

FEDERAL BUDGET 2025-26: PROPOSED BAN TO NON-COMPETE CLAUSES

Following the release of the 2025–26 Federal Budget on 25 March 2025, the Albanese Government has confirmed it will move to ban non-compete clauses in employment contracts for most Australian workers, should it be re-elected.

This commitment builds on the Treasury’s Competition Review Issues Paper,¹ released in April 2024, which identifies concerns about the impact of non-compete and related clauses on competition, job mobility, innovation, productivity and wage growth.

SCOPE OF PROPOSED BAN

Non-compete clauses typically prevent an employee from working for a competitor or establishing a competing business for a defined period following the end of employment. While these clauses are intended to protect legitimate business interests, the Government has expressed concern about their misuse.

Under the proposal, non-compete clauses would be prohibited in employment contracts for workers earning less than the high-income threshold, currently \$175,000 under the *Fair Work Act 2009* (Cth). The reform is anticipated to apply prospectively from 2027, subject to consultation and the passage of legislation.

RELATED REFORMS: WAGE-FIXING AND NO-POACH AGREEMENTS

Alongside the proposed ban on non-compete clauses, the Government has committed to closing what it describes as “loopholes in competition law” that currently permit the following anti-competitive arrangements between businesses:

- Wage-fixing, where businesses make arrangements that cap workers’ pay and conditions without the knowledge or agreement of affected workers.
- No-poach agreements, which prevent workers from being hired by competitors.

POTENTIAL ECONOMIC IMPACTS

According to a joint media release issued on 25 March 2025,² the Government stated that banning non-compete clauses for most workers “could lift the wages of affected workers by up to four per cent, or about \$2,500 per year for a worker on median wages.”

The release also referenced Productivity Commission modelling, which estimates the reforms

¹ Treasury, *Non-Competes and Other Restraints: Understanding the Impacts on Jobs, Business and Productivity, Issues Paper* (April 2024).

² Jim Chalmers (Treasurer), Murray Watt (Minister for Employment and Workplace Relations) and Andrew Leigh (Assistant Minister for Competition, Charities and Treasury; Assistant Minister for Employment), *Cracking Down on Non-Compete Clauses to Boost Wages and Productivity* (Joint Media Release, 25 March 2025).

could “improve productivity and add \$5 billion or 0.2 per cent to GDP annually, as well as reduce inflation.”

The Government has characterised non-compete clauses as a constraint on both individual opportunity and broader economic performance, describing them as “a handbrake on business creation and a speed bump on aspiration.”

CONSULTATION AND FUTURE CONSIDERATIONS

The Government will consult on the details of the proposed reforms, including:

- Potential exemptions (e.g. high-income employees);
- Penalties for non-compliance; and
- Transition arrangements.

Of note to employers is that, while non-compete clauses are the current focus of reform, the Government has indicated it will also consult on the use of non-solicitation clauses. Any future move to restrict these provisions could have implications for businesses that rely on them to safeguard client relationships and protect commercially sensitive information.

PRACTICAL STEPS FOR EMPLOYERS

While it remains uncertain whether the proposed ban on non-compete clauses will proceed, either through re-election of the Government or the introduction and passage of legislation, the announcement signals a clear policy direction that may have future implications for employers.

Employers that rely on non-compete clauses should take proactive steps to assess their current arrangements and mitigate potential impacts. Key actions include:

- Review existing employment contracts to identify where non-compete clauses are currently in use, particularly among lower and mid-level roles where enforceability is already limited.
- Assess the reasonableness of restraints in light of their intended purpose. Clauses should be tailored to protect a legitimate business interest and be narrowly defined in terms of time, geography and scope.
- Consider alternative protections, such as confidentiality and intellectual property clauses, which are unlikely to be affected by the proposed reforms.

We will continue to monitor the progress of these reforms and provide updates. Employers seeking guidance on the potential implications for their business or contractual protections are encouraged to contact Industry Legal for advice.

CONTACT US

This document is for information purposes only and should not be regarded as legal advice. Please contact us on 1300 101 391 or oa@industrylegalgroup.com.au if you require advice.

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