

Restraint of trade clauses

Young Workers Legal Service

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Restraint of trade clauses in employment contracts often restrict what an employee can do for future employment after they leave their job. They also often prevent an employee from leaving their current job and running a business on their own in competition with the employer. These clauses can restrict your freedoms after your employment ends.

Typical restraint of trade clauses include the following components:

- Restrictions on working for competitors;
 - example: *'you must not carry on, in any capacity, in competition with our business.'*
- Restraints on encouraging clients to follow you to another business;
 - example: *'you must not canvass, or solicit the business of, or maintain any personal records of, any client of our company.'*
- Geographical restraints, or a 'Restraint Area';
 - example: *'...must not work as a hairdresser within a 5km radius of this business.'*
 - example: *'... must not work as a renewable electricity consultant within South Australia.'*
- Time restraints, or a 'Restraint Period';
 - example: *'...must not work for a direct competitor of this company for one year after your employment ends.'*

What can I do before signing an employment contract?

- Carefully read your offer of employment before signing.
- If you suspect any restraint of trade clauses exist in your offer of employment, you could consider whether it is reasonable, and if you wish, discuss this with your prospective employer to have it altered or removed before signing your contract.

I have signed a contract containing a restraint of trade clause. What can I do?

- Restraint of trade clauses will not be enforced if they are unreasonable, taking into account the interests of both the employee and the employer. The clause may be completely unenforceable, or only partially enforceable. It is important to get advice from your union or YWLS on the enforceability of such a clause before, for example, accepting a job with a competitor of your current employer.
- If possible, ask to re-negotiate the clause with your employer.
- If you plan to leave your job, discuss your intentions with your employer to see if they consent to you working for a competitor.
- Contact your Union if the employer is not willing to discuss the matter.

Contact your union

Unions exist to help workers with employment disputes. Being a union member means that you have help available to you when you require. If you are a member, contact your union as soon as you find yourself having trouble resolving a conflict at work.

If you require further assistance, remember that you can contact the YWLS on (08) 8279 2233.



SA UNIONS