FINANCIAL ADVICE ASSOCIATION AUSTRALIA

5 September 2025

Competition Taskforce
The Treasury
Langton Crescent
PARKES ACT 2600

Email: CompetitionTaskforce@treasury.gov.au

Dear Competition Taskforce,

Reform to non-compete clauses and other restraints on workers - Consultation paper

The Financial Advice Association Australia[1] (FAAA) welcomes the opportunity to provide feedback to The Treasury on the consultation paper regarding *Reform to non-compete clauses and other restraints on workers* (Consultation Paper).

The FAAA, as the peak professional association for financial advice providers, represents over 10,000 members, including many employers and employees. The membership has a strong interest in the proposed developments discussed in the Consultation Paper.

FAAA position in summary

The FAAA believes that the general position of the existing common law (that non-compete clauses are unenforceable where they are contrary to the public interest) should be supported by legislative measures that restrict the use of non-compete clauses to circumstances where they are reasonable and go no further than is necessary to protect legitimate business interests.

Employers' practices of intimidating employees by including unenforceable clauses in employment contracts, and/or overly complex and ambiguous 'cascading clauses', should be curbed to promote greater efficiency in the Australian labour market.

However, employees' interests must be balanced against employers' business interests, including protection of:

[1] The Financial Advice Association Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

- confidential information and trade secrets
- client relationships
- workforce stability.

Issues specific to the financial advice profession

Whilst the FAAA is broadly supportive of the proposed reforms, there are a couple of matters that are directly relevant to the financial advice profession that we believe are appropriate to take into consideration in this process. These two matters are the following:

- Protections for an employer's investment in a Professional Year candidate.
- Sensible client non-solicitation clauses that reflect the explicit business value of financial advice client relationships.

Professional Year candidate protections

Through reforms to the professional standards regime for the financial advice profession, new entrants to the profession since 2019 are required to complete a professional year before they can be registered as financial advisers. This professional year requires 1,600 hours of training, including 100 hours of structured training.

During this year, the firm that employs the professional year candidate is limited in terms of their ability to utilise this person so there is a material investment involved in this exercise. This is an investment by the business in this person, to enable them to become a financial adviser and in the future generate income by working with clients.

The professional year stage has become a bottleneck, as small businesses in particular are hesitant to invest in the appointment of these people, given the increased uncertainty that they will be poached after they conclude the training. Other businesses could easily offer them a pay increase to encourage them to move as a means of avoiding the cost of employing them during the professional year.

In the context of the significant decline in financial adviser numbers since 2019, and the importance of rebuilding the profession, this has become an important issue.

We believe that in this case, there is a justified case for enabling these employers to apply a non-compete clause for a certain period after the new financial adviser completes the professional year. This could be a clause to prevent them working for a competitor in the same broad area for a period of up to 2 years.

Client non-solicitation clauses

The core value of most financial advice businesses is the ongoing relationships with clients and the ongoing revenue generated from these clients. Most financial advisers have a book of 80 to 150 clients that they work with on an ongoing basis, where the client pays monthly fees. In the case of life insurance clients, there may be an ongoing commission arrangement for the continued servicing of these clients.

These relationships are a key determinant of the value of the business. Advice businesses, or books of clients, can be sold and generally will be valued on the basis of a multiple of the ongoing client income. This creates the concept of client ownership and the incentive to protect these relationships.

As financial advice businesses grow, they may employ newer financial advisers to service the clients. Some larger business may employ a number of advisers and allocate clients to these advisers, with different advisers servicing clients over time. Whilst the business will retain ownership of that client relationship, it is the employee adviser who will service them and have regular contact with them. The employment agreements with these employed advisers will generally include client non-solicitation clauses to prevent them from recruiting their former clients, should they leave the business, and either set up their own business or move to another business.

It is important to clarify that under the Corporations Act, clients have a right to terminate their ongoing fee arrangement at any time and can choose to move to another financial adviser if they wish to do so. These non-solicitation clauses will only serve to prevent their former adviser trying to solicit them to go to an alternative business.

The FAAA believes that the retention of these client non-solicitation clauses is essential to preserve the value of these financial advice businesses.

For an employed adviser who, as their career progresses, decides to establish their own financial advice business, they have the option of starting from scratch and building a client book, or to purchase a book of clients, potentially from an older adviser who has decided to exit the financial advice profession.

To have confidence to purchase a book of clients, the purchaser needs certainty that they can employ someone in the business without the risk that they will seek to solicit those clients to go elsewhere. In undertaking this purchase of a book of clients, they will also seek contractual certainty from the seller, that they will not try to solicit the clients to return to them. These controls help to ensure that there is an orderly market for the sale of financial advice businesses.

Thus, the FAAA believes that it is appropriate and necessary to permit client non-solicitation clauses in employment agreements that should reasonably be able to extend for 12 months. This would ensure that when an employed adviser leaves, the practice has confidence that they have 12 months before this adviser can seek to recruit clients and during that time the business can

ensure that strong relationships have been formed with a new adviser. It is our view that these clauses should only prevent active solicitation.

Conclusion

The FAAA recommends that The Treasury consults extensively with key stakeholders in the financial services industry, and the financial advice profession in particular, to understand and finesse the issues particular to financial advisers, their clients and the AFSLs who authorise them.

Please contact me on (02) 9220 4500, or via phil.anderson@faaa.au, if you have any questions or if we can provide further information on any of the points raised. Alternatively, you may contact David Barrett, Senior Manager Policy & Advocacy, on 02 9220 4510 or via david.barrett@faaa.au.

Yours sincerely,

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Financial Advice Association of Australia