level 4 / 365 Queen Street

Melbourne VIC 3000

phone

1300 486 466

web

actu.org.au

australianunions.org.au