Digging a Hole: Mining boss myths about the Closing Loopholes Bill

ACTU Research Note – November 2023

AUSTRALIA NEEDS A Pay Rise

Executive Summary

In Australia it is currently legal to pay a labour hire worker less than a directly employed workers, doing the same job in the same workplace.

This is a loophole that the mining industry has pioneered and exploited for years, boosting profits while undermining the wages and conditions of its workforce.

The mining industry has paved the way for the rest of corporate Australia to use lower paid workers through labour hire. Nearly all of the top 100 companies on the Australia Stock Exchange now use labour hire, and many have even set up their own internal labour hire firms in order to pay staff less.

The largest 12 labour hire companies are now in the top 30 private employers in the country.[1] Many of these companies are headquartered overseas, pay little or no tax, and cover everything from security to aviation and cleaning to agriculture.

Today an estimated 600,000 of workers in the industry are engaged through labour hire, earning on average $4,700 less than permanent workers, hurting them, their families and communities during a cost-of-living crisis.[2]

The *Closing Loopholes Bill,* an election commitment of the Albanese Government, aims to end this rort and is currently before the Parliament. It would enable the Fair Work Commission (FWC) to order that labour hire employees be paid at least the going rate in the enterprise agreement of a host company. It's a targeted and sensible change that wouldn't cover small business, trainee arrangements or apply to short term-engagements.

The response from the mining industry has been hysterical, claiming that the changes would kill jobs, investment, productivity and even the labour hire industry itself. These claims are nonsense. As this research note shows, the Australian mining industry is spectacularly

[1] ACTU Research Note, *Same Job Less Pay: the Exploitation of Outsourcing Loopholes*, May 2023 p.2: https://beta.actu.org.au/wp-content/uploads/2023/07/media1450351actu-research-note-same-job-less-pay-exploitation-of-outsourcing-loopholes.pdf

[2] Ibid. p.3

profitable, making a record $304 billion last financial year. Yet the Bill would lift the wages of about 6,410 labour hire workers in the mining sector by a total of $49 million each year, at the very most.[3] That's right, the Bill would cost mining companies just 0.016 per cent of their profits.[4]

To better comprehend the sheer scale of this profitability:

- Mining bosses could double the wages of their entire workforce and still be five times as profitable as businesses in the rest of the economy,[5] or
- They could immediately give every single Australian worker – 14 million of them – a cost of living pay rise of 6 per cent and still be the most profitable industry in this country by a mile.[6]

"...the Bill would cost mining companies just 0.016% of their profits."

The industry also claims that the changes will scare away investment. Yet last financial year the mining industry only invested about 14 per cent of its income back into the industry – the lowest level since at least 2001. They are banking four times more in profit than they are investing back into the country.[7]

While big mining companies pioneered the use of labour hire, they are also leading efforts to keep this loophole open: spending $24 million to try to sink these laws.[8]

It is time for the Australian Parliament to decide: will it pass the Bill to help working people deal with a cost-of-living crisis, or side with big mining companies and their extreme profits?

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[3] Using Government estimates, the ACTU has divided the number of eligible labour hire workers in mining (6,410) as a proportion of total eligible labour hire workers (66,446) and then multiplied that by the total estimated wage bill of $510 million. See Australian Government, Department of Workplace Relations, Annexures to Certification Letter OBPR22-02409) Closing the labour hire loophole (August 2023) contained in *Explanatory Memorandum* to the *Fair Work Amendment (Closing Loopholes) Bill*. Pages 41 and 46.

[4] The Mining Industry recorded profits of $304 billion in the 2022-23 financial year (ABS National Accounts)

[5] If this occurred, the profit margin in the Mining sector would be 47 per cent, which is more than five times as high as the profit margin in the non-mining sector of 9 per cent.

[6] This would take mining profitability down to 38 per cent, still ahead of Information, Media & Telecommunications, the next most profitable industry on 21 per cent.

[7] ABS National Accounts

[8] Australian Financial Review, 25 October 2023, "Mining industry to spend $24m to derail IR laws".

The need for Same Job Same Pay

Businesses have used legal loopholes to replace permanent jobs with labour hire to drive down wages and make jobs insecure.

Labour hire workers now often work side-by-side with workers employed directly by the company doing the same work but receiving less pay. This hurts workers, their families and communities, especially in the middle of a cost-of-living crisis.

This is a business model that has been spearheaded by big mining businesses over the past decades. In Queensland's coal mines for example, the use of labour hire and contract workers has grown from just 5.9 per cent in 1996 to 54% in 2017.[9] The Minerals Council also admit that only 40 per cent of the workforce in the industry are directly employed by mining companies.[10]

But it is now widely used across many major employers. The Australian Centre for Corporate Responsibility research shows almost all ASX100 listed companies across all industries use labour hire.[11] The ACTU more recently estimated that the labour hire industry has annual revenues in the range of $30-40 billion, with the largest dozen labour hire providers now ranking among the top 30 largest commercial employers, with combined revenues approaching $20 billion.[12]

The top 30 labour hire firms make up more than half of the entire labour hire industry and are dominated by multinational companies who pay little-to-no corporate tax and are run out of the UK, Japan and France. ASX listed Downer, via its subsidiary Spotless Services, is

[9] Queensland Coal Mining Board of Inquiry Report, Part II, May 2021, pp. 373-374.

[10] Ms Tania Constable told the Senate on 3 October 2023 that "The breakdown is that around about 40 per cent of the mining industry is permanently employed by that host company, 40 per cent are service contractors, and the rest is made up of labour hire and casual employment." Education and Employment Legislation Committee Hansard Transcript https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commsen/27400/&sid=0009

[11] Australian Centre for Corporate Responsibility (2020) Labour Hire & Contracting Across the ASX100: https://www.accr.org.au/research/labour-hire-contracing-across-the-asx100/

[12] ACTU Research Note (May 2023), Ibid page 3.

the largest labour hire provider in Australia. All up these top 30 firms earn approximately $24 billion in revenue.

Across Australia the ACTU estimates that there are now at least 600,000 labour hire workers[13] - the vast majority of whom are working full time hours yet employed in insecure work and still receiving significantly less pay than direct employees at their place of work or industry. Growth in labour hire jobs and labour hire employees is outpacing employment growth by a large margin, on ABS measures.

Big business is using complex, multi-tiered, opaque outsourcing structures to avoid minimum wages set in Awards or enterprise agreements and paying employees doing the same jobs much lower rates of pay. The result is labour hire workers, economy-wide, earn about $4,700 a year less than ordinary workers when comparing the median hourly rate for a full-time worker.[14]

"…labour hire workers, economy-wide, earn about $4,700 a year less than ordinary workers…"

Labour hire workers often earn even less than their directly employed colleagues at the same worksite. Some mine workers are earning in the order of 30 per cent less than their directly employed colleagues due to being employed through labour hire rather than site Enterprise Agreements.[15] Decades of collective bargaining in the mining industry have delivered good pay and conditions to reflect the long hours, inherent risks and profitability of the industry. Outsourcing jobs to labour hire has allowed mining companies to typically pay such workers $30,000 to $40,000 less than permanent colleagues, even when doing the same job.

[13] Ibid page 2.

[14] Ibid, page 3.

[15] ACTU Affiliates, McKell Institute, 'Submission to the Senate Education and Employment Committee into the Fair Work Amendment (Equal Pay for Equal Work) Bill 2022', 2022

Without taking measures to ensure workers who do the same work are paid the same wages, employers will continue to use existing loopholes to drive down wages and ensure that workers and their communities don't get a fair share of mining profits.

Instead, much of that money goes to overseas shareholders. A McKell report in 2022 showed that $442 million to $565 million a year in economic activity is lost in Central Queensland and the Mackay, Isaac and Whitsunday regions alone due to mining companies undercutting permanent wages with labour hire.[16] That's millions of dollars that should be spent in local communities, in cafés and restaurants, barbers and shops.

When it comes to looking after the environment, protecting cultural heritage, acting on sexual harassment and paying fair taxes and royalties; mining companies have shown time and again that they will avoid doing the right thing unless we have strong laws to keep them accountable. It is the same for workers' wages.

The "Closing Loopholes" Bill

The *Closing Loopholes Bill,* an election commitment of the Albanese Government, aims to end this rort and was introduced into the Parliament on 4 September 2023.

If passed, it would mean that labour hire workers cannot be paid less for doing the same job. It would stop businesses from using labour hire just to cut pay.

The Bill provides that where a "host" employer is covered by an enterprise agreement and engages labour through a labour-hire provider, an application may be made to the Fair Work Commission (FWC) for a "regulated labour hire arrangement order". If such an order is made, the host employer of those labour hire employees will have to pay those workers no less than the rate of pay in the enterprise agreement.

[16] McKell Institute, 'Submission to the Senate Education and Employment Committee into the Fair Work Amendment (Equal Pay for Equal Work) Bill 2022', 2022

Applications can be made by either the host employer, employees of the host or the labour hire company, or their union.

These orders will not cover small businesses or employees on training arrangements and do not apply for the first three months that a labour hire employee is working.

Whether or not an arrangement is a labour-hire arrangement or the genuine provision of independent services, will be determined by the Fair Work Commission, applying a multi-factorial test.

The *Closing Loophole Bill* changes for labour hire are targeted. They apply to workplaces with collective agreements, which cover about 1 in 3 workers, and only cover labour hire employees and not genuine service contractors. Small businesses and those on training arrangements are excluded, as are short term engagements.

Given these restrictions, the Government has estimated that about 66,000 labour hire employees would be eligible to benefit under the reforms, and that they earn on average $4.79 less per hour than non-labour hire employees.[17]

[17] Explanatory Memorandum to Fair Work Amendment (Closing Loopholes) Bill 2023, Ibid pp 43-44

Big mining companies cry loud

Faced with the prospect of being compelled to pay some of their workers fairly, big mining companies have reacted with rage. The Minerals Council of Australia (MCA), whose membership includes big miners such as BHP, Rio Tinto, and Newcrest Mining said that the laws would: "…create unsustainable cost pressures and uncertainty for many businesses, while reducing Australia's competitiveness as an investment destination".[18]

Tania Constable, their CEO also said it is futile to "talk about creating the jobs of tomorrow's critical minerals and clean energy future… …when you have an industrial relations policy that threatens jobs and opportunity and will chase investment overseas."[19]

According to Steve Knott, the head of the Australian Resources and Energy Employer Association (AREEA), which counts Fortescue, Roy Hill, along with Woodside, Shell and Exxon Mobil among its members, the Bill would "devastate productivity", "…add to business costs and increase the cost of living pressures on all Australians". He went further to also claim that "Labour Hire will be killed off by absurd red tape and administrative burden." And predicted "operations will likely close, jobs lost, regional communities adversely hit and state and federal tax and royalty revenues foregone".[20]

So hysterical are the industry claims that they are starting to be contradictory: BHP said the Bill will "arbitrarily drive- up wages"[21], while AREEA said, "It is blindingly obvious that what is proposed will reduce wages…".[22]

"BHP said the Bill will "arbitrarily drive- up wages", while AREEA said, "It… will reduce wages…".

[18] Minerals Council of Australia, Submission to Closing Loopholes Bill Senate Inquiry, page 6.

[19] Tania Constable, CEO, MCA, "IR legislation at odds with Jobs Ambition", 4 October 2023. IR legislation at odds with jobs ambition - Minerals Council of Australia

[20] AREEA: "Flawed IR Bill threatens to wreck national economy and jobs, 13 October 2023, https://www.areea.com.au/news-media/media-center/media-release-flawed-ir-bill-threatens-wreck-national-economy-jobs/

[21] BHP Submission to the Closing Loopholes Bill Senate Inquiry 2023

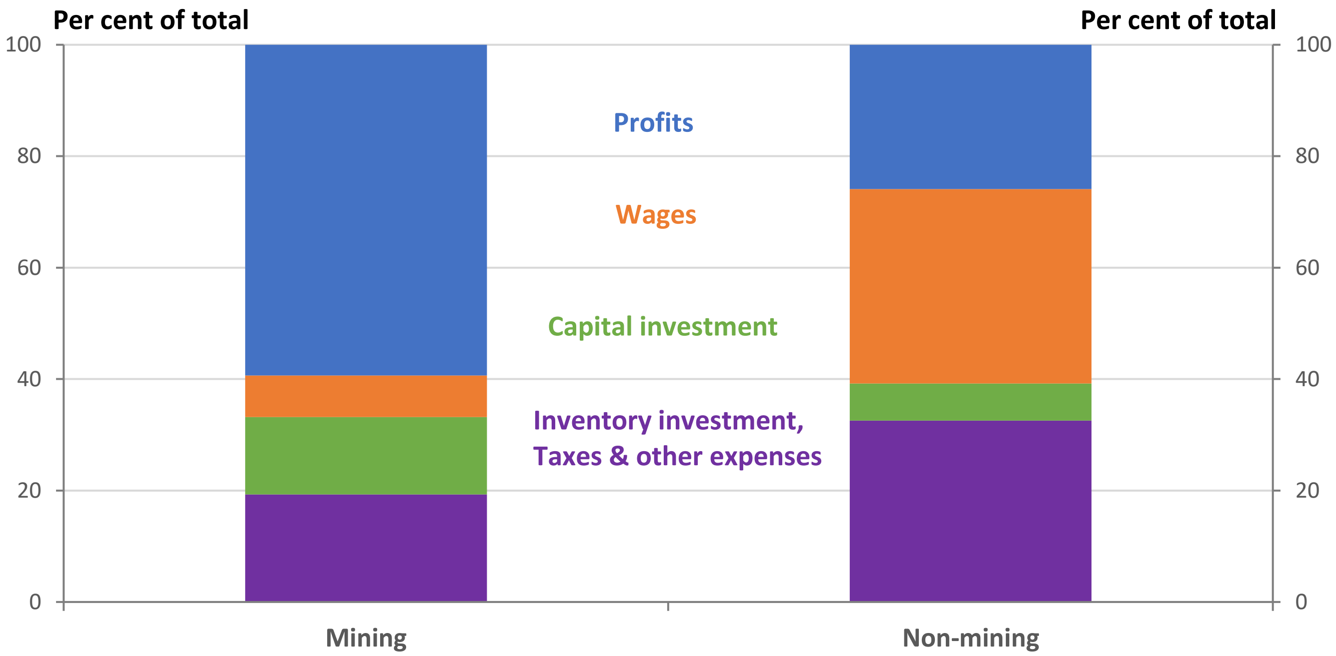
[22] AREEA, Ibid

Stratospheric profits

These are extreme and absurd claims. The Australian mining industry is one of the most profitable in the world. On any scenario paying labour hire workers fair wages would not put a dent into its profits.

Last financial year the industry made an eye-watering $304 billion in profit off $512 billion in revenue, coming in at 59 per cent of total revenue (see **Chart 1**). To put it another way, for every dollar of income, mining companies pocketed 59 cents in profit whereas the workforce only got 7 cents.[23]

Chart 1: FY 2022-23 Business aggregates as a share of income



Source: ABS National Accounts, ABS Business Indicators & ACTU calculations

By comparison, the *Closing Loopholes Bill* would lift the wages of an estimated 6,410 labour hire workers in the mining sector by a total of $49 million each year, at the very most.[24]

[23] Calculations taken from data in Appendix A

[24] Using Government estimates, the ACTU has divided the number of eligible labour hire workers in mining (6,410) as a proportion of total eligible labour hire workers (66,446) and then multiplied that by the total estimated wage bill of $510 million. See Australian Government, Department of Workplace Relations, Annexures to Certification Letter OBPR22-02409) Closing the labour hire loophole (August 2023) contained in *Explanatory Memorandum* to the *Fair Work Amendment (Closing Loopholes) Bill*. Pages 41 and 46.

That's right, the impact of the Bill would cost mining companies just 0.016 per cent of their profits last year.[25] Even if you accepted the far higher impact estimated by the Minerals Council of Australia of 7 per cent of the total wage bill in mining that would still only reduce their profits by just 0.9 per cent.[26]

To better comprehend the scale of this profitability, mining bosses could double the wages of their entire workforce and be twice as profitable as businesses in the rest of the economy. Or they could immediately give every single Australian worker – 13 million of them – a cost of living pay rise of 6 per cent and still be the most profitable industry in this country.

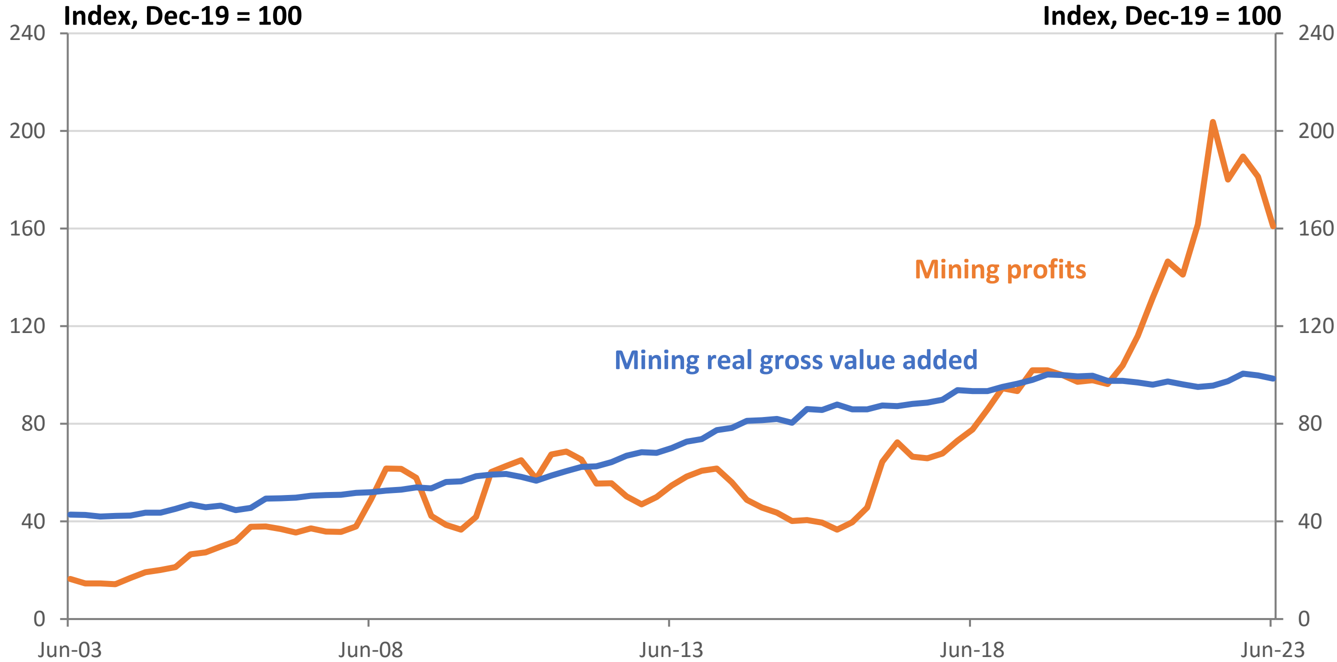
"…Mining companies could immediately give every single Australian worker – 13 million of them – a cost of living pay rise of 6% and still be the most profitable industry in this country.

Over the last decade, the mining industry has enjoyed spectacular profit growth, driven by price growth far outstripping output growth. In the last ten years, profits have grown by around 194 per cent, while real output has only grown by around 41 per cent over the same period (see **Chart 2**). Output has broadly stagnated since around March 2019 to June 2023, after climbing steadily for most of the last two decades. The prices on export markets that mining companies enjoy have increased by around 53 per cent over the same period – having already risen substantially since the early 2000s when the mining boom kicked off.

[25] The Mining Industry recorded Gross Operating Profits of $304 billion in the 2022-23 financial year (ABS Business Indicators)

[26] Minerals Council of Australia, Education and Employment Legislation Committee Hearing on *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023,* 3 October 2023
https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commsen/27400/&sid=0009

Chart 2: Index of profits and output



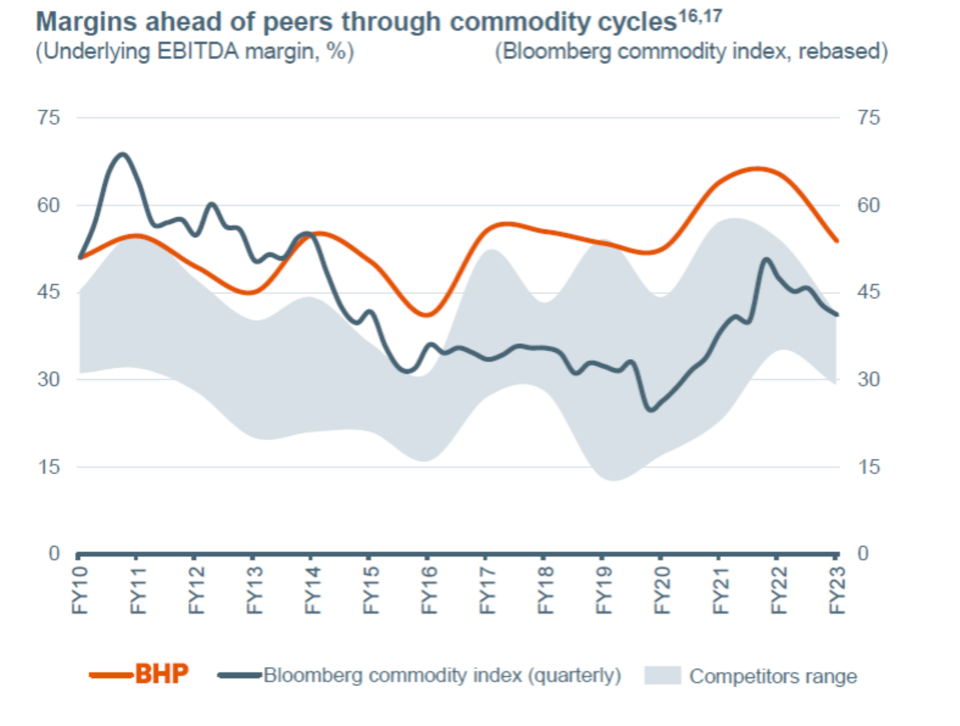
Source: ABS National Accounts & ACTU calculations

Slower growth in output compared to rapid growth in prices for Australia's commodity exports has also meant that mining companies have experienced a stellar performance in profits as a share of income – an approximation of the profit margin – compared to the rest of the economy.

Why is Australian mining so profitable? Firstly, Australia has very high-quality, long-lasting deposits that can be consistently mined at a much lower cost, relative to competitors.

Secondly, Australia is closer to major markets in North Asia than competing miners in South America and Africa. And thirdly, higher quality resources significantly lower transport and processing costs which dramatically increase supply-chain margins and profitability, relative to other sources. This is why Australian mining exporters typically attract a price premium from customers relative to rivals, and have profit margins ahead of their peers, as BHP itself observes in results announcements.

Chart 3: BHP Margins



Source: BHP 2023 Results Presentation - Disciplined Execution of our Strategy, p.9

In this context variability in productivity and profitability of Australian mining companies such as BHP and Rio Tinto are a function of customer demand, world prices and exchange rates. In the past both companies have altered production and export volumes to maintain profitability. In this equation labour costs are marginal, but that hasn't stopped the big mining companies trying to drive them further down.

BHP, leading the charge to defeat the *Closing Loopholes Bill,* claimed it would cost it $1.3 billion, although it has recently stated that it is revising this estimate.[27] This is a fanciful figure, some 26 times higher than the estimated total cost facing the entire Mining industry according to Government estimates. It is unlikely BHP even believes itself: if it's estimate was credible it would have declared it as a "material risk" to investors and shareholders as it is required by law to do so. It hasn't. Ratings agencies Moody's and S&P continue to rate BHP as low risk.

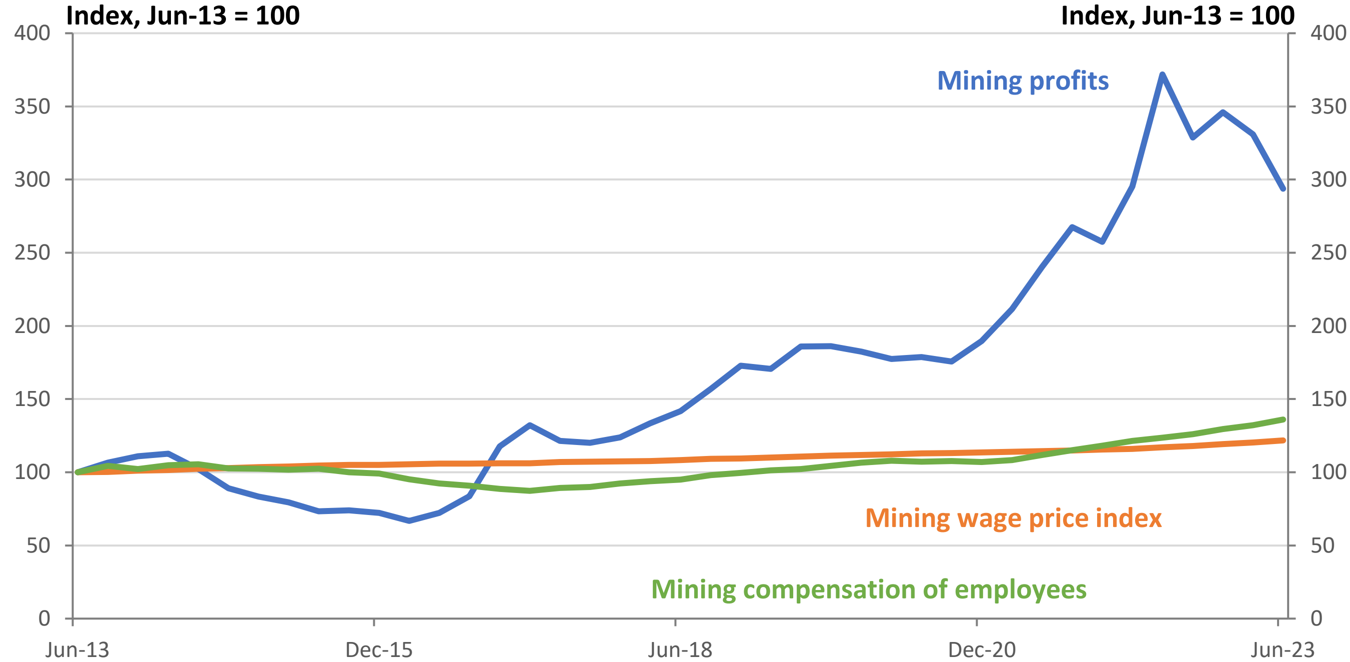
[27] Coorey, Philip, 'BHP "right to fear" $1.3b wages hit", *Australian Financial Review*, 23 May 2023.

None of this has stopped BHP from continuing to make extreme threats, claiming the Bill would make its programs that boost Indigenous and female employment "unfeasible",[28] and that it could jeopardise $3.2 billion worth of investment in copper.[29]

Profits up, real wages down

Wages for mining workers have not fared as well as mining profits. As measured by the Wage Price Index, mining wages have grown by around 22 per cent over the last decade, just shy of a tenth of the near 200 per cent growth in mining profits. Aggregate wage growth across this time has been slightly higher at around 27 per cent over the same period. Using Compensation of Employees, a broader measure of remuneration from the National Accounts, shows much the same result. Mining sector compensation has increased by around 36 per cent over the last ten years (see **Chart 4**), while aggregate compensation of employees elsewhere has increased by a much healthier 61 per cent.

Chart 4: Profits and Wages



Source: ABS National Accounts & ABS Wage Price Index & ACTU calculations

[28] Canberra Time, 30 October 2023, "Mining Giant says workplace reform threatens diversity", https://www.canberratimes.com.au/story/8405386/mining-giant-says-workplace-reform-threatens-diversity/

[29] Sydney Morning Herald, 1 November 2023, "BHP says proposed labour laws threaten $3.2b Australian investment", https://www.smh.com.au/business/companies/bhp-says-proposed-labour-laws-threaten-3-2b-australian-investment-20231101-p5egmz.html

Wage growth in mining sector enterprise agreements is also modest. Enterprise agreement data published by the Department of Employment and Workplace Relations indicates that the most recently approved mining sector agreements have an average annual wage increase of around 3.4 per cent as of June 2023, down from 3.5 per cent in March 2023 and below the economy-wide average annual increase of 3.8 per cent (see **Chart 5**). In fact, for the last ten years, the average annual wage increase in newly approved mining sector agreements have tended to be below the economy wide average annual wage increase in newly approved enterprise agreements. The same is true of current mining sector enterprise agreements, which have had a lower average annual wage increase since around March 2016 (see **Chart 6**). As measured by the WPI, mining wage growth has also been lower than aggregate wage growth for most of the last 10 years (see **Chart 7**).

"Mining profits have increased by 194 per cent over the past decade as wages have actually gone backwards by 6 percent in real terms."

In the face of the economy-wide inflation outstripping moderate wage growth mine workers have suffered a precipitous collapse in real wages even as mining companies enjoy record high profits. Real wages in the mining sector are around 6 per cent lower than they were ten years ago. Mining sector real wage growth has been negative in 12 of the last 13 quarters, briefly turning positive in June 2023 only to fall again in September 2023 (see **Chart 8**).

Chart 5: Average Annual Wage Increase in newly approved enterprise agreements

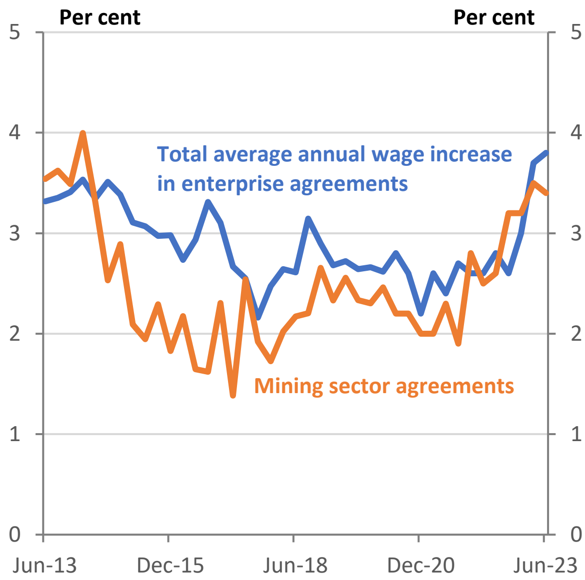
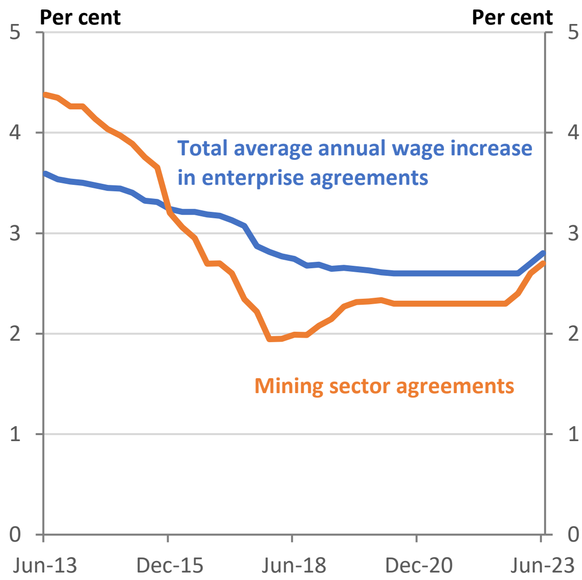
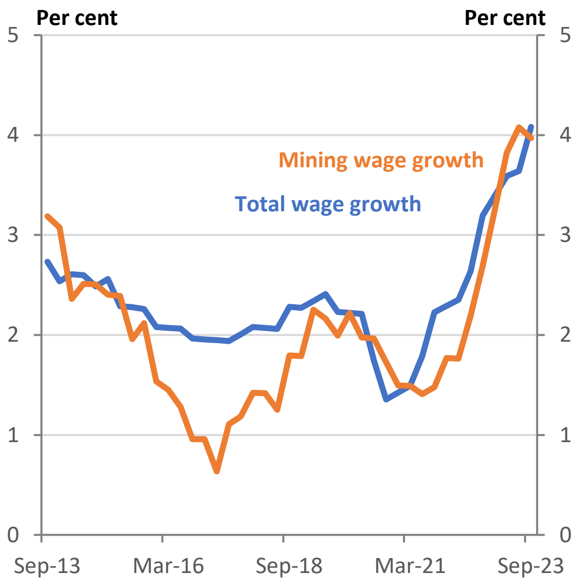


Chart 6: Average Annual Wage Increase in current enterprise agreements



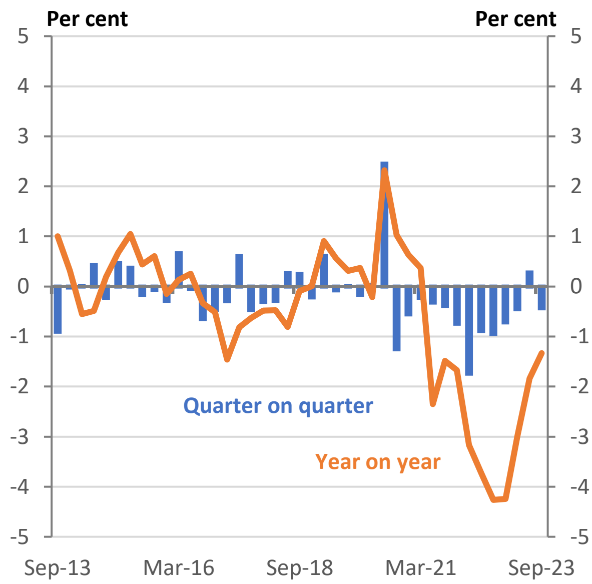
Source: Department of Employment and Workplace Relations

Chart 7: Aggregate and mining sector wage growth



Source: ABS Wage Price Index & ACTU calculations

Chart 8: Mining sector real wage growth



Source: ABS WPI & ABS Consumer Price Index

High profit share, low investment

Record high profits alongside wages growth below the economy-wide average has led a considerable increase in the profit share of mining output. Over the last ten years, the profit share of total mining gross value added in the national accounts has been on average around 80 per cent. Over that period, even at its lowest point, mining profits captured 68 per cent of total mining gross value added (see **Chart 9**). Climbing steadily since then, the profit share of the mining sector peaked at around 90 per cent in June 2022, before declining to an immodest 86.9 per cent as of June 2023. Since March 2020, the wages share of mining gross value added has averaged around 13 per cent, picking back up a little to around this level as of June 2023 after a trough of around 9 per cent in June 2022.

The outsized share of mining profits is also reflected in the wider GDP picture. Mining profits have averaged around 8 per cent of GDP for the last ten years, peaking at around 14 per cent of GDP in June 2022, having climbed steadily from around 4 per cent in March 2016. Even after a substantial decline in the terms of trade, mining profits still came in at around 11 per cent of GDP in June 2023. Since June 2016, just after the trough in the mining profit share of GDP, mining sector compensation of employees has been stagnant at around 1.5 per cent of GDP (see **Chart 10**).

Chart 9: Wages and Profit share of mining gross value added

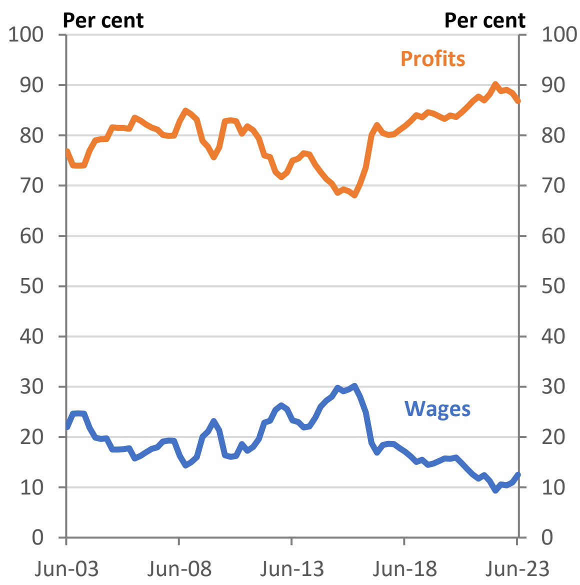
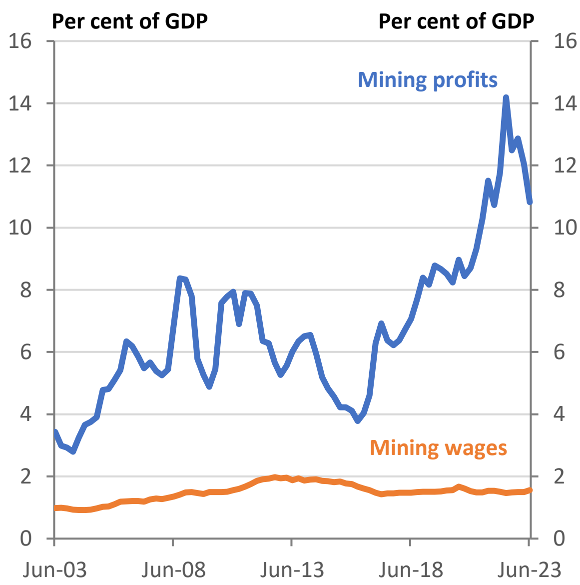


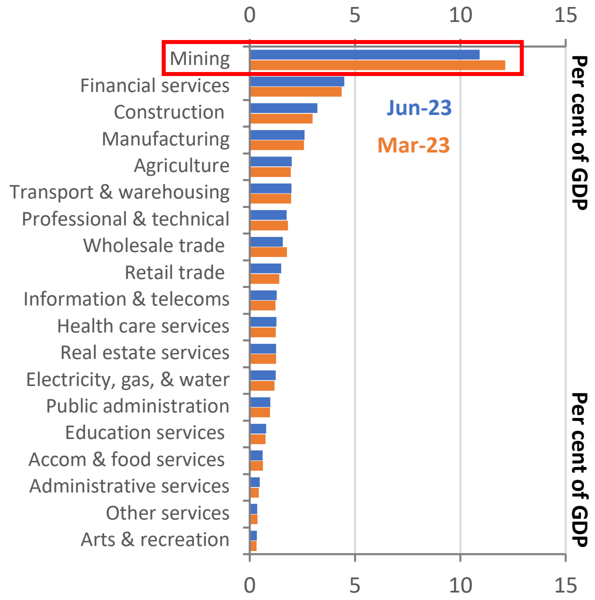
Chart 10: Mining wage and profit shares of GDP



Source: ABS National Accounts & ACTU calculations

The mining sector has ranked consistently at the top of all industries as a share of GDP since around 2005, with the most recent quarters no exception. In March 2023, mining was around 8 percentage points higher as a share of GDP than Financial and insurance services, the next highest ranked industry. The gap narrowed slightly in June 2023 to around 6 percentage points, but still represents a significant difference (see **Chart 11**). By contrast, in March and June 2023, mining ranked thirteenth out of nineteen industries for wages as a share of GDP (see **Chart 12**), despite enjoying elevated revenues and still very high commodity prices.

Chart 11: Ranking of industry profit shares of GDP



Source: ABS National Accounts & ACTU calculations

Chart 12: Ranking of industry wage shares of GDP

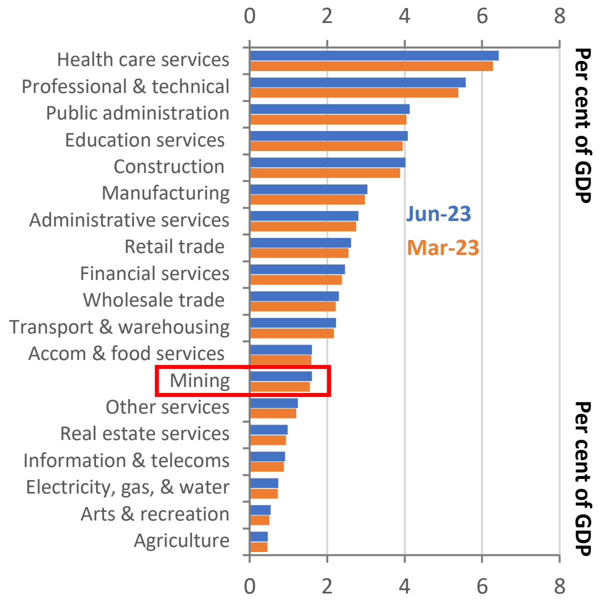
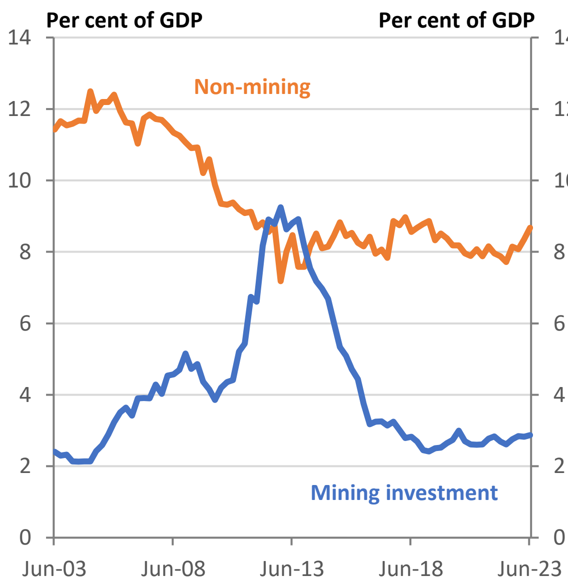
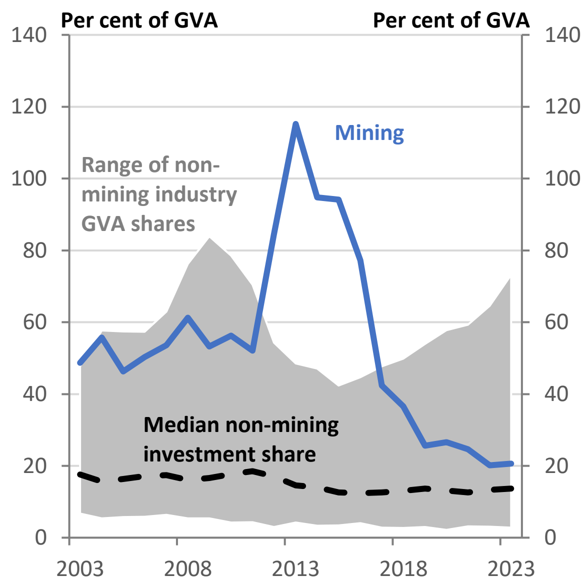


Chart 13: Investment shares of GDP



Source: ABS National Accounts & ACTU calculations

Chart 14: Investment as a share of GVA



Source: ABS National Accounts & ACTU calculations
NB: Year denotes financial year as data not available on a quarterly basis.

Despite enjoying considerable available cash to fund further investment, the mining sector has not increased capacity and the capital stock in recent years. In fact, as a share of GDP, mining investment has been steady at around 3 per cent of GDP since around September 2016 (see **Chart 13**). Measured as a percentage of gross value added, business investment in the sector is at least at a 20-year low (see **Chart 14**).

Mining companies have consistently reported to Treasury that investment is to be focused on maintaining existing resource production capacity rather than on expansion, reflected in the broadly flat outlook for mining investment for 2023-24 and 2024-25 in the most recent Budget. Indeed, mining companies have reported this posture towards investment since at least the 2019-20 Budget, long before the change of Government, let alone the introduction of the *Closing Loopholes Bill 2023.*

The industry also claims that the changes will scare away investment. Yet last financial year the mining industry only invested about 14 per cent of its income back into the industry – the lowest level since at least 2001. They are banking four times more in profit than they are reinvesting back into the country.[30]

"…the mining industry is banking four times more in profit than they are investing back into the country."

These decisions mean that Australia continues to be stuck as a country that digs up minerals and sells them, rather than diversifies into upstream processing and manufacturing that can be job rich. For example, in the late 1990s, BHP decided to exit onshore steel making. Today Australia ranks number one in iron ore production, the key ingredient in steel, producing 33 per cent of the global total.[31] But it ranks 30th in steel production, producing just 0.3 per cent of the global total.[32] The biggest barrier to investment and improving productivity seems to be the big miners themselves.

[30] For calculations see Appendix A

[31] See https://www.statista.com/statistics/267380/iron-ore-mine-production-by-country/ visited 4 November 2023.

[32] https://worldsteel.org/steel-topics/statistics/annual-production-steel-data/?ind=P1_crude_steel_total_pub/CHN/IND

Appendix X: Mining and non-mining business indicators

Table 1: Mining sector business aggregates

$billions	FY20	FY21	FY22	FY23
Income	318	335	452	512
Investment	54	55	64	71
Wages	31	32	35	38
Profit	171	191	280	304

Table 2: Non-mining business aggregates

$billions	FY20	FY21	FY22	FY23
Income	2573	2635	2946	3263
Investment	100	101	115	137
Wages	627	648	698	776
Profit	661	714	719	779

Source: ABS National Accounts & ABS Business Indicators