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Restraint Clauses, Australia, 2023

Results of the Short Survey of Employment Conditions, containing experimental estimates on the use of restraint clauses in Australia.

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i Source: [Employee Earnings and Hours, Australia, May 2023](#)

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New data on use of restraint clauses by employers

Restraint clauses in employment contracts are conditions that restrict an employee from sharing information, moving to a competitor, or prohibiting a former employee from approaching clients or co-workers. They exist to protect an employer's information and business interests.

Given the general decline in job mobility over time, there is an increasing interest in understanding potential factors that may prevent employees from changing jobs and employers, or that make it more difficult or less appealing to make a change, or that limit the

ability of employers to attract potential employees to fill vacant jobs. Restraint clauses are one potential factor.

To better understand the use and prevalence of different types of restraint clauses in Australia, in late 2023 the ABS conducted the Short Survey of Employment Conditions, the first ABS employer survey on this topic. It focused on asking simple questions that could reasonably be answered by businesses, to provide timely new insights.

Using the Employee Earnings and Hours (EEH) responding sample, around 7,000 businesses were approached to answer a series of follow up questions on restraint clauses. Unlike EEH, the short survey was not compulsory but still achieved a relatively high response rate of around 70%. The ABS would like to thank these businesses for their important contribution to this representative data, on a topic for which official statistics have not previously been available.

As this was the first attempt at collecting such information, and the ABS attempted to minimise reporting effort for businesses through the use of simple questions, the data and insights should be considered experimental and exploratory.

It is also important to remember when interpreting this employer-level data that businesses vary in size, and that a percentage of businesses within the Australian labour market does not necessarily translate into a similar percentage of employees in Australia (that is, a large employer will account for a higher proportion of employees in Australia than a small employer). Further contextual information on this can be found at the bottom of this release, under [Employers and their share of all employees \(/articles/article-65baef259395b#employers-and-their-share-of-all-employees\)](/articles/article-65baef259395b#employers-and-their-share-of-all-employees).

Note: Data presented in this article is rounded to one decimal place. At times, this can result in the component items not equaling the total due to rounding.

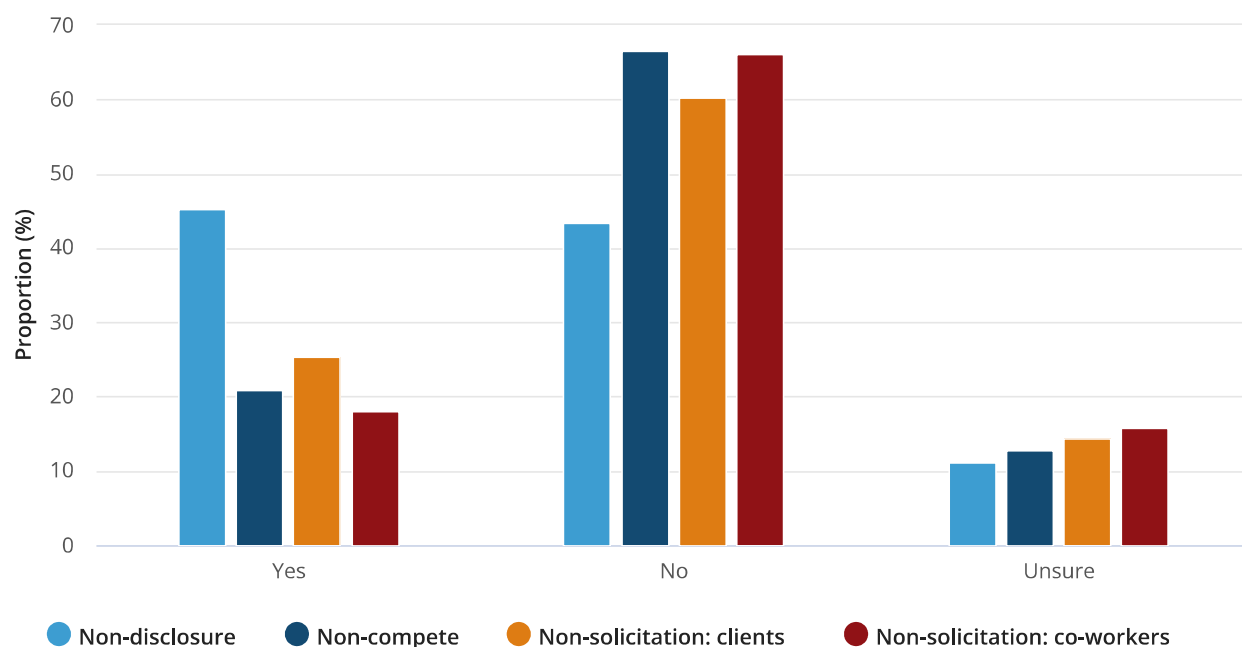
Use of restraint clauses in Australia

Non-disclosure clauses were the most common restraint clause, used by 45.3% of Australian businesses in 2023. The next most common was the Non-solicitation of clients (25.4%), followed by Non-compete (20.8%) and Non-solicitation of co-workers (18.0%).

All businesses were asked if any of these four restraint clauses applied to their employees. Those that answered yes were then asked further follow up questions. An 'unsure' option was

also provided. More information on this can be found in [Methodology](#) ([/methodologies/employee-earnings-and-hours-australia-methodology/may-2023](#)).

Restraint clause use by employers

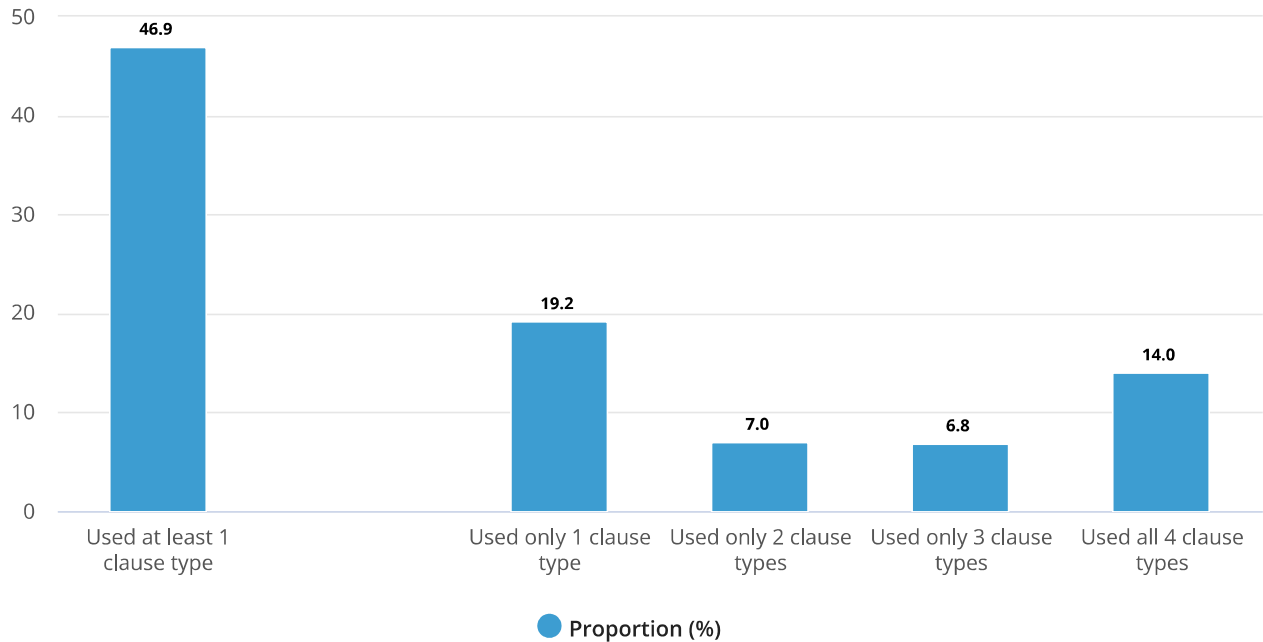


Businesses using multiple restraint clauses

46.9% of all Australian businesses reported they used at least one type of restraint clause.

Of those that reported at least one of the four clauses, a high proportion indicated that they only used one clause (19.2% of businesses) or all four restraint clauses (14.0%).

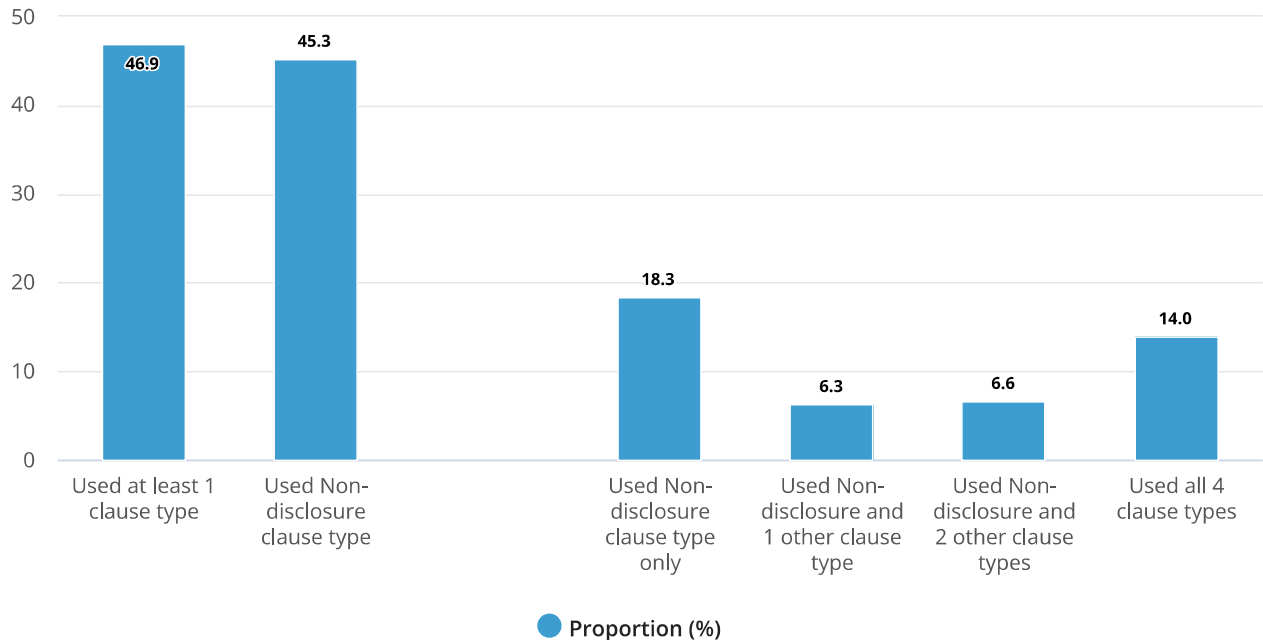
Businesses reporting multiple restraint clauses, Australia (a)



a. Proportions (%) for the categories "using only 1, 2, 3 and 4 clause types" are components of "Used at least 1 clause type"

Of the 46.9% of Australian businesses that used a restraint clause, most used a Non-disclosure clause. 18.3% of businesses only used a Non-disclosure clause, while 6.3% used Non-disclosure clauses and one other type, and 6.6% used Non-disclosure clauses and two other types.

Use of Non-disclosure, Australia (a)(b)



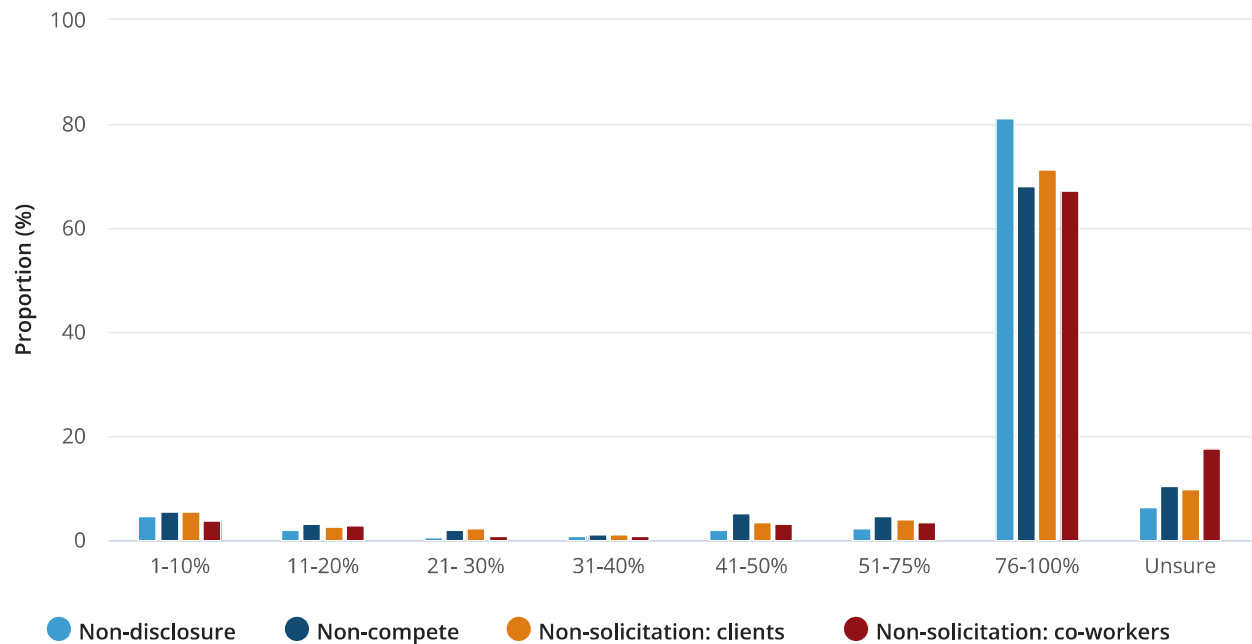
- a. Proportion (%) figures for this graph will not sum to 100%, as they are not mutually exclusive
- b. Proportions (%) for the categories "using Non-disclosure type only, and 1 and 2 other clause types, and all 4 types" are components of "Used Non-disclosure clause type"

The percentage of their employees covered by restraint clauses

Businesses that used restraint clauses were asked to indicate a percentage range for the share of employees that were covered by these clauses. The below percentages only refer to employers that reported using a particular restraint clause.

The majority of businesses that used restraint clauses reported that these clauses applied to 76-100% of their employees.

Percentage of employees covered by restraint clauses, Australia (a)



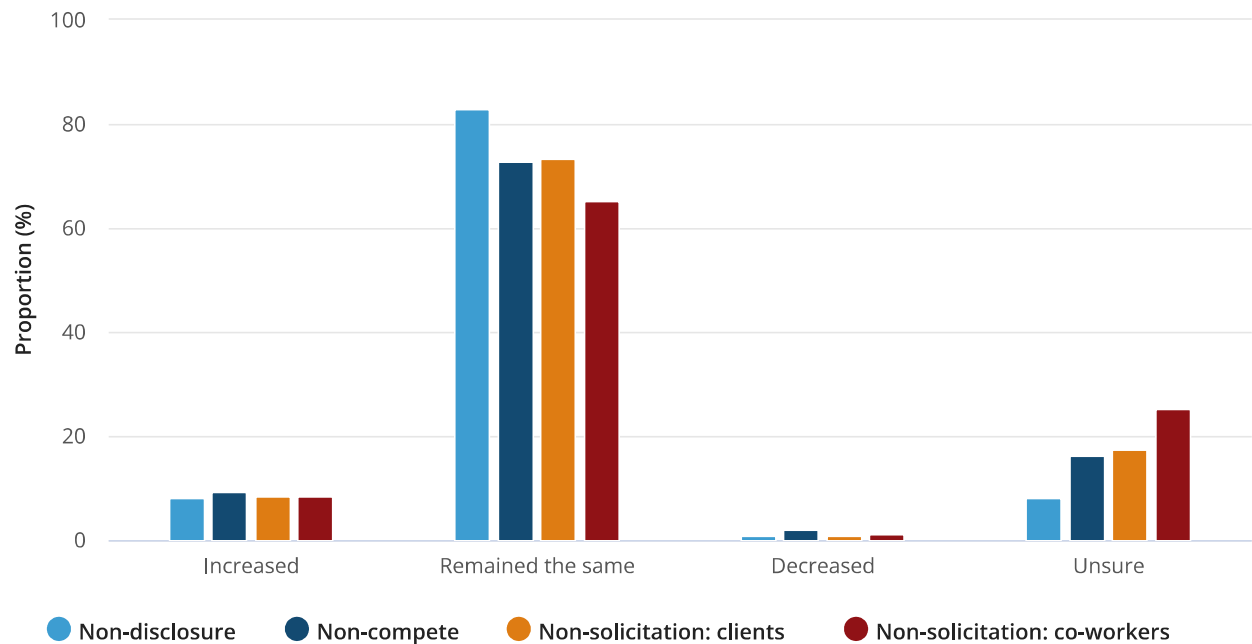
a. Proportions (%) by restraint clause are calculated from businesses using each clause

Previous use of restraint clauses

Businesses that used restraint clauses were asked to describe their use over the past five years for each type of clause. Proportions below refer to businesses who reported using that restraint clause.

The majority of businesses reported that their use of restraint clauses had generally remained the same over the past five years. However, across the clauses a higher proportion of employers reported an increased use than a decreased use.

Use of restraint clauses, past 5 years, Australia (a)

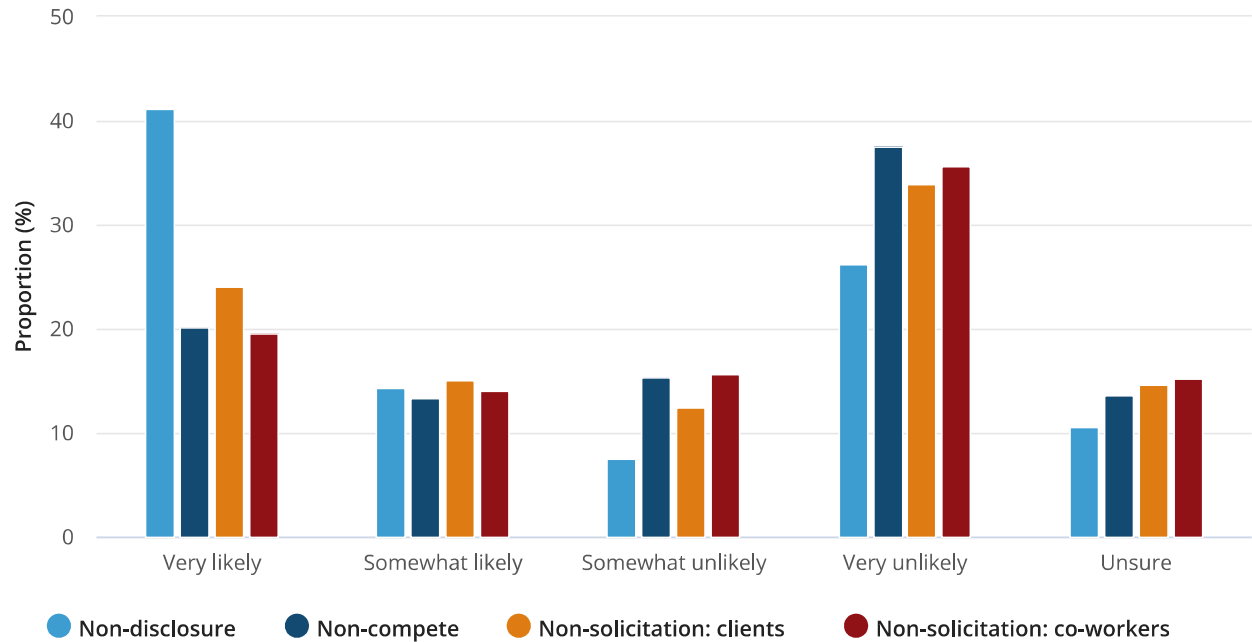


a. Proportions (%) by restraint clause are calculated by clause type, from businesses that use that restraint clause

Expected future use of restraint clauses

The expected future use of each restraint clause was asked of all businesses, regardless of their current use. These results were used to derive proportions according to each restraint clause, with Non-disclosure clauses the most likely to be used in the future (41.2% of businesses indicated 'very likely' and 14.4% indicated 'somewhat likely').

Future use, Australia (a)

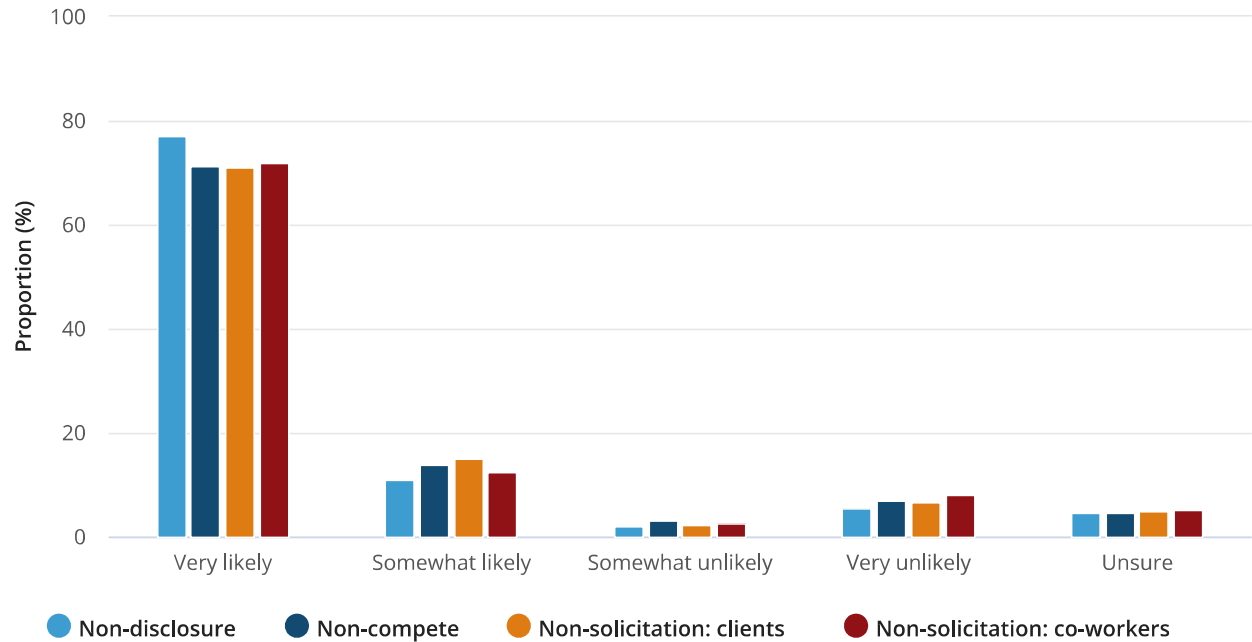


a. Proportions (%) in this graph are calculated by clause type, for all businesses

Expected future use was strongly correlated with an employer’s current use.

If a business was currently using a clause type, it was highly likely they expected to continue to use it in the future. 77.1% of businesses that used Non-disclosure clauses were 'very likely' to use them in future, and that proportion was also high, above 70%, for the other clauses, Non-solicitation: co-workers (71.8%), Non-compete (71.4%) and Non-solicitation: clients (71.0%).

Future use, businesses currently using restraint clauses (a)

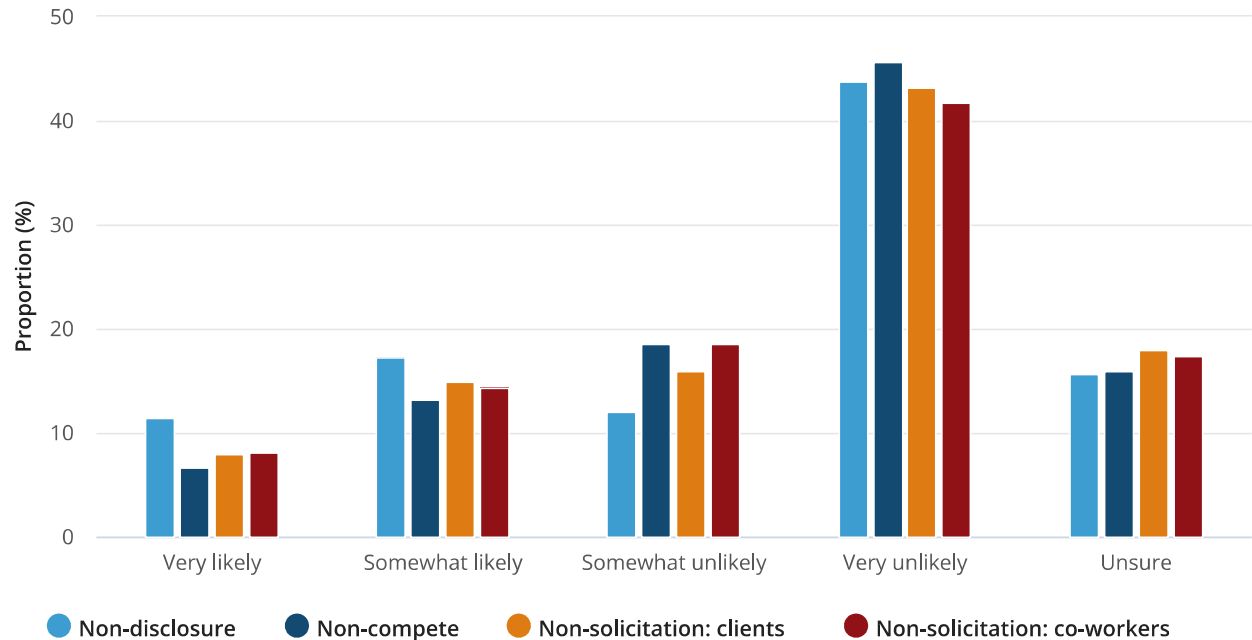


a. Proportions (%) by restraint clause are calculated by clause type, from businesses that use that restraint clause

If a business was not currently using a clause type, it was less likely that they expected to use it in the future.

45.6% of businesses that did not currently use a Non-compete clause reported that they were 'very unlikely' to begin using it in the future. The respective proportions of 'very unlikely' responses for the other clauses were: Non-disclosure (43.7%), Non-solicitation: clients (43.2%) and Non-solicitation: co-workers (41.7%).

Future use, businesses not using restraint clauses (a)



a. Proportions (%) in this graph are calculated by clause type, from businesses that did not use that restraint clause

Use of Non-compete clauses

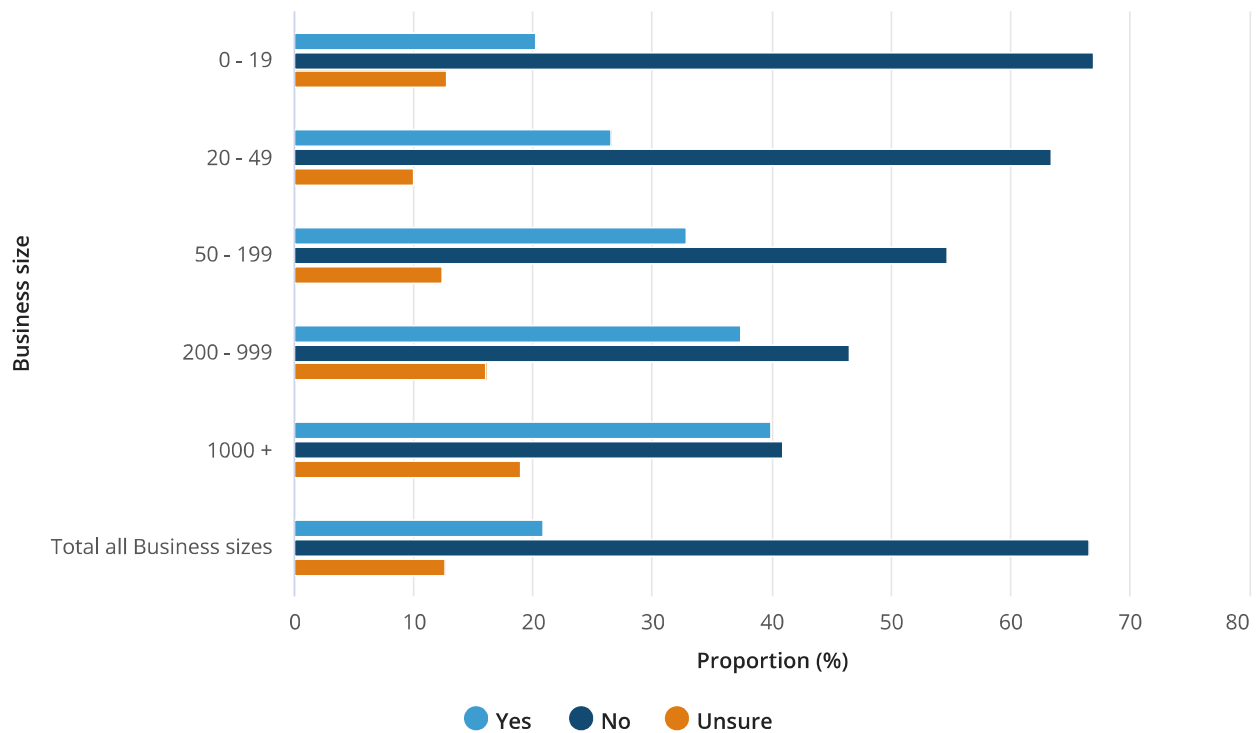
Among the different types of restraint clauses, there is a particular interest in understanding the impact of Non-compete clauses, given their potential implications for job mobility and the ability of employers to attract potential employees to fill vacant jobs.

Approximately one percent of Australian businesses said that a potential employee had turned down their job offer because of a Non-compete clause. This did not necessarily mean that a Non-compete clause had been legally enforced (though, of the businesses that used at least one restraint clause, 5.1% indicated they had taken or threatened legal action to enforce a restraint clause - not necessarily a Non-compete clause).

Large businesses (with 1,000 employees or more) had the highest use of Non-compete clauses (40.0%). Conversely, small businesses (0 to 19 employees) had the lowest use of Non-compete clauses (20.2%).

The majority of businesses in Australia fall into the small business category (0 to 19 employees), which is why the following graph shows similar proportions between the overall total for businesses and those in the 0 to 19 category.

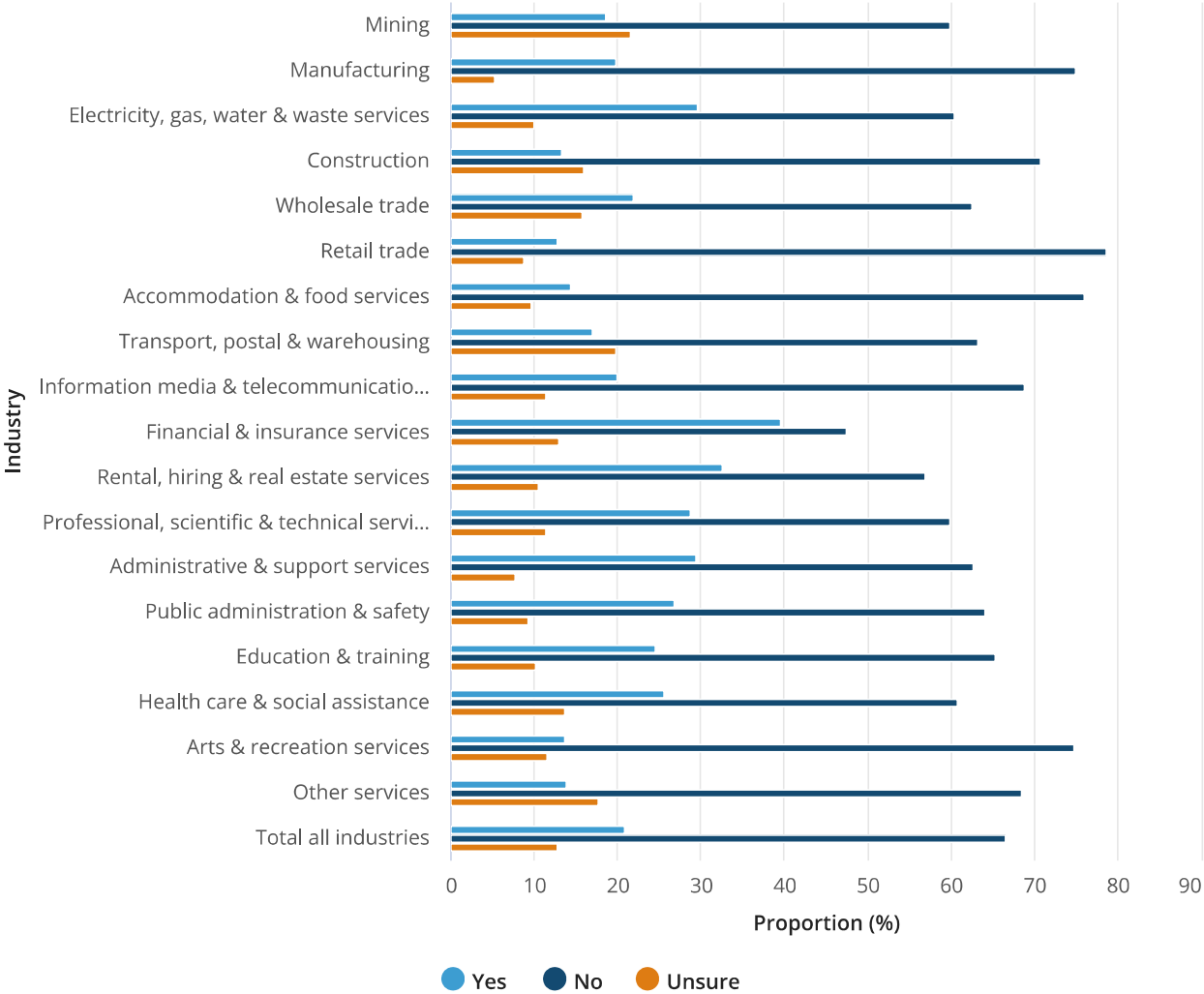
Use of Non-compete, Business size, Australia



When examining the use of Non-compete clauses by employers at an industry level, the highest use was in the Financial & insurance services (39.6%) and Rental, hiring & real estate services (32.6%) industries.

Retail trade (12.7%) and Construction (13.3%) had the lowest use of Non-compete clauses.

Use of Non-compete, industry, Australia



Employers and their share of all employees

The Short Survey of Employment Conditions collected summary employer-level information from employers, rather than individual employee/job level information. Its focus was on the use of restraint clauses by employers, with some high-level information around prevalence within businesses (which showed that generally, where clauses were used, they often applied to most or all employees in that business).

It is important to remember when interpreting employer-level data that businesses vary in size, and that a percentage of businesses within the Australian labour market does not necessarily translate into a similar percentage of employees in Australia (given a large employer will account for a higher proportion of employees in Australia than a small employer).

This section provides a sense of what proportion of total employee jobs were in businesses that used restraint clauses. This information is useful for understanding and analysing prevalence measures.

Employer's share of employees is presented below for context, for each type of restraint clause. Not all individual employee jobs in these businesses were necessarily covered by these clauses (as can be seen in the data on '[Percentage of employees using restraint clauses \(/articles/article-65baef259395b#the-percentage-of-their-employees-covered-by-restraint-clauses\)](/articles/article-65baef259395b#the-percentage-of-their-employees-covered-by-restraint-clauses)'):

- Non-disclosure clauses were used in 45.3% of Australian businesses in 2023. These businesses accounted for 64% of all employee jobs (while businesses who didn't use these clauses accounted for 23% of all employee jobs, and those who were unsure 13%).
- Non-solicitation of clients clauses were used in 25.4% of Australian businesses in 2023. These businesses accounted for 36% of all employee jobs (while businesses who didn't use these clauses accounted for 46% of all employee jobs, and those who were unsure 18%).
- Non-compete clauses were used in 20.8% of Australian businesses in 2023. These businesses accounted for 31% of all employee jobs (while businesses who didn't use these clauses accounted for 53% of all employee jobs, and those who were unsure 16%).
- Non-solicitation of co-workers clauses were used in 18.0% of Australian businesses in 2023. These businesses accounted for 29% of all employee jobs (while businesses who didn't use these clauses accounted for 51% of all employee jobs, and those who were unsure 19%).

Data downloads

Restraint Clauses, Australia, 2023

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[71.42 KB]
