



# Lord

## Commercial Lawyers

P: +61 3 9600 0162  
F: +61 3 9640 0946  
E: [info@lordlaw.com.au](mailto:info@lordlaw.com.au)

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# Legal Bulletin

## EMPLOYEE RESTRAINTS OF TRADE ARE ENFORCEABLE

A recent decision of the Supreme Court of Queensland serves as a reminder that courts will enforce employment restraints.

The case involved an employee who was employed from 2000 until 2011. The last 6 years of which were in a senior and well paid position.

The employee had signed a contract of employment which precluded her from being employed in a similar or competing business after leaving her employer's employ for a maximum period of 12 months.

In October 2011 the employee commenced employment with a competitor. Her former employer commenced proceedings seeking to enforce the restraint.

The court ultimately held that the restraint of 12 months was reasonable and the former employee was prevented her from commencing employment with her new employer for 12 months.

The critical points to note from this judgment are the Court held that:

- As a general proposition a restraint of trade is void as contrary to the public policy **unless** it is reasonable in the interests of the parties and by reference to the interests of the public.
- An employer must prove the restraint is a reasonable protection of its interests.
- The interests which can be protected by a restraint include the benefits an employee gains in confidential information derived from the employee's personal

dealings and relationships with the employers' customers.

- The validity of a restraint must be decided at the date of the agreement imposing it.

### Conclusion

For employers the case emphasises the importance of a well drafted restraint.

For employees it emphasizes the importance of taking care and appropriate advice before entering into a restraint and also when contemplating or making a move.

Further information:

Andrew Lord at [andrew.lord@lordlaw.com.au](mailto:andrew.lord@lordlaw.com.au) or

Tony Hulett at [tony.hulett@lordlaw.com.au](mailto:tony.hulett@lordlaw.com.au).

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