

Protecting your business

Restrictive covenants

Key contacts



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What are they?

Restrictive covenants are contractual terms, aimed at protecting your business from unfair competition by former employees, contractors, officers and directors.

They can provide a valuable means of preventing unfair competition from former employees and safeguarding:

- confidential data, including trade secrets and pricing information;
- Client/customer information and contact details; and
- retention of key staff

Do they work?

Restrictive covenants will only be enforceable if they are no wider than is needed to protect legitimate business interests (for example trade secrets, trade connections and confidential information). This requires careful drafting.

General factors to be considered

Designing appropriate restrictions requires consideration of (amongst other factors):

- What work do employees do and who do they work with?
- What customers do employees have access to?
- What are the competitive threats to the business?
- Do the threats to the business arise from confidential information being used by a competitor, former staff approaching key

customers or from losing key people and skills?

- Who are your competitors and where do they operate?
- Who has access to key confidential information or holds key customer relationships?
- What existing technical, procedural, commercial or legal safeguards do you have and are they sufficient?

Confidential information and trade secrets

- The law provides very good protection for “trade secrets.”
- In the vast majority of cases a business’ “confidential information” e.g. secret future business plans, financial margins, unpublished contract prices, discount and rebate structures for each client, are not trade secrets.
- This means that without specific contractual protection such damaging and sensitive information attracts little or no protection in law.

Trade/Customer connections

- For many businesses their key assets include their customer connections and goodwill. This often rests with the brand or the business as a whole but in many cases it can rest with key employees.
- In the absence of properly designed and focused post termination restrictions, the

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“Its ‘highly professional and knowledgeable’ team is led by the ‘thorough and friendly’ Catherine Daw.”

The Legal 500

law provides little or no protection against this risk and an employee is free to join a competitor and solicit business from their former customers.

What to do?

- **Review** – We advise all our clients to review their current position. What are your threats, how serious are they and what measures, be it technical, commercial or legal are in place?
- **Assess** – Do your current measures work and are they sufficient?
- **Amend** – If you think you may not be adequately protected waiting until an employee has left is often too little too late.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.