

## Anti-avoidance measures

It is proposed that anti-avoidance provisions be introduced in the Fair Work Act to protect against corporate avoidance behaviours. Anti-avoidance measures would be aimed at prohibiting action or arrangements in order to avoid Same Job, Same Pay obligations. The department is considering:

- a general anti-avoidance provision prohibiting labour hire providers and host employers from taking action or entering arrangements to avoid Same Job, Same Pay obligations; and
- whether the General Protections provisions in the Fair Work Act could be enhanced to create specific protections to support or supplement Same Job, Same Pay entitlements and obligations.

### Questions

15. If a general anti-avoidance provision were introduced to the Fair Work Act:
  - a) What should the scope of the provision be?
  - b) What exceptions or defences to the provisions should be incorporated?
16. How should the General Protections be enhanced to protect against avoidance behaviours?
17. Should other anti-avoidance measures be considered? If so, please provide details.

## Impacts and costs

There are significant limitations with current data relating to the use of labour hire arrangements in Australia. The multi-party nature of labour hire arrangements, the various forms labour hire can take, and the lack of reporting obligations on parties who use labour hire, mean these types of work are more challenging to identify and measure. There is also limited information on the contractual arrangements between labour hire providers and host employers. Data limitations mean that understanding the regulatory impact of reform on labour hire arrangements is complex.

### Questions:

18. Please describe the cost impacts of Same Job, Same Pay measures on affected parties and the broader economy. Specifically, what cost impacts would arise in relation to:
  - a) Identifying whether a labour hire worker is doing the 'same job' as an employee
  - b) Calculating the 'same pay' a labour hire worker is entitled to receive
  - c) Engaging in Same Job, Same Pay dispute processes in the Fair Work Commission
  - d) Any other Same Job, Same Pay issuesPlease include any assumptions, data sources or workings in your assessment of cost impacts.
19. What other positive and negative consequences of this measure could arise for:
  - a) labour hire workers and directly engaged employees
  - b) labour hire providers (including small business)
  - c) host employers (including small business)