

## NEWS

## Budget's ban on non-competes 'no cause for alarm' in adland

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by **NATHAN JOLLY**



The federal government is planning to ban non-compete clauses for employees who earn less than \$175,000 a year, in a change that could free up three million Australians. Experts say the move will have minimal impact on the advertising and marketing industry because junior and mid-level employees are not generally subject to non-competes.

The policy was announced in Tuesday night's budget, and is planned to come into effect from 2027. Non-compete clauses are designed to stop valuable employees from moving to a competitor or setting up a competing business, but the government claims they are often weaponised against low-earners to scare them into remaining at a company.

The treasurer, Jim Chalmers, said non-compete clauses are "holding too many Australian workers back from going to better-paid opportunities or setting up small businesses" and that "Australians shouldn't need a lawyer to go to a higher-paying job."

Chalmers said such "unnecessary red tape" acts to "lower worker mobility." He said removing them "ticks every box": "Proper economic reform, competition policy is making our economy more productive and boosting participation at the same time."

Darren Woolley is founder and global CEO of marketing management consultancy Trinity P3. He believes that non-compete clauses should only apply for the time in which an employer is paying an employee.

"I think if a company is serious about non-competes, then they need to put their money where their mouth is and actually pay the person not to work – because effectively they're stopping them from earning an income."

He notes that, from an employee's point of view, having a non-compete agreement where the employer has no intention of actually paying the person during that non-compete period can be devastating to someone's livelihood.



Darren Woolley

"Effectively, you're taking that person out of the market," he explains. "If you're an advertising specialist and the sensitivity is such that they don't want you working for a competitor for a period of time – say six months or 12 months – then that stops you being able to earn an income during that time."

Woolley stressed this example only applies to employees – not contractors or directors of companies, for whom there are "different requirements around confidentiality and doing harm" to the company and shareholders.

"Employees really only have their time, knowledge and expertise to sell."

## ADVERTISEMENT



Woolley says the \$175,000 threshold may not impact the advertising world as much as other sectors, because non-competes are rarely used for middle or junior roles.

"I'm not sure it's going to have a huge impact on the advertising and media industry at that level. It'll be interesting what happens if they extend that to all areas."

Woolley believes that the only fair way to have such clauses in play, is to continue paying someone not to work elsewhere during a period of what he calls "gardening leave".

"You pay them to take leave and not work somewhere else," he says. "I think that's probably the only way to do it. Because what you're effectively saying as an employer is 'this is serious enough for us to continue to support you during your non-compete period'."

As the law currently stands, non-compete clauses can seriously financially harm skilled workers who may be barred from working for extended periods.

"How do you provide for your family? How do you provide? How do you get gainful employment, earnings? How do they even think that's remotely fair?"

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