

28 September 2026

Our ref: [HF:MC]

Dr James Popple
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Law Council of Australia
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By email: [REDACTED]
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Dear Dr Popple

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

Thank you for the opportunity to provide feedback on the reform to non-compete clauses and other restraints — draft legislation. The Queensland Law Society (QLS) appreciates being consulted on this important review.

QLS previously provided a submission to the Law Council of Australia (**the Law Council**) on the proposed reforms on 2 September 2025 with the assistance of the QLS Industrial Law Committee, Franchising Law Committee and Competition and Consumer Law Committee.¹

QLS broadly supports the objectives of the proposed reforms and recognises the need to address inappropriate use of restraints while ensuring legitimate business interests can continue to be protected.

The Society has identified the following matters for consideration into the Law Council's submission.

1. High-income threshold

QLS notes that the Bill adopts the high-income threshold under the Fair Work Act 2009 as the dividing line between employees who cannot be subject to a non-compete obligation and those who may be.

The Law Council's submission supported this approach, describing the threshold as a “useful—although imperfect—proxy”. The Law Council also recognised that higher-income employees may have greater capacity to negotiate the terms of a restraint and to absorb a period of restricted employment.²

¹ Queensland Law Society, *Reform to non-compete clauses and other restraints on workers*, (Submission to the Law Council of Australia, 2 September 2025).

² Law Council of Australia, *Reform to Non-Compete Clauses and Other Restraints on Workers* (Submission to the Treasury, 12 September 2025).

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.

Additionally, the explanatory materials provide 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.

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.

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

2. Legitimate business interests

QLS notes that the exposure draft adopts a more prescriptive approach to the legitimate business interests capable of supporting a post-employment restraint.

The common law has allowed courts to consider the particular circumstances of a business and the interest said to justify a restraint. While we recognise 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.

We recommend 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.

3. Confidentiality and client non-solicitation

QLS supports the continued availability of appropriately drafted confidentiality obligations and reasonable client non-solicitation provisions.

This is consistent with our previous position that these matters should continue to be addressed through the common law.

QLS recommends that the explanatory materials provide practical examples distinguishing prohibited non-compete clauses from confidential and intellectual property protections, client non-solicitation clauses and client non-dealing provisions.

4. Co-worker non-solicitation

QLS notes the proposed prohibition on co-worker non solicitation clauses and considers that further clarification is required regarding its scope.

In particular, consideration should be given to its application to senior employees, contractors, labour-hire workers, professional services businesses and commercial transactions involving the sale or transfer of a business.

The distinction between actively soliciting employees and legitimate recruitment arrangements should also be clarified.

5. Offences and penalties

QLS notes the proposed application of the Part IV cartel provisions to the new no-poach wage-fixing prohibitions.

While we support effective deterrence, some members have raised concerns that the provisions will apply across the broader economy and may also affect small businesses that may not have the resources or market position of larger corporations.

QLS suggests that the penalty regime should be proportionate and take into account the size and circumstances of the business and the nature of the conduct. Specifically, consideration could be given to whether appropriate safeguards or differentiated penalties are required for small businesses.

6. Cascading restraints

QLS notes that the exposure draft would prohibit cascading post-employment restraints.

In our previous submission, QLS supported permitting cascading duration and geographical restraints and referred to the approach under the Restraints of Trade Act 1976 (NSW).

We acknowledge the concern that cascading clauses can create uncertainty for employees and may result in unnecessarily broad restraints being included in contracts. This is noted in the explanatory materials.

However, QLS considers that there may be circumstances where a properly drafted cascading clause can provide greater certainty rather than an absolute prohibition.

We recommend considering whether an absolute prohibition is necessary, or whether appropriately drafted cascading restraints could be permitted subject to safeguards against unreasonable restraints.

7. Transitional arrangements

QLS supports the inclusion of transitional arrangements but considers greater clarity is needed about existing employment arrangements.

The Bill applies to certain existing arrangements where they are varied. QLS considers that the legislation should make clear what constitutes variation for these purposes.

For example, it would be useful to clarify the treatment of salary increases, promotions, changes in duties, changes in hours and other routine amendments to an employment arrangement.

8. Franchising

QLS reiterates its serious concerns regarding the application of the proposed reforms to franchising arrangements in Australia.

Franchising relationships involve unique commercial dynamics and rely on safeguarding proprietary systems, intellectual property, operational know-how and network stability. Franchising in Australia is already subject to a specific regulatory framework under the Franchising Code of Conduct, including provisions dealing with restraints of trade between franchisors and franchisees. QLS previously raised concerns about ensuring that the proposed reforms do not inadvertently interfere with legitimate franchising arrangements.

QLS considers that further consideration is required to avoid unintended commercial disruption and uncertainty for franchisors and franchisees that have invested in good faith.

Express franchising exception

Proposed section 45ADA introduces per se cartel prohibitions in relation to no-poaching and wage-fixing arrangements between parties that employ staff. While specific statutory exceptions are provided for joint ventures (sections 45AO and 45AP), secondments (sections 45AUB and 45AUC), labour hire arrangements (sections 45AUD and 45AUE), and professional sporting league drafts (sections 45AUF and 45AUG), no exception exists for franchise networks.

Standard, non-solicitation provisions between franchisors and franchisees, designed to prevent cross-poaching of trained staff across a brand network, risk being captured as criminal offences (sections 45AF and 45AG) or civil contraventions (sections 45AJ and 45AK). An express statutory exception should be introduced into the *Competition and Consumer Act 2010* for provisions reasonably necessary to maintain and operate a franchise network.

Expansion of Legitimate Business Interests

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.

QLS recommends that section 333ZJ be amended so that the prescribed interests are non-exhaustive, or expressly recognise proprietary franchise systems and operational know-how.

Interaction with the Franchising Code of Conduct

The Bill and explanatory materials should also clarify the interaction between:

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- the proposed cartel provisions in the *Competition and Consumer Act 2010*;
- the post-employment restraint provisions in the *Fair Work Act 2009*; and
- the existing regulatory framework under the *Franchising Code of Conduct*, which already governs restraints of trade between franchisors and franchisees.

It is submitted that the legislation should expressly clarify that commercial agreements regulating the franchisor and franchisee relationship fall outside the scope of employment arrangements under the *Fair Work Act 2009*, or enact specific provisions to take into account the unique nature of a franchising arrangement and the need to protect franchise systems for the benefit of franchisors and their franchisees who have paid valuable consideration for businesses that are generally heavily reliant on intellectual property.

Targeted consultation

QLS strongly recommends that the Commonwealth undertake targeted consultation with the franchising sector and franchise law practitioners before finalising these provisions. This would assist in identifying potential unintended consequences and ensuring that legitimate franchise business models are not inadvertently compromised.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
President