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Competition and Regulation in Professional Services – Note by Australia

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This document reproduces a written contribution from Australia submitted for Item 8 of the 77th meeting of Working Party 2 on 10 June 2024.

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1. The paper focuses on current and recent policy initiatives that have sought to promote a more competitive professional services sector in Australia. Professional services are a key sector of the Australian economy, contributing to economic growth both directly through its own final outputs and indirectly as a large provider and user of intermediate inputs across other industries in the economy. The performance of professional firms are therefore of crucial importance to the broader economy.¹

2. The paper discusses reform recommendations related to professional services from two major competition reviews which laid the foundation of modern competition policy in Australia: the 1993 Hilmer review and the 2015 Harper review. It describes one of key regulations on professional services - occupational licensing, and the developments in mutual recognition across jurisdictions in Australia and across borders with other countries, focusing on the recent reform on using automatic mutual recognition (AMR) for occupational licencing to improve labour mobility. It discusses the current reform agenda as the Australian Government's Competition Taskforce is reviewing Australia's competition laws, policies, and institutions. In particular, the Taskforce focuses on recent efforts in Australia to promote competition by investigating restrictions employers impose on a worker's ability to move to competitors (known as non-competes clauses). The paper includes two case studies: improving competition among medical practitioners and in legal services.

3. In reflecting on the reforms in recent decades, it is clear that:

- Professional services have flow on effects on other sectors of the economy. Improving competition can lead to broader productivity gains.
- Regulators should continue to harmonise standards to reduce unnecessary market frictions and increase access to choices of high-quality professional services and drive innovation and more efficient prices in those markets.
- A priority is to limit the capacity of professionals working in a particular field to restrict the entry of new entrants to their specialisation, unless there are compelling countervailing reasons. As a principle, entry should not be solely determined by professionals who could gain commercially from restricting competition.

1. Regulation of Australian professional services

4. Within Australia, a range of jobs are subject to professional regulation and occupational licensing. Appropriate regulation of professional services is necessary to ensure the quality of services, the ethical conduct of professionals and consumer protection in 'credence' markets, as well as public safety and environmental protection. Legislators and regulators have generally sought to craft regulations in a manner that is proportionate to the risks and does not needlessly restrict the efficient and effective provision of

¹ This paper has been prepared by the Competition Taskforce Division in the Australian Treasury. The Taskforce has been asked to conduct a '[Competition Review](#)'. The Review was established in mid-2023 and will last two years. It will focus on the Government's priorities for modernising the Australian economy, including [worker non-compete clauses and other restraints](#) that prevent workers from switching jobs.

professional services, including entry into professions and competition within relevant markets.

5. Professional services make an important contribution to the Australian economy. Professional, scientific and technical firms account for around 8 per cent of Australian Industry Gross Value Added, pay 11 per cent of all wages, and employ 9 per cent of all jobs (amount to 1.3 million employees) in Australia.² When aggregated across industries, professionals account for over one quarter of all workers in Australia, the largest occupational grouping.³

6. Workers in professional services firms are more highly trained and highly paid than average workers. Most professional services workers (69.7 per cent) have a bachelor's degree or higher qualification.⁴ The average total earnings for professional service employees are more than 30 per cent higher than the average earnings for all employees.⁵ Productivity in the professional services industry has grown much faster than the rest of the economy, increasing by 24.2 per cent over the past ten years, compared to 7.4 per cent across the Australian economy.⁶

7. With some exceptions, in recent decades, regulators have generally been encouraged to address barriers to competition in professional services by removing as many regulatory barriers to labour mobility as possible. Given the high-human capital and interconnectedness of the professional services industry, it is critical that workers can easily move to roles where they can be most productively employed. Removing barriers to the movement of skilled workers improves dissemination of knowledge and innovation across the economy.

8. Conversely, constraints on job mobility among professionals is likely to drag on productivity growth. Legal, accounting, tax advice and IT professional services are business-facing economic activities that provide specialist services to other businesses across the economy. These intermediary services play an important role in driving the performance of other sectors of the economy, including downstream, consumer-facing sectors. Consequently, impediments which restrict activity, or the overall performance of professional services firms, may indirectly reduce economic activity.

9. Despite significant reforms, there is much to do to address the fractured regulatory landscape for professional services.

2. Previous economy-wide competition reviews impacting professionals services

10. During the 1990 and early 2000s, Australia implemented a package of National Competition Policy (NCP) reforms that are estimated to have led to a permanent 2.5 per

² Treasury calculations based on Australian Bureau of Statistics (ABS), [Australian System of National Accounts 2022-23](#) & [Labour Force, Australia, Detailed March 2024](#).

³ ABS, [Labour Force, Australia, Detailed March 2024](#). According to the Australian and New Zealand Standard Classification of Occupations (ANZSCO), 'Professionals' occupations group is broader than the industry classification of the 'Professional, scientific and technical services', and may provide a more accurate measure of the importance of the professional services in the labour market as it includes education, health and arts professions. However, there are no other corresponding economic data for ANZSCO.

⁴ ABS, [Qualifications and work 2022-23 – Table 12](#), Australian Government, 2024

⁵ ABS, [Average Weekly Earnings, Australia](#).

⁶ ABS, [Australian System of National Accounts 2022-23 – Table 15](#)

cent increase in Australia's GDP or around \$5,000 per household.⁷ The 1993 National Competition Policy Review (known as **the Hilmer Review**)⁸ recommended that the sale of professional services be brought in line with the sale of other goods and services, by extending competitive conduct rules to include all non-incorporated businesses and by repealing provisions permitting state and territory laws to specifically authorise or approve conduct.

11. Federal, state and territory governments endorsed the principles of the Hilmer Review and passed laws to realise the application of competition laws across Australia prohibiting professional associations from imposing restrictions on practice, unless a net public benefit could be demonstrated. Between 1996 and 2000, the Hilmer review was implemented under the National Competition Policy (NCP) agenda, which included the reform of several Australian occupational licences, such as real estate agents, dentists, hairdressers, employment agents and conveyancing services.⁹

12. The 2015 Competition Policy Review (known as **the Harper review**)¹⁰ was significant but did not have specific recommendations related to professional services.¹¹ However since the Harper review, progress has been made in mutually recognising occupational licensing across jurisdictions, with the implementation of automatic mutual recognition of some occupational licences progressively rolled out from 2021 across all Australian jurisdictions, except Queensland. Further reforms are needed to allow better recognition of the skills, experience, and qualifications of both domestic and overseas workers. For example, the 2023 Kruk review recommended reforms to improve recognition of overseas medical professionals.¹²

3. Occupational licensing and mutual recognition across jurisdictions in Australia

13. As a federation of states and territories, Australia must balance the benefits of having regulations that are tailored to state and territory-specific conditions against the costs of maintaining impediments that hamper interstate trade and prevent a seamless national economy.

⁷ Productivity Commission, [Review of National Competition Policy Reforms](#), Australian Government, 2005.

⁸ F Hilmer, M Rayner and G Taperel, [National Competition Policy Review](#), Australian Government, 1993

⁹ Productivity Commission, '[Volume 7 – A more productive labour market](#)', *Advancing Prosperity: 5-year Productivity Inquiry report*, Australian Government, 2023; Productivity Commission, *Review of National Competition Policy Reforms*

¹⁰ I Harper, P Anderson, S McCluskey & M O'Bryan QC, [Competition Policy Review: Final Report, Report to the Australian Government, 2015](#).

¹¹ The Harper review did comment that some unnecessary restrictions on competition have been removed, including restrictions on medical practice ownership; restrictions preventing lawyers from advertising; and lawyers' monopoly on conveyancing services. The Harper review also noted that licensing that restricts who can provide services can prevent new and innovative businesses from entering the market and limit the scope of existing business to innovate. In a range of areas, including medical profession, legal profession, building trade, and dental practitioners, licensing arrangements introduce standards that restrict who can practice in these industries and may impose more costs than benefits on the community.

¹² R Kruk AO, [Independent review of Australia's regulatory settings relating to overseas health practitioners, report to Australian Government, 2023](#).

14. Almost one in five Australian workers required a registration or a licence to perform their work in 2019.¹³ States and territories are responsible for most registration and licensing matters. These requirements are designed to improve public, consumer, and workplace safety, but differences in licensing and registration requirements across jurisdictions can make it harder and more costly for businesses to find licensed workers quickly, and for people to move to where jobs are available. Individuals and small businesses operating in cross-border areas and larger businesses operating in multiple jurisdictions may be acutely affected by these barriers as they might need to be accredited in two or more jurisdictions which leads to increased costs.

15. Mutual recognition helps address restrictions on labour mobility across jurisdictions by enabling a person who is licensed or registered in one jurisdiction to be registered in an equivalent occupation in another jurisdiction without having their qualifications or experience checked again. Part 3 of Australia's *Mutual Recognition Act 1992* establishes a national framework for the operation of the mutual recognition of occupations in Australia. It is underpinned by state-based mutual recognition laws. To obtain a second state or territory licence or registration under mutual recognition a worker must: apply to the local registration authority in the state or territory; provide detailed information to prove they are registered or licensed in another jurisdiction; and pay an application fee. From 1 July 2022 to 30 June 2023, around 6,637 mutual recognition requests had been made, with the main sectors being security (3,168), electrical (1,120) and property (848).¹⁴

16. As it stands, the mutual recognition process imposes financial costs and delays. Regulators assess the equivalency of registrations across jurisdictions as part of determining whether to grant a second state licence under mutual recognition arrangements, which is not always straightforward and creates barriers to competition within the labour market.

17. In 2015, the Australian Productivity Commission found that the current mutual recognition arrangements are largely working well but there would be cost savings from automating these processes. It recommended that governments expand the use of automatic mutual recognition (AMR) to assist greater cross-border service provision and improve the efficiency of mutual recognition arrangements.¹⁵

18. Since 2020, all jurisdictions (except Queensland) have signed the Intergovernmental Agreement on Automatic Mutual Recognition of Occupational Registration to implement a uniform scheme for AMR from 1 July 2021. It also included a commitment to monitor the implementation of AMR and to support ongoing improvements in the regulatory environment.

19. While a good step forward, there are a range of restrictions imposed by states and territories on mutual recognition and AMR. These vary from jurisdiction to jurisdiction depending on the requirements they set for occupations. Some variation between jurisdictions is historical. A jurisdiction can exempt a particular occupation from AMR if there is a significant risk within that jurisdiction relating to consumer protection, the

¹³ Department of the Prime Minister and Cabinet, [Improving occupational mobility: Analysis of the potential costs and benefits of implementing automatic mutual recognition of occupational registrations](#), Australian Government, 2021.

¹⁴ Data from GovTeams were provided by Department of Employment and Workplace Relations (DEWR), noting not all state regulators use GovTeams for mutual recognition and AMR information sharing. Some use emails and other means. Therefore, actual number of mutual recognition and AMR requests would be higher than the ones reported here.

¹⁵ Productivity Commission, [Mutual recognition schemes: Final report](#), Australian Government, 2015

environment, animal welfare or the health or safety of workers or the public. For example, teaching is exempt from AMR due to concerns from peak organisations such as the Australian Education Union that people with incorrect or poor qualifications would be able to move between jurisdictions. Unwarranted exemptions unnecessarily hinder labour mobility, reduce wages and create barriers for people to take up new jobs in other states or territories. A lack of mobility can lead to persistent disparities across regional labour markets and increased inequality in income and social conditions.¹⁶

20. The Australian Government is improving worker mobility across jurisdictions through digitalisation of occupational licensing.¹⁷ Digitalisation of occupational licensing also provides opportunities to explore further benefits from having a nationally consistent policy setting, such as streamlining worker screening.

Box 1. Estimates of economic gains

Occupational licensing can reduce labour mobility, productivity, and employment as well as increase wages of occupations subject to licensing. The Productivity Commission (2023) suggested that substantive economy-wide productivity improvements could be achieved if labour productivity improved in industries subject to licensing, including professional, scientific and technical services, school education, and health and social services.¹⁸ The Committee for the Economic Development of Australia estimates that reducing licensing strictness would produce up to \$5 billion each year for the Australian economy.¹⁹

The recent AMR reforms in 2021 are expected to generate benefits for business, tradespeople and other registered professionals, and consumers. Over time AMR will enable people to take up new job opportunities in other jurisdictions and improve labour mobility, leading to increased output, investment, productivity and competition.²⁰

Economic modelling of AMR, commissioned by the Department of the Prime Minister and Cabinet and undertaken by the PricewaterhouseCoopers (PwC), showed that the AMR reforms would deliver net economic benefits to Australia. It estimated that AMR could lead to additional economic activity of around \$2.4 billion over the 10-year period from 2021 to 2030, due to a better allocation of labour and capital in the economy,²¹ with gross state product in each jurisdiction expected to rise over this period.

¹⁶ Productivity Commission, [Geographic Labour Mobility](#), Research Report, 2014

¹⁷ Treasury, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#), Australian Government, 2023

¹⁸ Productivity Commission, '[Volume 7 – A more productive labour market](#)', *Advancing Prosperity: 5-year Productivity Inquiry report*, Australian Government, 2023.

¹⁹ A Barker, *Skills Recognition*, Committee for Economic Development of Australia (CEDA), 2022.

²⁰ Department of the Prime Minister and Cabinet, [Improving occupational mobility: Analysis of the potential costs and benefits of implementing automatic mutual recognition of occupational registrations](#), 2021

²¹ PwC, [Economic Impact Assessment of automatic mutual recognition of occupational licencing – Final Report](#), Report to the Australian Government Department of the Prime Minister and Cabinet, 2020

4. Recognising overseas qualifications and mutual recognition of professional qualifications

21. In Australia, states and territory bodies are authorised to regulate the recognition of overseas qualifications. For general purposes, state and territory government Overseas Qualification Units provide assessment for overseas qualifications. For specific occupations that require specialised knowledge and skills in Australia, authorities responsible for these occupations may require registration, licensing, professional membership or other requirements.²²

22. The Committee for Economic Development of Australia (2024) has noted that the share of recent migrants whose overseas qualifications are recognised is relatively low in Australia compared to other countries. Only around one quarter of migrants arriving between 2015 and 2019 had their overseas qualification recognised in Australia.²³ Information gaps may be a factor, but the complexity of the recognition system also acts as a barrier for many migrants to pursue recognition. Research has found that licensing exacerbates skills mismatch. The report noted that mismatches between migrants' skills and wages are larger in occupations that use licenses. Recent migrants who have a qualification in a licensed field but work in other occupations earn 20 per cent less than comparable Australian-born workers.

23. There are 39 skilled-migration assessing authorities across Australia, which undertake assessments for more than 650 occupations.²⁴ Members of professional associations who assess overseas qualifications are at risk of 'regulatory capture,' potentially using licensing to limit entry and prevent competition to maintain the incomes of existing practitioners.²⁵ Widely implemented AMR schemes have improved the situation though sometimes regulators still maintained restrictions.

24. In Australia, Mutual Recognition Agreements (MRAs) are negotiated by accreditation and licensing bodies, not by government. There are 93 mutual recognition and similar agreements for twelve professions with counterparts across 32 countries.²⁶ Professions include: Accountants, Actuaries, Architects, Builders and Construction Managers, Computing and Information Technology Practitioners, Dental Practitioners, Engineers, Language Pathologists and Audiologists, Medical Practitioners, Social Workers, Surveyors, Veterinarians. Australia is an 'active' economy in developing MRAs, among top five economies that have entered 40 or more MRAs.²⁷ All known Australian MRAs are listed on the *APEC Inventory of Mutual Recognition Agreements for Professional Qualifications and Licensure*.

25. The Australian Government plays a facilitative role to help professional services accreditation and licensing bodies engage with their overseas counterparts. However, there is no requirement for the Australian Government to review and assess MRAs for professional services.

²² Department of Education, *Qualifications Recognition*, Australian Government, 2022

²³ A Barker & S Tofts-Len, *Making Better Use of Migrant's Skills*, CEDA, 2024

²⁴ A Barker & S Tofts-Len, *Making Better Use of Migrant's Skills*, CEDA, 2024

²⁵ A Fells, *Regulation, Competition and the Professions*, Australian Competition and Consumer Commission, 2001; Harper et al, *Competition Policy Review*.

²⁶ Data were provided by Department of Foreign Affairs and Trade (DFAT).

²⁷ Asia-Pacific Economic Cooperation (APEC), *Mutual recognition Agreements for Professional Qualifications and Licensure in APEC: Experiences, Impediments and Opportunities*, February 2024.

26. MRAs help Australia remain internationally competitive by facilitating the transfer and diffusion of international best practice and expertise into the economy. They streamline the recognition of professional qualifications, licensing and registration processes to facilitate an easier two-way movement of professionals. MRAs reduce costs and time periods associated with license or registration processes while maintaining professional standards. An MRA may benefit recent migrants in Australia who have arrived through other visa pathways, but seek to have their professional qualifications recognised.

27. MRAs complement trade agreements by addressing residual and time-consuming process and procedural ('behind-the-border') barriers on licensing and registration. There is no pre-requisite for a Free Trade Agreement (FTA) to be in place for a MRA to be negotiated between interested economies. However, through the inclusion of Professional Services annexes or chapters in modern FTAs, Australia provides a practical platform for its professional bodies to engage with their counterparts to conclude new MRAs or similar agreements to facilitate the seamless two-way movement of professionals. In the development and review of FTAs, Australia undertakes a public consultation process, including with professional service peak bodies and regulators.

Box 2. Automatic and mutual recognition and its operation across Australia and New Zealand

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) allows a person who holds a registration or license in Australia or New Zealand to receive another registration or license in the other country after they have notified the local registration authority and paid applicable fees. It is a non-Treaty level arrangement between the Commonwealth of Australia, the Australian states and territories and New Zealand. It is implemented through mirror legislation in each of the jurisdictions and entered into force in 1998.²⁸

5. Current Competition Review and Professional Services

28. The 2023-25 Competition Review was initiated by the Australian Government to examine Australia's competition laws, policies and institutions. For instance, Australian Commonwealth, state and territory governments are collaborating on initiatives to revitalise Australia's National Competition Policy (NCP) to foster a more seamless and competitive national economy. The work involves a review of the existing National Competition Principles²⁹ to ensure their continued relevance in addressing existing and emerging challenges, as well as a 10-year National Reform Agenda (the Agenda).

29. As a part of the Agenda, an agreed set of reforms is being developed under sectoral and cross-sectoral themes that will guide prioritisation. All Australian governments are interested in exploring reforms that could address unnecessary regulatory and administrative barriers that prevent workers with relevant skills, experience and competencies from moving between jobs, firms and jurisdictions. If agreed and implemented, reforms that increase competition among firms for skilled workers would help to allocate labour toward its most productive use, reducing critical skills shortages and addressing regional disparities.

²⁸ New Zealand Ministry of Foreign Affairs and Trade, [Trans-Tasman Mutual Recognition Agreement \(1996\)](#).

²⁹ The existing National Competition Principles are contained in the [1995 Competition Principles Agreement](#).

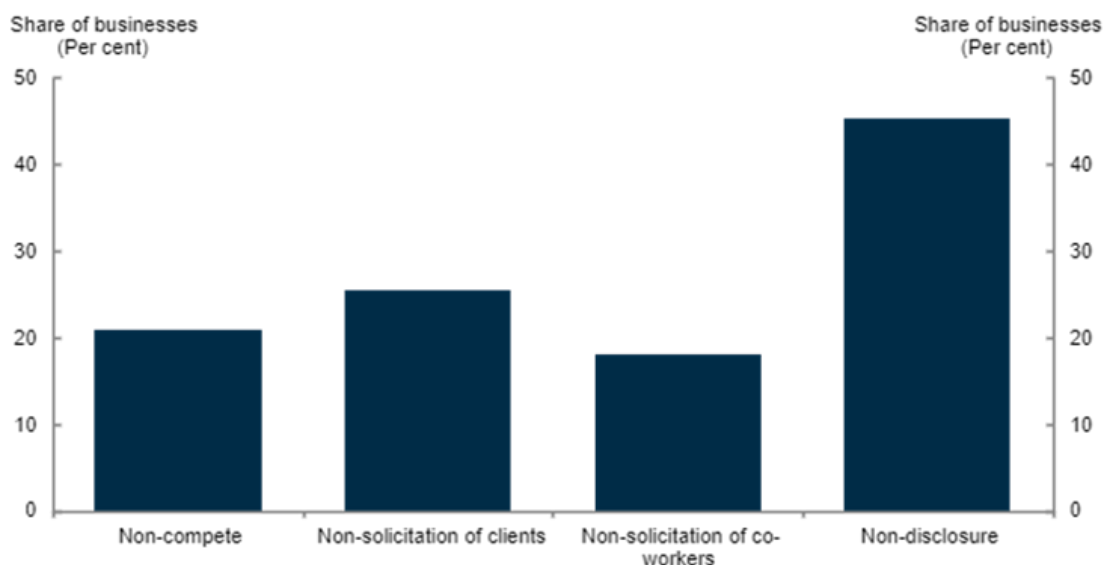
30. Consistent with this Agenda, the Competition Review is actively investigating worker restraint of trade clauses and whether reforms might be needed. The Competition Taskforce publicly consulted on an issues paper between 4 April to 31 May on the use and impact of non-compete clauses and other restraint clauses that might limit job mobility. The feedback will inform consideration of whether reform is needed. If reform is considered necessary, the Government has indicated that further consultation on specific reform options would take place.

6. Non-competes and other restraints on professional services workers

31. Non-compete clauses in employment contracts restrict a worker from working for a competitor or establishing a competing business. They have recently attracted the focus of Australian policymakers reflecting evidence both in Australia and overseas that restraint of trade clauses, particularly non-compete clauses, have become increasingly prevalent. The international evidence, and initial Australian evidence, also suggests that non-compete clauses may be adversely affecting some workers, other businesses and the broader economy – through reduced wages, job mobility and access to skilled workers. This overseas research, especially in the United States, also emphasises that non-compete clauses can affect worker behaviour and economic outcomes even in cases where the particular clause would be unenforceable in court. This points to an important ‘chilling effect’ that these clauses can have on labour mobility. At the same time, there is a recognition that these clauses may have a legitimate role in many instances, for example, where they are suitably targeted towards protecting trade secrets, confidential information and client lists.

32. In Australia, recent employer and employee surveys point to non-compete clauses being relatively common across all industries, business sizes and types of workers in Australia. The Australian Bureau of Statistics (ABS, 2024) reported that 20.8 per cent of businesses used a non-compete clause for some of their workers in 2023 (Figure 1) – figures which are comparable to other overseas jurisdictions including the United States (18 per cent), United Kingdom (26 per cent) and the Netherlands (37 per cent). Non-compete clauses were particularly common in knowledge - and relationship -focussed services industries such as professional services where 28.8 per cent of businesses recorded using non-compete clauses for their workers – the 5th highest among 18 industries. The ABS survey also showed that other restraint clauses – non-solicitation and non-disclosure clauses – were also common across the economy (Figure 1). Overall, the survey showed 1 in 2 Australian businesses reported using at least one of these restraint clauses.

Figure 1. Use of Non-compete and other restraint clauses by employers



Note: The figures above include employers that responded “Yes” to the use of these restraints and does not include employers that responded “Unsure”. Figures do not add to 100 per cent, as employers may use more than one kind of restraint clause.

Source: ABS, Restraint Clauses, Australia 2024.

33. The findings from this ABS employer-side survey are broadly consistent with a small survey of workers conducted by the e61 Institute last year. It found that 22 per cent of workers in Australia had a non-compete clause, with 50 per cent subject to at least one type of restraint clause. It also found these clauses being used across all income, age and industry groupings.

34. While most focus has been on how labour restraint clauses affect workers and businesses, these clauses can also have impacts on clients and customers. This is because clients and customers may have to give up their relationship with their existing service provider when that professional is subject to a non-compete clause. These clauses may therefore restrict a customer’s right to choose their supplier.

Box 3. PwC - A case study in how labour restraint clauses can hamper professionals’ job mobility

As noted above, ABS data show that non-compete clauses are particularly prevalent in services sectors with close client connections including professional services (for example, accounting and legal services). This was also highlighted in early 2023 when PwC Australia became involved in a ‘tax leaks scandal’ in which some partners misused confidential information received through undertaking consultancy work with the Australian Government on taxation policy. In response to this scandal, a number of partners and other employees left or attempted to leave PwC (and its spin-off Scyne Advisory³⁰) but faced significant barriers in doing so from the enforcement of non-

³⁰ As a result of the tax scandal, PwC decided to separate its public sector advisory business from the rest of the PwC practice under the name Scyne Advisory. Over 100 PwC partners and over 1000 PwC employees were offered employment with Scyne.

compete and other restraint clauses, and withholding of pay.³¹ It was reported that partners were informed they would be unable to work with clients that any partner in their business unit had provided with advice or services in the past three years. This effectively ruled the partners out from working with any ASX 500 or government client for two years – with the clause extending far beyond a restriction that states partners cannot take their direct clients with them. It was also reported that for partners who are paid a monthly profit share, PwC would withhold between 50 per cent to 100 per cent of their salary during their six-month notice period for up to one year.

To deter groups of partners moving to competing firms, PwC reportedly demanded its departing partners pay back fees generated in the previous year to deter their departure to a rival firm.³² Recently, Scyne took a junior partner to court (she had provided notice to leave and served the required 3 months of gardening leave) seeking a temporary injunction to prevent her from leaving for another firm citing a 12-month non-compete clause.³³ The judge in his interim decision did not grant relief to Scyne noting the delay in seeking the injunction.³⁴ Subsequently it has been reported that Scyne and this former partner reached a resolution ahead of the scheduled court hearing in June, with the former partner accepting a deal that will see her walk away from her current role to a different role at the rival firm.³⁵

As part of its public consultation process, the Competition Taskforce has been engaging with worker groups, businesses, legal aid services and others to obtain a better understanding of how these clauses are being used across other parts of the professional services industry such architecture, legal and financial services.

Separately, as part of the Government's PwC response to the tax leak scandal, Treasury has released a consultation paper on the regulation of accounting, auditing and consulting firms in Australia (3 May to 28 June).³⁶ The Government is seeking feedback on competition in the audit and accounting services in the Australian market and specific barriers or challenges to competition in the sector.

7. Emerging Technologies and Professional Services

35. Emerging technologies such as Artificial Intelligence (AI) are expected to have broad impacts on both the economy and our society. In professional services, recent developments in the field of generative AI and in particular large language models (LLMs) are expected to impact professional service occupations, replacing some tasks and augmenting in others. Competition issues could arise if there are few providers of AI, which could have implications for professional services.

³¹ T Bennett, '[PwC partners hit with restrictions if they try to move to rivals](#)', Australian Financial Review, 14 August 2023, accessed on 14 April 2024.

³² E Tadros, '[Legal experts doubt PwC's 'rule of three' would be enforced by courts](#)', Australian Financial Review, 17 September 2023, accessed on 14 April 2024.

³³ E Tadros, '[Scyne too slow in bid to stop former partner moving to Downer: judge](#)' Australian Financial Review, 8 March 2024, accessed on 14 April 2024.

³⁴ [Scyne Advisory Business Services Pty Ltd v Heaney](#) [2024] NSWSC 275 (20 March 2024).

³⁵ D Ross, '[Scyne settles with its former partner](#)', The Australian, accessed on 24 April.

³⁶ Australian Government, '[Regulation of accounting, auditing and consulting firms in Australia, Consultation Paper](#)', May 2024.

8. Recent Reviews of Specialist fields

8.1. Review of medical practitioners (the Kruk Review)

36. The 2023 Kruk review³⁷ examined the registration and accreditation processes and their interaction with migration processes for overseas health practitioners wanting to work in Australia. The Kruk review found that an applicant's end-to-end journey through the system – which includes navigating professional registration, visas processes, Medicare³⁸ applications and employment requirements – is complex, costly and slow.

37. The majority of Australia's healthcare workforce is regulated by the Australian Health Practitioner Regulation Agency (AHPRA) that covers 16 health care professions. AHPRA, along with the National Boards for each health profession, form the National Registration and Accreditation Scheme (NRAS). The NRAS was introduced in 2010 to improve national consistency, replacing the previous state-based registration and accreditation arrangements. National Boards are responsible for assessing practitioner's qualifications through their respective accreditation authorities. The Medical Board, for example, has 25 colleges responsible for the assessment of medical specialists.

38. While the NRAS has been important for improving consistency of standards and workforce mobility across jurisdictions *within professions*, regulatory responsibilities in the migration and registration system remain highly fragmented *across professions*, with no one regulator responsible for managing the end-to-end journey of an overseas practitioner into Australia's health care system.³⁹ The Kruk review final report provided 28 recommendations⁴⁰ under five broad reform areas to streamline the end-to-end regulatory journey and improve regulator accountability, and ultimately ensure Australia can attract health practitioners needed to fill shortages while maintaining appropriate standards of safety and quality. According to economic impact analysis commissioned by the Department of Finance, implementing the Kruk review recommendations is expected to result in economic cost savings of up to \$850 million annually.

39. Regulatory settings and practices directly impact the supply of health practitioners, and thus the prices paid by Australians for health services and health outcomes for the community. The Kruk review heard that specialist medical colleges – who set the comparability assessments of specialist international medical graduates – are inconsistent between colleges, and lack transparency in both process and outcomes, creating great uncertainty for applicants. The assessments are costly, with fees and processing times varying widely across colleges.

40. The Kruk review recommended introducing more expedited pathways for the registration and accreditation of medical professions in shortage. While these pathways are not currently available for medical specialists, some professional bodies expedite an applicant if their qualification is 'approved' or 'substantially equivalent', allowing them to pay less and meet fewer requirements. The Kruk review recommended that the immediate focus should be on streamlining processes, removing duplication and providing greater

³⁷ R Kruk AO, [Independent review of Australia's regulatory settings relating to overseas health practitioners, report to Australian Government, 2023.](#)

³⁸ Medicare is Australia's universal health insurance scheme. It guarantees all Australians (and some overseas visitors) access to a wide range of health and hospital services at low or no cost.

³⁹ Kruk, *Independent review of Australia's regulatory settings relating to overseas health practitioners*, p 29

⁴⁰ Kruk, *Independent review of Australia's regulatory settings relating to overseas health practitioners*, p 13-17.

support to specialist comparability assessment to ensure more timely decision making and consistent outcomes. However, should outcomes fall short of workforce needs, the Kruk review recommended that the determinative part of this assessment be shifted to the Australian Medical Council, with specialist medical colleges retaining an important advisory role.

41. The Kruk review and its findings were endorsed by all first ministers and health ministers, with health ministers tasked with implementing the non-migration recommendations of the report. Implementing the report's recommendations will bring Australia's approach more in line with our international counterparts, allowing Australia to compete better to attract top talent in healthcare.

Box 4. Australian Legal services

42. The legal services sector accounts for more than ten billion dollars annually to the national economy. Generally, to become a legal practitioner in Australia, a person must be admitted to practice in the relevant state or territory and hold a practising certificate from the body (usually a professional association such as a law institute, law society or bar association) in the relevant jurisdiction. Legal practitioners must satisfy requirements in regard to legal knowledge, practical training, and character. Traditionally, state and territorial bodies determine the legal professional standards within each jurisdiction. A separate licence was required from each jurisdiction which created barriers for lawyers to trade between jurisdictions.⁴¹

43. Significant progress has been made in promoting access to legal services markets within Australia over the last decade. This has been prompted by reforms that commenced following the National Competition Policy reforms in the mid 1990s (outlined above) which then led to mutual recognition of entitlement to practise and greater regulatory uniformity.

44. During the 1990s most Australian jurisdictions removed the exclusive right of legal practitioners to provide conveyancing services; established an Australian Practising Certificate Scheme; deregulated advertising; and removed restrictions on the establishment of different business structures other than legal partnerships.

45. The Standing Council of Attorneys-General (SCAG) which consists of state, territory and Commonwealth Attorneys-General, developed a Model Bill for the legal profession. The Model Bill seeks to introduce uniform minimum standards for law degrees and practical legal training, and Australia-wide recognition of those qualifications; a nationally consistent set of provisions facilitating the establishment of incorporated legal practices and multi-disciplinary practices; and a nationally uniform system governing the approval of foreign lawyers to practice the law of their home country in Australia.

46. All jurisdictions except South Australia have incorporated the Model Bill into their Legal Profession Acts. Lawyers who have an 'Australian Practising Certificate' can now practise as lawyers in all of the jurisdictions that have now adopted the Model Law on admissions (except South Australia).

47. There are now no formal barriers to prevent foreign lawyers providing foreign law legal services on a fly-in, fly-out basis. "Fly-in, fly-out" means coming to Australia to provide legal services on a temporary basis. Note, the appropriate visa to enter Australia is still required. Foreign lawyers working on a fly-in, fly-out basis are entitled to come to Australia and act for their clients and provide legal services (for example in commercial negotiations, on transnational contracts, or international arbitrations), for a maximum period of 90 days in any 12 month period. There are no restrictions on foreign lawyers working as foreign lawyers in South Australia.⁴²

48. Every lawyer trained outside Australia who wishes to become eligible for admission in Australia must first apply to an admitting authority for an assessment of whether the person's academic and practical legal training qualifications are substantially equivalent to the qualifications required of local applicants.⁴³ That assessment sets out what additional studies the applicant must undertake in Australia, and the period within which the applicant must complete those studies and apply for admission. A lawyer trained and admitted to the legal profession in New Zealand may

apply to have those qualifications recognised under the Trans-Tasman Mutual Recognition Act 1997 (Cth). Once an overseas applicant has been admitted to the legal profession, the applicant must obtain a practising certificate before commencing to practise law.

In addition to admission requirements there are now ‘uniform laws’ which establish a ‘common market’ for legal services across NSW, Victoria and Western Australia. This encompasses 75 per cent of Australia’s legal practitioners. The scheme is intended to promote consumer choice and has strong consumer protection measures. In addition to governing admission to practice rules, it applies uniform rules regulating legal practice, business practice and professional conduct, legal costs, dispute resolution and professional discipline. It is a model that is open for other Australia states and territories to join over time. A uniform scheme regulator called the [Legal Services Council](#)⁴⁴ has been established to oversee the uniform scheme and oversee state based regulatory institutions.

⁴¹ J Jones, A Davis, S Chester & C Hart, ‘[Reforming Lawyer Mobility – protecting turf or serving clients?](#)’, *The Georgetown Journal of Legal Ethics*, Vol 30, p125-193, 2017

⁴² For more information on practising as a foreign lawyer in Australia from the [Law Council of Australia](#)

⁴³ It is important to note that foreign lawyers cannot advise or hold themselves out as an Australian lawyer until the assessment is completed. However, they can do paralegal type work. It is possible to get conditional admission while they are studying but it is extremely rare.

⁴⁴ See the Legal Services Council website and fact sheets it publishes for more information - <https://legalservicescouncil.org.au/>