

Enhancing labour market competition and productivity in Australia

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Abstract

This paper explores the relationship between competition, productivity, and labour markets in Australia, emphasising the critical role that competition in the labour market plays. It provides an overview of the Australian labour market, outlining current trends and challenges, including the recent slowdown in productivity growth, which is at its lowest in 60 years. Fostering competition could help unlock significant potential. Competition in the labour market enhances workers' bargaining power and improves job mobility, ensuring the effective allocation of resources and leading to higher productivity. Additionally, competition incentivises innovation and promotes fairness by preventing monopsony power. The paper delves into the role that competition agencies can play and includes a case study on non-compete clauses (NCCs), examining their evolution, prevalence, and economic impacts in Australia, and comparing regulatory responses overseas. It discusses the pros and cons of NCCs, their effects on job mobility and wage growth, and proposes alternative strategies to safeguard trade secrets without unduly restricting worker mobility. Notably, the evidence shows that NCCs limit career advancement and suppress wages for low-wage workers, exacerbating their economic vulnerability. The paper concludes with policy recommendations aimed at fostering a more dynamic and equitable labour market, balancing the protection of legitimate business interests with the need to enhance worker mobility and innovation, especially crucial in times of low productivity growth.

Keywords: Labour market competition, productivity growth, job mobility, non-compete clauses (NCCs)

JEL Classification: J24, J38

1. Introduction

Labour market conditions play a vital role in determining productivity levels. Competition in the labour market drives wage growth by enhancing workers' bargaining power to negotiate higher pay and better benefits. It also improves job mobility, providing workers with more opportunities to switch jobs and find positions that better match their skills and preferences. This mobility contributes to economic efficiency, ensuring that resources, including labour, are allocated effectively, leading to higher productivity and economic growth. Additionally, competition incentivises innovation, as employers strive to attract and retain talent. It can also promote fairness and equity by preventing monopsony power, where a few employers dominate the market, leading to lower wages and poorer working conditions, especially for vulnerable groups. Ultimately, a competitive labour market benefits consumers by driving businesses to improve efficiency and quality, resulting in better products and services.

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Competition agencies, traditionally focused on ensuring that product markets remain competitive by preventing anti-competitive practices, promoting fair competition, and protecting consumer welfare, are increasingly turning their attention to labour markets. These agencies play a crucial role in preventing practices such as wage-fixing and non-compete agreements that can restrict workers' mobility and earning potential.

Non-compete clauses have garnered significant attention from regulatory bodies in both the United States (US) and Australia. In the US, the Federal Trade Commission (FTC) has recently issued a final rule banning most non-compete clauses, citing their detrimental effects on workers' mobility, wages, and innovation.² This rule aims to enhance job opportunities and economic dynamism by allowing workers to freely change jobs or start new businesses without legal constraints. Similarly, in Australia, non-compete clauses are under scrutiny as part of broader efforts to promote labour mobility and economic growth. The Australian Government's 2023 Future Work White Paper highlighted concerns that these clauses can hinder job mobility, wage growth, and innovation.³ As a result, there is ongoing discussion about potential reforms to ensure that non-compete clauses do not unduly restrict workers' opportunities and the overall competitiveness of the labour market.

The focus on competition in the labour market in Australia is both crucial and timely, especially given current labour market conditions. Despite a recent decrease in unemployment, the labour market is still grappling with skill shortages, slow wage growth, and concerns about job security. Fostering competition could help unlock significant potential. By addressing anti-competitive practices in the labour market, competition agencies can enhance job mobility, ensure fair compensation, and support a more dynamic and resilient labour market.

This paper is organised as follows: Section 2 provides an overview of the Australian labour market, highlighting current trends and challenges. Section 3 discusses how competition in the labour market can enhance job mobility, wage growth, and overall economic prosperity, and explores the role competition agencies can play. Section 4 includes a case study on non-compete clauses, examining their impact on workers and the economy, and exploring recent regulatory responses aimed at mitigating their negative effects. Section 5 summarises the key findings.

2. Australian labour market context

Employment trends, participation rates, and labour market flexibility

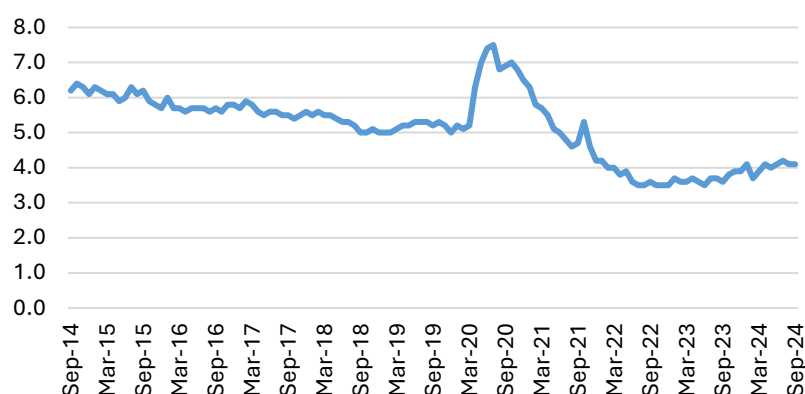
Several key factors have influenced recent Australia's employment dynamics. The COVID-19 pandemic significantly impacted the labour market, accelerating the adoption of remote work and digital technologies. The recovery phase saw a resurgence in employment, with the unemployment rate at 4.1% as of September 2024, low by historic standards (Figure 1).⁴

² FTC Announces Rule Banning Noncompetes, 23 April 2024.

³ Australian Government, The Treasury, Competition Review, Non-compete clauses and other restraints.

⁴ Australian Bureau of Statistics (September 2024), Labour Force, Australia, ABS Website, accessed October 2024.

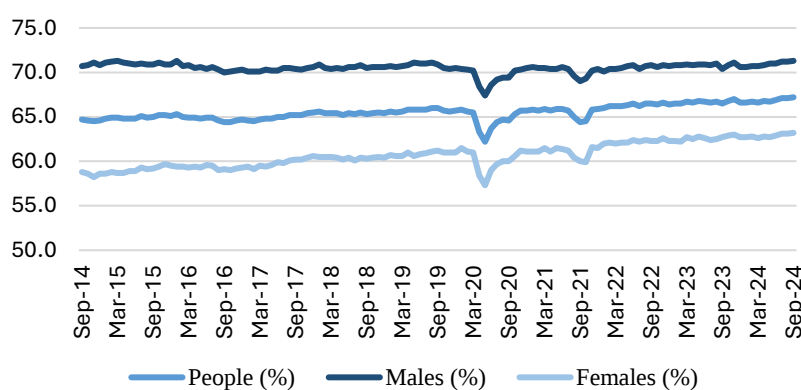
Figure 1: Seasonally adjusted unemployment rate (%)



Source: Australian Bureau of Statistics, Labour Force, September 2024

Australia's labour force participation rate increased to 67.2% in September 2024.⁵ This rate reflects the proportion of the working-age population that is either employed or actively seeking employment. Participation rates vary across different demographic groups, with notable differences between genders and age groups. As of August 2024, the participation rate for males was 70.8%, while for females it was 63.7% (Figure 2). Age also plays a crucial role, with the youth (15-24 years) participation rate at 67.5%, prime working-age individuals (25-54 years) at 83.2%, and older workers (55-64 years) at 66.0%.⁶

Figure 2: Seasonally adjusted participation rate



Source: Australian Bureau of Statistics, Labour Force, September 2024

Gender disparities in employment persist in Australia. Women are more likely to engage in part-time or casual work, which can limit career advancement and financial stability. As of 2024, 43.3% of women work part-time compared to 19.5% of men.⁷ Despite an increase in female participation rates, women still face barriers to entering high-paying industries and leadership positions. Women are underrepresented in senior leadership roles, with only 22% of

⁵ Australian Bureau of Statistics (September 2024), Labour Force, Australia, ABS Website, accessed October 2024.

⁶ Australian Bureau of Statistics (September 2024), Labour Force, Australia, Detailed, ABS Website, accessed October 2024.

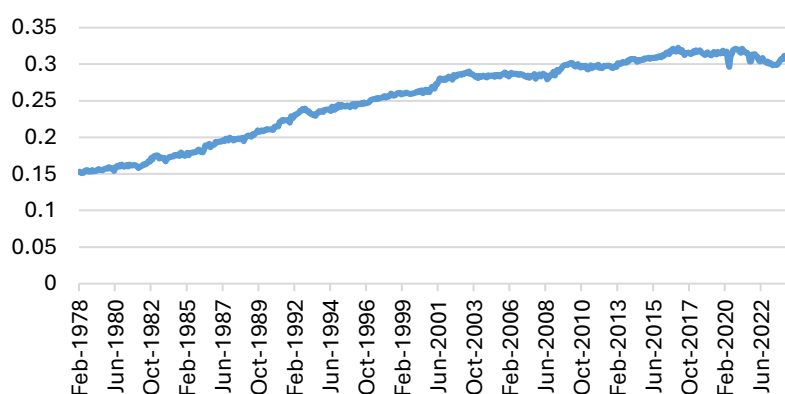
⁷ Australian Government, Status of Woman Report Card 2024.

CEO positions held by women.⁸ Additionally, women are more likely to take on unpaid care responsibilities, which further impacts their career progression and income stability.⁹

Youth unemployment remains a significant issue in Australia. As of September 2024, the youth unemployment rate stands at 9.5%.¹⁰ Young people often encounter difficulties in securing stable employment due to a lack of experience and skills mismatch. They are also more likely to be employed in temporary or informal jobs, which offer less security and benefits. According to the ABS, 34% of employed youth are in casual positions, compared to 20% of the overall workforce.¹¹

Labour market flexibility in Australia is indeed characterized by a mix of full-time, part-time, and casual employment arrangements. Policies that support flexible working conditions, such as the Fair Work Act, allow for varied employment contracts and adaptable working hours.¹² These arrangements can include changes to hours of work, patterns of work, and locations of work. This flexibility aims to help employees balance their work and personal lives, although it also raises concerns about job security and income stability, particularly for those in casual employment.¹³

Figure 3: Seasonally adjusted part-time employment (%)



Source: Australian Bureau of Statistics, Labour Force, September 2024

The rise of part-time and casual employment is a prominent trend in Australia's labour market. This shift has been driven by the demand for greater work-life balance and, more recently, the expansion of the gig economy. As of September 2024, part-time employment makes up 30.9% of total employment, up from around 15% in 1970s (Figure 3). While part-time and casual jobs provide flexibility, they often come with lower wages, fewer benefits, and less job security compared to full-time positions. Recent changes to casual employment laws aim to provide clearer pathways for casual workers to transition to permanent roles.¹⁴

⁸ Workplace Gender Equity Agency (2023), Gender Equality Scorecard 2022-2023.

⁹ Australian Government, Status of Woman Report Card 2024.

¹⁰ Australian Bureau of Statistics (September 2024), Labour Force, Australia, ABS Website, accessed October 2024.

¹¹ Australian Bureau of Statistics (September 2024), Labour Force, Australia, Detailed, ABS Website, accessed October 2024.

¹² Australian Government, Fair Work Ombudsman, Flexible working arrangements.

¹³ Gilfillan, G. (2021). Recent and long-term trends in the use of casual employment, Research paper series, 2021-22, Parliamentary Library, Canberra, 24 November 2021.

¹⁴ Australian Government, Fair Work Ombudsman, Casual employment changes.

Technological change and the future of work

Technological advancements, particularly in automation, digitalisation, and the gig economy, are reshaping the future of work in Australia. These technological changes are not only driving the growth of part-time and casual employment but also transforming the nature of work itself.

Automation involves using technology to perform tasks without human intervention, streamlining repetitive processes and reducing the likelihood of human error. Artificial intelligence (AI), which includes machine learning and cognitive computing, enables systems to learn and improve from experience, enhancing their capabilities over time. The rise of automation and AI presents both significant risks and promising opportunities. Lane and Saint-Martin (2021) argue that while AI has the potential to automate a wide range of tasks, including non-routine cognitive tasks, it can also complement and augment human capabilities, leading to higher productivity and improved job quality. The study finds that the impact of AI on employment and wages is ambiguous and depends on various factors such as the type of AI, its deployment, and market conditions. Contrary to fears of widespread job losses, empirical evidence from the past decade suggests that AI is more likely to reshape the work environment by changing job content, enhancing human-machine collaboration, and supporting human resource management and career development.

Acemoglu and Restrepo (AER 2018, JHC 2018) further explore how automation can displace certain tasks traditionally performed by humans while creating new tasks that require human skills, thus reshaping the job market. They present a framework for understanding the effects of automation on labour demand, emphasising the displacement effect, where automation reduces the labour share in value added, and the reinstatement effect, where new tasks are created that favour labour. Their research highlights that while automation can initially reduce labour demand, the creation of new tasks can offset these effects, ultimately leading to higher productivity and new employment opportunities. This dynamic emphasises the importance of policies that support workforce adaptation and skill development to harness the benefits of technological advancements.

Digitalisation refers to the adoption of digital technologies to transform business operations and services. The COVID-19 pandemic accelerated digitalisation across various sectors, leading to increased remote work and the adoption of digital tools. This shift enabled businesses to maintain operations during lockdowns and highlighted the importance of digital skills in the modern workforce. The demand for digital skills is growing, with businesses seeking employees proficient in science analytics, cyber security tools and coding. Deloitte Access Economics estimates that existing digital skills gaps are costing large Australian businesses \$3.1 billion each year.¹⁵

To mitigate the risks of job displacement due to automation and AI, and to close the existing digital skills gaps, it is essential to focus on upskilling and reskilling the workforce for a digital future. The Productivity Commission's 2023 5-year Productivity Inquiry Report emphasises the importance of building an adaptable workforce through lifelong learning, integrating digital skills into education, and attracting skilled migrants.¹⁶ Similarly, The Australian Government's

¹⁵ Deloitte Access Economics and RMIT Online (2023). Ready, set, upskill: Prioritising skills for a resilient workforce.

¹⁶ Productivity Commission (2023). 5-year Productivity Inquiry, Volume 7, A more productive labour market.

2023 Future Work White Paper highlights the importance of upskilling and reskilling programs, suggesting partnerships between government, industry, and educational institutions to develop relevant training.¹⁷

The gig economy has expanded significantly in Australia. This growth has been driven by digital platforms that connect workers with on-demand job opportunities. In 2022-23, the proportion of people who reported undertaking digital platform work (in the last 4 weeks) was 1% (0.96%) of the employed population.¹⁸ While the gig economy offers flexibility and opportunities for additional income for workers and provides consumers with greater convenience and access to a wide range of services at competitive prices, it also presents challenges. Gig workers often face job insecurity, lack of benefits, and income volatility. These issues highlight the need for policies that protect gig workers' rights and ensure fair working conditions.

The Productivity Commission's 2023 5-year Productivity Inquiry Report identifies the challenges faced by gig workers due to their classification as independent contractors rather than employees. This status excludes them from many legal protections and benefits, such as minimum wage laws, paid leave, and collective bargaining rights. The report emphasises the need for new regulatory frameworks to address these gaps, suggesting policies to extend certain employment protections, improve access to benefits, and create mechanisms for collective bargaining.¹⁹

Labour unions and industrial relations

Historically, labour unions have been instrumental in advocating for workers' rights and improving working conditions. In Australia, the early 20th century saw significant union activity, leading to the establishment of key labour protections, such as the eight-hour workday and minimum wage laws. In contemporary Australia, unions continue to play a crucial role, although their influence has waned compared to the mid-20th century.

As of August 2022, trade union membership in Australia was at 12.5% of employees, or about 1.4 million members, reflecting a significant decline from 41% in 1992. Gender trends show that both men and women have experienced a decline in union membership: from 1992 to 2022, male membership dropped from 45.5% to 11.4%, while female membership decreased from 35.9% to 13.6%.²⁰

Government industrial relations policies have significantly impacted the role of unions and the broader labour market. The introduction of the Fair Work Act 2009 marked a major legislative change, aiming to balance the interests of employers and employees. This Act established the Fair Work Commission (FWC), which oversees collective bargaining, dispute resolution, and the enforcement of workplace laws.

¹⁷ Commonwealth of Australia (2023). Working Future: The Australian Government's White Paper on Jobs and Opportunities.

¹⁸ Australian Bureau of Statistics (13 November 2023), Digital platform workers in Australia, ABS Website, accessed October 2024.

¹⁹ Productivity Commission (2023). 5-year Productivity Inquiry, Volume 7, A more productive labour market.

²⁰ Australian Bureau of Statistics (August 2022), Trade union membership, ABS Website, accessed October 2024.

Unions have traditionally been successful in negotiating higher wages for their members. The decline in union membership has coincided with slower wage growth in recent years. Despite this, unionised workers generally continue to earn higher wages compared to their non-unionised counterparts. As of August 2022, the median weekly earnings for employees who were trade union members in their main job were \$1,520 per week, compared with \$1,208 for employees who were not a trade union member.²¹

The relationship between unions and productivity is however more complex. While some argue that unions can hinder productivity through restrictive work practices, others contend that unions can enhance productivity by fostering better communication between workers and management and advocating for training and development. Laroche (2021) explores the “shock effect” of unions, which refers to the pressure unions exert on employers to improve efficiency and competitiveness. He demonstrates that unions can induce managers to adopt more efficient production methods and personnel policies. This effect occurs because unions often push for higher wages and better working conditions, which can increase operational costs for employers. To offset these costs and remain competitive, employers are compelled to innovate and streamline their processes, leading to enhanced productivity and efficiency.

The 2023 5-year Productivity Inquiry Report discusses the evolving role of collective bargaining, enterprise bargaining, and unions in Australia. It highlights that while enterprise bargaining was initially intended to drive productivity and wage growth through flexible, firm-level agreements, its effectiveness has diminished due to complexity, high transaction costs, and restrictive clauses. The report suggests reforms to simplify the bargaining process, improve the Better Off Overall Test (BOOT), and address overly stringent consultation clauses that hinder productivity.²²

3. Boosting productivity through competitive labour markets

Over the past decade, Australia has experienced its slowest productivity growth in 60 years. The Australian Government’s 2023 Future Work White Paper notes that labour productivity has driven productivity growth in Australia, contributing about 70% to the growth in real gross national income (GNI) per person over the past 30 years.²³ However, labour productivity growth has slowed down in recent years.²⁴ This highlights the pressing need for policies that promote competition in the labour market, aiming to boost productivity and address the challenges posed by this decline.

What roles does a competitive labour market play?

Competition drives wage growth. In a competitive labour market, employers must vie for the best talent by offering attractive wages and benefits. This competition drives up overall wage levels, ensuring that workers are appropriately compensated for their skills and contributions. When workers have multiple employment options, they gain more bargaining power, enabling them to negotiate for higher pay and better working conditions. This dynamic not only improves individual livelihoods but also stimulates economic activity, as higher wages lead to increased consumer spending.

²¹ Australian Bureau of Statistics (August 2022), Trade union membership, ABS Website, accessed October 2024.

²² Productivity Commission (2023). 5-year Productivity Inquiry, Volume 7, A more productive labour market.

²³ Commonwealth of Australia (2023). Working Future: The Australian Government’s White Paper on Jobs and Opportunities, p.53.

²⁴ Productivity Commission (2023). 5-year Productivity Inquiry, Volume 1 Advancing Prosperity, p.2.

A competitive labour market boosts job mobility, giving workers more employment options. This flexibility helps individuals find jobs that better match their skills, interests, and career goals. As a result, workers experience higher job satisfaction and professional growth. Additionally, it helps reduce unemployment and underemployment. Autor et al. (2023) demonstrate that increased competition in the labour market, especially post-pandemic, helped reduce unemployment and underemployment. They found that tighter labour markets led to wage compression at the lower end, higher job-to-job transitions, reduced employer market power, and stronger real wage growth for low-wage workers.

Competition in the labour market ensures that labour resources are allocated efficiently, meaning that workers are employed in roles where they can be most productive. This efficient allocation boosts overall economic productivity, as businesses can operate more effectively with the right talent in place. Higher productivity leads to economic growth, as firms can produce more goods and services with the same or fewer inputs. This growth benefits the entire economy, contributing to higher living standards and greater economic stability.²⁵

Employers in competitive labour markets are incentivised to innovate. This drive for innovation can lead to the adoption of new technologies, improved business processes, and better management practices. As companies strive to stay ahead of their competitors, they invest in research and development, training, and other initiatives that increase productivity. These improvements not only benefit the firms themselves but also foster a more dynamic and innovative business environment.

A competitive labour market helps prevent the concentration of market power among a few employers, known as monopsony. In a monopsonistic market, a small number of employers can dominate, leading to lower wages and poorer working conditions, particularly for vulnerable groups. Competition mitigates this risk by ensuring that workers have multiple employment options, which promotes fair wages and equitable treatment. This fairness is crucial for social stability and economic inclusivity, as it helps reduce income inequality.

Ultimately, a competitive labour market can lead to better products and services for consumers. When businesses compete for talent, they are more likely to innovate and improve their efficiency to maintain a competitive edge. This results in a wider variety of high-quality goods and services available to consumers at competitive prices. Additionally, as firms become more productive, they can pass on cost savings to consumers, further enhancing consumer welfare.

Competition agencies, traditionally focused on ensuring that product markets remain competitive by preventing anti-competitive practices, promoting fair competition, and protecting consumer welfare, are increasingly turning their attention to labour markets.

How can competition agencies promote competition in the labour market and what challenges do they face?

Strengthening the enforcement of antitrust laws can prevent monopolistic practices and promote fair competition among employers. By ensuring that no single employer can dominate the market, these laws help maintain a level playing field, which is essential for fair wages and working conditions. Simplifying regulations and reducing unnecessary licensing requirements

²⁵ US Department of Treasury (2022). The State of Labor Market Competition, March.

can make it easier for new businesses to enter the market. This increase in competition can lead to more job opportunities and innovation, benefiting both workers and consumers.

Policies that support job mobility, such as limiting non-compete agreements and ensuring the portability of benefits, can help workers move freely between jobs. This flexibility allows workers to find positions that better match their skills and preferences, leading to higher job satisfaction and productivity. Ensuring that workers have the right to organise and bargain collectively can enhance their bargaining power and promote fair wages.

No-poach agreements, where companies agree not to hire each other's employees, and wage fixing, where employers set wages at a certain level, are both anti-competitive practices. Information sharing, which involves exchanging sensitive information about employment conditions, can also be problematic. Detecting and proving these practices can be difficult because they are often informal, undocumented, and can be disguised as legitimate business practices. For example, employers may argue that information sharing is necessary for benchmarking purposes, making it challenging to prove anti-competitive intent.

The rise of digital platforms and gig economy jobs has created new forms of employment relationships that do not fit neatly into traditional categories of employment. Competition laws are often not well-suited to address the unique dynamics of platform-based work, where workers may not have the same protections as traditional employees. This can lead to exploitation and reduced bargaining power for gig workers²⁶.

Mergers and acquisitions can reduce competition in the labour market by consolidating employer power. Assessing their impact on employment conditions and worker mobility requires detailed, complex, and resource-intensive analysis. Additionally, the increasingly global nature of labour markets, with workers and employers operating across borders, complicates the enforcement of competition laws. Different jurisdictions may have varying regulations and enforcement capabilities, making it challenging to ensure compliance.

The Federal Trade Commission (FTC): Setting standards to combat uncompetitive labour market practices

The Federal Trade Commission (FTC) in the US has been actively addressing competition in the labour market through various partnerships and initiatives.

In September 2023, the FTC and the US Department of Labor signed a Memorandum of Understanding (MOU) to enhance collaboration on issues affecting workers. This collaboration aims to tackle issues such as labour market concentration, one-sided contract terms, and developments in the gig economy.²⁶ The FTC had also previously partnered with the National Labor Relations Board (NLRB) to protect workers from unfair practices and promote fair competition in labour markets.²⁷ In December 2021, the FTC and the US Department of Justice (DOJ) hosted a virtual workshop titled "Making Competition Work: Promoting Competition in Labor Markets" that brought together various stakeholders to discuss issues such as labour

²⁶ FTC, Department of Labor Partner to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices, September 2023.

²⁷ Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices, July 2022.

monopsony, restrictive contractual clauses, information sharing among employers, and the relationship between antitrust law and collective bargaining in the gig economy.²⁸

The FTC regularly conducts research and analysis on labour market concentration and its impact on workers, which helps inform their enforcement actions and policy recommendations to promote competitive labour markets. Several case studies illustrate the FTC's role in maintaining competitive labour markets. The FTC has taken action against companies involved in wage-fixing agreements, where firms collude to set wages at artificially low levels. For instance, in 2020, the DOJ, in collaboration with the FTC, brought its first criminal wage-fixing case against Neeraj Jindal, the former owner of a physical therapist staffing company, for conspiring to fix wages for physical therapists in the Dallas-Fort Worth area.²⁹ Another notable case involved Surgical Care Affiliates LLC, which was charged with entering into agreements with competitors not to solicit each other's senior-level employees.³⁰

The FTC has also scrutinised non-compete agreements that restrict workers' ability to move between jobs. In 2024, the FTC announced a final rule banning most non-compete clauses, which would prohibit employers from entering into non-compete agreements with workers, except in specific circumstances involving senior executives.³¹ The FTC's rule faced significant legal challenges: a federal judge in Texas issued a preliminary order against the ban which led to the rule being vacated nationwide. As a result, the FTC's ban on non-competes has not been implemented but the FTC can still address non-competes through case-by-case enforcement actions. In Australia, non-compete clauses are under scrutiny as part of broader efforts to promote labour mobility and economic growth.

4. An illustrative example: Non-Compete Clauses

Non-compete clauses (NCCS), also known as non-competition agreements or covenants not to compete, are contracts between employers and employees that prohibit the practice of a trade or profession for a specified time and within a specified region after termination of employment. These clauses are intended to protect employers' proprietary information and investments in employee training. However, their impact on labour market dynamics and macroeconomic performance is a subject of debate.

What are the pros and cons of NCCs?

NCCs offer several advantages for businesses. They help protect trade secrets and confidential information, ensuring that sensitive data such as proprietary processes and client lists are not used by competitors. This protection encourages firms to invest more in employee training and development, knowing that their investment is less likely to benefit a rival company. Additionally, non-compete clauses can aid in retaining key talent, reducing turnover and the associated costs of hiring and training new employees.

However, NCCs also have significant drawbacks. They can severely limit employee mobility, restricting workers' ability to find new employment and potentially leading to lower wages and

²⁸ FTC Virtual Workshop, Making Competition Work: Promoting Competition in Labor Markets, 6-7 December 2021.

²⁹ Wage-Fixing Agreements: *United States v. Neeraj Jindal*, Case No. 4:20-CR-358 (E.D. Tex. Dec. 09, 2020)

³⁰ No-Poach Agreements: *U.S. vs. Surgical Care Affiliates, LLC et al.*, Case No. 3:21-CR-00011 (N.D. Tex. Jan. 05, 2021)

³¹ FTC Announces Rule Banning Noncompetes, 23 April 2024.

reduced career advancement opportunities. There is also the potential for abuse, with employers imposing non-competes on low-wage or non-critical positions, unfairly restricting workers' employment options. They can stifle innovation and knowledge transfer within an industry, as employees are unable to share their expertise with other firms. Additionally, enforcing NCCs can be costly and time-consuming, involving legal disputes and potential litigation.

NCCs are often seen as an incentive-compatible mechanism to encourage employers to invest in employee human capital. Economic theory suggests that NCCs can help alleviate the hold-up problem by aligning the incentives of the employer and employee (Grossman and Hart, 1986; Lipsitz, 2017). Following this idea, studies by Garmaise (2009) and Ghosh and Shankar (2017) examined scenarios where the firm and worker co-invest in the worker's human capital, considering non-competes as either exogenous or endogenous. Both studies concluded that NCCs lead firms to increase their investment in employees, whereas the absence of non-competes tends to result in greater employee investment. However, this micro-level mechanism may not always translate into positive macroeconomic effects. While non-competes can enhance firm-specific investments and productivity, they may also reduce overall labour market mobility and innovation, potentially leading to negative broader economic impacts.

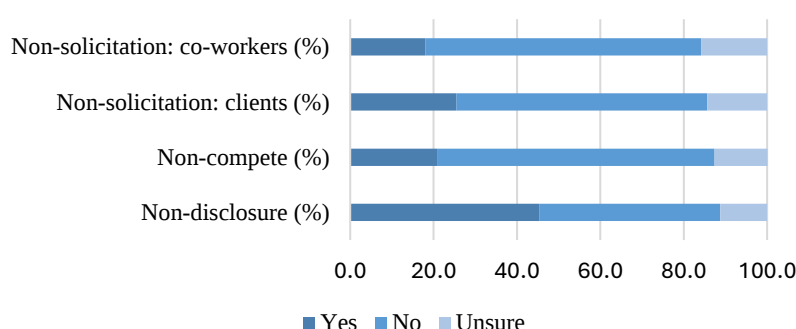
NCCs impact job mobility in several ways. They often prohibit employees from working for competitors or starting their own businesses in related fields, causing workers to hesitate to change jobs due to fear of legal repercussions. This restriction reduces labour market flexibility, hindering overall workforce mobility. NCCs can also lead to skill mismatches, forcing workers to stay in roles that don't align with their skills or career aspirations, such as an engineer unable to join a tech startup. Additionally, some NCCs impose geographical constraints, limiting job changes within specific areas and restricting workers who want to relocate. Furthermore, by limiting movement between firms, NCCs can hinder knowledge transfer and innovation, as employees miss out on valuable learning experiences at more innovative companies. These barriers affect both individual career growth and broader economic dynamics.

Evolution and prevalence of NCCs in Australia

NCCs began to appear in employment contracts in Australia, primarily in high-wage and senior roles in the early 20th century. These clauses were justified as necessary to protect trade secrets, client relationships, and to incentivize investments in employee training. The enforceability of NCCs in Australia has traditionally been governed by common law principles, which require that such clauses be reasonable in scope, duration, and geographic area to be enforceable. Courts have generally scrutinized NCCs to ensure they protect legitimate business interests without being overly restrictive.

In the late 20th century, the use of NCCs expanded beyond senior roles to include middle management and specialized technical positions. NCCs became more common in a wider range of industries, including technology, finance, and professional services. The clauses were increasingly used to prevent employees from joining competitors or starting their own businesses in the same field. In the 2010s research began to highlight the broader economic impacts of NCCs, including their potential to reduce job mobility and wage growth. Studies from the US and other countries influenced the debate in Australia, suggesting that NCCs could have negative effects on innovation and labour market dynamics. Notwithstanding, the prevalence of NCCs has continued to rise.

Figure 4: Restraint clause use by employers



Source: ABS Restraint Clauses 2023 Survey

The Australian Bureau of Statistics (ABS) Restraint Clauses, Australia 2023 dataset provides insights into the prevalence and types of restraint clauses used by Australian businesses. The survey found that 21% of businesses used non-compete clauses for at least some of their employees in 2023.³² Non-disclosure clauses were the most common, used by 45.3% of businesses, followed by non-solicitation of clients (25.4%), non-compete clauses (20.8%), and non-solicitation of co-workers (18.0%) (Figure 4). These clauses are prevalent across various sectors, affecting both high-wage and low-wage roles, including fast-food workers, childcare providers, and security guards (Figure 5).³³

Recent evidence on impact of NCCs in Australia

Buckley et al. (2024) investigates the impact of NCCs on job mobility and wages in Australia. Using data from an ABS survey linked to employer-employee microdata, the study finds that increased use of NCCs is associated with reduced job mobility and lower wage growth, particularly for low-skill workers.

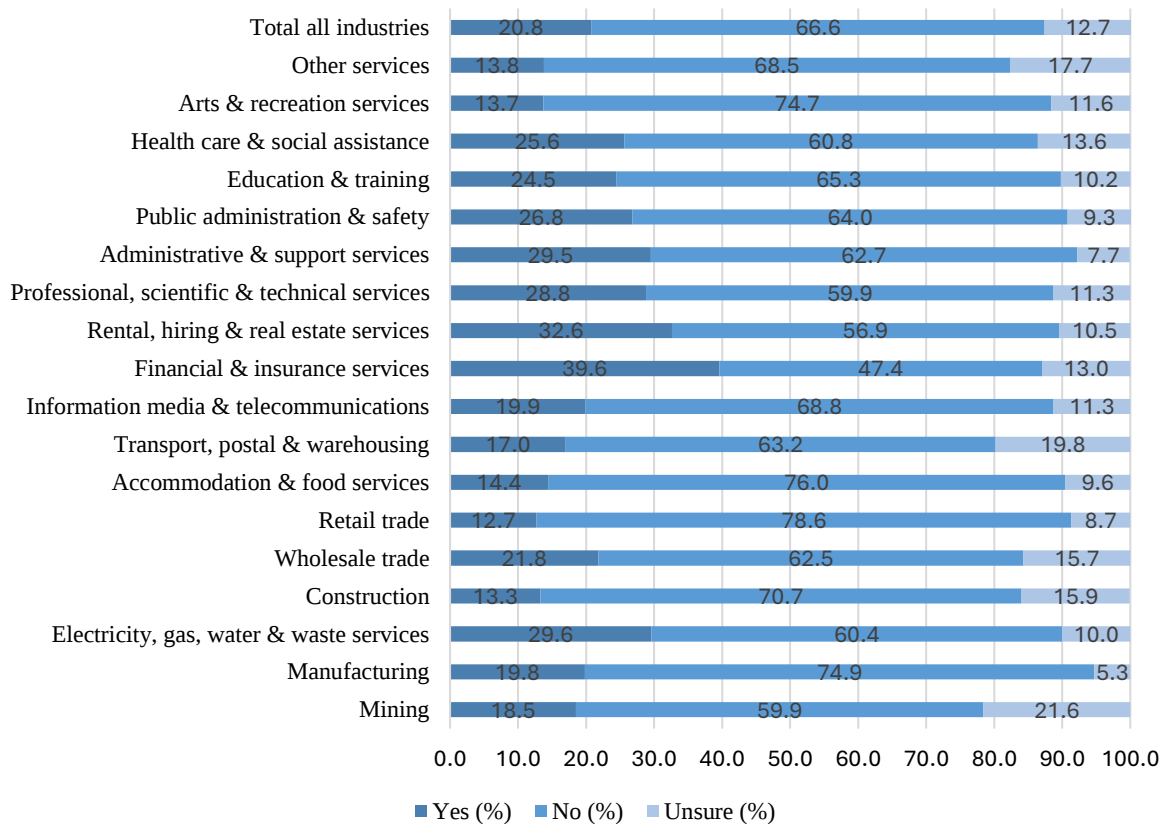
Specifically, workers at firms that increased their use of NCCs experienced a 1.8 percentage point decrease in job-separation probability, an 11% decline, and a 0.9 percentage point drop in job-to-job transition probability, a 10% decline, with a notable 29% fall in within-industry transitions. Additionally, workers at these firms are paid 4% less on average than those at firms using only non-disclosure agreements (NDAs), with lower-skill workers seeing around a 10% lower wage level after five years of tenure. These findings highlight the negative impact of NCCs on job mobility and wage growth, particularly for lower-skill workers.

The paper concludes that NDAs offer similar potential benefits to NCCs but with fewer downsides for job mobility and worker wages. NDAs prevent workers from disclosing confidential information, which can protect trade secrets and encourage innovation without significantly hindering job mobility. The findings suggest that NDAs could be a more balanced approach for firms to protect their interests while minimizing negative impacts on employees' job mobility and wage progression.

³² These findings align with Andrews and Jarvis (2023), which surveyed employees rather than employers. They leverage data from the McKinnon Poll, an online survey of 3,000 respondents, which is weighted to census data to enhance representativeness.

³³ Australian Bureau of Statistics (21 February 2024), Restraint Clauses, Australia, 2023, ABS Website, accessed October 2024.

Figure 5: Use of NCCs by industry



Source: ABS Restraint Clauses 2023 Survey

Balancing protection and mobility: Alternatives and limits on NCCs

In addition to NDAs, companies can use various strategies to protect trade secrets and sensitive information while allowing employees to explore new career opportunities. These include Confidentiality Agreements, which define confidential information and employees' obligations; Intellectual Property (IP) Agreements, ensuring company ownership of inventions; and Comprehensive Data Security Policies, governing the handling of sensitive information. Employee Training Programs educate staff on data security, and thorough Exit Interviews remind departing employees of their confidentiality obligations. Non-Solicitation Agreements prevent employees from soliciting the company's clients, customers, or other employees for a certain period, protecting relationships and the workforce without broadly restricting employment opportunities.

Ross (2024) discusses the challenges of monitoring alternatives to NCCs and suggests ways to limit the use of NCCs. He notes that while alternatives such as confidentiality agreements, intellectual property agreements, and data security policies can help protect a company's interests, they are often more difficult to enforce compared to NCCs. This difficulty arises because proving a breach of confidentiality or misuse of intellectual property can be complex and resource intensive. Courts have historically found it challenging to draw clear lines

between what constitutes confidential information and what does not, making enforcement less straightforward.

To limit the use of NCCs, Ross (2024) suggests several regulatory responses. These include placing an upper limit on the duration of NCCs, requiring employers to compensate employees during the period the NCC is in effect, and prohibiting the use of NCCs for low-wage workers. He also proposes that courts should adopt a stricter approach to granting injunctive relief, which is often used to enforce NCCs, and suggests that employers should be required to make a stronger case before such relief is granted. Additionally, he advocates for prohibiting the inclusion of NCCs in enterprise agreements. These measures aim to balance the protection of legitimate business interests with the need to promote employee mobility and innovation.

NCCs: An additional economic barrier for low-wage workers

NCCs are particularly problematic for low-wage workers because they limit job mobility and restrict opportunities for better employment, trapping workers in low-paying jobs. These workers often lack the bargaining power to negotiate better terms and the financial resources to challenge these clauses legally. As a result, they face prolonged periods of unemployment or underemployment if they cannot find new jobs within their industry. Additionally, non-compete clauses can hinder skill development and career growth, exacerbating economic vulnerability and reducing overall job satisfaction. This combination of factors makes NCCs especially detrimental to low-wage workers.

Lipsitz and Johnson (2022) shows that NCCs are prevalent among low-wage workers and finds that firms often use NCCs to mitigate the challenges of adjusting wages downward, particularly in response to minimum wage increases.³⁴ This practice can stifle job mobility and wage growth, as workers are restricted from seeking better opportunities elsewhere. The negative impact on employment is especially pronounced when NCCs are unenforceable, suggesting that the mere presence of these clauses can deter workers from changing jobs, even if they are not legally binding.

Further evidence from Lipsitz and Starr (2021) highlights the detrimental effects of NCCs on low-wage workers by examining the 2008 Oregon ban on NCAs for hourly-paid employees. Their study employs a difference-in-differences approach to assess the ban's impact, revealing that it led to a 2-3% increase in hourly wages on average. This wage growth was accompanied by improved job mobility and occupational status, indicating that removing the constraints of NCCs allows workers to pursue better job opportunities and negotiate higher wages. The positive effects were particularly significant for female workers and those in occupations where NCCs were more common, highlighting the broader benefits of restricting these agreements.

The combined findings from these studies suggest that NCCs can have a significant negative impact on low-wage workers by limiting their job mobility and suppressing wage growth. Regulatory interventions, such as the Oregon ban, demonstrate that reducing the enforceability of NCCs can lead to tangible benefits for workers, including higher wages and greater job flexibility. These insights support the need for policy reforms aimed at curbing the use of NCCs, particularly in low-wage sectors, to foster a more dynamic and equitable labour market.

³⁴ See also Lipsitz, M. (2017).

Ross (2024) proposes several regulatory measures to address the negative impact of NCCs on low-wage workers. These include banning or significantly limiting NCCs for low-wage jobs by setting a minimum salary threshold below which such clauses are not enforceable. He also advocates for greater transparency, requiring employers to clearly explain the terms and implications of NCCs before employees sign their contracts. Additionally, he suggests providing legal support and resources to help low-wage workers challenge unfair NCCs, as well as calls for stronger government intervention and potential legislative changes to protect these workers and enhance their job mobility and bargaining power.

Why don't firms compensate workers for NCCs?

The theory of compensating wage differentials explains that jobs with undesirable characteristics, such as high risk or unpleasant working conditions, must offer higher wages to attract and retain workers. This theory suggests that the additional income compensates workers for the negative aspects of the job, ensuring that the overall utility of different jobs is balanced. In the context of NCCs this theory implies that workers should receive higher wages to compensate for the restrictions on their job mobility and career opportunities. However, in practice, this compensation is often not provided, especially for low-wage workers who have less bargaining power. Higher-paid or highly skilled workers are more likely to negotiate better compensation for agreeing to NCCs, aligning with the theory's prediction that undesirable job characteristics should be offset by higher pay.

Feher (2023a) provides insights into how these agreements are compensated across different levels of employees within a firm. The compensation for NCCs varies significantly based on the employee's position and potential damage they could cause by competing. For higher-ability employees or those in top positions, firms often offer higher wages and other benefits to compensate for the restrictions imposed by NCCs. This is because these employees have more bargaining power, and their departure could significantly impact the firm. Conversely, low-wage or lower-ability workers typically receive minimal compensation for NCCs, as their bargaining power is limited and the perceived risk to the firm is lower. This creates a disparity where only certain types of workers can negotiate better terms in exchange for agreeing to non-compete clauses.

Feher (2023b) explores how the optimal stringency of NCCs varies with an employee's position within a firm's hierarchy. The study develops a theoretical model to analyse the impact of NCCs on employees' incentives to exert effort and firms' decisions to invest in human capital. The results reveal that NCCs are most commonly applied to employees at the top and bottom of the hierarchy. For top positions, NCCs are used to retain highly productive employees, with firms offering high compensation to ensure their effort and loyalty. In middle positions, NCCs are typically absent to maximize employees' incentives to exert effort, as these workers receive lower wages but benefit from the freedom to compete. Surprisingly, NCCs reappear at the bottom of the hierarchy, where employees are less productive, and their compensation does not incentivize significant effort. The study suggests that prohibiting NCCs for bottom positions could enhance social welfare by allowing moderate matches between firms and employees to improve productivity and overall economic efficiency.

While NCCs can protect trade secrets and encourage investment in employee training, they also pose significant barriers to job mobility and wage growth, particularly for low-wage workers. The evidence suggests that NCCs often limit career advancement and suppress wages, exacerbating economic vulnerability for those in lower-skilled positions. Regulatory

interventions, such as limiting the duration of NCCs, requiring compensation for affected employees, and banning their use for low-wage jobs, are crucial steps towards balancing the protection of business interests with the need to enhance worker mobility and innovation. By adopting these measures, policymakers can foster a more dynamic and equitable labour market, ultimately contributing to higher productivity and economic growth.

5. Conclusions

This paper has explored the relationship between competition, productivity, and labour markets in Australia, emphasising the critical role that competition plays in enhancing wage and productivity growth. The analysis highlights the importance of a competitive labour market in driving economic efficiency, innovation, and fairness, particularly in the context of Australia's current economic challenges, including low productivity growth and variable wage increases across sectors.

The overview of the Australian labour market highlighted significant trends and challenges, such as the rise of part-time and casual employment, gender disparities, and youth unemployment. These issues are compounded by the recent slowdown in productivity growth, which is at its lowest in 60 years. Addressing these challenges requires a comprehensive approach that includes fostering competition in the labour market.

The role of competition agencies is crucial in this context. By preventing anti-competitive practices such as wage-fixing and non-compete agreements, these agencies can enhance job mobility, ensure fair compensation, and support a more dynamic and resilient labour market. The case study on non-compete clauses (NCCs) provides valuable insights into their evolution, prevalence, and economic impacts. While NCCs can protect trade secrets and encourage investment in employee training, they also pose significant barriers to job mobility and wage growth, particularly for low-wage workers.

The findings suggest that regulatory interventions, such as limiting the duration of NCCs, requiring compensation for affected employees, and banning their use for low-wage jobs, are essential to balance the protection of business interests with the need to enhance worker mobility and innovation. These measures can help create a more equitable and dynamic labour market, ultimately contributing to higher productivity and economic growth.

In conclusion, fostering competition in the labour market is vital for addressing Australia's productivity challenges and ensuring sustainable economic growth. Policymakers must continue to implement and refine strategies that promote fair competition, protect workers' rights, and encourage innovation. By doing so, Australia can build a more resilient and inclusive economy that benefits all workers and businesses.

References

- Acemoglu, D. and Restrepo, P. (2018). The Race between Man and Machine: Implications of Technology for Growth, Factor Shares, and Employment. *American Economic Review*, 108(6), 1488-1542.
- Acemoglu, D. and Restrepo, P. (2018). Low-Skill and High-Skill Automation. *Journal of Human Capital*, 12(2), 204-232.

Andrews, D., and Jarvis, B. (2023). The ghosts of employers past: how prevalent are non-compete clauses in Australia?. e61 Institute.

Autor, D., Dube, A and McGrew, A. (2023). The Unexpected Compression: Competition at Work in the Low Wage Labor Market. NBER Working Paper No. 31010. National Bureau of Economic Research.

Buckley, J., Smith, A., & Johnson, R. (2024). The impact of non-compete clauses on job mobility and wages in Australia. e61 Institute.

Commonwealth of Australia (2023). Working Future: The Australian Government's White Paper on Jobs and Opportunities, Department of the Treasury.

Deloitte Access Economics and RMIT Online (2023). Ready, set, upskill: Prioritising skills for a resilient workforce.

Feher, A. (2023a). The economics of non-compete clauses. University of Amsterdam.

Feher, A. (2023b). Non-competition Agreements and Dedicated Human Capital. University of Amsterdam.

Garmaise, M. J. (2009). Ties that Truly Bind: Noncompetition Agreements, Executive Compensation, and Firm Investment. *The Journal of Law, Economics and Organization*, 27, 376–425, 2009.

Grossman, S. J. and Hart, O. D. (1986). The costs and benefits of ownership: A theory of vertical and lateral integration. *Journal of Political Economy*, 94(4), 691–719.

Ghosh, S. and Shankar, K. (2017). Optimal Enforcement of Noncompete Covenants. *Economic Inquiry*, 55, 305–318, 2017.

Lane, M. and A. Saint-Martin (2021), "The impact of Artificial Intelligence on the labour market: What do we know so far?", *OECD Social, Employment and Migration Working Papers*, No. 256, OECD Publishing, Paris.

Laroche, P. (2021). Unions, Collective Bargaining, and Firm Performance. In: Zimmermann, K.F. (eds) *Handbook of Labor, Human Resources and Population Economics*. Springer, Cham.

Lipsitz, M. (2017). *The costs and benefits of noncompete agreements* (Doctoral dissertation). Boston University.

Lipsitz, M. and Johnson, M. S. (2022). Why are low-wage workers signing noncompete agreements? *Journal of Human Resources*, 57(3), 689-724.

Lipsitz, M. and Starr, E. (2021). Low-wage workers and the enforceability of non-compete agreements. *Management Science*, 2021..

Productivity Commission (2023). 5-year Productivity Inquiry, Volume 1, Advancing Prosperity, Report no 100, February 2023.

Productivity Commission (2023). 5-year Productivity Inquiry, Volume 7, A more productive labour market, Report no 100, February 2023.

Ross, I. (2024). Non-compete clauses in employment contracts: The case for regulatory response. TTPI Working Paper No. 4/2024. Tax and Transfer Policy Institute, Crawford School of Public Policy, Australian National University.

US Department of Treasury (2022). The State of Labor Market Competition, March.

Workplace Gender Equity Agency (2023). Gender Equality Scorecard 2022-2023, November 2023.