Law Council
OF AUSTRALIA

Reform to non-compete clauses and other restraints – draft legislation

The Treasury

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Telephone +61 2 6246 3788
Email mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612
Level 1, MODE3, 24 Lonsdale Street,
Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

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Introduction

1. The Law Council of Australia welcomes the opportunity to provide a submission to the Treasury on the Exposure Draft of the Competition and Fair Work Legislation Amendment (Banning Unfair Non-Competes) Bill 2026 (Cth) (**Draft Bill**).

2. The Draft Bill would amend both the *Competition and Consumer Act 2010* (Cth) (**CCA**) and the *Fair Work Act 2009* (Cth) (**FW Act**) to implement the Australian Government's proposal to ban non-compete and other clauses. As noted in previous submissions to the Treasury, the Law Council is broadly supportive of the Australian Government's objective of addressing the misuse of non-compete and related clauses.[1]

3. This submission primarily seeks to identify and address matters arising from the drafting of the Draft Bill rather than the underlying policy decisions of the Australian Government. The Law Council has identified a number of concerns regarding the breadth, operation and potential unintended consequences of the Draft Bill in its current form.

4. In some instances, there are differing views within the legal profession regarding the proposed reforms. Where views diverge, positions are attributed to specific contributors.

Schedule 1—Amendment of the CCA

5. Schedule 1 to the Bill extends the existing cartel prohibitions in Part IV of the CCA to prohibit the following two new categories of cartel conduct between parties that employ staff (proposed section 45ADA):

   (a) no-poach agreements: Provisions of a contract, arrangement or understanding that have the purpose, or have or are likely to have the effect, of directly or indirectly preventing "a party" from recruiting, soliciting or hiring "another party's" current, former or future staff, or imposing conditions on doing so (proposed subsection 45ADA(2)); and

   (b) wage-fixing agreements: Provisions that have the purpose, or have or are likely to have the effect, of directly or indirectly fixing, maintaining, decreasing or controlling remuneration or terms and conditions of employment of the current or future staff of two or more parties to the contract, arrangement or understanding (proposed subsection 45ADA(3)).

6. Proposed section 45ADA gives rise to both criminal and civil penalties, consistent with the existing treatment of cartel conduct under Division 1 of Part IV. The severity of these consequences, including potential imprisonment for up to 10 years for individuals, makes it critically important that the new provisions are clearly drafted without interpretative ambiguity.

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[1] Law Council of Australia, Submission to the Treasury, Worker non-compete clauses and other restraints (7 June 2024); Law Council of Australia, Submission to the Treasury, Reform to non-compete clauses and other restraints on workers (12 September 2025).

7. This is especially the case given that the cartel provisions have historically attracted judicial criticism for their complexity, particularly in a criminal law context. For example, Wigney J stated in *Director of Public Prosecutions (Cth) v Citigroup Global Markets Australia Pty Ltd and Others (No 5)*:

> *This case is anything but simple or straightforward. Even putting to one side the relatively complex factual matrix upon which the prosecution case is based, the offences with which the accused have been charged are highly complex. Indeed, it is difficult to think of any more complex and difficult offences than the ones in question in this case.*
>
> *Those responsible for drafting the cartel offence provisions in the C&C Act — none of whom could possibly have ever set foot in a criminal trial court before — appear to have approached the drafting task as if it were akin to producing a cryptic crossword. The offence provisions, when read with the extensive definitions of the terms used in them, are prolix, convoluted and labyrinthine. When coupled with the general principles of criminal responsibility, including the extensions of criminal responsibility in Ch 2 of the Criminal Code, the complexity of the offences is multiplied. By the time the maze of provisions is worked through, it is very easy to lose sight of exactly what conduct the offence provisions are intended to bring to account and punish.*[2]

Extraterritorial application

8. There are two interrelated issues with the current drafting of the amendments to the CCA that would seem to give the proposed cartel provision in section 45ADA unintended extraterritorial application. The specific drafting detail is as follows:

   (a) Definition of "staff": The proposed definition of "staff" in section 45AB of the Bill does not require that the employee be located in Australia, be employed under a contract governed by Australian law, or perform work in Australia. As such, the concept of "staff" would likely need to be read consistent with the extended extraterritorial application of the CCA in the absence of qualifying wording.

   (b) Absence of a competition condition: The competition condition (see, in comparison, CCA subsections 45AD(1) and (4)) is absent from the Bill. The absence of a competition condition removes the territorial nexus that is important to confine the extraterritorial application of the cartel provision. It is noted in *2026 Miller's Australian Competition and Consumer Law Annotated* notes, for example, that:

> *The Competition and Consumer Amendment (Competition Policy Review) Act 2017 (Act No 114, 2017) amended s45AD so that the requirement now is that the parties must be, or be likely to be, in competition with each other in the supply or acquisition of relevant good or services in trade or commerce. The effect is to expressly confine the cartel provisions to cartels affecting competition in Australia, or between Australia and other places.*[3]

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2 *DPP (Cth) v Citigroup Global Markets Australia Pty Ltd (No 5)* (2021) 293 A Crim R 331, 384.

3 Russell Miller, *2026 Miller's Australian Competition and Consumer Law Annotated* (Thomson Reuters, 2026) CCA.45AD.220 (emphasis added).

9. In the absence of drafting that limits the extraterritorial application of the new cartel prohibition, section 5 of the CCA would apply by default to give the cartel provision extended extraterritorial application to conduct outside Australia. This would mean, for example:

   (a) the prohibition would apply to Australian corporations in relation to their hiring conduct outside Australia of foreign employees in markets unrelated to Australia; and

   (b) the cartel provision could apply to standard employment arrangements entered into by Australian subsidiaries of multinational groups in foreign jurisdictions, even where the foreign employees in question never work in Australia.

10. Moreover, the current drafting of the Bill would seem to give the CCA an extraterritorial reach that is inconsistent with international practice and that would unduly interfere in the employment markets of other countries. There is also a risk of conflict with foreign laws and norms of international comity, particularly where the impugned conduct is lawful or customary in the jurisdiction in which it occurs. We assume this scope was not intended as the public statements of the Australian Government appear to have been directed only at workers in Australia.[4]

11. The extraterritorial scope of the provisions also raises questions of enforceability. In practice, the Australian Competition and Consumer Commission (**ACCC**) would face substantial difficulties in investigating and gathering evidence of contraventions occurring offshore. Service of process on, and obtaining jurisdiction over, foreign parties would present further obstacles. Even where enforcement proceedings are pursued, Australian civil penalty orders and criminal sanctions are unlikely to be enforceable abroad. All of this would undermine the veracity of the law.

[4] See, eg, the Hon Dr Jim Chalmers MP, Treasurer, *Cracking down on non-compete clauses to boost wages and productivity* (Media Release, 25 March 2025).

Recommendations

To limit the extraterritorial application of the proposed cartel provision in proposed section 45ADA, the Law Council recommends that:

- **The definition of "staff" in section 45AB should be amended to confine the definition to employees located in Australia, not employees outside Australia.**
- **The precise territorial nexus and any extraterritorial scope may require careful thought to avoid unintended overreach and the significant practical and legal complications that would result.**
- **A competition condition (or other express requirement) should be introduced to confine the new cartel provision to relevant conduct affecting a market in Australia.**

Drafting precision

12. There are several interrelated issues with the current drafting of proposed section 45ADA which collectively give the proposed section uncertain application and excessive scope. These issues should be individually addressed in the final version of the Bill and are as follows:

    (a) Party to a contract, arrangement or understanding (**CAU**): The use of the word "party" needs to expressly say "party to a contract, arrangement or understanding" in each usage, otherwise there is some interpretative uncertainty.

    (b) Related bodies corporate: The extended definition of party to include related bodies corporate raises complications in the context of the prohibition on wage fixing.

    (c) Competition condition: The absence of the competition condition is problematic as it gives proposed section 45ADA potential broader scope than intended, including potentially to vertical arrangements as discussed further below.

    (d) Other requirements: The use of the words "other requirements" in proposed paragraph 45ADA(2)(b) gives the prohibition broad application with potentially unintended consequences.

    (e) Considering multiple contracts together: The phrase "considered together with" is too broad and creates unintended consequences.

Concept of "party"

13. The current drafting of proposed subsection 45ADA(2) of the new cartel provision uses the word "party". There is a drafting note under proposed subsection 45ADA(1) that "party has an extended meaning – see section 45AC". However, section 45AC of the CCA does not define the term "party" but simply extends the concept of a party to related bodies corporate. As such, the word "party" may take its ordinary meaning,

which is unclear in the drafting of that new section given inconsistencies with the other cartel provisions.

14. The other cartel provisions are drafted to use the express words “parties to the contract, arrangement or understanding”, hence the concept of party is expressly related to being a party to a CAU. This wording is important as it explains that the word “party” is intended to mean a party to the relevant CAU, rather than a party more broadly.

15. The uncertain reach of the provision is heightened by a combination of the broad reference to “party” and the reference to “indirect” effects. As currently drafted, there is a risk, for example, that a provision in an employment contract between an employer and an employee could be a provision that is “likely to have the effect of indirectly preventing” another third-party employer from hiring that same employee.

Concept of a “party” in the context of wage-fixing agreements:

16. The proposed prohibition on wage-fixing arrangements only applies where a provision fixes or controls the pay or employment conditions of employees of *at least two* parties to the agreement. This appears to be intended to ensure that one-way restrictions on wages or other terms of employment (such as in a vertical relationship) are not prohibited.

17. However, given that the proposed subsection 45ADA(4) would provide that a provision may have the relevant purpose or likely effect when considered together with the provision of any other CAU which has a common party, the requirement that the employment conditions of “at least two parties to the agreement” be restricted may be easily (and inadvertently) satisfied on account of separate, unrelated arrangements between the parties. For example, a contract between A and B which determines employment conditions for party B, when read together with a separate, unrelated contract between A and B which determines employment conditions for party A.

18. Another practical issue is that existing section 45AC of the CCA creates an extended meaning of the term “party” for the purpose of the cartel provisions, such that the related bodies corporate of the parties to the relevant agreement are deemed to also be parties to the agreement. That extended meaning of “party” would also apply to the proposed new cartel prohibitions (see the drafting note in the new section 45ADA(1)).

19. As a result, contracts or arrangements which affect the employment conditions for the staff of one party to a contract and that party's related bodies corporate may constitute wage-fixing, even though the employment conditions for the staff of the other party to the contract are not affected. This would create issues in various contexts. For example, where a buyer may seek to impose legitimate restrictions on the seller *and* the seller's related bodies corporate (in circumstances where there is no stand-alone exemption for provisions arising in a services contract or a sale of business contract).

Competition condition

20. The existing cartel provisions in section 45AD of the CCA operate within a framework that requires the parties to a CAU to be in actual or potential competition with one another. Specifically, the existing offences relating to price fixing, output restrictions, market allocation and bid rigging all contain an express requirement that the parties be actual or likely competitors, or that the provision relate to competitive conduct. The new no-poach and wage-fixing provisions contain no such requirement.

21. The absence of a competition condition is a significant departure from the established cartel framework. Again, the new prohibitions could, on their face, be enlivened by an agreement between parties who do not compete, such as vertical arrangements such as a franchisor and franchisee, a buyer and supplier, a principal and subcontractor, or any other parties in other conventional commercial relationships. This extends the reach of the cartel provisions well beyond the horizontal competitor-to-competitor conduct that has historically been the target of cartel laws. However, as drafted, employees themselves could breach the cartel provisions, when the law is supposed to protect employees. For example, an employer-employee employment contract may contain an annual performance bonus that must be repaid if the employee leaves the employer within 12 months, but this is arguably "likely to have the effect" of "indirectly preventing a party from hiring" that employee, where "party' could be construed colloquially to include any "third party".

22. The Law Council understands that the policy intent as expressed at paragraphs [1.6]–[1.8] of the Draft Explanatory Memorandum (**Draft EM**) is to target businesses "substituting coordination for competition" in the labour market and no-poach agreements between "competitors". However, the proposed statutory text of new section 45ADA imposes no such limitation.

Other requirements

23. The broad drafting in proposed subsection 45ADA(2) has potential unintended consequences due to the use of the words "other requirements" and the word "indirectly". For example, it could be a breach of the cartel provisions as currently drafted for a law firm to enter into an arrangement with other law firms that has the purpose of indirectly imposing "other requirements" before any law firm can conduct any part of the process of soliciting future employees. Today, law firms do enter into arrangements to co-ordinate the hiring of law graduates from universities so that all offers are made at the same time so that law graduates can compare offers between different law firms and make an informed choice. Such arrangements are intended to benefit law students and would, under the current drafting of the cartel provision, be potentially prohibited.

24. Similarly, the current drafting could also have the unintended consequence of discouraging businesses from including labour-standard provisions in their supply chain contracts or, for that matter, meeting other basic regulatory standards.

25. For example, it could be a breach of the cartel provisions for Business A to require Business B to comply with genuine minimum labour standards intended to prevent labour exploitation or support compliance with modern slavery obligations. Modern

slavery clauses are now commonly included in procurement contracts, and these could run afoul of proposed subsection 45ADA(2) as currently drafted.

26. Businesses commonly require suppliers to meet minimum regulatory standards and to impose equivalent requirements on their subcontractors. Under proposed subsection 45ADA(4), provisions in separate agreements with a common party may be considered together. This creates a risk that legitimate labour-standard provisions passed through multiple levels of a supply chain could collectively be characterised as problematic, even where each provision serves the purpose of preventing labour exploitation and complying with regulatory requirements.

27. From a policy perspective, this risk should be viewed in the context of the Australian Government's separate consultation on a proposed criminal offence for failing to prevent modern slavery.[5] The intersection of these two reforms could create directly conflicting compliance incentives: potential cartel exposure may discourage businesses from imposing legitimate labour standards, while the proposed modern slavery offence would encourage businesses to implement effective measures to prevent exploitation. The Draft Bill's limited exemption for ministerially specified codes (subsection 45AUA(4)) does not cover businesses' own supplier codes, voluntary standards or other contractual measures adopted to prevent exploitation.

Recommendations

To improve the clarity and precision of the drafting of the proposed cartel provision in section 45ADA, the Law Council recommends:

- **Generally, the drafting of proposed section 45ADA should be refined to make clear that the provisions target agreements between two or more employers, and that a vertical employer-employee contract does not constitute a cartel provision merely because of indirect effects on a third party.**

- **Proposed subsection 45ADA(2) should be amended to refer to "a party to the contract, arrangement or understanding" in all instances where the word "party" is used, which would be consistent with the language used in the current cartel prohibitions in section 45AD.**

- **A competition condition should be included in section 45AB or, at a minimum, a requirement that the parties be in actual or potential competition with one another, consistent with the existing cartel prohibitions in section 45AD.**

  Alternatively, Treasury could consider making the new provisions "purpose only", replicating other existing non-price fixing cartel provisions such as market allocation and bid rigging. This would mean that section 45ADA would only apply where the purpose, assessed objectively, is to prevent poaching or fix wages. This would avoid the new section capturing any provisions that have the incidental or unintended effect on hiring or remuneration and would give businesses confidence that they will not inadvertently fall foul of provisions that carry very significant penalties.

[5] Attorney-General's Department, Strengthening Australia's response to modern slavery in supply chains (Consultation Paper, 21 August 2026).

- **The words "other requirements" should be removed in proposed paragraph 45ADA(2)(b) given the resulting overreach in scope and uncertainty this creates, including in unintentionally prohibiting arrangements that have evolved to benefit employees by better co-ordinating hiring processes.**
- **Careful thought should be given to whether the word "indirectly" is required in proposed subsection 45ADA(2) given that the effect of no-poach arrangements is direct (hence the concept of "indirect" is superfluous) yet the word "indirectly" creates unintended scope creep and potential unintended adverse consequences.**
- **The Bill should include a broad exemption for genuine minimum labour standards intended to prevent labour exploitation or support compliance with modern slavery obligations.**

Exceptions need to be practically workable

28. The Law Council notes that there are likely to be difficulties with the practical application of the proposed exceptions to the new cartel provision. There are four key issues:

    (a) the "reasonably necessary" test was appropriate for ancillary restraints in joint ventures but creates an unwarranted regulatory burden when applied in the employment context where the nexus is self-evident;

    (b) the requirement for employee consent may work for smaller arrangements but will create a major difficulty for larger arrangements;

    (c) the fixed duration limits in the exemptions create difficulties for implementation; and

    (d) franchising arrangements do not seem to be appropriately addressed.

"Reasonably necessary" test

29. The joint venture, secondment and labour hire exemptions in existing CCA sections 45AO, 45AUB and 45AUD require the cartel provision to be "reasonably necessary" to enable the relevant arrangement. This language has been adopted in proposed subsection 45AO(1A) and revised sections 45AUB and 45AUD to apply to the section 45ADA cartel provisions (no-poach agreements and wage-fixing agreements).

30. While the Law Council appreciates the policy objective of ensuring that exemptions are appropriate, the "reasonably necessary" test creates significant practical difficulties in the context of arrangements such as secondments, labour hire agreements or other standard commercial arrangements. For example:

    (a) The "reasonably necessary" test is used in the existing joint venture defence in the current drafting of the cartel provisions in the CCA, but it was appropriate where an ancillary restraint may only be tangentially relevant to the purpose of the joint venture. This can generally be clearly identified and evidence

established to show that "but for" the relevant restraint, the joint venture would not be commercially effective or viable.

(b) An ancillary restraint in an employment context will generally have an evident nexus to the joint venture as it will be targeted at the employees involved in the joint venture and will self-evidently therefore have the requisite nexus. Accordingly, the "reasonably necessary" requirement would seem to be superfluous in this context.

(c) While there has been little judicial interpretation of the concept in the context of the cartel provisions, the High Court said in *Brown v Tasmania* that the concept involves determining whether there are alternative, reasonably practicable, means of achieving the same object but which have a less restrictive effect.[6] However, this assumes there is a menu of commercial alternatives available to the parties, which is unlikely to be the case in the context of employment restraints that have a specific formulation and function.

(d) Moreover, a party relying on the defence would face significant complications. The wording would require the party relying on the exemption to demonstrate that the provision was "reasonably necessary", but it is unclear what evidence would be required to discharge this burden, particularly in circumstances where the necessity is self-evident from the nature of the arrangement but there is reasonable basis for disagreement as to whether employees may actually be susceptible to poaching and whether joint venture parties would be likely to poach each other's employees.

(e) Whether a provision was "reasonably necessary", and whether a less restrictive alternative was available, may be open to legitimate disagreement between businesses, regulators and courts—and may be judged with the benefit of hindsight. That uncertainty is disproportionate where an incorrect assessment introduces the risk of criminal liability.

Employee consent

31. There are significant practical complications caused by the requirement for employee consent. Proposed subsections 45AO(3), 45AUB(2) and 45AUD(2) require written notice to, and consent from, each affected staff member before a corporation gives effect to a no-poach or wage-fixing provision. The employee consent requirement in the exemptions also seems impractical in many commercial contexts.

    (a) In large joint ventures involving hundreds or perhaps even thousands of employees, the requirement creates a major administrative burden. It is impractical for the consent of every employee to be obtained, particularly as employees may be disinterested to give consent or may not understand the issues.

    (b) The requirement for consent gives individual employees disproportionate leverage. A single critical employee who withholds consent could potentially delay or prevent a commercial arrangement.

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6 [2017] HCA 43.

(c) There is also uncertainty about the temporal scope of consent. It is unclear whether consent given at the outset covers the provision's continuing operation, or whether fresh consent is needed each time an employee's role, placement or assignment changes. In a large joint venture, secondment or labour hire program (where employees routinely join, leave or rotate) this ambiguity could require repeated rounds of notice and consent, rendering the exemptions unworkable at scale.

(d) The consent requirement raises particular difficulties in the labour hire context, where staff may be placed on rolling short-term contracts. It is unclear whether a labour hire firm must obtain fresh consent from an employee each time a new arrangement with a client is entered into.

(e) More fundamentally, the consent requirement may not be necessary given that transparency is to be addressed through regulations. A notice requirement alone could satisfy the policy objective without conferring disproportionate bargaining leverage on individual employees in otherwise legitimate arrangements. A business should not lose the protection of an exemption simply because an individual employee has withheld consent.

Fixed duration limits

32. The fixed duration limits in the exemptions also create difficulties. A three-month post-involvement limit for no-poach provisions may be insufficient to protect legitimate investments in recruitment, training, knowledge transfer and project mobilisation (particularly in large-scale joint ventures with long time horizons). This is notable given that the Bill imposes no equivalent three-month limit on high-income-threshold employees. The appropriate duration will depend on the nature, scale and duration of the arrangement. The Law Council recommends replacing fixed time limits with a requirement that any restriction operate for no longer than is reasonable having regard to the nature and duration of the arrangement.

Franchise context

33. The application of proposed subsection 45ADA(4) is of particular concern in the franchise context.

34. Franchise networks commonly contain recruitment restrictions and minimum workforce standards. Agreements between franchisors and franchisees frequently restrict the recruitment of employees from within the network, and franchisors routinely set common standards concerning staff training, safety, qualifications and minimum employment conditions to support service quality, regulatory compliance and brand reputation. A provision directly preventing a franchisor and franchisee from recruiting one another's employees is likely to fall within section 45ADA, even though the parties may not compete in a relevant market and the provision may serve a legitimate commercial purpose.

35. Each franchisee is a separate business and will generally have its own agreement with the franchisor. Proposed subsection 45ADA(4) allows provisions in separate agreements with a common party (the franchisor) to be considered together. This creates uncertainty about whether legitimate employment-related standards

contained in different franchise agreements could collectively be characterised as wage-fixing, even where each provision applies only to the employees of an individual franchisee. Faced with potential criminal cartel liability, franchisors may avoid setting legitimate workforce standards across their networks, weakening service quality and the network's ability to compete effectively.

Recommendations

To improve the workability of the exemptions framework, the Law Council recommends:

- **The Bill should include a broad service contracting exemption for provisions forming part of genuine customer-supplier contracts that serve a legitimate purpose connected with service delivery.**
- **The joint venture, secondment and labour hire exemptions should be recast as broad safe harbours, with the "reasonably necessary" test replaced by a "genuinely connected with and reasonably related to" standard.**
- **The employee consent requirement in the exemptions should be replaced with a notice requirement, with a proportionate civil consequence for non-compliance.**
- **The fixed three-month time limit for no-poach provisions in the exemptions should be replaced with a requirement that any restriction operate for no longer than is reasonable having regard to the nature and duration of the arrangement.**
- **The Bill should expressly exempt franchise provisions that are genuinely connected with and reasonably related to the legitimate operation of a franchise network.**

No-poach restraints in mergers and acquisitions

36. There are two issues with the current drafting of the amendments to the CCA that could have unintended consequences for no-poach restraints in transactions relating to mergers and acquisitions (**M&A**):

    (a) the potential elimination of post-completion restraints that protect purchasers; and

    (b) the failure to address pre-acquisition restraints that protect sellers during the due diligence process.

Post-completion restraints protecting the purchaser

37. One of the more substantial, and presumably unintended, consequences of the Bill is the potential elimination of no-poach restraints in M&A transactions. As currently drafted, the Bill appears to prohibit no-poach restraints in M&A transactions that would otherwise prevent vendors from poaching employees transferred to the buyer.

38. Such restraints are standard in virtually all M&A deals and protect the value of the business being acquired. The prohibition on such restraints could have a serious adverse effect for M&A activity in Australia by undermining the certainty accorded to acquirers that vendors will not immediately poach back key employees that have been sold as part of the business.

39. Three important issues arise:

    (a) The first is whether a no-poach provision in a sale and purchase agreement would fall within the existing goodwill protection at paragraph 51(2)(e) of the CCA. This provision applies an exemption (in the case of a contract for the sale of a business or of shares in the capital of a body corporate carrying on a business) to any provision of the contract that is solely for the protection of the purchaser in respect of the goodwill of the business.

    Although there may be some differences of view, the more commonly adopted view is that a no-poach agreement imposed by a buyer on a seller of the business for a limited period is reasonably related to protection of the "goodwill" of the business which the buyer has paid for.

    (b) Second, the Bill proposes the following new subsection 51(2AB), which seems to indicate that paragraph 51(2)(e) is disapplied in relation to the proposed new cartel provision section 45ADA:

    > *(2AB) Subsection (2) does not apply in relation to a contravention of any of the following provisions of this Part…*

    (c) Third, the ACCC already has jurisdiction under the new merger regime to review restraints including no-poach agreements and may make a declaration removing the exemption if it is considered overly broad. In these circumstances paragraph 51(2)(e) should continue to be available for the new cartel offence.

40. The existing goodwill exemption in paragraph 51(2)(e) (should it ultimately apply to the new prohibitions) would arguably protect post-completion restrictions for the benefit of the purchaser but arguably would not protect pre-completion restrictions on poaching employees (e.g., in the due diligence phase) or on pre-completion obligations to carry on existing workforce arrangements in the ordinary course. There would be benefit in a broader exemption applying in the sale of business context (in addition to paragraph 51(2)(e)).

41. Additionally, the disapplication of the other exemptions in existing paragraphs 51(2)(d) to (g) of the CCA should be given closer consideration. While the disapplication of the "industrial relations exemptions" in paragraphs 51(2)(a) to (c) is understandable in this context, it is not clear why the other exemptions in paragraphs 51(2)(d) to (g) would also be disapplied.

42. As such, the Law Council suggests that a two-stage solution is required. First, paragraph 51(2)(e) should remain as an exemption. Moreover, the other exemptions in subsection 51(2) may also require careful thought to ensure something is not being removed that has utility. Second, given the legal position concerning goodwill remains unclear and there are issues with the application of paragraph 51(2)(e) to

pre-completion restrictions, an express exemption is required specifically for no-poach provisions in a business sale context.

Recommendations

To preserve the legitimate use of no-poach restraints in M&A transactions, the Law Council recommends:

- **The exception set out in paragraph 51(2)(e) should be preserved for the new section 45ADA cartel provision to allow no-poach restraints that are intended to preserve the goodwill of the business for the benefit of the purchaser by restraining the vendor from immediately poaching back employees that have been transferred in the business sale.**
- **The uncertainty as to whether no-poach arrangements in M&A deals fall within paragraph 51(2)(e), and issues relating to pre-completion restrictions should be resolved via express drafting that allows no-poach arrangements to be included in sale and purchase agreements, noting they would remain subject to the common law doctrine of restraint of trade and potential merger review by the ACCC.**

Pre-acquisition restraints protecting the seller

43. As currently drafted, the Bill does not address the legitimate interests of a seller or target business in sharing confidential information with interested bidders. This creates a risk of loss of value of the seller's business if a bidder was to use the confidential information provided to poach employees of the seller's business, rather than to make an offer of purchase. It is submitted that the law should recognise and protect the integrity of M&A processes and permit a seller or target to impose a no-poach restriction for a limited period on those parties who choose to participate in the bidding process.

44. In an M&A transaction, a seller or target company will typically require prospective bidders to execute a confidentiality agreement before being granted access to confidential due diligence materials and management presentations about the business, to enable those bidders to fully assess the value of the business. The seller has a legitimate interest in receiving fair value for the business without being exposed to the risk that parties may use the information provided to the detriment of the seller's business.

45. For instance, management presentations are commonly provided to bidders, giving bidders an opportunity to meet with and hear from the seller's key employees. That kind of access would not otherwise be granted in the ordinary course of most businesses, particularly where competitors or major trading partners are concerned.

46. To guard against the risk that, following the management presentation or access to key employees, a bidder may try to hire those key employees rather than to make an offer of purchase, it is not unusual for confidentiality agreements to include a limited no-poach or non-solicitation provision. These restrict the bidder from recruiting,

soliciting or hiring the seller's or target's staff for a limited period, as a condition of the bidder being granted access to employees or confidential information about the seller's business.

47. These provisions protect a legitimate interest. This interest is the seller's right to preserve the value of the business by preventing bidders from exploiting confidential information and access gained through the due diligence process.

48. The proposed exemption would be limited to those parties who chose to participate in the bidding process and who have agreed to a confidentiality agreement concerning the seller's business. It would not have any application to other parties, including competitors and trading parties who did not elect to participate in the seller's sale process. Those parties would be free to make offers to the seller's employees as in the ordinary course.

49. If the Draft Bill became law in its current form, the existing sale of business and goodwill exemption in paragraph 51(2)(e) of the CCA will not assist in the pre-contractual context. This is because at the stage that a confidentiality agreement is entered into, the seller has not yet agreed to sell the business or any goodwill. As a result, a no-poach provision in a pre-deal confidentiality agreement could constitute a cartel provision under proposed subsection 45ADA(2) set out in the Draft Bill, attracting both criminal and civil penalties.

50. The Law Council submits that the seller or target has a legitimate interest in these circumstances that is analogous to the interests recognised by the existing exemptions. Just as the labour hire exemption recognises that a labour hire provider has a legitimate interest in preventing the hiring party from directly employing the worker (thereby undermining the provider's business model), so too does a seller have a legitimate interest in preventing a bidder from taking advantage of the access afforded during due diligence to recruit the seller’s employees.

Recommendations

The Law Council recommends that the Draft Bill be amended to include an additional exemption for no-poach provisions in pre-acquisition confidentiality agreements, subject to appropriate safeguards, and the exemption should apply where:

- **a party (Person A) agrees to a no-poach arrangement with another party (Person B) in circumstances where Person B has agreed to receive access to confidential information about Person A's business with a view to considering whether to make a proposal to acquire the business of Person A;**
- **the no-poach provision is genuinely connected with and reasonably related to protecting the value of the business that is the subject of the potential acquisition; and**

- **the no-poach provision operates for a period that is no longer than a reasonable period following the date on which Person A discloses to Person B the information (which is not in the public domain) about Person A's business.**

51. In relation to the duration of any such exemption, we would consider that a degree of caution should be exercised before prescribing an overly rigid fixed time limit. M&A transactions vary considerably in their complexity and duration, and a seller should not be left exposed to poaching by a bidder simply because the transaction has taken longer than anticipated. We consider that a maximum upper limit of 12 to 18 months from the date of disclosure of non-public information may be appropriate if an upper limit is necessary.

52. This proposed exemption is consistent with the policy objectives of the Draft Bill. The Draft EM at paragraph [1.28] states that the Draft Bill targets "collusive conduct between parties that is intended to fix or control wages, or to restrict the movement of workers" contrary to the public interest. No-poach provisions in pre-acquisition confidentiality agreements are not collusive arrangements designed to suppress wages or restrict labour mobility. Rather, they are targeted, time-limited protections that serve the legitimate commercial purpose of preserving the value of a business during a sale process.

Regulations should provide flexibility for exceptions

53. The Law Council is concerned that some of the exemptions included in the Bill seem *ad hoc* and presumably responsive to particular concerns raised during the drafting of the Bill. For example, there seems to be a weighting to exemptions for government arrangements, and there is a specific exception for sporting arrangements. The Law Council has concerns that there may be other beneficial arrangements through the economy that may have been overlooked, particularly as the period for public consultation has been limited.

54. One solution to the issue of inadvertently prohibiting beneficial arrangements is to rely on the potential for ACCC public benefit authorisation under section 88 of the CCA. However, case-by-case authorisation is expensive and potentially highly inconvenient.

55. As such, it may be appropriate to introduce scope for exemptions by way of Ministerial regulation. Exemption by regulation may provide a means to address instances of accidental overreach without requiring the parties to partake in a full ACCC process that they may not be able to afford.

Recommendations

The Law Council recommends:

- **The existing ACCC authorisation process under section 88 of the CCA should be expressly confirmed as available for the new provisions. This could occur by way of comment in the Explanatory Memorandum.**

- **The Minister should have the ability to implement exemptions by regulatory instrument, thereby enabling accidental regulatory overreach to be quickly addressed.**

Transitional provisions need to be practically workable

56. The Law Council has concerns about the practical operation of the grandfathering provisions for pre-existing no-poach and wage-fixing arrangements. The drafting intent is described at paragraph [1.81] of the Draft EM as:

> *In relation to cartel provisions because of section 45AD, a contract, arrangement or understanding made or arrived at before, at or after the commencement time, or an authorisation or notification for such an agreement, will only be subject to the existing cartel prohibitions in the CCA.*

57. This is intended to be achieved via a new subsection 195(1) of the CCA, which provides that the prohibition applies to giving effect to a "new law cartel provision" at or after the "commencement time", even where the relevant CAU was entered into before that time.

58. The drafting distinguishes between "making" and "giving effect to" a provision, implicitly assuming that a restraint may continue to exist in a contract without breaching the CCA, provided no party takes positive steps to enforce it.

59. This distinction creates complications because "giving effect to" is a nuanced, fact-specific concept. The difficulty is compounded by the new effects-based test in proposed subsection 45ADA(2), which captures provisions that are "likely to have the effect" of preventing hiring.

60. In *ACCC v Yazaki Corporation*, the court observed that while a "continuation of supply may constitute a giving effect to of a contravening arrangement or understanding" that a "failure to report or a failure to compete does not".[7] This suggests "giving effect" requires a positive act of implementation, not mere passive continuation. However, if the continued existence of a clause has a practical deterrent effect on hiring (for example, a prospective employer decides not to pursue a candidate after learning of the clause) it is arguable that the provision is being functionally "given effect to" even without active enforcement. For example:

    - Is a party unilaterally curtailing its hiring conduct on seeing the existence of the provision "giving effect to" the provision?
    - Is a person otherwise unilaterally adjusting its conduct, perhaps mistakenly, to act in accordance with the provision "giving effect to" the provision?
    - Is a party highlighting the existence of the provision to another party "giving effect to" the provision?
    - Is a party summarising a contract and identifying the provision as a point of compliance then "giving effect to" the provision?

[7] [2015] FCA 1304, [225].

61. All of these have no clear answer and may turn on the particular facts and circumstances but may expose a firm to cartel consequences if a contravention of the cartel provisions occurs. As such, compliance could be highly difficult.

62. The commencement provisions also raise significant transition concerns. Under the CCA amendments, the "giving effect" prohibition applies from commencement with no transition period, even for pre-existing agreements. By contrast, the FW Act amendments afford a 6-month grace period before the new restrictions apply to pre-existing employment arrangements. This asymmetry is difficult to justify given that the CCA amendments carry the more severe consequences, including criminal penalties of up to 10 years' imprisonment for individuals.

Recommendations

The Law Council recommends:

- **Pre-existing contracts should not be subject to the new cartel provision given the uncertainty as to what "giving effect to" an existing provision in a contract may mean in practice.**
- **Alternatively, the Draft Bill should include an express provision that renders legally unenforceable all existing provisions of contracts, arrangements or understandings that would contravene the cartel provision.**
- **If the proposed language should proceed, there should be a reasonable transitional period (e.g. 2 years) for parties to take advice and audit existing contracts, coupled with express clarification that "giving effect to" in the context of the new cartel provisions requires enforcement action and that the mere continued existence of a provision (or a party thinking it is constrained by it) does not constitute "giving effect".**

Schedule 2—Amendment of the FW Act

63. Schedule 2 to the Draft Bill proposes to amend the FW Act to insert a right to be free from non-compete terms (terms which restrict, prohibit or prevent the employee from commencing subsequent employment or being involved in any business or undertaking subsequent to the employee's employment). The right applies to employees (other than casual employees or pieceworkers) whose annualised full-time equivalent earnings are equal to, or less than, the high-income threshold.

64. Schedule 2 to the Draft Bill also proposes to insert a right to be free from co-worker non-solicitation clauses (terms or conditions of employment that restrict or prohibit an employee from subsequently recruiting, or attempting to recruit co-workers) for all employees, irrespective of income.

65. Where these terms are permitted, Schedule 2 to the Draft Bill clarifies the requirements for enforceability of these terms. To remain enforceable, terms that are not prohibited in Schedule 2 of the Bill must be necessary to protect a legitimate interest, be reasonable, and not be drafted in a cascading manner.

66. The amendments in Schedule 2 to the Draft Bill propose to insert civil penalty provisions which prohibit an employer from entering into a contract of employment or other workplace arrangement that contains a prohibited post-employment restraint term/clause. If used, these prohibited terms will be unenforceable.

Key definitions

Meaning of co-worker non-solicitation term

67. Proposed new subsection 23C(1) defines the phrase "co-worker non-solicitation term". The definition is anchored by the concept of "a term or condition of employment".

68. Under proposed new subsection 23C(2), the persons covered by subsection 23C(1) are "any person who carries out, or who has previously carried out, work in any capacity for the employee's employer". There is then a non-exhaustive list of the types of work captured by that definition. The types of work that are not covered by the list, but which are at least capable of being captured by the definition, include "work" undertaken by directors, founders or other non-employed executives, whether or not for remuneration. The Draft EM does not address whether these types of "work" are intended to be captured by the clause. Given that the clause captures volunteers and students (both of whom work without remuneration) we see a benefit in making clear whether other types of non-remunerated "work" that are performed outside an employment or contractor relationship are captured by the definition.

69. Separately, we note that the term "co-worker" is commonly understood in employment contexts to mean a peer with whom a person works. The persons covered by proposed subsection 23C(2) are far wider and include persons who are more senior than the employee to whom proposed subsection 23C(1) attaches and include persons with whom the employee may never have worked. While the definitions in subsection (2) made clear that "co-worker" is not a limiting phrase (a matter which is confirmed by the Draft EM), consideration should be given to omitting the word "co-worker" from the definition.

Meaning of employment arrangement

70. The term "employment arrangement" is defined in proposed paragraph 23D(1)(d) as including "any other agreement or arrangement, whether written or unwritten, that regulates the relationship between the employer and employee". It would assist if:

    (a) section 23D (and/or the Draft EM) provides greater clarity regarding agreements or arrangements that regulate the relationship between the employer and employee and are sought to be captured—other than contracts of employment, deeds and workplace policies (being the other categories of employment arrangements in paragraphs 23D(1)(a)-(c)).

    (b) the Draft Bill makes explicit reference to whether documents such as commission and bonus plans and management equity plans constitute a relevant "employment arrangement", with commentary as to whether those types of documents may or may not fall within one of the categories of employment arrangement in section 23D; and

(c) clarity could be provided as to whether incentive arrangements offered to an individual by a holding or parent company of their employer, and not their employing entity, would be included, noting the definition of "employment arrangement" is an "arrangement between an employer and an employee".

Meaning of non-compete term

71. Proposed new subsection 23E(1) defines "non-compete term" as follows:

> *(1) A **non-compete term** is a term or condition of employment that restricts, prohibits or prevents the employee from, or adversely affects the employee for, seeking to:*
>
> *(a) be involved in any business or undertaking subsequent to the employee's employment; or*
>
> *(b) commence subsequent employment.*

72. However, there is ambiguity about whether the provision is directed to a person "seeking" to do the things in proposed paragraphs 23E(1)(a) and (b) while still in employment or only after employment has ended.

73. In particular, it is not clear whether the words "subsequent to the employee's employment" in paragraph 23E(1)(b) are directed to the timing of the employee's involvement in the business or undertaking, or whether they attach to the act of "seeking" to do those things. By way of example, it is not clear whether a clause that prevented an employee from taking steps, while still in employment, to set up a competitive business would be a clause that prevented the employee from *seeking* to do something *subsequent to the employee's employment*, or whether such a clause would not offend the section because it only sought to prevent the employee from *seeking* to do something *while still in employment*.

Meaning of post-employment restraint of trade term

74. Proposed new subsection 23F(1) defines "post-employment restraint of trade term" to include a co-worker non-solicitation term, a non-compete term and, at paragraph (c), "any other restraint of trade term that applies, or purports to apply, to an employee after the termination of the employee's employment".

75. Strictly speaking, any action by an employee (such as resignation) or an employer (such as dismissal) results in the employee's employment "terminating". However, "termination" is often used by lay persons in an employment context to refer to action by an employer that brings an employment relationship to an end, as distinct from "resignation" (being the act of an employee that brings the relationship to an end).

76. Further, lay people typically connect "termination" with the act of being given *notice* of termination and may not appreciate that section 23F is using termination in its legal sense to refer to the point at which the employment relationship ends, rather than the point at which notice of termination is given.

77. This may lead to confusion about whether a term or condition of employment that regulates what a person can do during their notice period is a term of the kind to which proposed section 23F is directed.

78. We appreciate that the term itself contemplates the term as being "post-employment". Nonetheless, we consider that section 23F can be made clearer by substituting a different phrase that makes clear that it does not pick up terms that apply during a period of notice.

Restrictions on post-employment restraint of trade terms

Subdivision A—Annualised full-time equivalent earnings

79. Under proposed subsection 333Z(2) of the Draft Bill, an employee may be subject to a non-compete term if their "annualised full-time equivalent earnings" exceeds the high-income threshold. Proposed new section 333Y defines the term "annualised full-time equivalent earnings".

Calculation of earnings

80. In the Note to proposed subsection 333Y(1), the Draft Bill refers to the definition of "earnings" under section 332 of the FW Act as the applicable definition for the purpose of section 333Y. Under section 332, payments where the amount cannot be determined in advance are excluded, meaning commissions, incentive-based payments and bonuses will not count in the calculation of "annualised full-time earnings" under section 333Y.

81. As noted in the Law Council's submission in response to the 2025 Consultation Paper, the exclusion of those types of payments may have unintended consequences. For example, an employee who receives a relatively low salary may nonetheless be eligible to receive (and may have historically received) a very large cash-based bonus. That employee may have access to highly valuable confidential information and could otherwise have been appropriately covered by a post-employment non-compete restriction (and other restrictions). The structuring of that employee's remuneration, and the pay components to be included in any calculation as against the high-income threshold, would result in that employee being subject to the ban, while their actual earnings could be far in excess of the high-income threshold.

82. To remove this potential consequence, it may be more appropriate to use the value of all past payments to an employee, and calculate the yearly number of payments received, rather than the usual earnings test, against the high-income threshold.

83. Conversely, it may also be that reliance on the high-income threshold will capture relatively junior, but high income, employees with limited bargaining power or limited connection to the operational and commercial information held by that organisation and its clientele. As previously suggested, to address this concern, the Treasury could consider the inclusion of additional factors such as the nature of the role, industry norms, and the worker's bargaining power.

Impact of leave, etc

84. The Law Council has received some queries regarding how the calculation of "annualised full-time equivalent earnings" might practically apply to employees who

undertake a period of parental leave or unpaid leave, where their income will drop below their usual earnings for a period of time.

85. Proposed paragraphs 333Y(a) and (b) state that the annualised full-time equivalent earnings of an employee are the amount of earnings the employee would be entitled to "if the employee were to work for the period of 12 months" beginning at the time the employment arrangement takes effect or is varied. Our understanding is that this calculation would set aside the impact of any parental leave or unpaid leave in reducing actual earnings, instead relying on annualised earnings. To avoid any confusion, the Law Council suggests that the Draft EM be amended to include an example to illustrate the impact of leave (or lack thereof) in the calculation of annualised full-time equivalent earnings.

Position of the Queensland Law Society

86. The Queensland Law Society (**QLS**) maintains its concern that income is not necessarily an appropriate proxy for whether a restraint is justified. An employee's remuneration does not necessarily reflect the nature or value of the information, client relationships or other interests to which they have access. An employee below the threshold may have significant access to confidential information or valuable client relationships, while a highly remunerated employee may have little information or influence that warrants protection.

87. Additionally, the Draft EM provides that an employee's annualised full-time equivalent earnings are assessed when an employment arrangement is entered into or varied. The position can then change during employment. If earnings fall below the threshold, an existing non-compete clause ceases to have effect. However, if they rise, it will become effective again.

88. The QLS considers that this may create uncertainty for both employers and employees, particularly where remuneration includes bonuses, or where an employee's remuneration changes as a result of promotion or changes in work arrangements.

89. If the threshold is retained, the QLS considers that further clarification is required regarding its operation where an employee's remuneration changes over time.

Subdivision B—Restrictions on non-compete terms

Proposed section 333ZA (and related terms)

90. Proposed section 333ZA provides that an employer contravenes the section if "the employer enters into or establishes an employment arrangement with an employee" (emphasis added). Some forms of "employment arrangement" (as defined) are not "entered into" or "established with" an employee. For example, a workplace policy that is unilaterally imposed by an employer is not "entered into" or "established with" an employee. The syntax used here limits the scope of the prohibition. We understand that proposed section 333ZA, and its cognates, are not intended to be limited in this way.

91. We note that the same issue arises in relation to proposed section 333ZC (the prohibition on enforcing prohibited non-compete terms) and proposed section 333ZG (prohibition on co-worker non-solicitation terms).

Proposed subsection 333ZB(4)

92. As noted at paragraph [2.55] of the Draft EM, it is possible for an employee's annualised full-time equivalent earnings to either:

    (a) fall below the high-income threshold resulting in a permitted non-compete term ceasing to have effect; or

    (b) exceed the high-income threshold resulting in a permitted non-compete term beginning to take effect (again).

93. New subsections 333ZB(2) to (4) explain whether a non-compete term has effect in these circumstances.

94. Subsection (3) provides that a non-compete term has no effect at a time if the term is inconsistent with section 333Z (about employee rights relating to non-compete terms) because the employee's annualised full-time equivalent earnings are equal to or less than the high-income threshold at that time.

95. Proposed subsection 333ZB(4) provides that if the "employee's employment is terminated, the non-compete term has no effect if, immediately before the end of that employment, the non-compete term had no effect because of subsection (3)".

96. We note the potential for an employer to increase a person's annualised full-time equivalent earnings on the last day of the employee's notice period and for that increase to have the effect that subsection (3) ceases to apply (i.e. the non-compete term is then active).

97. If this was done for the purpose of avoiding the application of subsection (3), consequences may flow from other sections of the FW Act. Among other things, section 340 (protection from adverse action) may be engaged. However, the position is not clear, given that the alleged act of adverse action would be an increase in the employee's remuneration. Consideration could be given to including, by way of a new subsection (5) a prohibition on increasing an employee's annualised full-time equivalent earnings during their notice period for the purpose of avoiding the application of subsection (3).

Subdivision D—Requirements for restraint of trade terms

Proposed section 333ZJ

98. Proposed new subsection 333ZJ(1) reflects, as we understand it, the common law test. It does not state the time at which the test is to be applied. At common law, that time is when the contract is entered into, not when the restraint is sought to be enforced.

99. We consider that the uncertainty can, and should, be removed by inserting an express provision that makes clear that the test time is the time at which the contract

is entered into. Consideration should be given to expressly dealing with contractual variations. In particular, there is a question about whether a variation to the contract that affects the considerations that bear on whether the restraint is "reasonable" (such as a material increase in salary) should have the effect that the test is applied at the time of the variation, rather than the original date on which the employment arrangement was entered into.

100. Given the extensive and often inconsistent case law regarding what constitutes a reasonable post-employment restraint under the common law, it would assist if the requirement in section 333ZJ of the Draft Bill for a post-employment restraint to be reasonable is clarified by further commentary in the Draft EM about the circumstances in which a post-employment restraint will be reasonable.

101. As to the phrase "included in an employment arrangement **between** an employer and an employee", we refer to our comment about proposed section 333ZA.

Position of the Queensland Law Society

102. The QLS notes that the Draft Bill adopts a more prescriptive approach to the legitimate business interests capable of supporting a post-employment restraint.

103. The common law has allowed courts to consider the particular circumstances of a business and the interest said to justify a restraint. While recognising the benefit of greater certainty, an exhaustive list may prevent a court from taking into account legitimate interests that do not fall neatly within the prescribed categories.

104. The QLS recommends consideration of whether the proposed categories should be exhaustive. The common law already provides flexibility to consider the particular interests of a business and the circumstances of the restraint. At minimum, further guidance would be useful concerning interests such as goodwill, trade connections and specialised commercial relationships.

105. The QLS also recommends that the proposed legitimate business interests supporting post-employment restraints be reconsidered in the context of franchising. Proposed subsection 333ZJ(2) confines the relevant interests to confidential information and customer, client or professional network relationships. QLS is concerned that this closed list may not adequately recognise distinctive franchising assets, including specialised operational methods, proprietary franchise systems and network goodwill, particularly where those interests do not fall neatly within the definition of confidential information.

106. The QLS notes that proposed subsection 333ZJ(5) would prohibit cascading post-employment restraints. While the QLS acknowledges the concern that cascading clauses can create uncertainty for employees and may result in unnecessarily broad restraints being included in contracts, the QLS considers that there may be circumstances where a properly drafted cascading clause can provide greater certainty rather than an absolute prohibition.

107. The QLS therefore also recommends considering whether an absolute prohibition is necessary, or whether appropriately drafted cascading restraints could be permitted subject to safeguards against unreasonable restraints.

Interaction with NSW legislation

108. Paragraph [2.23] of the Draft EM states that:

> *Effectively, the amendments will mean that post-employment restraint of trade terms for all national system employees are regulated exclusively by the FW Act, rather than the common law or the NSW Restraint of Trade Act (for national system employees in NSW).*

109. The Draft EM appears to reflect the policy intent for post-employment restraints to be regulated exclusively under the FW Act. However, in our view, the operative provisions as proposed in the Draft Bill do not unequivocally accomplish that goal.

110. Currently, sections 27 and 30 of the FW Act preserve significant room for State contract law. Under constitutional inconsistency principles, the common law or the *Restraints of Trade Act 1976* (NSW) could not revive a term that the Commonwealth law makes ineffective. But where a restraint is permitted by the provisions proposed in the Bill, the orthodox common law reasonableness test and State legislation may remain concurrently applicable.

111. We suggest the Bill should state expressly whether it:

- *exhaustively* replaces the common law and State restraint legislation;
- establishes only a statutory minimum; or
- invalidates prohibited terms while leaving permitted terms subject to existing law.

112. Without clarification, the legislation may add a new layer and avenue for litigation rather than replacing the existing ones.

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- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
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