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T H E M C K E L L I N S T I T U T E

# Closing Loopholes, Opening Opportunities

HOW SAME JOB, SAME PAY IS DELIVERING  
FOR WORKERS & COMMUNITIES

By Ed Cavanaugh & Max Douglass

## About the McKell Institute

The McKell Institute is an independent, not-for-profit research organisation dedicated to advancing practical policy solutions to contemporary issues.

## Acknowledgement of Country

This report was written on the lands of the Wurundjeri People of the Kulin Nation. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

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## About this report

This report has been prepared by the McKell Institute in collaboration with the Mining and Energy Union.

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## Executive Summary

In 2020, the McKell Institute released its report *Wage Cutting Strategies in the Mining Industry*. The report examined the financial impact that workers and their communities were experiencing due to a loophole in Australia's employment laws that saw workers at the same site, doing the same or similar jobs, employed through different employers.

This phenomenon became known as the 'labour hire loophole'. In effect, it allowed host firms to avoid paying workers at their sites under conditions negotiated through enterprise agreements by contracting job functions out to labour hire firms. These external firms, sometimes even subsidiaries of the host employer, were then able to avoid enterprise agreement terms, as the workers employed by labour hire third party firms were able to pay their workers under different agreements or at the award rate.

As the McKell Institute noted in the 2020 report and in other reports, labour hire has a role to play in the Australian labour market. In many cases, however, employers were using labour hire for the primary purpose of circumventing enterprise agreements to reduce pay.

*Wage Cutting Strategies in the Mining Industry* examined this in Australia's mining sector. But the labour hire loophole had become prevalent across many industries, most notoriously in the aviation sector.

Ahead of the 2022 Federal Election, the Australian Labor Party pledged, if it formed government, to enact legislation called *Same Job, Same Pay*. The principle behind the policy was to close the labour hire loophole: businesses could still leverage labour hire firms for their intended purpose, but not as a means of circumventing enterprise agreements and reducing pay.

In 2023 the Commonwealth Parliament passed the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth)* which embedded *SJSP* in law.

This report examines its subsequent policy impact; identifies examples of workplaces in which this has changed outcomes for workers, communities and employers; and examines the predicted impact of the legislation over the coming years.

It finds that pre-legislation official estimates of the benefits of closing the labour hire loophole are likely to be underestimates, as they potentially significantly misjudged several important parameters.

Our analysis finds that *Same Job, Same Pay* has the potential to contribute to an annual wage uplift of almost \$920 million in a 'middle of the road' scenario. It also calculates that the potential overall economic benefit associated with the forecast wage uplift could be as large as \$2.556 billion, climbing year on year as the labour hire workforce continues to grow.

*Same Job Same Pay* was designed to give workers at the same workplace a fair go—regardless of the contract they signed, and to address fundamental misuse of labour hire as a means of circumventing enterprise agreements negotiated in good faith. Our analysis shows that it has done, and will continue to do, just that. For thousands of workers, *Same Job Same Pay* has closed a legal loophole that depressed their wages and has substituted that for a fair go.

## Key Findings

- **Finding 1:** *Same Job, Same Pay* is likely to contribute to an aggregate annual wage uplift of up to \$920.3 million in a 'middle of the road' scenario, and well over \$1 billion in a generous scenario.
- **Finding 2:** If fully implemented, *Same Job, Same Pay* could indirectly make an economic contribution of up to \$2.556 billion per year, based on an aggregate annual wage uplift of \$920.3 million.
- **Finding 3:** *Same Job, Same Pay* is already delivering significant wage increases for workers. In the mining industry alone, approximately 1,500 workers have seen average pay rises of around \$33,500 each, with some receiving up to \$60,000. Meat workers and retail distribution labour hire workers are also seeing strong wage gains.
- **Finding 4:** Another 4,300 mining workers stand to gain from orders pending or under consideration. If successful, the aggregate annual wage uplift across the industry would be approximately \$200 million.
- **Finding 5:** *Same Job, Same Pay* is also contributing to indirect wage gains. Employees in the aviation sector are using it as a bargaining chip rather than seeking orders. Some employers are also actively insourcing to avoid prospective orders.
- **Finding 6:** The passage and implementation of *Same Job, Same Pay* coincides with a record-tight labour market and has not contributed to any unintended impacts on unemployment as some had suggested.

## Part 1: Why *Same Job, Same Pay* was necessary

### **Key Points:**

- Labour hire plays a critical role in many industries, but some employers had begun using it primarily as a means of circumventing enterprise bargaining agreements, and lowering pay.
- This was most acute in some industries, especially mining and aviation, but was occurring throughout the economy.
- *SISP* was a response to the clear misuse of labour hire as a tool for cutting wages, rather than adding flexibility to labour supply. Its urgency was compounded by the relative vulnerability of labour hire workers

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### **Labour hire has become entrenched in the Australian labour market**

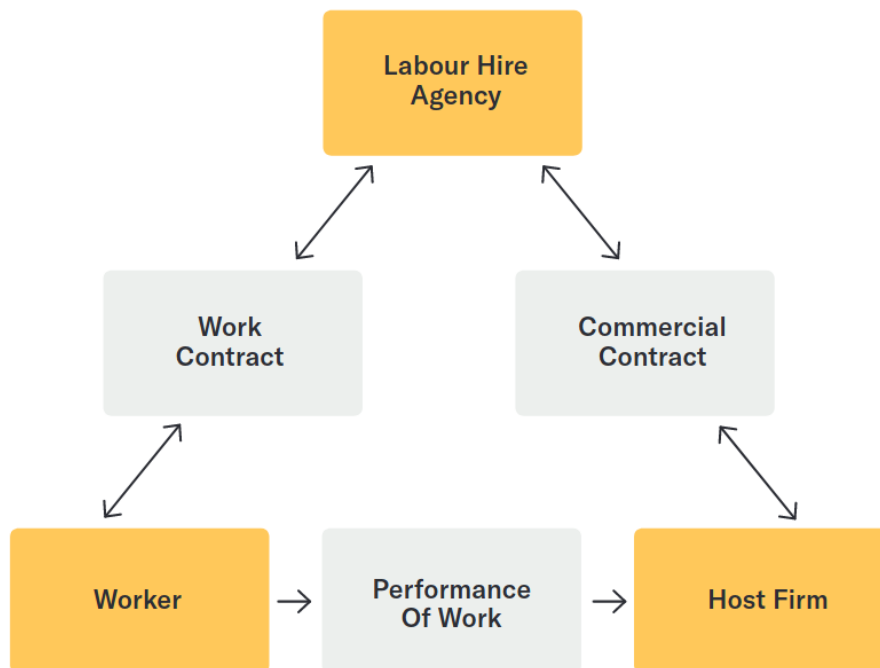
The Australian labour market has changed considerably in recent decades. Permanent, male dominated, full-time employment was once the mainstay of Australian households, but this is increasingly no longer the case.

Many Australians are now casually employed with no annual leave or certainty of hours. Many also now work part time. Some of this change has been broadly positive and rightly welcomed by Australian workers. It has afforded many greater choice and flexibility in their working arrangements. It has also played a considerable role in Australia's laudable expansion of female employment participation

Equally, this trend has presented challenges to Australia's traditional employment model—especially for those who would prefer to work in permanent positions. It has contributed to greater precarity for workers in terms of their earnings and job security and has had knock on effects for productivity and wellbeing.

One of the symptoms of these changes has been the rise in the use of labour hire firms throughout the Australian economy. These labour hire firms employ workers and provide them to 'host employers' under commercial labour hire arrangements. The workers then perform work for the host employer despite having no direct employment relationship. Put differently, labour hire arrangements 'split contractual and control relationships' inherent in

traditional employment relationships.<sup>1</sup> These arrangements are frequently referred to as ‘triangular’ employment arrangements.

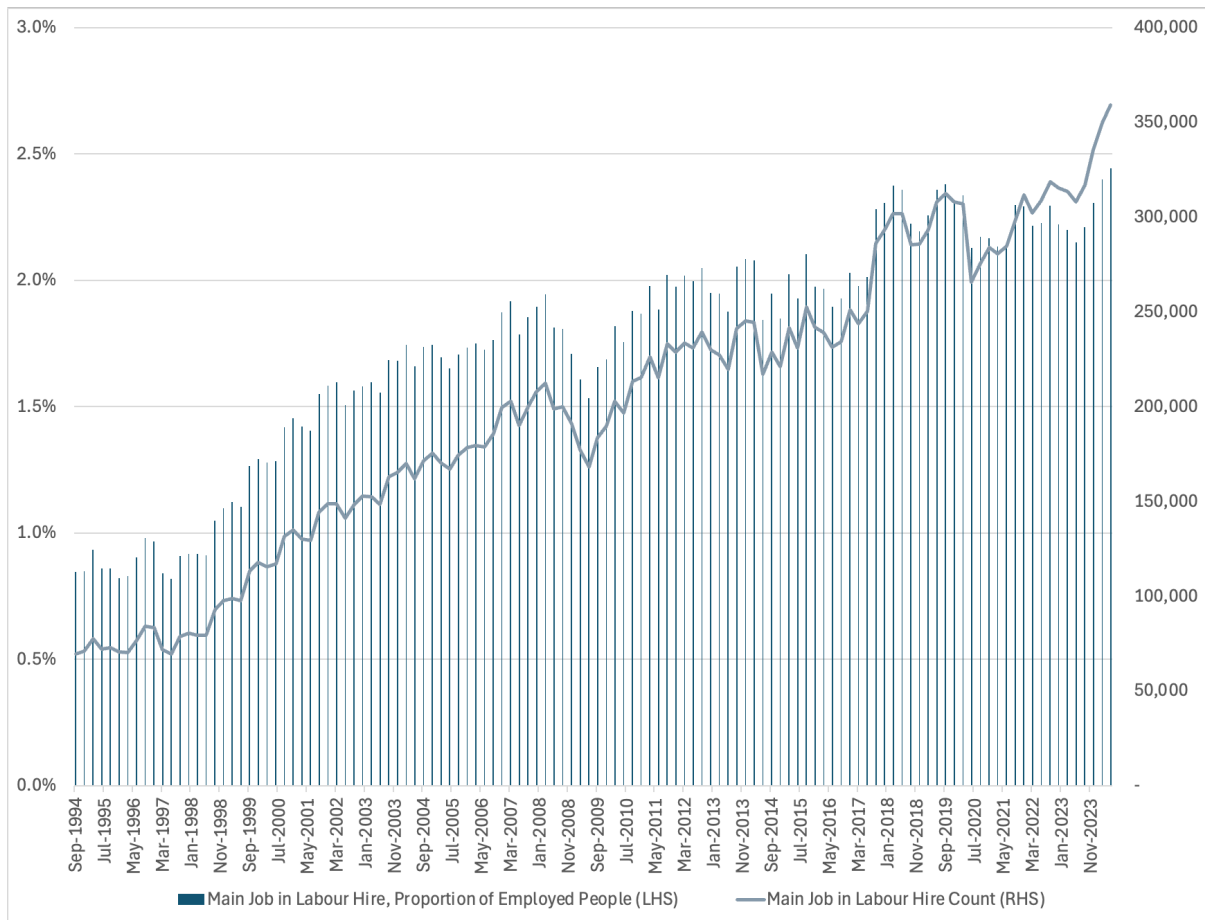


*Figure 1: Triangular Employment Relationship<sup>2</sup>*

Such arrangements have become an increasingly entrenched part of the Australian labour market over the last 30 years. Between 1994 and 2024, the number of people whose main job is in the labour hire industry has grown by 415 per cent. It has significantly outpaced the rate of growth in the non-labour hire workforce, rising from 0.8 per cent to 2.4 per cent of total employment over the same period.<sup>3</sup>

That said, the self-reporting nature of available data means that there is a serious risk that these figures are underestimates of the true breadth of labour hire in the Australian economy. Labour hire survey participants in Australian Bureau of Statistics (ABS) employment data often respond that they are employed by their *host industry*, rather than by their labour hire firms.<sup>4</sup>





**Figure 2: Proportion of Employed People Whose Main Job is in Labour Hire, and Corresponding Count<sup>5</sup>**

In June 2022, there were 6,245 employing businesses who provided workers to host employers.<sup>6</sup> While there is no reliable data on the number of host businesses, anecdotal evidence suggests that it is increasingly widespread in the Australian mining, construction, agriculture and cleaning sectors.

Once a relatively obscure practice employing a negligible proportion of the workforce, labour hire is now an entrenched aspect of the Australian industrial relations landscape. This is acknowledged by its attempted regulation by Commonwealth, state, and territory governments. For example, many Australian states and territories now maintain labour hire licencing regimes.<sup>7</sup>

## Labour hire can be crucial for seasonal, surge, and specialised industries

When used properly, the proliferation of labour hire arrangements can be seen as a response to the legitimate needs of Australian businesses. There are three principal industries which might genuinely require labour hire arrangements at a given point in time:

- **Seasonal industries:** Some firms only require labour for limited and specific periods throughout the year. Agricultural harvest workers, for example, are often required only for several months per year.
- **Surge industries:** Like seasonal industries, some ‘surge’ industries require additional labour at short notice for brief and unpredictable periods. This occurs frequently for firms which are prone to demand shocks, such as those operating in warehousing, hospitality, retail and healthcare.
- **Specialised industries:** Sometimes firms require the services of specialised workers retained by labour hire firms for non-repeated engagements.

It is sometimes argued that firms already have access to their desired flexibility through employing these workers as casuals, rather than through a labour hire arrangement. This is true, and many firms do have a casual workforce which waxes and wanes over time. However, it is not hard to see that—for many workers—labour hire engagements can sometimes offer a continuity of future employment which is preferable to intermittent casual employment at the host employer.

## The ‘labour hire loophole’ has fundamentally undermined pay and conditions for labour hire workers, and existing workers

While some uses of labour hire are entirely legitimate, others are more at odds with the interests that Australia’s industrial relations system is designed to protect. They include circumventing union presence, avoiding employer obligations, and the off-shifting of employment risks.<sup>8</sup>

Until the Government’s *SJSP* reforms, the most pernicious of these illegitimate uses was using labour hire to reduce costs through undercutting wages via the ‘labour hire loophole’.

This loophole arose primarily at large firms where employees were covered by an approved enterprise-specific agreement under pt 2-4 of the *Fair Work Act 2009* (Cth). To be approved,

these agreements must render the enterprise's employees better off overall compared to their position under the applicable award.<sup>9</sup>

This requirement is frequently achieved by the provision of comparably higher hourly rates of pay. Indeed, across almost every sector in the Australian economy, workers covered by enterprise agreements bring home higher weekly earnings than those covered by awards.<sup>10</sup>

But enterprise agreements only cover employees *directly employed* by the enterprise, and not those under labour hire arrangements. This effectively permitted firms to outflank their more expensive enterprise agreements by engaging labour hire firms to perform *the exact same work for often considerably less pay*. This is observed in empirical studies of wage outcomes, which uniformly find lower hourly rates of pay for labour hire workers in identical industries.<sup>11</sup>

Pre-2023 examples of such practices abound in Australia. Qantas previously employed more than 2,400 flight attendants under such arrangements to circumvent the relatively high wages payable under their own enterprise agreements. Worse yet, Qantas used in-house labour hire companies which *they themselves controlled*.<sup>12</sup>

Practice in the Australian mining industry was also particularly egregious. This was primarily due to the high wage differentials attributable to the relatively high rates of pay secured under the host enterprise agreements compared to the labour hire wages. This creates what many have described as a 'two-tiered' workforce.

In 2021, a Parliamentary Committee heard that permanent employees were paid approximately 24 per cent more than labour hire workers at Australian mine sites. On some sites, the difference equated annually to \$50,000 per worker per year, not accounting for other entitlements.<sup>13</sup> The same Parliamentary Committee heard of identical practices in agriculture and meat processing.<sup>14</sup>

It is also worth noting that—once established—such practices put downward pressure on wages in these industries generally. It minimised almost all incentives for employers to directly hire workers which would be covered by their enterprise agreements and indirectly push wages away from enterprise agreement rates and towards comparably lower award rates.

## Labour hire is a spectrum, but the bottom end represent some of Australia's most vulnerable workers

Labour hire workers are not homogenous. In fact, they tend to cluster around the most and least well remunerated workers in the Australian economy. Indeed, as briefly mentioned above, some labour hire workers are highly specialised and retained only for brief periods.

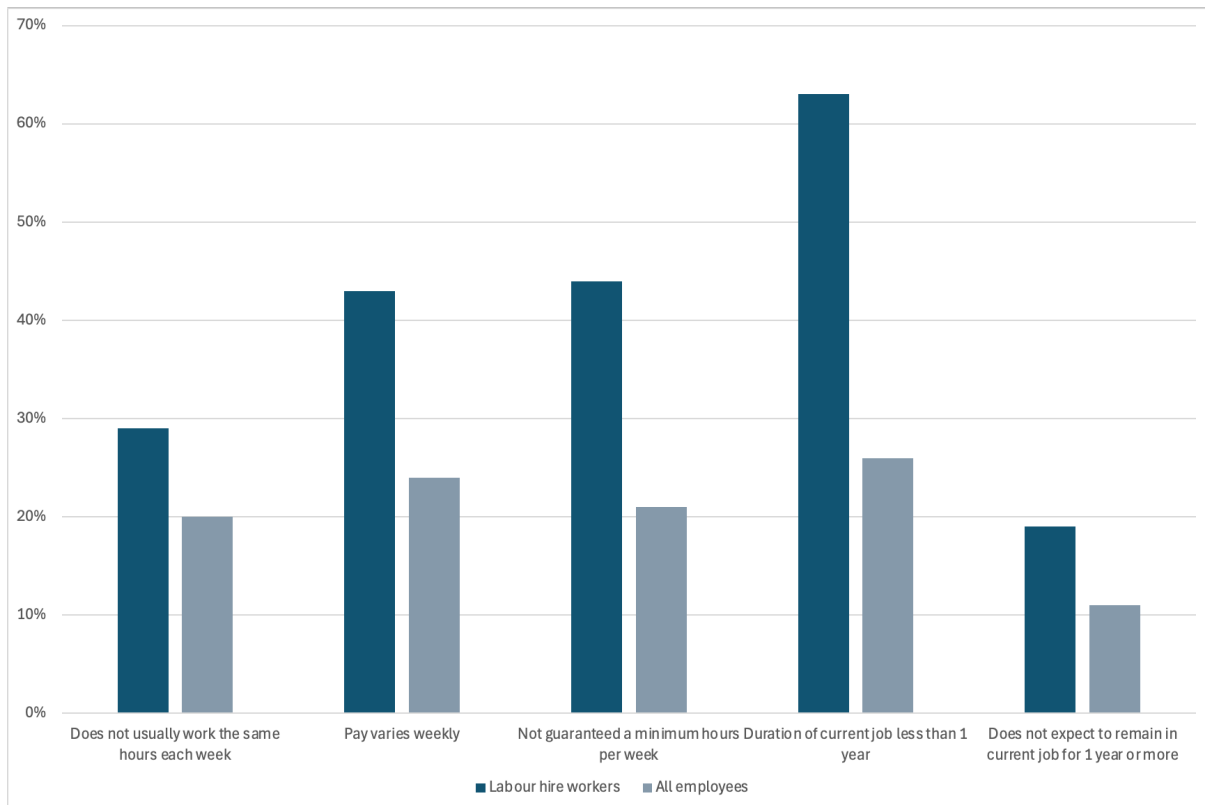
This high- and low-income clustering of labour hire workers is readily observed in the data. Part time labour hire workers employed for between three months and two years earn on average almost \$10 more per hour than non-labour hire workers, but on average full-time labour hire workers earn considerably less on an hourly basis.<sup>15</sup>

That said, the low-income cluster is appreciably larger than the high-income cluster. 81.2 per cent of labour hire workers work full time and these workers—for the most part—are considerably more vulnerable than their non-labour hire counterparts.<sup>16</sup> Several indicators support this conclusion.

For example, in 2020–21 the median annual earnings of persons whose main job was in labour hire was \$35,337,<sup>17</sup> compared to \$54,890 across Australia as a whole.<sup>18</sup>

In August 2022, 83.6 per cent of labour hire workers did not have access to *any paid entitlements*, compared to the economy-wide figure of 23.4 per cent of Australian workers who do not have any paid entitlements.<sup>19</sup> Labour hire workers also report much higher rates of various indicators of job instability.

Even then, labour hire workers are frequently improperly denied their comparatively lower employment entitlements. For example, a 2019 audit of 63 labour hire firms found that almost two thirds were non-compliant with their obligations to pay correct allowances, overtime and penalties to their workers.<sup>20</sup> Other out-of-court settlements for underpayment suggest that such practices are widespread.<sup>21</sup>



**Figure 3: Indicators of Job Instability, Labour Hire Workers and All Employees, August 2022<sup>22</sup>**

Labour hire workers are also considerably more likely to be foreign born, and culturally and linguistically diverse. Indeed, in August 2022, almost 50 per cent of labour hire workers were not born in Australia.<sup>23</sup> This only serves to compound their already vulnerable status within the labour market.

In addition to their precarity, labour hire workers are also at an elevated risk of workplace accidents. It is significant that '[a]ll studies of labour hire workers ... have found that labour hire employees are more likely to be injured at work'.<sup>24</sup> This vulnerability is elevated by several interrelated factors including poor training, little acquaintance with the host employer, and more complex chains of responsibility.<sup>25</sup> They are also more likely to report bullying at work,<sup>26</sup> and less likely to report health and safety concerns because of fear of reprisals.<sup>27</sup> Yet even when they are injured, labour hire employees remain disadvantaged and are 'less likely to be offered employment post-injury than permanent employees'.<sup>28</sup>

Unlike some have suggested, labour hire workers do not like this state of affairs, and do not prefer any supposed 'flexibility' it offers. Surveys indicate that they would overwhelmingly prefer to work for their host employer directly.<sup>29</sup>

***Same Job, Same Pay* was a necessary and unavoidable reform**

In the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth)* the Government introduced their *Same Job, Same Pay* regime which effectively closed the labour hire loophole from its commencement in December 2023.

It brought Australia into line with international best practice,<sup>30</sup> extended applicable workplace instruments to vulnerable low-income workers, and thwarted the undermining of Australian wages by large employers seeking to evade their industrial obligations.

## Part 2: How *Same Job, Same Pay* is already delivering for workers

### **Key Points:**

- *SJSP* came into effect in December 2023 and empowers the Fair Work Commission to make ‘regulated labour hire arrangement orders’ which typically give labour hire workers access to the rate of pay they would be entitled to if employed.
- Since it was enacted, 23 orders have been made by the Fair Work Commission, with dozens more pending across a range of industries.
- These orders are benefitting workers directly but also encouraging employers to hire workers directly and proving a useful bargaining chip for workers.

### **Understanding the *Same Job, Same Pay* scheme**

The *Same Job, Same Pay* regime is contained in pt 2-7A of the *Fair Work Act 2009* (Cth). It empowers the Fair Work Commission (**FWC**) to make ‘regulated labour hire arrangement orders’ (***SJSP* Orders**).<sup>31</sup>

These orders entitle labour hire employees at the host employer to the ‘protected rate of pay’, which is most typically the rate which would otherwise apply under the relevant enterprise agreement.<sup>32</sup>

The FWC is required to make the order if the following three conditions are met:

1. The labour hire firm supplies or will supply workers to the host employer;
2. An industrial instrument such as an enterprise agreement would apply to the labour hire workers if they were directly employed; and
3. The host employer is not a small business.<sup>33</sup>

However, the FWC must not grant the order if either the performance of the work is the provision of a service rather than the supply of labour,<sup>34</sup> or if it is not fair and reasonable in all the circumstances to do so.<sup>35</sup>

The legislation also provides exemptions for short term arrangements, such as seasonal work.<sup>36</sup> Parties have been able to seek orders since December 2023, but *SJSP* Orders made since only commenced in November 2024.

So far, the FWC have made *SJSP* Orders at 23 worksites, with plenty more awaiting determination.<sup>37</sup> What information is public about the orders made reveals that labour hire workers are already winning significant pay rises.

### **Industry Case Study: Mining**

The mining industry was a pioneer of using the labour hire loophole to undercut wages achieved by workers through enterprise bargaining over years.

Our *Wage Cutting Strategies in the Mining Industry* report outlines the widespread practice of mine operators outsourcing large portions of the production workforce—typically 30–40 per cent but in some cases more than half—to labour hire companies. These workers performed the exact same work as permanent employees, but on pay rates up to 40 per cent lower than enterprise agreement covered employees.

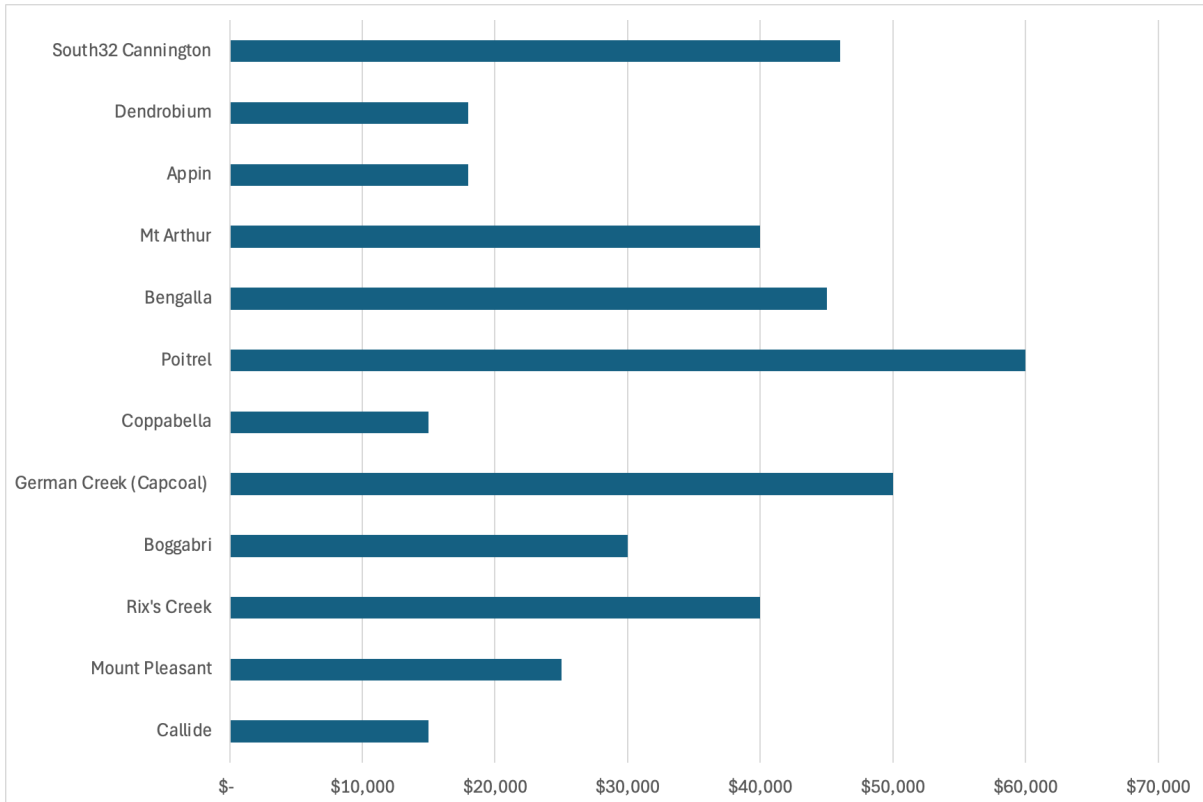
The first applications for *SJSP* Orders were made in the mining industry, with successful outcomes continuing to deliver substantial wage increases.

According to data provided by the Mining and Energy Union to the McKell Institute, since November 2024, 17 *SJSP* Orders have been made at 12 sites in the mining industry, with a further 38 orders at 18 sites pending or being contested by employers.<sup>38</sup>

Across the 12 sites where orders have already been made, around 1,500 workers have already benefitted from an increased rate of pay attributable to an *SJSP* Order. Well over four thousand more workers stand to directly benefit from pending orders and order under consideration.

For many of these workers, the pay rise that has been achieved, or is likely to be achieved, is considerable. Some uncontested claims, for example, have seen workers receive up to \$60,000 in additional pay per year.





**Figure 4:** Average Pay Increase in the Mining Industry Attributable to SJSP Order Already Made; By Site<sup>39</sup>

Across the mining industry, almost 6,000 workers who are currently benefiting from, or are subject to benefit from, Same Job Same Pay orders are anticipated to receive, on average, \$31,300 higher pay as a direct result. In aggregate, the potential wage uplift just across SJSP Orders made, pending, and under consideration is worth over \$200 million.

The legislative reform is also driving a change of behaviour by mine operators who are insourcing jobs as a response to the closure of the labour hire loophole. At sites such as Mount Pleasant, Mount Athur and Appin, operators are responding to SJSP applications by transferring labour hire workers to direct employment, in some cases without waiting for the FWC to make an SJSP Order.

For instance, the Mount Arthur mine in the NSW Hunter Valley was the first BHP coal mine to receive an SJSP Order from the FWC. Having commenced on 7 March, the order delivers annual pay increases of approximately \$10 million and has led to the creation of hundreds of new permanent jobs.<sup>40</sup>

Yet insourcing of labour hire roles has been ongoing since the passage of the *SJSP* amendments. Before the amendments passed there were over 400 labour hire mineworkers employed at Mount Arthur. When the application to the FWC was first made, that number had dropped to 270. When the order was issued by the FWC it had fallen to 230, and BHP has recently announced that it will further insource another 200 labour hire roles.

This arrested and reversed a decade of outsourcing at Mount Arthur and is a clear illustration that the *SJSP* scheme is working as intended to both directly and indirectly disrupt the exploitation of the labour hire loophole.

### **Industry Case Study: Aviation**

One of the catalysts for *SJSP* reforms was the way that certain actors within the aviation industry had deployed labour hire as a means of reducing wages.

The aviation sector workforce is broad, and the industry is exposed to international competition. There are a breadth of employees working the sector, ranging from pilots and cabin crew, through to ground handling and maintenance staff, as well as operations staff and numerous other roles that keep airlines running.

Over time, many of the individual job functions within the sector have been outsourced to labour hire firms. Even within the same job functions, individual workers working alongside one another found themselves subject to different employment arrangements, while doing the exact same job. This is particularly the case when it comes to cabin crew: in some cases, there may be up to four separate employment arrangements covering the cabin crew of a single flight, with each worker employed by a different labour hire firm, and some directly with the airline.<sup>41</sup>

This dynamic led to the aviation sector being viewed as one of the most rampant abusers of the labour hire loophole. This dynamic has been almost entirely arrested by the *SJSP* regime. For existing labour hire workers, the ready availability of an *SJSP* Order looms large and workers are now able to seek pay rises during negotiations at parity with rates under enterprise agreements.

For example, the Flight Attendants' Association of Australia obtained five-figure pay rises for 750 Qantas domestic flight attendants and 2,400 international flight attendants using the *SJSP* scheme as a *negotiation tool*, rather than seeking a direct order.

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“Qantas Domestic cabin crew will see their base pay packets increase by up to \$20,000 per year, while MAM and Altara casual employees will earn an extra 32 to 42.5 per cent in hourly pay, excluding allowances.”<sup>42</sup>

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This example specifically underscores the *indirect impacts* of the *SJSP* scheme as a powerful bargaining chip for labour hire workers.

### Industry Case Study: Retail Distribution

The retail distribution sector has seen *SJSP* generate real wage increases for workers in the five months since its passage.

In one of the earliest cases in the retail sector under the new legislation, close to 200 workers employed under labour hire arrangements in a Kmart warehouse in Brisbane benefited by up to \$11.50 per hour.<sup>43</sup>

This example proved to be an illustrative case-study of exploitation of the labour hire loophole. Workers hired under the labour hire firm in this case ‘perform[ed] work at the Centre in accordance with the [host company’s] rules, policies and procedures’ in the exact same circumstances as directly employed workers. They were required to wear the same uniforms, use the same equipment, and were subject to the same rostering requirements.<sup>44</sup>

Despite this, the workers hired through the labour hire firm undertaking the exact same work were being paid up to \$11.56 per hour *less* than their directly employed colleagues on the same site.

Pre- <i>SJSP</i> Order	Post- <i>SJSP</i> Order	Difference	Increase (%)
\$35.62	\$47.18	\$11.56	32.5 per cent

*Table 1: Kmart Warehousing Hourly Wage, Pre- and Post-*SJSP* Order*

On other retail distribution sites, *SJSP* is already delivering behavioural changes from retail employers.

At one South Australian site, for example, 40 labour hire workers have been proactively shifted from labour hire arrangements to a direct employment relationship. In this South Australian case, the hourly rate of pay the workers are expected to receive will increase from \$33.47 per hour to \$39.85 per hour, an increase of \$6.38 per hour.<sup>45</sup>

## Part 3: The bigger picture of Same Job, Same Pay

### Key Points:

- Modelling done by the Department of Employment and Workplace relations before the passage of the amendments is now outdated and likely underestimated several key parameters.
- When we update the labour force figures and align pre-*Same Job, Same Pay* wage differentials closer to those observed on the ground, the total annual aggregate potential wage gain approaches \$920.3 million in a ‘middle of the road’ scenario.
- If all of these orders were sought, they would contribute to approximately \$2.556 billion in additional economic activity, with a disproportionate amount occurring in Australia’s regions.

### Departmental estimates assumed smaller pay rises than have been achieved

The Explanatory Memorandum of the legislation which introduced the *Same Job, Same Pay* legislative framework contained an economic analysis by the Department of Employment and Workplace Relations (**DEWR**) estimating its annual aggregate wage impact.

DEWR’s analysis estimated the number of workers which would be eligible for an *SJSP* Order, multiplied it by the estimated the average hourly pay difference between eligible and non-eligible workers, and then multiplied it by the number of hours and weeks a typical labour hire employee would be expected to work. They calculated that the total *wage gains* would come to \$510.6 million per year.<sup>46</sup> Their original calculation went as follows:

$$66,446 \text{ (Eligible Workers)} * \$4.79 \text{ (Wage Differential)} * 38.1 \text{ (Weekly Hours)} \\ * 42.1 \text{ ( Weeks Worked)} \approx \$510.5 \text{ million (Total Annual Wage Gain)}$$

DEWR estimated that among eligible workers, the average pay differential compared to non-labour hire would be \$4.79,<sup>47</sup> or approximately 13.8 per cent more than the full-time median hourly earnings of employees paid by a labour hire firm of \$34.80.<sup>48</sup> Internal and publicly available FWC data on wage rises already achieved suggest that these may be severe underestimates of the true magnitude of attainable pay rises.

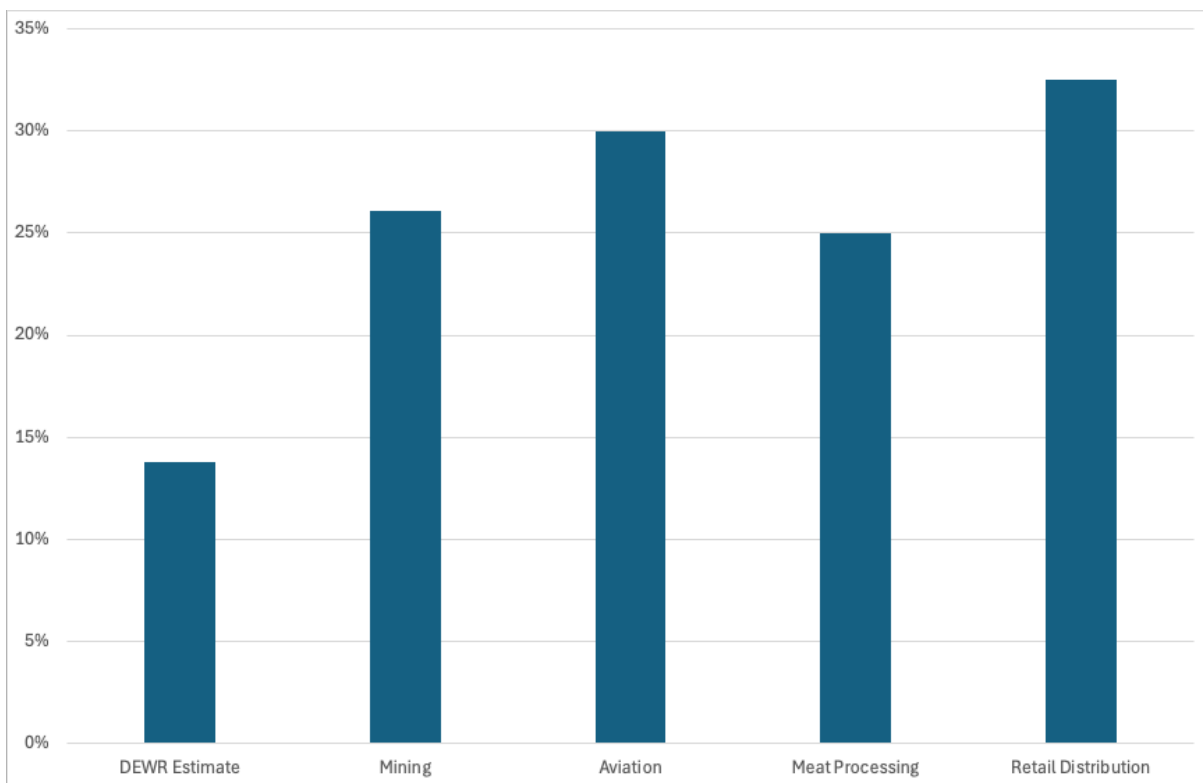
For example, data from the Mining and Energy Union suggests that the average pay rise across orders already achieved and awaiting determination is approximately 26.1 per cent.<sup>49</sup>

Public FWC data shows that other industries appear to be reaping pay rises of magnitudes far above the DEWR estimates.

In the meat processing industry, the Australasian Meat Industry Employees Union obtained an *SJSP* Order which entitled labour hire abattoir workers to a 25 per cent pay rise.<sup>50</sup>

In retail warehousing, the Shop, Distributive and Allied Employees Association recently obtained an *SPSP* Order which increased pay by 32.5 per cent.<sup>51</sup>

And in aviation, the Flight Attendant’s Association of Australia were able to obtain pay increases of 30 per cent for their Qantas international crew indirectly using *SJSP* Orders as the basis for their salary negotiations.<sup>52</sup>



**Figure 5: Industry Average SJSP Order Rates (If Data Available)**<sup>53</sup>

There is obviously reason to expect that these relatively high wage differentials will fall over time. The first *SJSP* Order sought are—naturally—likely those intended to address the most egregious abuses of the labour hire loophole. Wage differentials which have already been observed of 20–30 per cent will be at the higher end of *SJSP* Orders as they are made over time.

That said, it is clear from the preliminary real-world estimates that DEWR's 13.8 per cent calculation is likely on the conservative end. This means that the overall wage gain estimated by DEWR of \$510.5 million may also be a conservative estimate. Indeed, in their analysis, DEWR acknowledged the 'high degree of uncertainty' inherent in their calculations.<sup>54</sup>

### Real data suggests aggregate SJSP annual pay rises approach over \$1 billion

Using real pay rises obtained as a base to reconstruct DEWR's model, the anticipated aggregate wage rise increases markedly. This report offers a base, middle, and observed average estimates of the aggregate wage rise attributable to *SJSP* Orders.

Hourly Pay Differential	Hourly Differential	Aggregate Wage Rise
13.8 per cent wage uplift (DEWR Estimate)	\$4.79	\$510.5 million
15 per cent wage uplift (Lower Estimate)	\$5.22	\$556.3 million
20 per cent wage uplift (Middle Estimate)	\$6.96	\$741.7 million
28.4 per cent wage uplift (Observed Average)	\$9.88	\$1.053 billion

*Table 2: Aggregate Wage Rises, Selected Pay Differentials*

Indeed, as Table 2 shows, if we relax the DEWR estimates to come more closely in line with observed pay rises in *SJSP* Orders, the total aggregate wage rise can increase significantly.

Since it is likely that the wage differentials will fall as less egregious and more marginal *SJSP* Orders are sought, 15 per cent has been used as a lower estimate and 20 per cent as a middle estimate. The observed industry-wide average of 28.4 per cent is then used as a highly unlikely upper estimate.

### Accounting for part-time employees, population growth, and hours worked

There are other elements of DEWR's baseline analysis which are liable to criticism on the basis that they underestimate the true potential for aggregate wage gains.

First, DEWR *excluded all part-time labour hire employees* from their analysis on the basis that they earn *on average* more than part-time non-labour hire employees. This meant that approximately 60,000 workers were excluded from their estimates.

DEWR contended in their analysis that ‘the Government’s proposal is unlikely to apply to part-time labour hire employees’ because ‘there is no negative wage differential to justify the making of [an order]’.<sup>55</sup>

It is puzzling that DEWR would exclude *all part-time labour hire workers* from their analysis based on an *average wage differential*. Rather than being reflective of a general trend, it is highly likely that this average has been skewed up by some relatively high-skilled part-time labour hire workers at the top of the income distribution.

After applying other valid exclusions from DEWR on labour hire engagements three months or less, small business employers, and employers without an enterprise agreement, it is possible to re-estimate aggregate wage gains after re-including a portion of part-time employees at 16 hours per week using various hourly pay differentials.

	10 per cent part-time re-included	25 per cent part-time re-included	40 per cent part-time re-included
13.8 per cent wage uplift (DEWR Estimate)	\$515.0 million	\$521.8 million	\$528.6 million
15 per cent wage uplift (Lower Estimate)	\$561.3 million	\$568.6 million	\$576.0 million
20 per cent wage uplift (Middle Estimate)	\$748.4 million	\$758.2 million	\$768.0 million
28.4 per cent wage uplift (Observed Average)	\$1.063 billion	\$1.076 billion	\$1.090 billion

**Table 3:** Aggregate Wage Rises, Selected Pay Differentials, Selected Part-Time Re-inclusion

Secondly, DEWR’s estimates were conducted using labour force estimates from June 2022.<sup>56</sup> In the labour hire sector, the number of people employed in the sector increased by 15.7 per cent between September 2022 and the latest release June 2024.<sup>57</sup> There is no reason to assume that the cohort eligible for an *SJSP* Order has not increased by a proportionate amount.

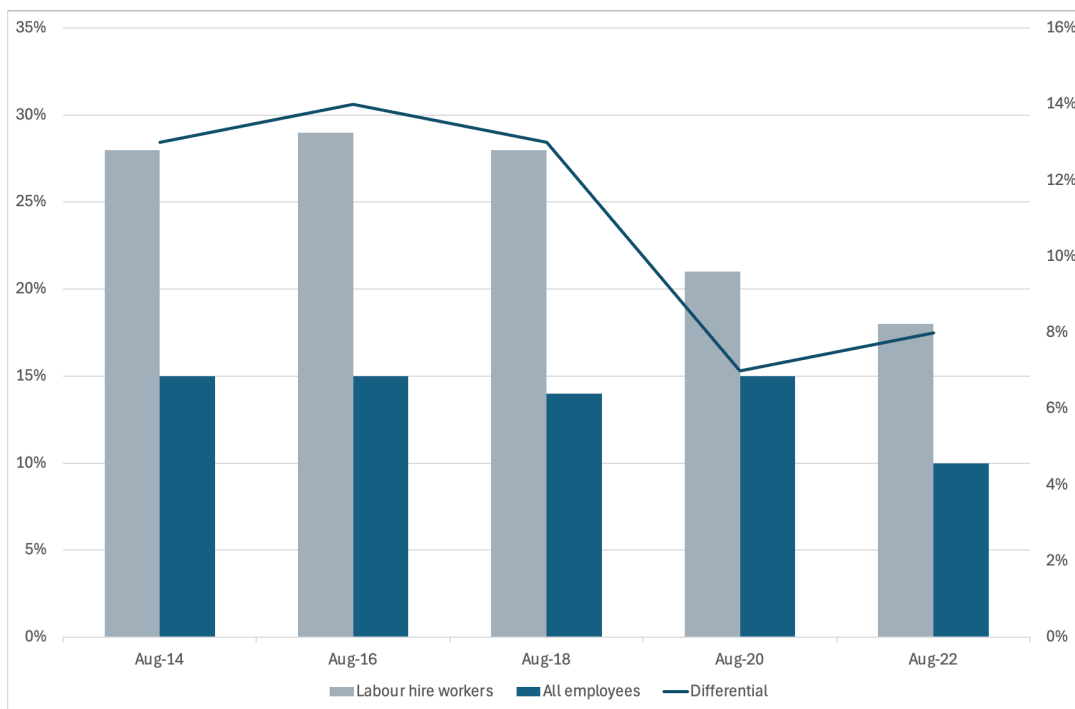
Assuming 25 per cent of part-time employees are re-included for the purposes of our estimates, it is again possible to re-estimate the wage effects with a 15.7 per cent growth in the cohort eligible for an *SJSP* Order.



Accounting for Labour Hire Workforce Growth	
13.8 per cent wage uplift (DEWR Estimate)	\$603.9 million
15 per cent wage uplift (Lower Estimate)	\$658.1 million
20 per cent wage uplift (Middle Estimate)	\$877.5 million
28.4 per cent wage uplift (Observed Average)	\$1.246 billion

**Table 4:** Aggregate Wage Rises, Selected Pay Differentials, Accounting for Workforce Growth

Finally, the DEWR estimates assumed that full-time labour hire workers would work on average 38.1 hours per week, and 42.1 weeks per year.<sup>58</sup> These figures were based off static estimates from observations between 2019 and 2022. Yet, these same surveys revealed that labour hire workers were disproportionately more likely to report that they would prefer to work more hours.



**Figure 6:** Proportion of Workers Preferring to Work More Hours, Labour Hire Employees and All Employees

While higher pay attributable to *SJSP* Orders would dampen labour hire workers’ willingness to work more, Australia’s tight labour market since August 2022 has likely meant that these additional hours were increasingly absorbed.<sup>59</sup>

Accordingly, using the estimates produced above which account for part-time workers and for workforce growth, we can estimate aggregate wage gains attributable to increasing the number of hours worked by full-time labour hire workers.

	38.1 Hours (DEWR Estimate)	40 Hours (Middle Estimate)	42 Hours (Upper Estimate)
13.8 per cent wage uplift (DEWR Estimate)	\$603.9 million	\$633.3 million	\$664.4 million
15 per cent wage uplift (Lower Estimate)	\$658.1 million	\$690.2 million	\$724.0 million
20 per cent wage uplift (Middle Estimate)	\$877.5 million	\$920.3 million	\$965.3 million
28.4 per cent wage uplift (Observed Average)	\$1.246 billion	\$1.307 billion	\$1.371 billion

*Table 5: Aggregate Wage Rises, Selected Pay Differentials, Variable Hours per Week*

There is another limitation in DEWR's methodology which likely leads to an underestimate of the wage differential. In their calculations, they exclude wages of workers who have been in their jobs for more than two years. This is puzzling, given the labour hire loophole was intended to undercut and displace longer-term workers with seniority and its associated wage benefits under enterprise agreements.

The foregoing analysis suggests that once we account for the credibly observed wage increases attributable to *SJSP* Orders, re-introduce some part time workers, and account for workforce and hours growth, the true potential aggregate wage impact of *SJSP* is far greater than originally estimated by DEWR, and may be as high as \$1.371 billion per year.

### **Indirect effects are also significant, especially for regional communities**

When wages increase, so too does overall aggregate demand, consumption and investment. This means that any 'economic benefit' attributable to *SJSP* Orders goes far beyond the aggregate wage increased estimated by DEWR. Instead, it has a quantifiable economic dividend for the whole Australian economy. This is especially the case for regional mining communities where *SJSP* Orders are most likely to lead to market increases in wages.

If we assume that *SJSP* Orders obtain—on average—a 20 per cent wage uplift, that 25 per cent of part time workers are otherwise eligible for an *SJSP* Order, and that full-time *SJSP*

recipients work 40 hours per week we arrive at a wage estimate of \$920.3 million after accounting for post-2022 labour force growth.

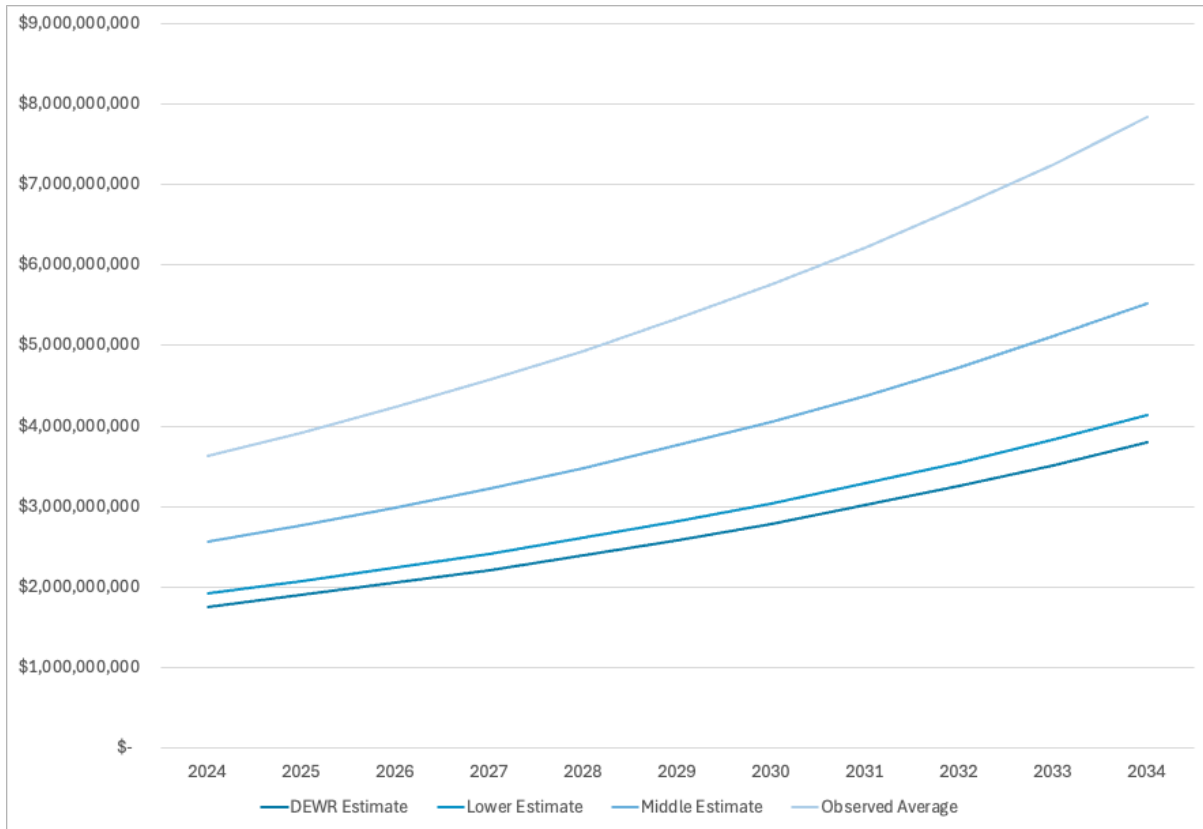
A whole of economy effect can then be calculated for a given year. In Australia, it has been estimated that the marginal propensity to consume (**MPC**) is approximately 0.64—meaning that for every additional dollar of income, 64 cents will be consumed.<sup>60</sup> This consumption reverberated—or ‘multiplies’—as individuals who receive this money then proceed to consume themselves. Accordingly, the whole of economy effect for aggregate wage gains can be estimated by the following equation:

$$2024 \text{ Estimated Impact} = \frac{\text{Aggregate Wage Uplift}}{1 - \text{MPC}} = \frac{\$920.3\text{m}}{1 - 0.64} = \$2.556\text{bn}$$

Consequently, having modified the DEWR estimates, *SJSP* would have an economy-wide impact of up to \$2.556 billion if all eligible orders were made using a middle wage premium estimate.

It is crucial to note that this is just an annual wage uplift figure, and it is possible to extrapolate these figures out in line with expected labour hire labour force growth. While Australia’s labour hire labour force grew by 14 per cent in the past year, much of this is likely attributable to higher-than-expected immigration.

If we assume that the eligible labour hire labour force grows at 8 per cent per year, this figure may rise as high as \$5.519 billion by 2034. These annual figures can also be projected using the DEWR, lower, middle, and observed average wage differentials estimates.



**Figure 7:** Annual Estimated Whole Economy Effect, Selected Pay Differentials, 2024 to 2034

This whole of economy impact is not simply an abstract figure—it has real implications for household budgets and individual welfare. It also of particular importance for Australia’s regional communities, who are frequently dependent on mining for their sustainability and survival.<sup>61</sup>

**Concerns about *Same Job, Same Pay* have proven inaccurate and misleading**

Criticism of the *SJSP* scheme has proven inaccurate at best, and highly misleading at worst. No critique has been vindicated by the available data.

Some commentators argued that the *SJSP* scheme would ‘force businesses to economise and employ fewer labour resources than desirable’—meaning it would drive down labour demand. This has evidently not occurred. The Australian labour market has remained tight in recent years, even with a climbing participation rate.<sup>62</sup>

Others have argued that many workers choose to be employed in labour hire ‘because it is a more flexible arrangement that suits their circumstances, as it is not subject to rigid regulation’.<sup>63</sup> Survey data shows this is incorrect. Labour hire workers are subject

disproportionately to more unstable working conditions, and early surveys indicate that the vast majority would prefer direct employment.<sup>64</sup> As the labour hire loophole was expanded over the past decade to drive down wages, it is highly likely that this preference has further grown over time.

Finally, early opposition to the *SJSP* scheme appealed to survey data which was highly misleading. For example, one announcement touted that 75 per cent of their survey recipients agreed that ‘companies should be able to hire temporary workers to fill surge capacity’.<sup>65</sup> This is entirely achievable under the legislation, which does not apply to labour hire engagements of under three months duration.

The same announcement noted that 77 per cent of their survey recipients ‘would feel frustrated if someone who had less experience, or didn’t work as hard, was paid the same amount as them’.<sup>66</sup> Differences in experience and skill might give rise to different rates of pay under the relevant enterprise agreement, but the *SJSP* scheme is about making sure that rates of pay aren’t determined simply by the type of contract a worker signs at a given site.

## Conclusion

Labour hire has a role in the Australian economy, but not one in undercutting wages legitimately secured by good faith bargaining. To this end, the Albanese Labor Government's *SJSP* scheme was a responsible, necessary and—above all—fair legislative reform.

It protects some of Australia's most vulnerable workers and safeguards the integrity of Australia's industrial relations system. At its core, it ensures that workers on the same site, working for the same company, doing the same work, are paid the same wage.

The *SJSP* scheme has all but effectively closed the labour hire loophole left open by previous governments and is now delivering both direct and indirect wage gains across the Australian economy.

Our analysis of the *SJSP* scheme suggests that early estimates of its annual aggregate wage impact did not fully capture the magnitude of the potential wage gains. We find that after accounting for empirically observed wage gains, part-time employment, population growth, and hours worked, the annual aggregate wage impact may be as high as the low billions, rather than the original \$510.5 million estimated by DEWR.

## Endnotes

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- <sup>1</sup> Dr Katie Hepworth, *Labour Hire & Contracting Across the ASX100* (Report, 12 May 2020) 5.
- <sup>2</sup> Dr Katie Hepworth, *Labour Hire & Contracting Across the ASX100* (Report, 12 May 2020) 10.
- <sup>3</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) < <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>> Table 1.
- <sup>4</sup> Geoff Gilfillan, *Use of Labour Hire and Contract Workers in Australia* (Parliamentary Library Research Paper Series 2023–24, 31 May 2024) 7.
- <sup>5</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) < <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/jun-2024>> Table 1.
- <sup>6</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 373.
- <sup>7</sup> See, eg, *Labour Hire Licensing Act 2018* (Vic), *Labour Hire Licensing Act 2017* (Qld), *Labour Hire Licensing Act 2017* (SA); *Labour Hire Licensing Act 2020* (ACT).
- <sup>8</sup> See, eg, Richard Hall, *Labour Hire in Australia: Motivation, Dynamics and Prospects* (Report, Working Paper 76, April 2002) 8–11.
- <sup>9</sup> See *Fair Work Act 2009* (Cth) ss 193, 193A.
- <sup>10</sup> See Australian Bureau of Statistics, *Employee Earnings and Hours, Australia, May 2023* (24 January 2023) < <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/latest-release>> Data Cube 2.
- <sup>11</sup> See, eg, Ian Watson, ‘Contented Workers in Inferior Jobs? Re-assessing Casual Employment in Australia’ (2005) 47(4) *Journal of Industrial Relations* 371; Judy Fudge and Kendra Strauss, *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work* (Routledge, 2016). See also Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 366, Table 1.
- <sup>12</sup> Australian Unions, *Qantas is One Big Loophole* (Australian Unions, 2023) < [https://www.australianunions.org.au/wp-content/uploads/2023/06/ANAPR\\_QANTAS\\_v7.pdf](https://www.australianunions.org.au/wp-content/uploads/2023/06/ANAPR_QANTAS_v7.pdf)>.
- <sup>13</sup> Senate Select Committee on Job Security, Parliament of Australia, *Third Interim Report: Labour Hire and Contracting* (Interim Report, November 2021) 45–6 [3.16], [3.20].

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<sup>14</sup> Senate Select Committee on Job Security, Parliament of Australia, *Third Interim Report: Labour Hire and Contracting* (Interim Report, November 2021) 76 [Box 4.1], 78 [Box 4.2].

<sup>15</sup> See, eg, Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 366, 399.

<sup>16</sup> See, eg, Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 399.

<sup>17</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>>.

<sup>18</sup> Australian Bureau of Statistics, *Personal Income in Australia, 2020–21* (6 December 2023) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/personal-income-australia/2020-21-financial-year>>.

<sup>19</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>>.

<sup>20</sup> Geoff Gilfillan, *Use of Labour Hire and Contract Workers in Australia* (Parliamentary Library Research Paper Series 2023–24, 31 May 2024) 15 n 28.

<sup>21</sup> See, eg, Fair Work Ombudsman, ‘Queensland Labour-Hire Company Penalised’ (Media Release, 5 July 2023) <<https://www.fairwork.gov.au/newsroom/media-releases/2023-media-releases/july-2023/20230705-nq-powertrain-penalty-media-release>>.

<sup>22</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>>.

<sup>23</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>>.

<sup>24</sup> Elsa Underhill, *Response to Workplace Relations Framework Draft Report* (2015) <[https://www.pc.gov.au/\\_data/assets/pdf\\_file/0019/193303/subdr0321-workplace-relations.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0019/193303/subdr0321-workplace-relations.pdf)> 2.

<sup>25</sup> Senate Select Committee on Job Security, Parliament of Australia, *Third Interim Report: Labour Hire and Contracting* (Interim Report, November 2021) 27–9.

<sup>26</sup> Senate Select Committee on Job Security, Parliament of Australia, *Third Interim Report: Labour Hire and Contracting* (Interim Report, November 2021) 2–3 [1.11].



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<sup>27</sup> Senate Select Committee on Job Security, Parliament of Australia, *Third Interim Report: Labour Hire and Contracting* (Interim Report, November 2021) 36 [2.104].

<sup>28</sup> Elsa Underhill, *Response to Workplace Relations Framework Draft Report* (2015) <[https://www.pc.gov.au/\\_data/assets/pdf\\_file/0019/193303/subdr0321-workplace-relations.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0019/193303/subdr0321-workplace-relations.pdf)> 2.

<sup>29</sup> See, eg, Linda Brennan, Michael Valos and Kevin Hindle, *On-Hired Workers in Australia: Motivations and Outcomes* (Report, December 2003) 90.

<sup>30</sup> See, eg, Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 382–3.

<sup>31</sup> *Fair Work Act 2009* (Cth) s 306E.

<sup>32</sup> See *Fair Work Act 2009* (Cth) s 306F.

<sup>33</sup> *Fair Work Act 2009* (Cth) s 306E(1)(a)–(c).

<sup>34</sup> *Fair Work Act 2009* (Cth) s 306E(1A).

<sup>35</sup> *Fair Work Act 2009* (Cth) s 306E(2).

<sup>36</sup> *Fair Work Act 2009* (Cth) ss 306G(2), 306J–306L.

<sup>37</sup> See ‘Regulated Labour Hire Arrangement Orders Made’, *Fair Work Commission* (Web Page, 28 March 2025) <<https://www.fwc.gov.au/work-conditions/labour-hire-employees-protected-rates-pay/regulated-labour-hire-arrangement-0>>.

<sup>38</sup> It should be noted that this figure is based on the *number* of labour hire firms that would be impacted by an order. For example, an FWC order could only affect one site, but order three labour hire companies to pay the protected rate of pay. Depending on how one counts, this could be counted as one or three orders. For the purposes of this analysis, we consider an order to have been made at Mount Pleasant even though the application was withdrawn after the affected workers were offered permanent employment.

<sup>39</sup> Data from Fair Work Commission decisions, and data provided to the McKell Institute by the Mining and Energy Union.

<sup>40</sup> Mining and Energy Union, ‘\$10 Million in Pay Rises: Historic Same Job Same Pay Win at BHP’s Mt Arthur’ (Media Release, 23 February 2025) <<https://meu.org.au/10-million-in-pay-rises-historic-same-job-same-pay-win-at-bhps-mt-arthur/>>.

<sup>41</sup> See, eg, Australian Unions, *Qantas is One Big Loophole* (Report, 2023) <[https://www.australianunions.org.au/wp-content/uploads/2023/06/ANAPR\\_QANTAS\\_v7.pdf](https://www.australianunions.org.au/wp-content/uploads/2023/06/ANAPR_QANTAS_v7.pdf)>.

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<sup>42</sup> See Jake Nelson, 'Qantas Labour-Hire Cabin Staff Win Pay Rises', *Australian Aviation* (online, 18 March 2025); Senator the Hon Murray Watt, '\$20,000 Pay Rises for Flight Attendants from Labor's Same Job, Same Pay Laws' (Media Release, 17 March 2025).

<sup>43</sup> See *Application by Shop, Distributive and Allied Employees Association re Kmart Lytton Distribution Centre* [2024] FWC 3238, [4].

<sup>44</sup> See *Application by Shop, Distributive and Allied Employees Association re Kmart Lytton Distribution Centre* [2024] FWC 3238, [4].

<sup>45</sup> Data provided to the McKell Institute by the Shop, Distributive, and Allied Employees Association.

<sup>46</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 399

<sup>47</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 398.

<sup>48</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 366.

<sup>49</sup> Internal data provided to the McKell Institute by the Mining and Energy Union. The figure for completed orders is inclusive of the [South32 order](#) obtained by Nicholas Driver.

<sup>50</sup> See *Re The Australian Meat Industry Employees Union* [2024] FWCFC 388, [4] and associated order.

<sup>51</sup> See *Shop, Distributive and Allied Employees Association re Kmart Lytton Distribution Centre* [2024] FWC 3238, [4] and associated order.

<sup>52</sup> Senator the Hon Murray Watt, '\$20,000 Pay Rises for Flight Attendants from Labor's Same Job, Same Pay Laws' (Media Release, 17 March 2025) <<https://ministers.dewr.gov.au/watt/20000-pay-rises-flight-attendants-labors-same-job-same-pay-laws>>.

<sup>53</sup> The average for mining is determined on the assumption that the average worker at a given site earned \$120,000 annually.

<sup>54</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 403.

<sup>55</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 399.

<sup>56</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 399–400.

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<sup>57</sup> Australian Bureau of Statistics, *Labour Hire Workers, June 2024* (13 September 2024) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/labour-hire-workers/latest-release>> Table 1.

<sup>58</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth) 402.

<sup>59</sup> See Max Douglass, *Assessing the Albanese Government's Employment Record* (Report, March 2025).

<sup>60</sup> See Laura Berber-Thomson, Elaine Chung and Rebecca McKibbin, 'Estimating Marginal Propensities to Consume in Australia Using Micro Data' (2010) 86(1) *Economic Record* 49.

<sup>61</sup> House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Parliament of Australia, *Keep it in the Regions: Mining and Resources Industry Support for Businesses in Regional Economies* (Final Report, November 2018).

<sup>62</sup> Gene Tunny, *Closing Opportunities, Not Loopholes: A Review of Proposed New Laws Regarding Labour Hire, Casual Employment, and the Gig Economy* (Analysis Paper 59, November 2023) 5–6.

<sup>63</sup> Saxon Davidson, 'Labor's "Same Job, Same Pay" Reforms Would Reck Australia's "Boom and Bust" Economy, and Leave the Rest of Us to Pick up the Pieces', *Sky News* (online, 24 August 2023) <<https://www.skynews.com.au/insights-and-analysis/labors-same-job-same-pay-reforms-would-wreck-australias-boom-and-bust-economy-and-leave-the-rest-of-us-to-pick-up-the-pieces/news-story/06eda5f6b413df9bd59078d4530a0d2b>>

<sup>64</sup> See, eg, Linda Brennan, Michael Valos and Kevin Hindle, *On-Hired Workers in Australia: Motivations and Outcomes* (Report, December 2003) 90.

<sup>65</sup> Business Council of Australia, 'Research Rejects Government's Workplace Proposals' (Media Release, 28 July 2023) <[https://www.bca.com.au/research\\_rejects\\_government\\_s\\_workplace\\_proposals](https://www.bca.com.au/research_rejects_government_s_workplace_proposals)>.

<sup>66</sup> Business Council of Australia, 'Research Rejects Government's Workplace Proposals' (Media Release, 28 July 2023) <[https://www.bca.com.au/research\\_rejects\\_government\\_s\\_workplace\\_proposals](https://www.bca.com.au/research_rejects_government_s_workplace_proposals)>.