PREPARATION PACK · VICTORIA

A senior manager is leaving and the clients want to follow.

PREPARED	JURISDICTION	REFERENCE	CITATIONS CHECKED
4 November 2026	Victoria	ATU-2026-000233	13 of 17

WHAT YOU ASKED

We are a twelve-person accounting firm in Geelong, Victoria, operating through a proprietary limited company. A senior manager who has been with us six years on a salary of $145,000 resigned on 10 October 2026 giving four weeks' notice; her last day is 7 November. Her employment contract has clause 18, a 12-month post-employment restraint on practising as an accountant within 50 km of Geelong; clause 19, a 12-month restraint on soliciting or accepting work from any client she dealt with in her last two years with us; and clause 12, a confidentiality clause covering client lists and files. On 17 October two of our clients emailed asking us to transfer their files to her new practice 'from 1 December'. A third client told one of our partners that she had 'mentioned she was going out on her own' at a meeting back in September, while still employed. Those three clients bill about $180,000 a year between them. Our engagement letters say the client may end the engagement on 30 days' notice and that we hand over their records on request, subject to payment of outstanding fees. We would much rather keep the clients than fight in court. I want to know whether we can hold her to the restraint and the non-solicitation clause, whether we can refuse or delay releasing the clients' files, what we should say to the two clients this week, and what, if anything, we should say to her before her last day.

ROLE
the managing partner of the firm (the employer)

GOAL
keep the clients if we can, avoid a court fight, and handle the next two weeks without making it worse

DATES
resignation 10 October 2026; last day 7 November 2026; client emails 17 October 2026; clients want to move from 1 December 2026

THE CLOCK: TIME LIMITS FOR THIS KIND OF MATTER

- The restraint periods. Clauses 18 and 19 are stated as 12-month restraints. When a 12-month period starts (end of employment, or some other trigger) depends on the clause wording, which has not been supplied. This is where a time limit of this kind would be found: in the clause itself, read against Victorian common law.
- File-transfer request date. The three clients have asked for files to be transferred from 1 December 2026.
- Last day of employment. The stated last day is 7 November 2026; until then the employment subsists.
- Privacy correction timing. Where a private-sector organisation holds personal information, a request to correct it must be responded to within a reasonable period [4]. This concerns correcting personal information, not transferring files; it is noted because privacy obligations may be in play.

- Injunction timing. There is no fixed statutory time limit stated in the supplied sources for seeking an injunction. Interim injunctions commonly turn on promptness. The court's power, including interim relief and the power to award damages as well as or instead of an injunction, is in Corporations Act section 1324 [3], and whether that pathway is engaged depends on provisions on misuse of position and information that were not retrievable. The general Supreme Court injunction power was flagged but not retrievable.
- Fair Work Act notice. The Act sets out notice requirements and minimum notice periods, framed as requirements on an employer who terminates an employee's employment [1]. This matter is a resignation by the employee, so whether and how that section bears on the firm's position is a question for a lawyer; it is not a resignation-notice provision.

01 Your situation

This pack organises the firm's position across the two restraint clauses (clause 18, the 50km non-compete, and clause 19, the client non-solicitation and non-acceptance clause), the duties the departing manager owed while still employed, the confidentiality clause over client lists and files (clause 12), and the clients' file-transfer request. It is for taking to a lawyer or a free legal service quickly. Nothing here is advice, and it does not weigh how any of this would turn out.

The facts as given: a twelve-person Geelong accounting firm, operating through a proprietary limited company, has a senior manager of six years on a salary of $145,000 who resigned on 10 October 2026 giving four weeks' notice, with a last day of 7 November 2026. The contract has clause 18 (a 12-month restraint on practising as an accountant within 50km of Geelong), clause 19 (a 12-month restraint on soliciting or accepting work from any client she dealt with in her last two years), and clause 12 (confidentiality over client lists and files). On 17 October two clients emailed asking the firm to transfer their files to her new practice from 1 December. A third client told a partner that she had mentioned, at a meeting in September while still employed, that she was going out on her own. The three clients bill about $180,000 a year between them. The engagement letters say a client may end the engagement on 30 days' notice and that the firm hands over records on request, subject to payment of outstanding fees. The firm wants to keep the clients and avoid a court fight, and must decide what to tell the two clients and the employee in the next fortnight.

Several pieces of law for a matter of this kind could not be retrieved from the supplied sources and are flagged for a lawyer to pull in full: Corporations Act 2001 provisions on misuse of position and information by employees or officers, the broader Privacy Act 1988 framework beyond the correction principle, the Australian Consumer Law on misleading conduct in what is said to clients, the general Supreme Court injunction power and the overarching obligations in Victorian civil proceedings, and the Tax Agent Services Act Code of Professional Conduct on releasing records. These are noted only as gaps, not applied.

No court or tribunal proceeding appears to be on foot from what you told us.

Timeline

- September 2026: the manager mentioned at a meeting, while still employed, that she was going out on her own (from what you told us)
- 10 October 2026: the manager resigned, giving four weeks' notice (from what you told us)
- 17 October 2026: two clients emailed asking the firm to transfer their files to her new practice from 1 December (from what you told us)

- 7 November 2026: stated last day of employment (from what you told us)
- 1 December 2026: date from which the clients have asked for files to be transferred (from what you told us)

02 The law for situations like yours

THE TWO RESTRAINT CLAUSES (CLAUSE 18 AND CLAUSE 19)

Restraint of trade at Victorian common law: a post-employment restraint is prima facie void and enforceable only so far as it is reasonable, judged against a legitimate interest the restraint protects and no wider than necessary to protect it. The supplied sources do not contain a Victorian statute setting out these tests, so the detailed principles sit in common law a lawyer must supply and verify.

The Competition and Consumer Act prohibits contracts, arrangements or understandings with the purpose or likely effect of substantially lessening competition, and defines competition by reference to markets in which a party supplies or acquires services [2]. Whether and how that section interacts with an employment restraint is a question for a lawyer; the section is set out generally here, not applied.

CLIENTS FOLLOWING A DEPARTING ADVISER

One supplied case addresses what distinguishes mere notification to a client from active enticement, and treats a client's independent decision to follow as a matter going to causation and loss [19]. It also records that a duty not to exploit a business opportunity gained in employment has been treated as reserved to those in "top management" such as directors or senior officers, rather than every employee [19]. Whether a given role falls within that category is fact-specific. The case is a Federal Court decision from 2006 and is not citator-checked; it must be verified as still good law before anyone relies on it.

DUTIES DURING EMPLOYMENT, AND WHAT HAPPENS DURING A NOTICE PERIOD

While employed, an employee owes duties of fidelity and good faith; the content and limits of those duties at common law and in equity are developed in case law a lawyer must supply. The same supplied case distinguishes courtesy notification from enticement and examines calls made during a notice period and involvement in colleagues leaving [19,24]. The same case also records a point about the notice period that may cut the other way: where an employer, on receiving an employee's notice of resignation, immediately requires the employee to surrender access and is instructed not to attend work, the employee may contend that this is a repudiation of the employer's obligations under the contract, which the employee may purport to accept [24]. Whether removing access, restricting duties or placing an employee on garden leave during a notice period has that character turns on the contract and the circumstances and is a question for a lawyer.

The statutory misuse-of-position and misuse-of-information provisions that would ordinarily apply to a company's employee could not be retrieved and are flagged. The supplied improper-use-of-information provisions [6,14,16,17,20,21] are directed at officers or employees of specific Victorian statutory bodies and do not govern a private accounting firm's employee; they are noted only to show the general shape of such offences, not as law applying here.

RELEASING, DELAYING OR CONDITIONING RELEASE OF CLIENT FILES

Clause 12 (confidentiality over client lists and files) and the engagement letter's 30-day and handover terms are contractual and turn on their own wording, which has not been supplied in full. The ownership line between a firm's own working papers and a client's own documents is a matter of law and the engagement terms, to be supplied by a lawyer.

Privacy: the correction principle governs correction of personal information held about an individual, the steps required, refusal notices and response timing [4]. That principle addresses correction of inaccurate, out-of-date, incomplete, irrelevant or misleading personal information, not the transfer or release of client files to a new firm; it is noted only because privacy obligations may be in play. The broader Privacy Act framework was not retrievable and is flagged. The supplied disclosure-with-consent provisions in other Acts [5,8,13] operate within their own statutory schemes and do not govern this firm; they illustrate only the general pattern that disclosure of protected information is commonly permitted where the person it concerns expressly consents. Tax-agent professional obligations on releasing records could not be retrieved and are flagged. The supplied provision on transfer of client files when a manager's appointment ends [29] is from the legal-practice regulation scheme and does not apply to an accounting firm; it is not relied on here.

SETTLEMENT STRUCTURES AND REMEDIES

One supplied case concerns the construction of a specific deed of release and whether it precluded a later termination notice; it is a source on how separation terms are drafted and read, not on general principles of continuing obligations during a notice period [25]. Corporations Act section 1324 sets out an injunction power, including interim injunctions and the power to award damages in addition to or instead of an injunction, for contraventions of that Act [3]; whether that pathway is engaged depends on the misuse provisions that were not retrievable. The general Supreme Court injunction power and the overarching obligations on parties in Victorian civil proceedings were flagged but not retrievable.

03 What gets looked at

- **Legitimate interest and scope of a restraint** (Victorian common law, not in the supplied sources). A court considers whether there is an interest capable of protection and whether the restraint's duration, area and client coverage go no further than reasonably necessary, assessed as at the time the contract was made.
- **Substantially lessening competition** [2]. Where this section is in issue, a court looks at the purpose or likely effect on competition in the relevant market in which a party supplies or acquires services.
- **Notification versus enticement** [19]. A court distinguishes a courtesy notice to a client from active solicitation, examining what was said and done and when.
- **Independent decision and causation of loss** [19]. On loss, a court asks what position the employer would have been in absent any breach, using hindsight and a common-sense view of causation, including whether a client would have moved anyway.
- **Seniority of the role** [19]. Whether higher business-opportunity or fiduciary-type duties attach is treated as turning on whether the role falls within a category such as top management.
- **Conduct during the notice period** [24]. A court examines steps taken by each side during the notice period, including any restriction of duties or access, and what each side's conduct conveys about the contract.
- **Reasonable steps and timing on correction** [4]. For a correction request, a court or regulator looks at whether the steps taken were reasonable in the circumstances and at the timing of the response.
- **Injunction matters** [3]. Under section 1324 a court may grant interim and final injunctions and may order damages instead of or as well as an injunction, and the power can be exercised regardless of prior or intended repetition and regardless of imminent danger of damage.

04 What the other side may say

ARGUMENTS COMMONLY RAISED IN MATTERS LIKE THIS

- That a restraint is wider than necessary in area, duration or client coverage, and so unenforceable to that extent at common law. This raises for a lawyer: what interest does each clause protect, and is its scope matched to that interest?
- That contact with clients was mere notification rather than solicitation, and that clients chose independently to move [19]. This raises: where does the line between notification and enticement sit on these facts?
- That a duty reserved to top management does not apply to the role in question [19]. This raises: does this role fall within that category?
- That loss is not measured by the full value of lost clients, because clients may have left regardless, causation being judged with hindsight [19]. This raises: how would loss be assessed if any breach were established?
- That a step taken during the notice period, such as removing access, restricting duties or requiring the employee not to attend, repudiates the employer's obligations under the contract, which the employee may purport to accept, freeing the employee from ongoing obligations [24]. This raises: what does the contract permit during the notice period, and what would any such step convey?
- That the client, not the firm, owns its own documents and is entitled to transfer, and that confidentiality and handover clauses cannot be used to frustrate a client's choice; and, conversely, that fees owing or working-paper ownership may justify conditioning release. This raises: what do the engagement terms and professional obligations (the Code provision was not retrievable) say about ownership and conditions?
- That the correction principle is directed at correcting inaccurate or misleading personal information and does not bear on a request to transfer files [4]. This raises: which part of the privacy framework, if any, governs a transfer request (the broader framework was not retrievable)?
- That anything said to clients about the move must not be misleading (the Australian Consumer Law provisions were not retrievable). This raises: what would representations to clients need to address to stay within those provisions?

05 Documents that usually matter

- The full text of clauses 12, 18 and 19 (exact wording, triggers, definitions of client and of clients dealt with, the start point of each 12-month period, any step-down or severability wording). These control how each clause operates.
- The engagement letters with the three clients, including the 30-day and handover terms and any clause on ownership of working papers or on fees owing. These control the file-release question.
- Whether any fees are outstanding from the three clients, and the amounts. Relevant to any condition on release.
- The manager's precise role, duties and level of authority. Relevant to whether higher duties attach [19].
- Exactly what was said to the client in September and in what context. Relevant to notification versus solicitation [19,24].

- Whether the three clients' approaches on 17 October were prompted by the manager or made independently. Relevant to causation and to the notification line [19].
- Any separation deed, deed of release or variation agreed on resignation. Relevant to how continuing obligations and restraints are dealt with [25].
- What, if anything, has been done about the manager's access or duties since 10 October. Relevant to the notice-period conduct point [24].
- Whether the manager is over 45 and the exact continuous-service length, if the Fair Work notice question arises [1].
- The firm's tax-agent registration status and any applicable Code obligations (the provision was not retrievable). Often central to conditioning release of records.
- The broader Privacy Act framework beyond the correction principle, and any consents the clients have given (not retrievable). Relevant to use and disclosure.

06 The routes

- Negotiation or correspondence between the firm and the former employee about the scope and operation of the restraints and about the clients, without proceedings.
- Negotiation with the clients about continuing the engagement, within what the engagement terms and privacy and professional obligations permit.
- A separation or settlement agreement recording how restraints, confidentiality and client transfers are handled; one supplied case shows a deed-of-release structure of this kind [25].
- Interim and final injunctive relief, or damages, through the courts if a contravention or breach is alleged; section 1324 is one statutory injunction route [3], and the general Supreme Court power (flagged, not retrievable) another. Check any current filing fee with the court.
- Privacy complaint mechanisms where correction or handling of personal information is in issue [4]. Check any current fee with the relevant body.

This pack does not draft letters, emails or any communication to the clients or the former employee. What such a message would need to settle can be taken to a lawyer as questions, below. These routes are not ranked and none is recommended.

07 Questions to ask a lawyer or free service

1. Given the exact wording of clauses 18 and 19, when does each 12-month period start, and how does Victorian common law assess the reasonableness of the area, duration and client coverage?
2. Does clause 19, as worded, extend to a client who approaches the firm or former employee first (non-acceptance), and does it cover these three clients?
3. On the September conversation and the 17 October approaches, where does the line between notification and solicitation sit, and what role does a client's independent decision play [19]?
4. Does the manager's role fall within the category to which the higher business-opportunity and fiduciary-type duties attach [19]?
5. If the firm restricts the manager's duties or access, or asks her not to attend during the notice period, could that be characterised as a repudiation she may accept, and what does the contract permit [24]?

6. What do the Corporations Act misuse-of-position and misuse-of-information provisions (not retrievable here) require of an employee in this position, and could section 1324 injunctive relief be engaged [3]?
7. Under the engagement letters, who owns the working papers versus the client's own documents, and can release be conditioned on fees owing or the 30-day and handover terms?
8. What does the broader Privacy Act framework (not retrievable here), alongside the correction principle [4], require when a client requests transfer of files containing personal information?
9. What does the Tax Agent Services Act Code of Professional Conduct (not retrievable here) require about releasing client records to a new practice?
10. What would anything said to the clients need to address to stay within the Australian Consumer Law provisions on misleading conduct (not retrievable here)?
11. Would a separation or settlement agreement be a way to deal with restraints, confidentiality and client transfers together, and what would it need to cover [25]?

08 Free help

- Victoria Legal Aid (the state legal aid commission).
- A local community legal centre.
- The Law Institute of Victoria referral service.
- The Office of the Australian Information Commissioner (for privacy correction or handling complaints).
- The Tax Practitioners Board (for tax-agent professional obligations).
- The Supreme Court of Victoria or the relevant court (for injunction or civil process questions).

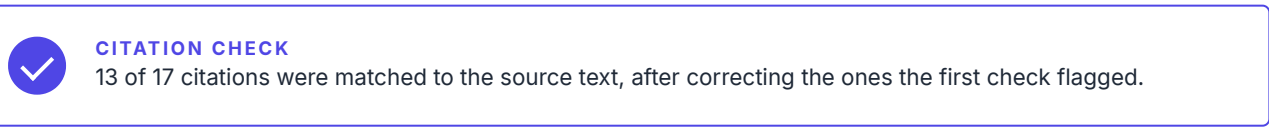
09 Your documents

No documents were supplied.

The two or three documents that would most help:

- The employment contract, in particular the full text of clauses 12, 18 and 19.
- The engagement letters with the three clients, including the 30-day, handover, fees and ownership terms.
- Any separation deed, deed of release or variation agreed on or after the resignation.

10 The law relied on



1	**Fair Work Act 2009 s 117** Requirement for notice of termination or payment in lieu	Compilation 2026-07-07 (C2026C00355)
2	**Competition and Consumer Act 2010 s 45** Contracts, arrangements or understandings that restrict dealings or affect competition	Compilation 2026-09-16 (C2026C00405)

3	**Corporations Act 2001 s 1324** Injunctions	Compilation 2026-09-19 (C2026C00432)
4	**Privacy Act 1988 s 13** Australian Privacy Principle 13—correction of personal information	Compilation 2026-06-04 (C2026C00227)
5	**Identity Verification Services Act 2023 s 35** Disclosure etc. with consent	Compilation 2024-12-11 (C2024C00830)
6	**Victorian Funds Management Corporation Act 1994 s 32** Improper use of information	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
8	**Sport Integrity Australia Act 2020 s 68A** Disclosure with consent	Compilation 2021-11-04 (C2021C00549)
13	**Payment Times Reporting Act 2020 s 44** Person to whom information relates—disclosure and consent	Compilation 2025-02-21 (C2025C00133)
14	**Project Development and Construction Management Act 1994 s 42** Improper use of information	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
16	**Game Management Authority Act 2014 s 15** Improper use of information	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
17	**Parliamentary Workplace Standards and Integrity Act 2024 s 75** Taking advantage of information	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
19	**AMP Services Ltd v Manning [2006] FCA 256** AMP Services Ltd v Manning [2006] FCA 256	judgment AMP Services Ltd v Manning [2006] FCA 256 (2006-03-24). case law, NOT citator-checked; verify it has not been appealed, overturned or distinguished before relying
20	**Catchment and Land Protection Act 1994 s 18F** Improper use of information	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
21	**Victorian Managed Insurance Authority Act 1996 s 22** Improper use of information	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying
24	**AMP Services Ltd v Manning [2006] FCA 256** AMP Services Ltd v Manning [2006] FCA 256	judgment AMP Services Ltd v Manning [2006] FCA 256 (2006-03-24). case law, NOT citator-checked; verify it has not been appealed, overturned or distinguished before relying
25	**Jardin and Jardim Investments Pty Ltd v Metcash Ltd and Metcash Trading Ltd [2011] NSWCA 409** Jardin and Jardim Investments Pty Ltd v Metcash Ltd and Metcash Trading Ltd [2011] NSWCA 409	judgment Jardin and Jardim Investments Pty Ltd v Metcash Ltd and Metcash Trading Ltd [2011] NSWCA 409 (2011-12-22). case law, NOT citator-checked; verify it has not been appealed, overturned or distinguished before relying
29	**Legal Profession Uniform Law Application Act 2014 s Sch 1 cl 340** Termination of manager's appointment	null. static consolidated edition; no live register for this jurisdiction, verify later amendments before relying

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