

# GLENCORE

23 December 2021

Secretariat  
Select Committee on Job Security  
Department of the Senate  
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Canberra ACT 2600

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## **Glencore Questions on Notice and Hansard Transcript Public Hearing – 6 December 2021**

Dear Secretariat,

Please find attached to this correspondence the following documents.

- Glencore's response to Questions on Notice taken during the Committee Public Hearing on 6<sup>th</sup> December 2021;
- Glencore's response to subsequent additional Questions on Notice from the Committee Chair; and
- Our minor amendments to the Hansard Transcript

Thank you for your assistance in relation to Glencore's appearance before the Committee.  
Please do not hesitate to contact us if you would like to discuss or need further clarification.

Yours sincerely

Cass McCarthy  
Corporate Affairs – Australia  
Glencore

## QUESTIONS ON NOTICE – GLENCORE

### Question 1 – pg. 14

**Senator CANAVAN:** *How many labour hire companies do you use in total?*

**Mr Milner:** *That's a good question—*

**Senator CANAVAN:** *You can take it on notice if you like.*

**Mr Milner:** *I might take it on notice. If we look at our coal business, 80 per cent of our supplementary labour comes from two providers. We use four, total, in coal. In the metals business we use approximately four to six main providers, based on location—*

In Australia, Glencore's workforce is composed of direct employees and contractors (including Labour Hire and Service Contractors). Across our business we employ very few casuals.

In the Queensland Metals business, which employs roughly 7,000 people, we have approximately:

- 4800 direct Glencore employees;
- 16 Casual employees; and
- Contractors (including Labour Hire) representing approximately 25% of our total workforce.

Our Queensland Metals business uses seven Labour Hire companies.

In our Australian coal business, which employs roughly 10,000 people, we have approximately:

- 7,000 direct Glencore employees;
- 30 Casual employees; and
- Contractors (including Labour Hire) representing approximately 30% of our total workforce.

Glencore's Australian Coal business uses eleven labour hire companies in total. This includes four companies that provides the majority of our labour hire requirements.

### Question 2 – pg. 14

**Ms McCarthy:** *My understanding is that, for coal, there are four major labour hire businesses that we use. They include WorkPac, Programmed Services, GPS and One Key.*

**Senator CANAVAN:** *Are they all on separate enterprise agreements, or do they share an enterprise agreement? What's the situation?*

**Mr Milner:** *I'd have to confirm, but my understanding is that they all have their own enterprise agreements, some of which the unions are a party to.*

The major labour hire companies listed above (Workpac, Programmed Services, GPS and One Key which service our coal business all have their own separate enterprise agreements. Each Labour Hire company used by Queensland Metals has its own arrangements.

### Question 3 – pg.14

**Senator CANAVAN:** *You might have to take these questions on notice. As to the rates of payment under the four enterprise agreements for those labour hire companies, are they higher, lower or the same as the rate in your enterprise agreement with Glencore direct employees?*

**Ms McCarthy:** *In order to give you the correct information, we'd probably prefer to take that on notice, if that's okay.*

**Senator CANAVAN:** *Okay. Just take on notice the hourly rate that truck drivers get paid, because I know it might be complicated across different things.*

Please note it is difficult to generalise across individual labour hire enterprise agreements.

That said, the casual hourly rate paid to an Operator under labour hire arrangements for working a 12.5 hour rotating even time roster is typically between \$48-\$50 per hour and above \$50 per hour for a Multi-Skilled Operator.

Superannuation and unplanned overtime are paid in addition.

#### Question 4 – pg. 15

**Senator CANAVAN:** Presumably there's some element of this—and, like you, I'm not across all of the details being proposed—that would potentially undermine and roll back the enterprise bargaining system towards something that more resembles the old industry based negotiations. Am I misinterpreting that? If you've got same job, same pay, presumably that has to be across the whole coal industry, and therefore we're not negotiating on an enterprise level, like we have been since the days of Paul Keating.

**Ms McCarthy:** As I indicated, we haven't actually reviewed the bill in detail. We're still going through that at the moment. If that were indeed an outcome, I think we would need to look at that very closely.

Glencore works with reputable businesses, including labour hire businesses, that are subject to the same laws and obligations as Glencore. Although these businesses are different to ours, they are subject to the same laws, market forces and scrutiny (including from unions). Our experience is the labour hire businesses that we use prioritise, as we require, safety skills, ability to manage risk and ability to respond to our operational needs. They also prioritise training which is important to us.

The “Same Job, Same Pay” bill purports to require “host employers” of labour hire workers to provide equivalent pay and conditions to workers employed directly by the host. Conditions extends to a range of matters, not simply pay and possibly not even only employee entitlements. The obligation also extends to related entities who may be treated as “host employers” even though the movement of employees within different Glencore entities would not be considered “labour hire” according to any conventional definition, and is frequently offered for the benefit and experience of the individual concerned.

Fundamentally, the legislation assumes that labour hire workers will be performing exactly the same work and have exactly the same qualifications and experience as direct employees. That is not our experience as Glencore engages a number of labour hire businesses that are RTOs, and support our Trainee Operator Programs.

In our industry, we do not observe abusive and exploitive labour practices which is what we understand is one of the motivations for the Bill. However, we fear the Bill will impose onerous and unworkable obligations on many labour hire providers and jeopardise their commercial viability. The broad definition of “labour hire” would also capture a range of normal commercial arrangements that are not, in our view, reflective of labour hire. It is also not clear how the industrial agreements that apply to labour hire would be reconciled with the industrial arrangements of the “host employer” where there may be different benefits in each instrument.

More broadly, the uncertainty and administrative burden may promote less direct employment. We also see the legislation discouraging businesses from using enterprise agreements since it will be easier for parties to have no enterprise agreement and instead apply the award which already imposes a safety net of “same job, same pay” conditions. To that end we agree with Senator Canavan’s observations that it will not promote bargaining at an enterprise level.

In summary, from Glencore’s perspective, the Bill imposes additional costs, potential confusion and disputation, and red tape that is simply not necessary. We also think it has the potential to detract from bargaining at an enterprise level.

## Question 5 – pg. 16

**CHAIR:** Earlier in this inquiry we heard from Dr Stephen Whelan, a labour economist at the University of Sydney. As I'm sure you're aware, Dr Whelan produced a report with the McKell Institute titled *Wage-cutting strategies in the mining industry*. That report includes data provided by the CFMEU which says the average remuneration of a One Key worker at your Liddell mine is \$90,024. The average remuneration of a Glencore Liddell employee on the other hand is \$133,444. That's a pay gap of 33 per cent. Is that true? Do you have any data that can refute that?

**Ms McCarthy:** I'm not familiar with that report or the detail in it. In order to get you the correct information I'm happy to take that on notice.

Dr. Whelan's March 2020 report, 'Wage Cutting in the Mining Industry', seeks to draw comparisons between the average Glencore (Liddell Coal) employee wage and One Key Resources (OKR) employee wage, based on wage guidance solely sourced from the CFMMEU between 2016 and 2018.

As neither Glencore nor Liddell Coal were consulted by Dr. Whelan as part of his research, it is unclear how these average employee wages were derived and for which period that they were applicable. For example, there are a variety of roles (trainees, operators, maintainers, etc.) and rosters across Glencore mine sites with associated total remuneration packages.

Currently, OKR only supply one truck operator and one multi-skilled operator to Liddell Coal, operating on either day or night shift to support Liddell's production mining activities.

OKR have advised that the single truck operator supplied to Liddell is not a casual and the OKR employee is remunerated for their work pattern at \$42.45 per hour + Leave Accruals + Superannuation (Total Remuneration Package \$122,430). OKR also advised that the single multi-skilled operator supplied to Liddell is a casual OKR employee, remunerated at \$51.75 per hour + Superannuation (Total Remuneration Package \$130,215).

It is Glencore's understanding that OKR employ and provide supplementary labour to the coal mining industry in accordance with its FES Coal Pty Ltd Greenfield Agreement 2018, to which the CFMMEU are a signatory.

A Mine Operations Employee (operators and trades) working a 12.5 hour rotating shift 7 Day roster currently receives total annual remuneration of \$160,667 including superannuation. Base hourly rate \$32.21.

## Question 6 – pg. 16

**CHAIR:** There are some other matters I need to raise with you as well which were raised in the inquiry at earlier hearings. It's from the Centre for International Corporate Tax Accountability and Research, from Mr Ward who gave evidence. Mr Ward spoke about Glencore and CICTAR—the organisation I just mentioned—who have recently produced a report on Glencore's tax avoidance titled *Broke: coal mining giant games the global tax system and world loses*. Mr Ward said that until shortly after the Senate corporate tax avoidance inquiry in 2015, most, if not all, of your Australian coal sales were through Singapore where you paid a rate very close to zero. Is that evidence correct?

**Ms McCarthy:** I am aware of the report and I'm also aware that Glencore provided a response to that organisation before they published the report. My understanding was that the information we provided was not included. What I would say in relation to Glencore in Australia, particularly in relation to tax, is that, since 2010, our Australian operations have paid \$19 billion in taxes and royalties. Glencore does not avoid tax. We pay the tax that we are required to pay. In relation to the marketing arrangements, I'm not a tax expert. I can provide you with further information on that, but my strong understanding is that we no longer have that marketing arrangement out of Singapore, and we do comply with all of our tax and financial reporting. For example, last year Glencore contributed \$13.8 billion to the economy in Australia. Of that, \$9.5 billion was around goods and services. We work with almost 8,000 suppliers and we paid \$2.1 billion in taxes and royalties.

**CHAIR:** I understand—and again I stand corrected if you think otherwise—that the CICTAR website actually has published your response.

**Ms McCarthy:** *I will need to follow up on that. If they have, Chair, I stand corrected and apologise, but I will follow that up. I know they posed a number of questions to us, which we responded to. I think what I was referring to is whether those responses were actually reflected in the final report.*

Prior to issuing the report, CICTAR wrote to Glencore making various “allegations”.

Glencore did respond to these specific “allegations” and this response has been published.

However at no point did CICTAR provide their report in its entirety to permit Glencore to respond in full nor did they amend their report to take into account the response that Glencore provided despite the Glencore response clearly demonstrating that the allegations were false.

## Question 7 – pg. 16

**CHAIR:** *Alright. I understand that, in their response, they actually refute some of the core claims that have been made by Glencore and just said that Glencore complied with the law. I appreciate that the law allows what it allows, but the point we're getting to is about what the actual tax arrangements are and about what tax is not paid in this country, which is for our resources. Mr Ward has since said further that, when the Singapore scheme was shut down, Glencore set up a similar arrangement through Switzerland, which CICTAR estimates cost Australia around \$345 million in lost tax revenue between 2016 and 2018. Does that assertion raise concerns for you? Do you have a counter view?*

**Ms McCarthy:** *As I mentioned, and I'd like to point out, tax in Australia is a very specialist skill. I'm not a tax subject matter expert, so if I need to take some questions on notice I'm happy to do that. What I would reiterate to you is that I don't know the methodology that CICTAR used.*

The CICTAR report is a biased and fundamentally flawed report. There are numerous factual inaccuracies and hence conclusions drawn are incorrect. For the report to have any validity the entire report should have been provided to Glencore for review and CICTAR should have updated their report for Glencore's responses.

Glencore does not engage in tax avoidance nor does it engage in contrived and aggressive tax planning. We note that the Full Federal Court confirmed that the offtake agreement between Glencore's Cobar operations in Australia and its head trading company in Switzerland, Glencore International AG (GIAG), was based on arm's length terms and found in favour of Glencore against the Australian Tax Office. CICTAR ignored this significant judicial decision.

Similarly, CICTAR falsely claimed that Glencore closed its Singapore coal marketing office because it was exposed in the Senate inquiry.

Glencore chose to close the Singapore coal marketing function following its 2013 acquisition of the Xstrata mining group to eliminate unnecessary duplication of functions due to our existing marketing function in Switzerland (established in the 1970s as part of the original Glencore trading/marketing business) rather than as a response to the Senate inquiry or as tax motivated decision.

Glencore had inherited Xstrata's Singapore based coal marketing function which had been set up in Singapore due to proximity to Asian customers as Xstrata was growing its Australian coal operations. Once again, this gross inaccuracy was highlighted to CICTAR in our response to their question but it was inexplicably ignored in their report.

For completeness, we note the vast majority of our Australian coal sales are made directly to third-party customers and any coal our Australian businesses sell to GIAG is approved in accordance with a strict process that includes verification of the price to comparable market transactions at the time the sale is agreed. As part of our ongoing engagement process with the ATO, the ATO requests details on a sample basis of these transactions including details of the on-sale from GIAG to the end customer. There are also currently no

ATO audits concerning Glencore coal sales, both current and historic, to Glencore companies in Switzerland, Singapore or other locations.

CICTAR is not the first and will not be the last to raise false allegations with respect to Glencore in the current environment where corporate taxation of multinationals is a topical issue. The most common, more egregious errors made with respect to Glencore time and time again, include:

- The fact that corporate income tax is paid on taxable profits, not on gross revenue
- the fact that utilisation of carried forward tax losses is in accordance with Australian taxation laws and not some form of tax avoidance as often painted in sensationalised reports
- The fact that the Singapore coal marketing office was closed when Glencore acquired Xstrata as Glencore already had an established coal marketing function established in Switzerland not because it was exposed in the Senate inquiry
- The fact that the vast majority of coal sales from Australia are direct to end customers
- Ignoring the fact that the full Federal Court confirmed in the Cobar case that the sale of copper concentrate to Switzerland was in the range of arms-length pricing and the ATO's request for special leave to appeal to the High Court was declined.

Glencore has a robust but constructive relationship with the ATO that is based on regular and transparent engagement with respect to Glencore's tax affairs.

This significant level of engagement supports the ability of the ATO to review Glencore's tax affairs on a timely basis and gain an understanding of ongoing developments in the group's Australian business.

The ongoing interaction with the ATO takes the form of general business updates, quarterly meetings, responses by Glencore to informal and formal requests for information, as well as more structured engagements through the use by the ATO of specific assurance products including real time risk reviews, tax assurance reports and audits.

Australia has some of the most robust tax integrity and transfer pricing measures in the world which have been significantly bolstered over the past few years.

We acknowledge that as underlying commercial transactions can be multifaceted, and some areas of tax law are inherently complex and subject to interpretation, there will be differences of opinion between the ATO and Glencore.

Where differing views cannot be resolved through engagement then at times the most appropriate manner of resolving these disagreements is to seek a judicial decision. The recent matter relating to our Cobar copper operations noted above is an example.

Given the scale of Glencore's operations in Australia, Glencore has also adopted an enhanced tax governance and assurance program. This recognizes that tax risk management is an important part of good corporate governance and provides the ATO with comfort over routine transactions in addition to engagement on more complex transactions.

Glencore is cognisant of the importance of the public having confidence that multinationals comply with the relevant tax laws and equally that tax authorities have sufficient resources and authority to enforce tax law.



In recognition of this, Glencore has been proactive in providing further disclosure about its business including providing further detail on its Australian tax profile through tax facts sheets, reporting under the Board of Taxation's Voluntary Tax Transparency Code and the provision of significant detail in the Glencore Investment Pty Limited financial statements, as well as numerous global reporting initiatives.

We comply with all our tax and financial reporting obligations.

Glencore is very proud of the contribution we make in Australia, which for almost 25 years has provided jobs for thousands of Australians, support for thousands of businesses and billions of dollars in government revenue.

## Additional Questions on Notice received from the Chair 13th December 2021

### Question 8

1. Across Glencore's Australian mine sites, how many people does Glencore engage as:
- a. Permanent employees
  - b. Casual employees
  - c. External contractors including labour hire
  - d. Other (please specify)

Please note that we have focussed our response our coal, copper and zinc as these constitute the bulk of our mining operations in Australia.

For our Queensland Metals (copper / zinc) business:

- |   |       |
|---|-------|
| a. Permanent employees                        | 4,530 |
| b. Casual employees                           | 17    |
| c. External contractors including labour hire | 2,523 |
| d. Other (please specify)                     |       |
| • Fixed Term incl. Graduates, apprentices     | 307   |

### Question 9

2. Across Glencore's Australian **coal** mine sites, how many people does Glencore engage as:
- a. Permanent employees
  - b. Casual employees
  - c. External contractors including labour hire
  - d. Other (please specify)

We can confirm the following;

Across Glencore's Australian **coal** mine sites, how many people does Glencore engage as:

- |   |       |
|---|-------|
| e. Permanent employees                                    | 6,655 |
| f. Casual employees                                       | 30    |
| g. External contractors including labour hire             | 3,010 |
| h. Other (please specify)                                 |       |
| • Fixed Term incl. 75 Graduate & 223 Apprentice Programs) | 363   |

## Question 10

3. Across Glencore's Australian mine sites, how many people does Glencore engage as:
- a. Permanent employees
  - b. Casual employees
  - c. External contractors including labour hire
  - d. Other (please specify)

Please refer response to Question 8

## Question 11

4. Of the workers engaged through labour hire at Glencore's Australian mine sites, what proportion are:
- a. Permanent employees
  - b. Casual employees
  - c. Other (please specify)

See response to Question 8.

## Question 12

5. Of the workers engaged through labour hire at Glencore's Australian **coal** mine sites, what proportion are:
- a. Permanent employees
  - b. Casual employees
  - c. Other (please specify)

Across Glencore's Australian coal mine sites, of the workers engaged through labour hire at our Australian coal mines sites are as follows:

- |                           |     |
|---------------------------|-----|
| a. Permanent employees    | 618 |
| b. Casual employees       | 847 |
| c. Other (please specify) |     |

Please note that these figures are based on detail provided by the major labour hire providers.

## Question 13

6. At the hearing, Mr Milner said with respect to the pay gap between labour hire casuals and direct permanent employees:  
"In some areas that difference is up to about \$30,000, so it does exist; however, that's not consistent across our operations... Our worst case is approximately \$30,000, but it swings both ways.  
When Senator Grogan then asked: "Is that broadly around the 30 per cent mark?", Ms McCarthy responded "It's in the range."  
Please advise (answering each separately):
- a. When Ms McCarthy said that the \$30,000 pay gap is in the range of 30 per cent, is Glencore aware of the specific percentage gap? If so, what is it?
  - b. Why does Glencore choose to engage a substantial labour hire workforce in its Australian operations?
  - c. If the response to the above question is not to cut wages and costs, then why does Glencore not require labour hire firms to pay their Glencore casuals the same rate of pay as Glencore's own employees?

Glencore's Australian Coal Assets currently operate in accordance with 19 separate enterprise agreements at individual site workplace level. Each of these agreements have their own terms and conditions and pay rates that vary between sites.



For this reason, it is not possible to provide a specific percentage gap as a high level assessment. The detail provided was a general observation only.

In relation to our Queensland Metals business, we estimate that the pay gap is more in the order of 16% difference.

Glencore's requirement for Labour Hire are many and varied. Labour Hire assists in managing commodity cycle volatility, improving productivity, and supplementing core skills. They can provide entry level pathways for people with no previous work experience in the mining industry.

More broadly, Glencore group supplier standards also require suppliers to offer fair remuneration, working hours and working conditions.

## Question 14

7. Mr Milner said at the hearing:  
"In underground coal we're paying 10 to 15 per cent more for labour hire to come into the business."  
Please advise:
- a. Is the 10 to 15 per cent referred to the actual wage gap, or the overall amount it costs Glencore to engage labour hire workers in underground coal, inclusive of the other on-costs of the labour hire firm and their profit margin?
  - b. Why is there such a large discrepancy between the wages (or costs – depending on the answer to the above question) of labour hire (relative to the cost of direct employment) in underground and open cut coal?
  - c. Are the underground coal workers referred to engaged as casuals?
  - d. Is Glencore aware that under the National Employment Standards, casuals are supposed to receive a 25 per cent loading in lieu of paid entitlements?

The ability of the mining sector to access Labour Hire workers during the peaks and troughs of the commodity cycles is invaluable and contributes to the ongoing international competitiveness of the Australian resources sector.

Our experience in engaging with reputable Labour Hire firms ensures providers align their focus on things we require such as safety, skills, ability to manage risk and ability to respond to our operational needs. They also prioritise training which is important to us.

They must comply with workplace laws, and typically have enterprise agreements in place with rates that are needed to attract and retain people for the work.

The differential referred to is in relation to what it costs to engage the employee from the labour hire firm. Actual wages to the employee compare in range from being about the same as a Glencore employee to 15% lower to the labour hire employee.

The cost of labour hire can fluctuate depending on scarcity and ability to mobilise labour at the times that particular skill requirements exist.

While we don't have concise detail available from all Labour Hire providers, we are informed by the LH Provider at Ulan in NSW Central West where 2 of our 4 underground operations are located that 75% of their underground coal workers accrue leave entitlements and are not engaged as casual workers.

Glencore is aware of the requirement for casually engaged employees to have incorporated in their remuneration a 25 per cent loading in lieu of paid entitlements.

**ENDS**