



Reform to non-compete clauses and other restraints on workers

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Introduction

Housing Industry Association Ltd (HIA) welcomes the opportunity to provide feedback on Treasury's consultation into the Reform to non-compete clauses and other restraints on workers.

As a member of the Australian Chamber of Commerce and Industry (ACCI), HIA has had the benefit of reviewing ACCI's draft submissions for this consultation, and supports in principle the position as articulated within their submission.

HIA further urges this consultation to apply key considerations to housing and supply and affordability, preservation of independent contracting, and small business when determining the reforms to non-compete clauses and related restraints for workers.

Primarily, it is our position that all proposals for regulatory change, including this reform agenda, must first be subject to a genuine cost benefit analysis that specifically considers the impact of the reforms on:

- housing affordability;
- business, particularly small business;
- the need for consistency and stability in the regulatory framework over the long term; and
- the cumulative impact of regulatory reforms within the broader Commonwealth, State and Territory regulatory environment.

Housing supply & affordability– must be a key focus

It is extensively recognised that Australia is currently faced with housing supply and affordability challenges.

The barriers to supply were recently recognised and extensively discussed in the August 2025 Federal Government Economic Reform Roundtable discussions. Notably, *'there was broad consensus that commonsense changes could reduce the regulatory burden for builders and boost housing supply'*.¹

Regulatory fatigue is real for the residential building industry, and as a direct consequence industry is prevented from getting on with building the homes Australia needs. As articulated by the Hon Clare O'Neil MP Minister for Housing, Minister for Homelessness, Minister for Cities on 24 August 2025, *"In the middle of a housing crisis a generation in the making, we want builders building good quality homes of the future – not figuring out how to incorporate another set of rules."*²

The Federal Government has made a notable commitment to delivering 1.2 million homes over 5 years, through the National Housing Accord, which is a pivotal milestone in government policy and direction. While the residential building industry is supportive and is working towards this target it must be recognised this goal cannot be achieved in a vacuum.

HIA forecasts show that to reach this goal, housing supply cannot fall below 240,000 new homes each year. While new home building activity has climbed from the low levels experienced in the post pandemic

¹ The Hon Clare O'Neil MP Minister for Housing, Minister for Homelessness, Minister for Cities, Joint media release with Senator the Hon Murray Watt Minister for the Environment and Water, Action on red tape and approvals to build more homes, more quickly, 24 August 2025

² Ibid.

slump, commencements are set to sit around 187,140 in the 2025 calendar year.³ This is a slow start to achieving the Government's goal.

HIA has engaged the Centre for International Economics (the CIE) to undertake a review of taxes, fees and charges on new housing and apartments. The March 2025 report identifies that governments collectively, are adding in excess of half a million dollars to the cost of a new home, which new home buyers are then required to repay for decades as part of their mortgage.⁴

A key reason to Australia's acute housing shortage is due to the taxes and regulatory imposts on new home and apartment building. These imposts in turn impede productivity in the sector.

The primary solution to resolve Australia's housing shortages is to remove government taxes and unnecessary regulations to allow the industry to deliver the homes Australians are demanding.

Governments increasing the cost and red tape on building a new home makes it harder to boost supply, leads to longer build times and results in housing becoming further out of reach for more Australians.

Housing must be a priority. Delivering more housing must drive the policy debate. We urge this as a key consideration in determining the appropriateness of any reform to non-compete clauses and other restraints on workers.

Preservation of independent contracting

The consultation has questioned whether the ban on non-compete clauses should apply to workers who are not employees, such as independent contractors.

Due to the cyclical nature of work, the reliance on the use of subcontractors in the residential building industry, in particular the detached housing and renovation markets, is unique.

By contrast, in commercial construction, whilst there are a large number of subcontracting firms, the overwhelming majority of those working are actually employed by these subcontracting firms. Further subcontracting occurs only in specialist areas.

The flexibility of the subcontract system and the highly competitive nature of the residential building industry have interacted to secure a high degree of efficiency and productivity for many decades.

There are around 25 different trades involved on-site in the building of a house. These trades are on-site for short periods of time, interacting with other trades in an ad hoc manner with respect to overlaps of time and direct interactions to undertake work tasks.

An independent business, and the principal that contracts the independent business, intend to enter into a commercial arrangement and do not intend for a relationship of employee/employer to arise from the commercial arrangement.

³ HIA National Outlook, Winter Edition 2025, 14 August 2025

⁴ Centre for International Economics, [Taxation of the housing sector](#), report prepared for the Housing Industry Association Ltd, March 2025

Parties should be free to contract and agree upon their own terms and conditions, including the terms and conditions of payment. This will ensure the efficient operation of the market for all businesses operating in the residential construction industry.

Only where there is an overwhelming case for regulation, such as clear evidence of market failure, should governments interfere in commercial arrangements between contracting parties.

Small business – critical to success

Small business largely feel the impact of Government reform agendas, and face a pronounced risk of regulatory fatigue.

The recently released Federal Government Small Business strategy emphasises the importance of small business to the Australia's economic success by noting:

'small businesses are vital to Australia's economic prosperity and our communities. They provide jobs, deliver services, drive innovation and productivity, contribute revenue and help define community identities'.⁵

Notably, construction is the largest employer across all sectors, of which a larger share work for micro and small businesses. As it relates to Employees, Wages and Salaries in the construction industry:

- Micro (0-4 employees) and small businesses (5-19 employees) in the Construction industry employed 805,700 people as of the 30 June 2023.
- Construction micro and small businesses employed about 64 per cent of all workers in the Construction industry (1.29 million people).
- One in ten workers across all industries (12.928 million) were employed in Construction, of which a larger share work for micro and small businesses.
- Micro and small businesses in Construction also paid \$37.582 billion in wages and salaries in 2022/23, which is 43 per cent of total wages and salaries paid in the Construction Industry (\$86.633 billion).⁶

Share of employment across all industries

Source: ABS



⁵ The Commonwealth of Australia, 2025, National Small Business Strategy, Canberra

⁶ Australian Bureau of Statistics (ABS) (2022–23), [Australian Industry](#), ABS website; and Australian Bureau of Statistics (ABS) (2020–24), [Counts of Australian Businesses, including Entries and Exits](#), ABS website.

The construction industry's total Income, Expenses and Earnings before income, taxes, depreciation and amortisation over the past few years has concerningly experienced a decline with Micro and small businesses in Construction generating \$298.266 billion in income in the 2022/23 financial year, which is 52 per cent of total Construction industry income (\$568.182). This share has marginally fallen in the last five years, from 56 per cent in 2018/19 to 52 per cent in 2022/23.⁷

Despite this reduction in income, small business owners are working harder than ever, with 45% of small business owners working 39 hours or more per week.⁸ In the limited hours of a business day, a small business owner 'wears many hats', navigating a complex web of regulation and compliance, often without the dedicated expertise or resources of larger business.

The Federal Government's National Small Business Strategy considered this view:

*'There are myriad challenges and limited hours in the day to navigate government systems to comply with regulations, take advantage of government incentives or resolve issues..... Most small business owners are sole traders and operate with fewer resources than larger businesses. They need to learn fast about legal and regulatory requirements, customer service, financial management, human resources, IT and digital technology, contracting and procurement, marketing, supply chains and various other responsibilities for which larger businesses have designated staff or departments.'*⁹

Red tape takes small business owners away from 'getting on with business', and in the case of the residential building industry, building the housing which Australia needs.

Suitability of existing laws

Notwithstanding the issues raised in the consultation paper, non-compete clauses that balance the rights of the employer and employee have featured in contracts of employment in many workplaces for some time without the need for government interference. These clauses are subject to a well-established common law approach, that provides strong protections, such as:

- These clauses are presumed void, unless the employer proves it is reasonably necessary to protect a legitimate interest;
- Courts assess reasonableness by reference to scope, duration, geography and the employee's position; and
- If a clause is too broad, courts may strike it down or apply the "blue pencil test" to read down the restraint.

Seeking to regulate when there are already non-compete laws and precedents in place to manage and protect the interests of parties to the employment relationship, is therefore unwarranted.

⁷ Ibid

⁸ ABS TableBuilder, Census 2021.

⁹ Ibid