



Policy Brief | 17 July 2025

# Non-compete clauses

Economic policy section and Law and Bills Digest section

## Issue

Use of restraint of trade (ROT) contract clauses is of growing interest in Australia. This includes non-compete clauses (NCCs), which are used in contracts to prevent [former employees](#) working for a competitor or engaging in work of a similar nature. Of particular interest are the effects of NCCs on productivity and wages, and options for reform.

### Key points

- NCCs are used to protect business interests like intellectual property.
- Research suggests NCC use has increased over time in Australia, including among lower skilled workers.
- The Productivity Commission (PC) suggests that limiting unreasonable NCC use would improve productivity and wage growth.
- While NCCs can promote innovation and investment in workers, their impact on skills transfer and training remains uncertain.
- Globally, there are a range of different approaches to regulating NCCs and mitigating their impacts.

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## Context

In a capitalist system, open competition between rival firms fuels progress. This competition allows innovation to flourish and pushes prices for consumers downward. It also means employees have a choice of alternative workplaces, improving their bargaining position for salaries and conditions.

At the same time, if a company builds an employee's productive capacity through training and skills development, it will likely want a return on that investment. Historically, employers have used NCCs to protect business interests such as [commercially sensitive trade secrets](#), where competitors may access [proprietary information, client lists, product formulas and intellectual property](#), pp. 15-16).

Available evidence suggests that NCCs are used by around [a fifth of Australian businesses](#) and apply to around [a fifth of employees](#), although this is based on limited survey data. The existence of NCCs can have various 'chilling' effects including:

- employee hesitancy to look for or accept new positions, [reducing job mobility](#) (p. 27)
- dissuading employees from [starting a competing business](#), hindering competition, innovation and entrepreneurialism (p. 34)
- [decreases in patenting](#), suggesting a negative impact on innovation (p. 25).

[Recent research](#) suggests NCC use has increased and is a default option in many employment contracts. In addition to the [finance and insurance sectors](#) and senior roles traditionally covered by NCCs, they now increasingly apply to 'outward facing customer roles' such as [childcare workers, yoga instructors](#) (p. 2), [hairdressers and IT professionals](#) (pp. 19-32). [More broadly](#), NCCs are 'no longer confined to highly paid executives but now apply across income, age, occupational and education groupings' (p. 1).

## What are the arguments against NCCs?

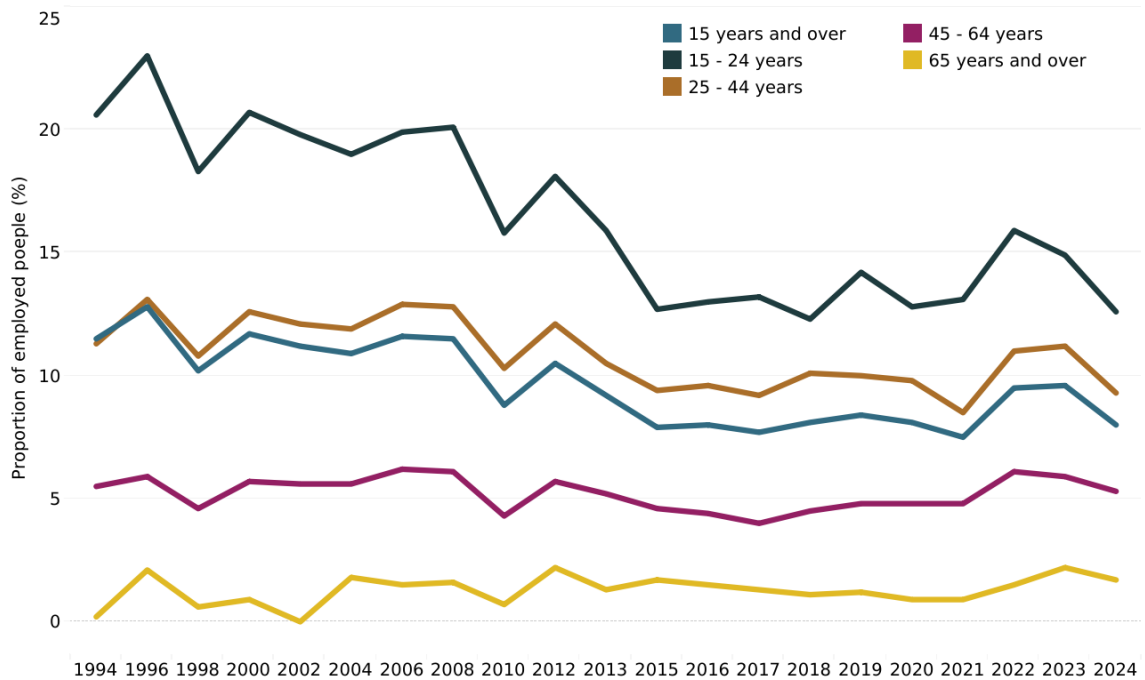
The economic consensus is that NCCs generally do more harm than good, lowering productivity, wages, and living conditions. [Research also indicates](#) that NCCs can reduce employee mobility, with subsequent negative impacts on wages and productivity.

### Job mobility

While acknowledging inherent methodological challenges, a [2024 study](#) found increased use of NCCs (as opposed to non-disclosure agreements, or 'NDAs', which are an alternative for safeguarding trade secrets) correlated with decreased job mobility. This was particularly seen in lower-skilled workers, while impacts across worker age groups were consistent.

Factors other than ROT clauses have also contributed to lower job mobility in Australia compared with 30 years ago, such as the ageing of the overall workforce (older workers are [less likely to move between jobs](#)). Regardless, the decrease in job mobility is notable if looking only at younger cohorts.

**Figure 1** Employed people who changed jobs during the year by age



Source: Australian Bureau of Statistics (ABS), [Job Mobility](#).

The COVID-19 period saw a dip in labour mobility for young workers due to lower demand for less skilled entry-level workers and the negative impact of shutdowns on industries such as retail and hospitality (where many young workers are employed). However, this declining trend in mobility started much earlier (from around 2008) which suggests other reasons may have discouraged young people from changing jobs. The annual retrenchment rate for all workers (or rate of job loss due to economic reasons) has [fallen steadily](#) since the early 1990s. As a result, workers are now more likely to cease jobs voluntarily, mainly for personal reasons, higher wages or better working conditions.

The 2023 Australian Bureau of Statistics [Short Survey of Employment Conditions](#) noted:

Given the general decline in job mobility over time, there is an increasing interest in understanding potential factors that may prevent employees from changing jobs and employers, or that make it more difficult or less appealing to make a change, or that limit the ability of employers to attract potential employees to fill vacant jobs. **Restraint clauses are one potential factor.** [emphasis added]

### Wages

[Studies have shown](#) Australian firms with NCCs paid workers 4% less on average than comparable firms only using NDAs. While all the workers started with similar wages, those employed at firms using NCCs experienced slower wages growth over the first few years of their employment. A further [US study](#) found that states where NCCs were enforceable had 6% lower wages.

However, [evidence](#) on NCCs impact on wage levels is conflicting, with specific [caution against](#) ‘confusing correlation with causation’. For example, in the US data has shown some

workers subject to NCCs being better off and earning higher wages. But this could be due to other factors, such as higher educational attainment.

Contentions that workers subject to NCCs receive more training is also debated. While some studies supported this view, other perspectives suggest that firms may need to provide more employee training given NCCs constrained them from hiring high-skilled workers (pp. 23-24).

**Productivity**

In 2024 the Productivity Commission (PC) [published](#) modelling into the impacts of the Government’s proposed competition reforms. It found:

Non-compete clauses constrain job matching and act as a barrier to labour productivity – therefore, we modelled this reform as having the direct effect of improving labour productivity, with the exact magnitude depending on the current prevalence of non-compete clauses in each industry (p. 24).

The PC’s modelling showed removing all ROTs could increase Australia’s GDP by up to 0.19%, and the removal of NCCs in industries with higher use of these clauses could increase wages by 2.4% (Table 1).

**Table 1** Summary of labour mobility reforms

No.	Short name	Key direct effects	Key flow-on effects
L1	Restraint of trade clauses	<p><b>Estimated effects:</b></p> <p>Increased wages for workers (up to 2.4% in industries with high use of non-compete clauses and up to 1.4% in others)</p>	<p><b>GDP:</b> +2,569—5,137 m (+0.10—0.19%)</p> <p><b>CPI:</b> -0.05—0.10%</p> <p><b>Net govt revenue (Cth):</b> +\$333—666 m</p> <p><b>Net govt revenue (S/T):</b> -\$28—55m</p>

Source: adapted from PC, [National Competition Policy: modelling proposed reforms Study report](#) (2024): p. 24.

## How have other countries regulated NCCs?

[Various jurisdictions](#) have undertaken NCC related regulatory reform (see also [OECD \(2023\)](#)).

Options include:

- Total bans. The [US Free Trade Commission](#) initially proposed a ban in 2023 and issued a [final rule in 2024](#) (pp. 7, 17). As of 20 August 2024, the rule has not gone into effect due to a [court order](#).
- Selective or limited bans based on:
  - a particular income threshold (in [Austria](#) and [Luxembourg](#))
  - specific sectors/occupations (technology in [Hawaii](#) and healthcare in [New Mexico](#))
  - duration (in 2023 the [UK government](#) proposed a 3 month limit on use).

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- Mandatory compensation of workers during the NCC ([Finland](#), [Denmark](#), [Portugal](#), [Sweden](#), and [France](#)).
- Improving transparency of NCC clauses ([UK Government proposal](#)).
- Controlling and monitoring NCC use, for example through government registration, noting the potential regulatory burden.

## Australian Government approach

While research on the impacts of NCCs in Australia is in its early stages, the ABS [Short Survey of Employment Conditions \(2023\)](#) found 20.8% of 7,000 Australian businesses used NCCs while a [survey](#) of 3,000 adult respondents using the McKinnon poll by the e61 Institute found 22% were subject to a NCC.

Given this notable impact, the Australian Government has proposed reforms to NCCs, as part of a broader package of competition reforms. This includes [a ban on NCCs for workers earning less than the high-income threshold](#), currently [\\$175,000](#) and indexed annually. Following passage of necessary legislation, the reforms are scheduled to take effect from 2027.

## Further reading

- Dan Andrews and Andrea Garnero, [Five facts on non-compete and related clauses in OECD countries](#), OECD Economics Department Working Papers, No. 1833 (OECD Publishing, April 2025).
- Cassie Boyle, Samantha Saltzman, Jose Francisco Irias and Alison Lewandoski, '[Non-competes around the world: Top issues and strategies for global employers](#)', *DLA Piper GENIE* (27 September 2023).
- Treasury, [Non-competes and other restraints: understanding the impacts on jobs, business and productivity](#), Issues Paper (April 2024).
- World Law Group, [Global Guide to Non-Competition Agreements](#) (The World Law Group Ltd, 2018).

## Non-compete clauses

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