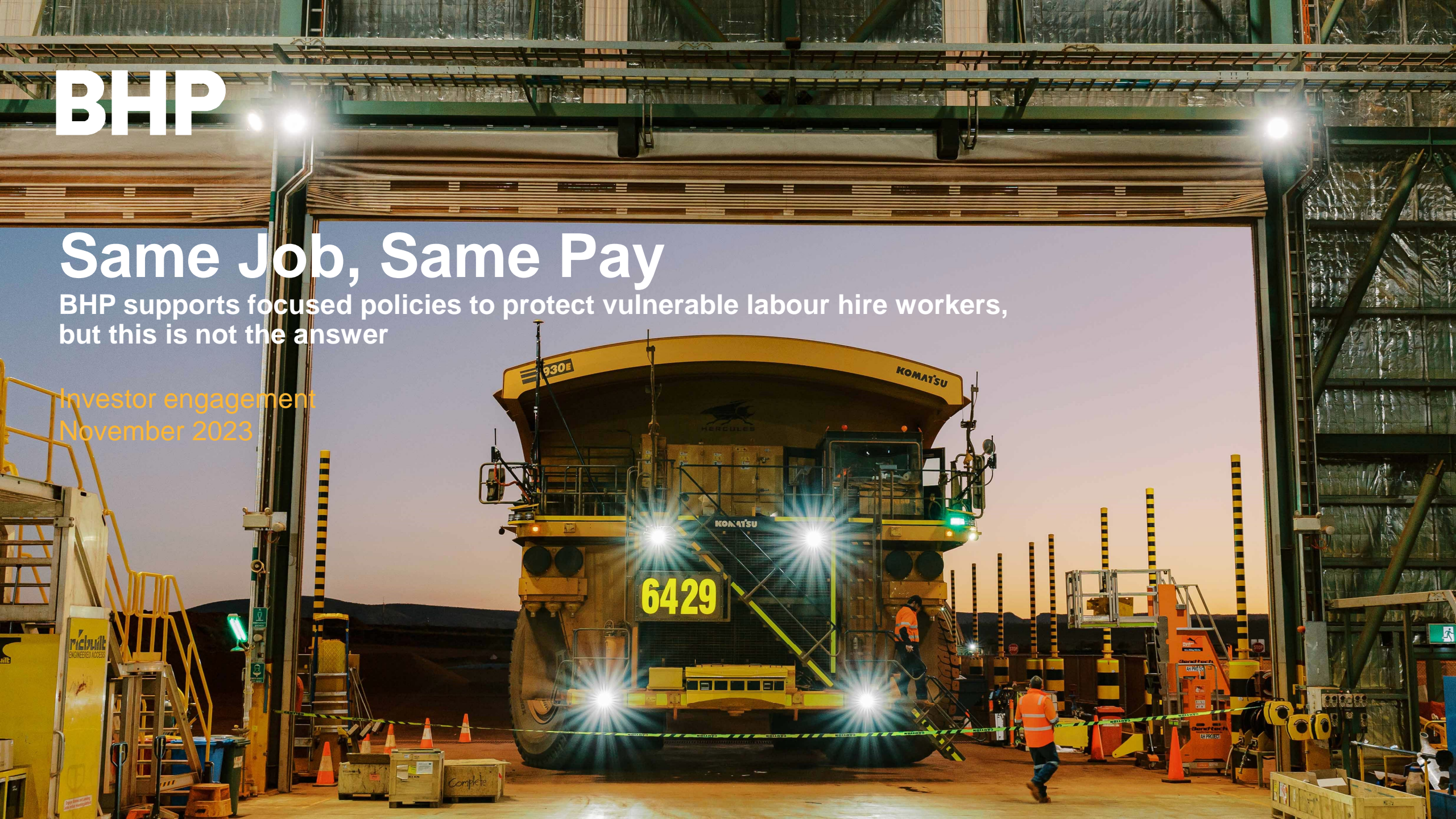


# BHP

## Same Job, Same Pay

BHP supports focused policies to protect vulnerable labour hire workers,  
but this is not the answer

Investor engagement  
November 2023



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# Australia's workplace relations system

## Challenges for costs and productivity

Labour productivity in mining declined by 8 per cent between 2000-01 and 2020-21, average weekly earnings for full-time workers grew by 99 per cent<sup>1</sup>

Australia has a complex and highly regulated workplace relations system.

There is a legitimate compliance focus on minimum terms and conditions and protection of employment and union rights. However, the way the system does this is complex.

The system has limited focus on productivity.

A strict industrial relations system which locks in costs irrespective of productivity.

Mining is highly cyclical and to be competitive, flexible and maintain productivity there has been a growth in labour hire used in combination with service contractors and a permanent workforce.

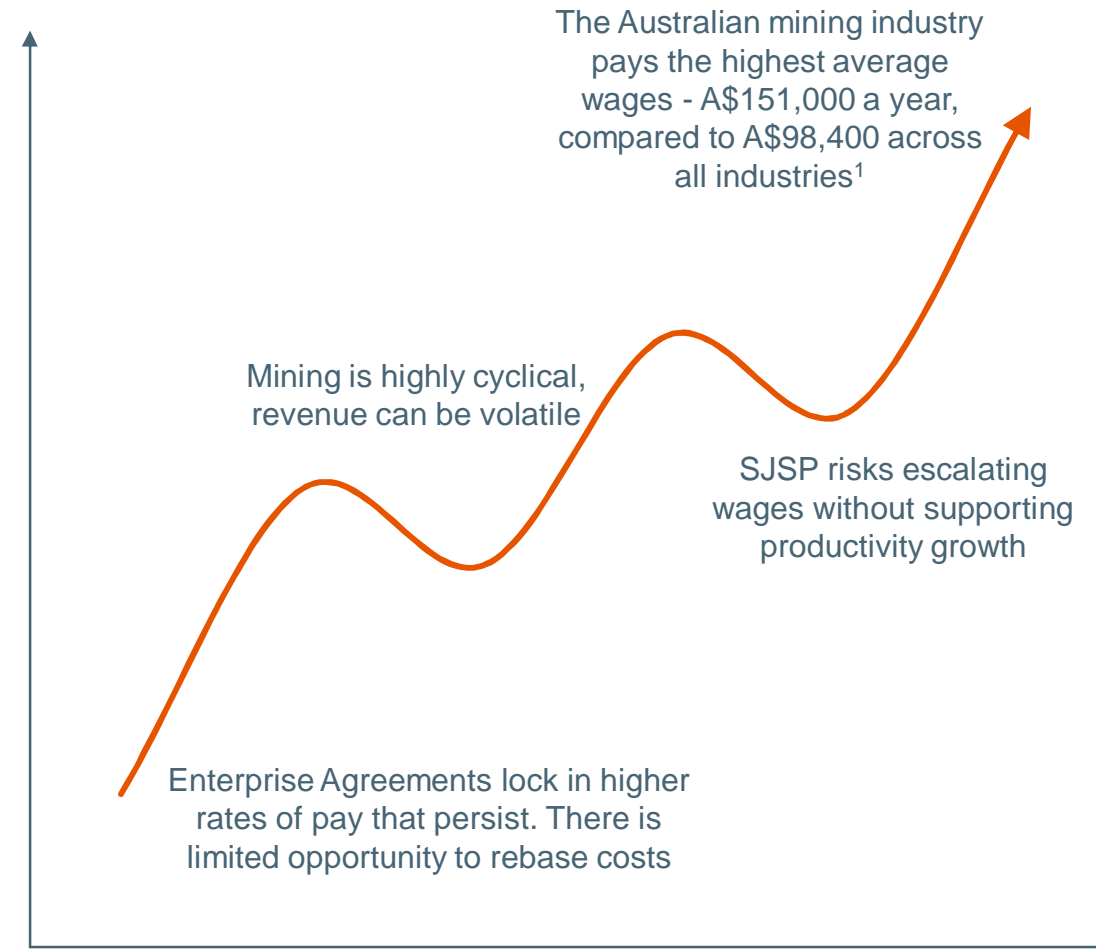
These three components of the workforce are managed to meet current market conditions and operational requirements.

1. [Multi-employer bargaining turns back the clock - Minerals Council of Australia](#)

# What is Same Job, Same Pay?

It is not a simple resolution of loop-holes, it is the most significant and far-reaching change to Australian workplace relations since WorkChoices

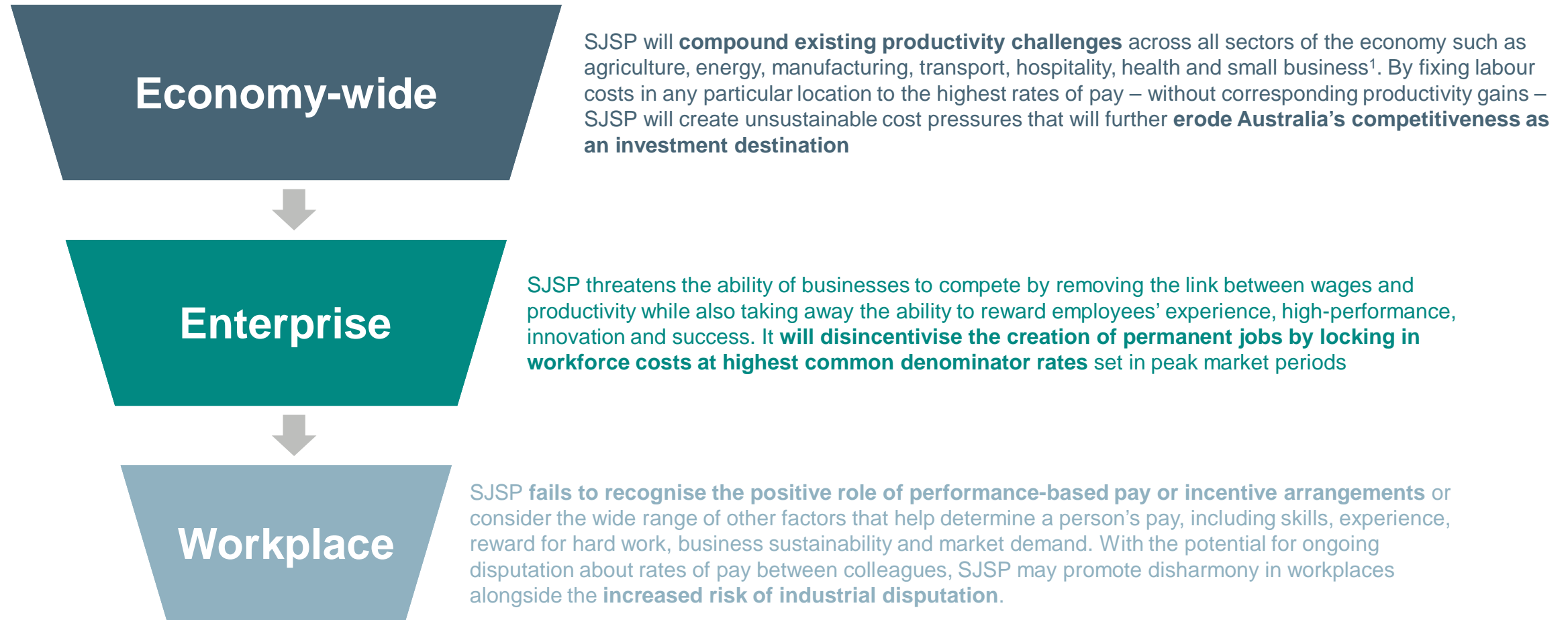
- On 4 September 2023, the Australian Federal Government introduced the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023. The proposed law contains a new framework for pricing labour, which is described in public discourse as 'same job same pay' (SJSP). It is likely this will become law in early 2024
- If passed, any business which directly or indirectly supplies employees to another business (the 'host') can be ordered to pay its employees the full rate of pay under a host's enterprise agreement, despite the employer having an enterprise agreement in place that covers the work performed at the host's business
- The legislation will **apply to every sector of the economy**
- **Broad concepts of 'same job' and 'same pay' mean that, if an order is made, a labour hire worker new to the business will have to be paid the same by law as a worker with decades of experience:**
  - A labour hire worker who is new to the business, may have significantly less experience, and may only be deployed to work at that business for six months would by law have to be paid the same as a worker who has 10 years of experience working for the business and who has built a reputation for reliability and quality work.



1. Source: Australian Bureau of Statistics, [Average Weekly Earnings, Australia](#), released 17 August 2023, table 10H, average Nov 2022 and May 2023.

# Impacts to every level of the Australian economy

Adverse economic implications which will produce inflationary wage pressure and put jobs at risk



1. Source: Including businesses represented by the Australian Chamber of Commerce and Industry, Australian Petroleum Production & Exploration Association, Business Council of Australia, Council of Small Business Organisations Australia, Master Builders Australia, Minerals Council of Australia, National Farmers Federation, and Recruitment, Consulting & Staffing Association.

# BHP Operations Services

Creates permanent employment and addresses insecure work with labour hire companies

- Helps to reduce casualisation and reliance on labour hire by creating **permanent roles at BHP**
- **Market competitive wages** set through benchmarking against other companies
- Employees trained in new ways of working
- **Almost 200,000 applicants for 4,500 permanent jobs**
- OS provides more secure roles for workers, and:
  - ✓ Well paid jobs; average salary greater than A\$150k
  - ✓ Full leave entitlements including annual leave, personal leave, parental leave
  - ✓ Access to the BHP share scheme and BHP incentive scheme
  - ✓ High value training, development and progressions opportunities

SJSP directly targets a business unit that has created permanent jobs:



**Existing jobs**

**4,500**

Permanent, well-remunerated roles



**Job creation**

**1,000**

Expected additional OS jobs over the next two to three years at risk



**New to  
industry career  
pathways**

## BHP's FutureFit Academy

Without OS to accept graduates, BHP's continued FutureFit investment – expected to reach A\$300m over five years – may become unfeasible

# BHP position on Same Job, Same Pay

Same Job, Same Pay will create a further drag on productivity and will harm Australia's global competitiveness

We support the principle of focussed legislative reform to protect **vulnerable workers** including those who are low paid or are otherwise disadvantaged.

We also believe in the value of a **competitive labour market** and in the importance of maintaining strong links between increases in labour costs and improvements in productivity

BHP is strongly opposed to SJSP in its current form because of the damage it will do to our business as well as to Australia's economy, to Australian jobs and to Australia's productivity and international competitiveness



# Same Job, Same Pay: Next Steps

Senate Inquiry into the Bill is expected to provide its report to Parliament in early February 2024, after which Parliament will debate the Bill in detail

We have made our  
submission on the  
Fair Work Legislation  
Amendment (Closing  
Loopholes) Bill 2023

[Link to BHP's submission](#)

We provided evidence  
to the Senate  
Committee hearing on  
31<sup>st</sup> October 2023

What is the impact to other companies operating in Australia? And what are they doing?

[Here you will find submissions from other sectors of the Australian economy](#)

**BHP**

# Appendix: Australia's workplace relations system

In order to employ someone in Australia, a business has to navigate multiple layers of compliance and regulation in determining that employee's terms and conditions of employment, namely:

1. The National Employment Standards
2. The relevant Modern award
3. Their own enterprise agreement (if one is in place)
4. The terms and conditions set out in the employment contract
5. If enacted, the Bill will add a fifth layer - the terms of any regulated labour hire arrangement order (RLHA order) under the Bill

In effect, the Bill will require labour hire and service contractor employers, who have already complied with the four existing regulatory layers (1-4 above), to contend with a RLHA order potentially overriding all of these. In addition, every time one of these businesses deploys one or more of their employees to perform work directly or indirectly for the benefit of a customer (a “host business”), they will need to consider the actual or potential rates of pay that they might have to pay the employee while they are working on that customer's site – which will likely be different to the rates they have to pay the same employee when they work for another customer.

# Appendix: How would SJSP work?

- When an employer supplies, either directly or indirectly, one or more employees to another business, the 'host', then employees and unions would be able to apply to the Fair Work Commission for a 'regulated labour hire arrangement' order.
- If an order is made, employers covered by the order would be required to ensure that their employees working as part of the arrangement are paid no less than the rate at which they would be paid under the host's enterprise agreement, as if they were directly employed by the host. The Commission could also order that an alternative rate apply, based on the rates in an enterprise agreement of a related entity to the host. In both instances, such costs will most likely be factored into commercial contract pricing
- The 'host' could be any BHP entity receiving the benefit of labour from another entity – the concept is not confined to mine operators or contract owners. The employer 'suppliers' to the BHP 'host' that may be subject to these orders could be third party contractors or related entities to the host (e.g. Operations Services). The scheme captures any supply of labour to the host, even if accompanied with the supply of other services. Service providers are not exempted
- The law proposes broad factors that the Fair Work Commission must consider in deciding (at its discretion) whether or not it is fair and reasonable to make an order, but it does not provide any clarity on how the Commission should consider these factors. Hosts and suppliers will likely need to expend significant litigation resources to demonstrate to the Commission that it should exercise discretion to not make an order, based on the factors

# Appendix: Economy wide impact

**SJSP will drive up labour costs across the economy. It will do this in a way that is unsustainable because there is no linkage to improving productivity.**

