Australian Government

Non-compete clauses and other worker restraints

Department of the Treasury

The policy problem and preferred policy approach

Non-compete clauses (NCCs) and other worker restraints are a common and growing feature of employment agreements across all sectors and income levels in Australia. Australian and international evidence shows that these clauses limit worker mobility and supress wages, with broader economic costs to productivity, innovation and competition. To address these issues, the preferred policy approach incorporates a ban on NCCs for low- and middle-income employees, co-worker non-solicitation clauses, and no-poach and wage fixing agreements. It also includes limiting the use of other remaining restraints of trade that are not subject to these bans. This option carefully targets restraints of trade that are most harmful to workers and the economy, while retaining some flexibility for businesses to use some restraints in certain circumstances.

Impact Analysis

Impacts

These reforms are expected to create a more dynamic, productive and competitive economy. Reforming NCCs and other restraints will lead to improved labour mobility resulting in increased labour productivity and wages over time. The e61 Institute estimates that workers at firms that use NCCs extensively are on average paid 4 per cent less than similar workers at similar firms that only use non-disclosure clauses. Reduced barriers to labour mobility also help the broader economy, ensuring workers find their most productive jobs, improving the dispersion of knowledge, knowhow and innovation across the economy, and providing a significant boost to aggregate productivity as outlined by recent Productivity Commission (PC) modelling of this reform. As reforms are implemented, there will be a one-off familiarisation cost to businesses of $46.4 million. However, this cost will be significantly offset by ongoing regulatory compliance savings and other economic benefits for businesses resulting from improved legal certainty and more efficient allocation of labour. Overall, these reforms are expected to provide a significant ongoing boost to real GDP ($5.1 billion annually in 2024 dollars) according to PC modelling, providing net benefits to the Australian community.

Who is impacted

Individuals	Businesses	Public
➢ Improved job mobility ➢ Increased real wages ➢ Increased productivity	➢ One-off ‘familiarisation’ cost of complying with the reforms ➢ Reduced administrative expenses from more legal certainty ➢ Rise in entrepreneurship and new business formation	➢ Increased GDP ➢ Increased knowledge and innovation spillovers ➢ Reduced consumer prices

Other considerations and implementation

The preferred option is expected to include legislative amendments to the *Fair Work Act 2009* and the *Competition and Consumer Act 2010* with reforms expected to apply prospectively from 2027. Other policy options that were considered include maintaining the status quo or a full ban of all restraint of trade clauses. However, based on stakeholder feedback and empirical evidence, it was determined that these options did not strike the right balance for businesses, employees and the public.