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Department of Employment and Workplace Relations
Australian Government

Via email: WRSubmissions@dewr.gov.au



Chamber of Commerce
and Industry WA

T: (08) 9365 7555

E: membership@cciwa.com

W: www.cciwa.com

To whom it may concern

CCIWA submission to *Same Job, Same Pay*

Introduction

CCIWA is the peak body advancing trade and commerce in WA. We want the best for communities across the State. Our members are of all sizes and come from all industries and regions, from small early childhood education and care providers in regional towns, to medium sized manufacturers in the Perth metropolitan area.

At the outset, we wish to convey that the consultation surrounding these reforms is improved as compared to the rushed *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*. That said, the *Same job, Same pay* proposal has the potential to create serious, longstanding consequences for the WA business community, and a four week turn-around for consultation is inadequate given the complexity and impact these reforms present.

Despite the short-time frame, we have engaged with the WA business community on this matter. We have also been working closely with the Australian Chamber of Commerce and Industry, and support its submission in full.

We also wish to convey our deep concerns about the *Same Job, Same Pay* measure in this submission. If the proposal is implemented as intended, this would have significant ramifications for the Western Australian business community, creating perverse and unintended outcomes.

Labour hire plays a critical role in the WA economy

This proposal comes at a time when skills shortages across industries are heightened. In our most recent Business Confidence survey (March quarter), 75 per cent of businesses across industries said they were struggling to fill staffing gaps, impacting service provision, productivity and growth.

From the resources and construction sectors to disability service providers and the agricultural sector, labour hire providers are widely used to overcome skill shortages, safeguard industries against immediate staffing shortages, support businesses to adapt to seasonal and/or operational changes in demand as well as facilitating the supply of specialist skills.

In our State, labour hire plays a very significant role. Therefore, we caution the agenda to demonise the labour hire industry, particularly, when the Department itself notes there is limited evidence to support the basis of this reform.¹



We also reinforce to all involved in the development of this legislation that if the basis of policy is to address a very specific problem, then this reform should seek to address that issue – anything beyond this scope is unjustified and would give rise to a raft of perverse and unintended outcomes.

Same Job, Same Pay will be a handbrake on the WA economy

If this policy is implemented as intended, this policy has the propensity to serve as a severe impediment and major disruptor to the use of labour hire in WA and the businesses they support. It will not only exacerbate workforce shortages and the provision of quality services, but also undermine both the WA and national economies.

As one resource company representative noted:

“This will prompt us to re-evaluate our current workforce structure, which is reliant on a mix of (more diversified, higher skilled) direct hire employees and subcontractors. If there is a likelihood that subcontractors’ remuneration will be pushed up to the direct hire levels, we may need to consider reducing the direct hire component and transitioning to a less diversified, lower skilled operating model – potentially under a fully outsourced arrangement.”

and a disability services provider also explained that:

“We engage labour hire to supplement our existing staff to ensure there is sufficient staff to manage our clients in our accommodation units. There are several labour hire providers that we use. The smaller labour hire providers won’t be able to deal with this level of complexity, and if we don’t have sufficient staffing options available, then this will have a direct impact on service delivery”.

In other words, the lives of the most vulnerable in our society will be negatively impacted.

It is also likely that this policy would disrupt domestic food markets given the operational, including cost, pressures it would apply to our agricultural sector and those businesses that support getting their product to market. It is important to underline that Australians feel most insecure about the cost of living and their capacity to pay their mortgage. This policy seems most likely to exacerbate those concerns.

We stress that the Department needs to do an appropriate level of due diligence by undertaking a rigorous Impact Analysis to understand the consequences of this policy, and to minimise any potentially significant adverse consequences in the design of this policy.

¹ Consultation Paper, page 3: “to address the limited circumstances in which host employers use labour hire to deliberately undercut the bargained wages and conditions set out in enterprise agreements made with their employees”.



***Same Job, Same Pay* must be appropriately targeted and contained**

To align with the intended goal of this policy - where in limited circumstances, the host employers use labour hire to deliberately undercut the bargained wages and conditions - then the scope of this policy must be targeted and contained.

The policy should therefore only be narrowly defined and applied to the extent that only arrangements which can be genuinely described as “*labour hire*” in a traditional triangular arrangement are included within its scope.

We are deeply concerned that if the policy went beyond the scope of its intended purpose, then service contractors could inadvertently also be captured within these provisions.

Further, to reinforce the intended aim of the policy, Group Training Organisations (GTOs), service providers, contract management services, recruitment and placement services and genuine subcontracting arrangements must be expressly excluded from the scope of this policy.

***Same job, Same pay* does not capture the complexity of the employee-employer relationship**

We are deeply concerned by the Department’s suggestion of calculating ‘same pay’ with reference to the ‘full rate of pay’ as defined by Section 18 of the *Fair Work Act 2009* (Cth) (FW Act). In particular, we consider the inclusion of ‘incentive-based payments and bonuses’, ‘monetary allowances’ and ‘any other separately identifiable amounts’ as totally inappropriate and will lead to significant unintended consequences.

With this application, there is no accounting for the highly complex relationship that exists between employee and employer, which gives rise to pay differences across organisations. These factors include:

- performance/productivity
- loyalty and years of service
- seniority
- skills and experience
- bargaining during contract negotiations
- availability of alternative workers at the time of employment

Given this, it is completely inappropriate for the Department to capture and apply the *Same Job, Same Pay* by reference to the ‘full rate of pay’ and by sole reference to the duties or classification of the worker. This will have perverse and unintended outcomes.

If the *Same Job, Same Pay* measure was introduced as intended, this would not only have a substantial impact on the cost of doing business, it would also add significant administrative complexity. For this reason, we do not support small businesses being captured by any of these proposed reforms.



Concluding remarks

In the Department of Prime Minister and Cabinet's *Australian Government Guide to Policy Impact Analysis*, it makes a clear case that policy makers should clearly demonstrate a public policy problem necessitating Australian Government intervention and should also examine a range of genuine and viable options, including non-regulatory options, to address the problem.

The *Same Job, Same Pay* is a highly significant policy instrument intended to address a very specific problem - yet the policy could inadvertently capture a large number of businesses, creating perverse and unintended consequences.

Given the Department itself acknowledges this is not a widespread problem, there is no policy justification to go beyond this narrow and targeted scope.

As labour hire is used extensively in our tight labour market, we also recommend the Department undertakes a rigorous Impact Analysis before proceeding with any legislative intervention. This would also assist in mitigating any significant risks. In that process, we also recommend the Department examines a range of non-regulatory options to address this very specific issue.

If the *Same Job, Same Pay* was introduced as intended, without a rigorous Impact Analysis, and it was broad in scope capturing other service contracting arrangements, we argue this policy would have significant social and economic consequences for the WA business community.

Yours sincerely,

Chris Rodwell

CEO CCIWA



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