APSCo Submission in Response to the Competition and Fair Work Legislation Amendment (Banning Unfair Non-Competes) Bill 2026

On behalf of APSCo Australia Members, representing 200 parent companies of labour hire firms across Australia.

Submitted: Thursday 1st October 2026

Background

APSCo is a not for profit industry body that represents the professional (white collar) recruitment industry. Members are governed by its Constitution and adhere to a Code of Conduct that promotes compliance, professional behaviour and ethical and responsible recruitment practices.
Through its ongoing Member communications and professional development programs, we are consistently educated across Government compliance, State licensing requirements, Award changes and updates to the Fair Work Act.
APSCo Membership ensures our business is across changing legislation, best workplace practice and ongoing professional development. Our Membership upholds our commitment to deliver quality service and assures we operate with our client and candidates' best interests in mind.
The APSCo brand is a trusted, internationally recognised badge of quality underpinned by the core values of RESPECT, INTEGRITY, RELATIONSHIPS, LEADERSHIP and SUCCESS.

Introduction

APSCo Australia welcomes the opportunity to provide a response to the Treasury's Draft Competition and Fair Work Legislation Amendment (Banning Unfair Non-Competes) Bill 2026.

APSCo supports the Government's objective of increasing workforce mobility and preventing the inappropriate use of post-employment restraints. Labour mobility is an important feature of a productive and competitive labour market and APSCo supports measures that encourage employees to pursue career advancement and entrepreneurial opportunities.

However, APSCo is concerned that a blanket prohibition on non-compete clauses may generate unintended consequences for highly relationship-based and heavily regulated industries such as recruitment and labour hire. In particular, APSCo submits that the proposed reforms may undermine the substantial compliance investments, governance frameworks and worker protection mechanisms that governments have spent many years seeking to strengthen across the sector.

Regulatory Reform and Industry Investment

The recruitment and labour hire industry has undergone significant regulatory reform over the past decade.

Governments across Australia have introduced labour hire licensing schemes, wage theft legislation, workplace compliance reforms, same job same pay provisions, enhanced Fair Work enforcement mechanisms and broader industrial relations reforms designed to improve accountability, transparency and worker protection outcomes.

APSCo members have responded by making substantial investments in:

- Labour hire licensing compliance
- Payroll and wage assurance systems
- Award interpretation and classification expertise
- Workplace health and safety frameworks
- Worker onboarding and verification processes
- Industrial relations and Fair Work compliance capabilities
- Contractor engagement and classification processes
- Technology platforms and governance systems and
- Worker safeguarding and risk management procedures.

These investments are not discretionary. They are essential to maintaining lawful operations and delivering positive outcomes for workers, clients and the broader labour market.

APSCo submits that any policy changes affecting competition within the sector should be considered alongside the Government's broader objective of promoting higher standards of compliance, governance and worker protection.

Legitimate Business Interests in the Recruitment Industry

The recruitment and staffing industry has characteristics that distinguish it from many other sectors.

Unlike businesses whose value is primarily derived from physical assets, recruitment businesses generate value through long-term investment in intellectual capital, relationship networks, market knowledge and workforce expertise.

APSCo submits that recruitment businesses hold several legitimate commercial interests that warrant consideration when assessing post-employment restraint arrangements, including:

- Client relationships and goodwill
- Candidate, contractor / worker relationships
- Confidential commercial information
- Workforce planning intelligence
- Market insights and business development strategies
- Talent community development
- Proprietary recruitment processes and methodologies and
- Significant compliance and governance infrastructure.

Importantly, candidate, contractor and worker relationships represent a core asset within the recruitment profession.

Recruitment businesses invest substantial time, expertise and financial resources into sourcing, screening, assessing, onboarding, developing and supporting workers throughout their employment lifecycle. These relationships are often developed over many years and are supported by ongoing investment in technology, compliance systems, worker engagement initiatives and professional development programs.

The ability to connect skilled workers with employment opportunities relies upon trust, continuity and sustained relationship-building. Recruitment businesses effectively operate within a dual-sided market where both client relationships and worker relationships are fundamental to business success.

APSCo submits that these workforce relationships constitute a legitimate business interest that should be recognised within any framework governing post-employment restraints.

Impact on Sustainable Business Investment

Many APSCo members already operate within highly competitive and relatively low-margin environments, particularly within labour hire and payroll-based workforce solutions.

Margins in these business models are constrained by:

- Award obligations
- Superannuation requirements
- Payroll tax
- Workers compensation premiums
- Compliance and reporting obligations
- Labour hire licensing requirements and
- Increasing industrial relations regulation.

At the same time, businesses have been required to absorb significant costs associated with recent workplace relations and worker protection reforms.

While APSCo supports the objectives of these reforms, they have, however, materially and significantly increased the cost of operating compliant recruitment and labour hire businesses.

APSCo is concerned that the proposed prohibition on non-compete clauses may intensify price-based competition by facilitating the rapid replication of existing businesses through the transfer of client relationships, worker networks, commercial intelligence and specialised market expertise.

In sectors where margins are already modest, additional downward pressure on pricing may further reduce the capacity of businesses to invest in:

- Compliance and governance systems
- Payroll assurance programs
- Worker protection measures
- Employee training and development
- Workplace health and safety initiatives
- Technology infrastructure and
- Risk management capabilities.

Over time, this may create a market environment where competitive success is increasingly determined by price rather than investment in quality, compliance and worker protection outcomes.

Risk of Accelerated Business Replication

APSCo supports entrepreneurship and healthy competition.

However, recruitment businesses can often be established with relatively modest capital requirements compared to many other industries.

The accumulated knowledge, worker relationships, client goodwill and market intelligence developed within established recruitment businesses represent a substantial portion of their enterprise value.

Under the proposed reforms, individuals or groups of employees may be able to leave established businesses and rapidly establish competing operations with immediate access to extensive relationships, commercial insights and market knowledge acquired during previous employment.

While many new businesses operate responsibly, APSCo is concerned that the reforms may lower practical barriers to entry in a manner that creates incentives to prioritise rapid market acquisition ahead of equivalent investment in governance structures, compliance capability and worker protection frameworks.

Risk of Coordinated Team Movements

APSCo members have expressed particular concern regarding coordinated team departures.

Recruitment businesses commonly operate through collaborative teams consisting of recruitment consultants, account managers, delivery specialists, candidate managers and operational support functions.

The simultaneous departure of multiple employees can result in the immediate transfer of substantial commercial knowledge, candidate networks, client relationships and market intelligence.

The Bill appears primarily focused on individual employee mobility and does not fully consider the practical implications of coordinated team movements within relationship-driven industries.

In circumstances where teams collectively establish competing businesses, the commercial impact extends beyond ordinary labour mobility and may effectively transfer years of investment in training, compliance capability, workforce development and relationship building from one organisation to another.

Impact on Clients, Workers and Workforce Planning

The potential consequences of these reforms extend beyond the interests of recruitment businesses.

Recruitment providers are frequently entrusted with highly sensitive information relating to:

- Workforce planning strategies
- Organisational restructures
- Labour demand forecasts
- Candidate pipelines
- Succession planning activities
- Remuneration structures; and
- Future hiring requirements.

Clients share this information with an expectation that it will remain protected.

In addition, recruitment firms invest heavily in developing trusted worker communities, specialist talent pools and contractor networks that improve labour market efficiency by connecting skilled workers with employment opportunities.

APSCo is concerned that unrestricted transfer of these relationships and commercial insights may negatively affect client confidence and weaken incentives to invest in long-term workforce development and talent attraction activities.

Downward Pressure on Standards and Worker Protection

Compliance represents a significant operational cost for recruitment and labour hire businesses.

Businesses that invest heavily in payroll assurance, worker protections, governance systems, industrial relations expertise and workplace safety frameworks inevitably face higher operating costs than businesses that make lower levels of investment.

APSCo is concerned that unrestricted business replication and intensified price-based competition may create incentives that reward lower-cost operating models rather than businesses maintaining robust compliance frameworks.

Over time this may place downward pressure on:

- Compliance investment
- Workforce governance standards
- Worker safeguarding initiatives
- Employee development programs
- Payroll assurance processes
- Workplace relations expertise and
- Broader worker protection outcomes.

Such outcomes would be inconsistent with the objectives underpinning many recent government reforms.

Protecting Workforce Mobility While Preserving Regulatory Outcomes

APSCo supports measures that prevent the misuse of non-compete clauses and fully recognises the importance of mobility within a modern labour market.

However, APSCo submits that a complete prohibition may not appropriately balance workforce mobility with legitimate business interests in heavily regulated, relationship-based industries.

A more targeted framework may better preserve incentives for businesses to continue investing in compliance capability, worker protection systems, professional development and long-term workforce participation outcomes.

APSCo Recommendations

APSCo recommends that Treasury carefully consider the interaction between the proposed non-compete reforms and the broader regulatory framework governing recruitment and labour hire businesses.

In particular, APSCo submits that consideration should be given to:

- The impact of coordinated team departures and business replication
- Protection of client goodwill, candidate and worker relationships, confidential commercial information and workforce planning intelligence
- The significant compliance investments made by regulated recruitment and labour hire providers
- The effect of increased price-based competition on low-margin, compliance-intensive workforce businesses
- The potential implications for worker protection outcomes and industry standards and
- Whether limited and proportionate protections should remain available for executive, leadership, strategic and revenue-generating roles, including positions with access to highly sensitive commercial information and workforce planning intelligence.

Conclusion

APSCo supports measures that prevent the inappropriate or excessive use of non-compete clauses. However, a complete prohibition risks creating unintended consequences for industries that have been subject to extensive government-led compliance reform and which rely heavily on intellectual capital, worker relationships, client goodwill and workforce expertise.

APSCo encourages Treasury to adopt a more balanced and targeted framework that preserves workforce mobility while allowing proportionate protections for legitimate business interests where substantial compliance investment, worker protection obligations and commercially sensitive information are involved.

Such an approach would better align competition objectives with the Government's broader commitment to maintaining high standards of compliance, governance and worker protection within Australia's recruitment and labour hire sector.

APSCo Australia would welcome the opportunity to discuss this submission further and provide any additional information that may assist Treasury's consideration of the proposed reforms.

Yours sincerely,



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