

**Briefing Note:**

**Union Organising and Labour Market Rules:  
Two Sides of the Same Coin**

**By Dr Jim Stanford  
June 13, 2019**

***Summary***

- By international standards, Australia has a poor record of protecting basic worker and labour rights and freedoms: including rights to assembly, rights to organise, rights to due process, and rights to strike. According to the World Economic Forum (a generally business-friendly international policy organisation), Australia ranks 5<sup>th</sup> last among OECD countries in protecting worker rights.
- International evidence is clear that there is a strong, positive correlation between a country's protection of labour freedoms, and the organising success and economic influence of unions. Improvements in basic labour rights and freedoms tend to be associated with accelerating increases in union membership (as a share of total employment). And stronger union membership, in turn, is associated with broader collective bargaining coverage, less poverty among working people, and less inequality.
- There are some exceptions to this pattern. In particular, there are a few countries with well-protected labour rights regimes where union membership is nevertheless low; France is the most extreme example (where union members account for just 8% of all employees despite strong protection of labour rights). But in those cases, other labour market institutions and practices (such as extensive industry-wide collective bargaining systems) ensure that the benefits of union representation are extended to a wider proportion of workers.
- In contrast, there are *no countries* where union membership is strong (above 20% of employment) without the presence of strong protections for workers' rights and labour freedoms.
- This finding is important for Australian trade unions, as they grapple with the after-effects of the Coalition's surprising victory in the 2019 federal election. The union movement and other social advocates have successfully built a broad public campaign to "change the rules" of Australia's labour market – including lifting the minimum wage (to a living wage level), preserving other labour market protections

(like penalty rates), limiting the spread of insecure work, and strengthening collective bargaining freedoms. The Coalition government is not sympathetic to that agenda; and though it barely discussed labour policy issues during the campaign, it may now try to shift labour policies even further in favour of employers.

- However, despite an unreceptive political climate for advocating labour reforms with the present federal government, the evidence presented in this report suggests that the broad campaign for an expansion of both labour market rights and union capacity should continue. The efforts of Australian unions and their allies since 2017 have been effective in strengthening public awareness of labour market injustices, and building support for obvious remedies. It has even led to incremental changes in policies by governments and institutions at all levels (even including, to a modest extent, the Commonwealth government). Most importantly, the international evidence is clear that eventually winning changes in the rules of labour market and industrial relations will be essential, as a complement (not a substitute) for unions' continuing efforts to expand membership, extend collective bargaining, and lift wages.
- This analysis suggests that Australia faces a dual challenge: improving protection of workers' basic rights and freedoms, and strengthening workers' collective ability (given those rights and freedoms) to achieve better economic outcomes (like wage increases and job security). International evidence is also clear that societies in which the benefits of economic growth are shared more broadly across working and middle-income households demonstrate better economic and social outcomes. Rebuilding the labour practices and institutions necessary for more inclusive and stable prosperity will require progress along both of those tracks: greater respect for basic labour rights, and stronger unions and collective bargaining systems.

## ***Introduction***

Over the last two years, Australia's union movement, joined by other social and equality advocates, has sponsored a high-profile educational and activist campaign to "Change the Rules" of Australia's labour market. Through a combination of workplace outreach, community meetings, mass demonstrations, and efforts to mobilise sympathetic voters in the recent federal election, the campaign captured widespread public attention – and support.

Public opinion polls confirm that strong majorities of Australians (in some cases over 70 per cent) now consistently support key demands of the campaign: such as restoring Sunday penalty rates, or lifting the minimum wage.<sup>1</sup> Where it was once taken for

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<sup>1</sup> Among many other examples, please see: Catherine Hanrahan, "Federal election 2019: Vote Compass finds support for Sunday penalty rates and higher minimum wage," *ABC News Online*, 5 May 2019, <https://www.abc.net.au/news/2019-05-06/federal-election-vote-compass-industrial-relations/11062258>; AAP, "Voters back minimum wage boost," *SBS News*, 5 June 2018, <https://www.sbs.com.au/news/voters-back-minimum-wage-boost-union-poll>; Katharine Murphy, "Majority of Australians want forced wage rise if

granted in Australian economic dialogue that wages were too high and needed to be brought down, most Australians now firmly believe that wages are too low and need to be lifted.

Concern about stagnant wages and growing inequality, often coming from unexpected sources (like some business leaders<sup>2</sup> and the Reserve Bank of Australia<sup>3</sup>) reinforced the momentum of this effort to rally support for reforming Australia's labour laws and regulations. Perhaps sensing public support for stronger labour protections, Coalition leaders steered well clear of workplace issues during the recent election campaign – preferring to focus instead on arguing that a Labor government would supposedly raise taxes and damage the economy. This strategy worked, and the Coalition government was surprisingly reelected.

This result is understandably disappointing to the many activists who hoped a change in government would open the door to progressive labour policy reforms; some now despair at the chances of ever “changing the rules” of the labour market. Some have suggested the union movement should now focus more strictly on efforts to organise new members and otherwise improve their internal operations, regardless of the generally hostile legal and regulatory climate for union activity in Australia.

With a Coalition government back in power, should unions continue to campaign to “Change the Rules”? Or should they focus instead on reinvigorating their own organising efforts – doing whatever they can within the existing rules? Clearly the answer is: “Both!”

And there is strong international empirical evidence to support that conclusion. International experience confirms, with no exceptions, that trade unions need an amenable legal and regulatory climate in order to do their job effectively. Without laws to legitimise and protect collective bargaining and union activists, compel employers to deal fairly with unions, empower workers to exert collective influence in negotiations, and enforce the terms of negotiated agreements in a prompt and effective way, no

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company taxes are cut,” *The Guardian*, 12 February 2018, <https://www.theguardian.com/australia-news/2018/feb/13/majority-of-australians-want-forced-wage-rise-if-company-taxes-are-cut-guardian-essential-poll>; AAP, “Penalty rates: New poll suggests 65 per cent of Australians want protection laws,” *SBS News*, 3 March 2017, <https://www.sbs.com.au/news/penalty-rates-new-poll-suggests-65-per-cent-of-australians-want-protection-laws>; Adam Gartrell, “Even Coalition voters believe the minimum wage is too low, polling finds,” *Sydney Morning Herald*, 16 April 2017, <https://www.smh.com.au/politics/federal/even-coalition-voters-believe-the-minimum-wage-is-too-low-polling-finds-20170416-gvlpdo.html>; Isidewith.com, “Should the government raise the federal minimum wage?,” <https://australia.isidewith.com/poll/965649>.

<sup>2</sup> For example, see Sarah Turner, “We need to talk about wage policy, says CBA's chief economist,” *Australian Financial Review*, 18 October 2017, <https://www.afr.com/news/economy/we-need-to-talk-about-wage-policy-says-cbas-chief-economist-20171018-gz35z2>.

<sup>3</sup> See Jacob Greber, “Workers must demand greater share of pie, says RBA Governor Philip Lowe,” *Australian Financial Review*, 19 June 2017, <https://www.afr.com/news/economy/monetary-policy/workers-must-demand-greater-share-of-pie-says-rba-governor-philip-low-20170619-gwtxht>.

amount of determination, internal improvement, or innovation on the part of unions will be able to attain a stable and strong collective bargaining system.

This briefing note reviews international evidence regarding the close relationship between supportive laws and policies, and the size and strength of unions. The two dimensions of union work – organising to build collective power in workplaces and industries, and lobbying and mobilising to win fairer workplace laws and freedoms – clearly must go hand in hand.

### ***World Economic Forum Index of Labour Rights***

The World Economic Forum is a non-governmental organisation based in Geneva, Switzerland, that promotes global business activity and economic development – generally from a staunchly market-oriented perspective. It publishes an annual ranking, its *Global Competitiveness Report*, which reviews 140 countries on grounds of openness, efficiency, and appeal to business.<sup>4</sup> The index considers almost 100 different indicators of economic capacity, institutional stability, education and skills, innovative activity, and more. These indicators are organised into 12 “pillars,” or main drivers – one of which is the quality of labour markets.

In its most recent editions, the WEF has begun to include an index of “workers’ rights” as one of 12 specific inputs to that overall ranking of countries’ labour market quality. While the WEF’s overall methodology generally assumes that policies and institutions which support the freedom and independence of private companies are positive and desirable (thus contributing to greater “competitiveness”), the index is now also considering the basic rights and freedoms of workers as an important indicator of basic freedom and the rule of law.

The WEF’s workers’ rights index thus constitutes a novel attempt to measure the extent to which fundamental labour rights (such as freedom of association, civil rights, the right to strike, and rights to due process) are respected in practice in various jurisdictions. It should be stressed that the WEF is hardly approaching this topic from a “pro-union” perspective: the general thrust of its overall research and policy agenda clearly reflects the assumption that what is good for business, is good for the economy. But to its credit, by constructing and including this measure of workers’ rights, the Forum acknowledges that competitiveness must be considered from a more comprehensive and longer-run perspective: with at least some attention to the social and democratic factors that affect economic performance and well-being.

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<sup>4</sup> See Klaus Schwab (ed.), *The Global Competitiveness Report 2018* (Geneva: World Economic Forum, 2018), 671 pp., <https://www.weforum.org/reports/the-global-competitiveness-report-2018>.

**Table 1**  
**Labour Rights and Union Organising:**  
**International Evidence**

	Labour Rights		Union Density	
	Score	Rank	Percent <sup>1</sup>	Rank
<b>Austria</b>	100.0	1	26.9	8
<b>Finland</b>	100.0	1	64.6	4
<b>Iceland</b>	100.0	1	85.5	1
<b>Sweden</b>	99.0	4	66.1	3
<b>Italy</b>	97.9	5	34.4	7
<b>Norway</b>	97.9	5	52.5	6
<b>Belgium</b>	94.8	7	54.2	5
<b>Germany</b>	94.8	7	17.0	17
<b>Denmark</b>	94.8	7	67.2	2
<b>Netherlands</b>	93.8	10	17.3	15
<b>Ireland</b>	91.8	11	24.2	10
<b>Canada</b>	90.7	12	26.3	9
<b>Switzerland</b>	90.7	12	15.7	19
<b>Portugal</b>	90.7	12	16.1	18
<b>France</b>	89.7	15	7.9	26
<b>Japan</b>	89.7	15	17.1	16
<b>New Zealand</b>	84.5	17	18.7	13
<b>Israel</b>	82.5	18	23.4	12
<b>Spain</b>	81.4	19	13.9	21
<b>United Kingdom</b>	80.4	20	23.5	11
<b>Chile</b>	76.3	21	17.7	14
<b>Australia</b>	<b>75.3</b>	<b>22</b>	<b>14.5</b>	<b>20</b>
<b>United States</b>	67.0	23	10.3	23
<b>Korea, Rep.</b>	58.8	24	10.1	24
<b>Mexico</b>	56.7	25	12.5	22
<b>Turkey</b>	53.6	26	8.6	25

Source: Author's calculations from International Trade Union Confederation, World Economic Forum, and OECD data as described in text.

1. 2017 or most recent.

The WEF index relies on data gathered by the International Trade Union Confederation (ITUC), through its Global Rights Index,<sup>5</sup> but the WEF provides more statistical detail.<sup>6</sup> The WEF index ranges from 0 (no rights) to 100 (full respect of labour rights). Table 1 above presents the WEF workers' rights scores for a selection of OECD countries, including Australia, in order from best to worst.<sup>7</sup> The range of workers' rights experience portrayed in Table 1 is consistent with the findings of other economic research on comparative labour laws and industrial relations systems.<sup>8</sup> The strongest protection for basic labour rights is found in the Nordic and continental European countries. The more market-dominated economies of the Anglo-Saxon countries demonstrate low to intermediate respect for workers' rights. More recently industrializing countries (including Turkey, Mexico, and Korea) record the worst scores for labour freedoms: in these jurisdictions trade unionists are regularly harassed, imprisoned, or worse.

Some will be surprised at the relatively poor score assigned to Australia for protection of workers' rights. Australia demonstrates the 5<sup>th</sup> worst score of the 26 OECD countries included in Table 1.<sup>9</sup> Its WEF workers' rights score (of 75.3) is modestly higher than the U.S. score (67.0), but below most other countries – lower even than some countries where fundamental democratic freedoms have at times been called into question (such as Chile, Israel, and Spain). Australia's low ranking on the WEF's index of workers' rights reflects a wide range of restrictions and prohibitions which have become normalised in Australia's labour law framework: including extreme restrictions on the right to strike, strong limits on union entry and organising activity, surprising prohibitions on speech and assembly by union members, and intense state and police surveillance and (at times) harassment of unions and unionists. Australia's relatively poor performance in respecting and protecting basic labour rights – even as measured by a staunchly business-friendly organisation like the WEF – should serve as a wake-up call to anyone in this country concerned with basic democratic freedoms and the rule of law.

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<sup>5</sup> International Trade Union Confederation, 2018 Global Rights Index (Brussels: ITUC), 56pp., <https://www.ituc-csi.org/ituc-global-rights-index-2018>.

<sup>6</sup> The ITUC project organises countries into 5 broad “categories” according to their general level of respect for workers' rights, whereas the WEF index assigns more specific scores to each country based on the extent of rights respected in practice.

<sup>7</sup> Table 1 excludes the formerly socialist East European economies, where the evolution of labour and union freedoms after the transition to capitalism is still in process. Some of these countries seem to guarantee extensive formal labour rights, as enshrined in founding documents and laws (and hence they could score highly on an index of labour rights); but the extent to which these protections are available and enforced in practice is often questionable.

<sup>8</sup> See, for example, Greg Bamber, Russell D. Lansbury, Nick Wailes, and Chris F. Wright (eds.), *International and Comparative Employment Relations: National Regulation, Global Changes* (London: Sage, 2015).

<sup>9</sup> Moreover, all of the East European OECD members excluded from our analysis, as discussed above, also attain higher workers' rights scores than Australia; hence Australia ranks 5<sup>th</sup> worst of *all* OECD countries (not just those in Table 1) by this measure. As noted, however, the existence of formal labour rights in those East European economies does not always translate into meaningful protection of workers' rights in practice.

## ***The Correlation between Labour Laws and Union Success***

Australia's internationally poor performance in protection of worker rights and freedoms is surprising and concerning.<sup>10</sup> However, our focus in the present paper is to consider the relationship between respect for basic labour freedoms (the "rules" of industrial relations) and the success of unions in organising members (and hence in fulfilling their economic and social role as collective advocate for better wages and job security). This will shed light on the strategic choices facing union campaigners in the wake of the surprising federal election results.

A simple but imperfect measure of unions' organising strength is the proportion of paid employees in each country which belong to unions. This ratio, called union density, will in turn determine the success of other union activities: ranging from collective bargaining, to workplace representation, to industrial action, to political influence. It is possible for unions to exert power in these dimensions even when they lack members,<sup>11</sup> but it is certainly less likely.

Table 1 therefore lists, for each of the same 26 OECD countries, data on union density, as reported in the OECD's Employment and Labour Market Statistics database.<sup>12</sup> Union density in Australia has diminished greatly over the past generation, falling from 50% in the early 1980s to under 15% according to most recent ABS data. This decline reflects many factors, not least being an increasingly union-hostile legal and regulatory climate. Australia now ranks 20<sup>th</sup> among the 26 countries included in Table 1 according to union density: fractionally higher than its 22<sup>nd</sup>-place ranking for labour freedoms, but nevertheless well within the lowest third of the countries considered.

It is evident from a cursory inspection of Table 1 that there is a strong correlation between a country's level of respect for basic labour rights and freedoms, and the success that unions in that country are able to achieve in organising members (and consequently influencing economic, policy, and political outcomes). The correlation is not perfect: there are a few countries with very well-protected workers' rights, where union density is relatively low. But there are no countries with weakly-protected workers' rights where union density is relatively high.

Figure 1 illustrates the strong correlation between workers' rights and union density for the 26 countries considered in Table 1. The Nordic countries (along with Belgium) are clustered in the top right of the figure: combining strong workers' rights with high union density. The more repressive countries (Turkey, Mexico and Korea) are clustered

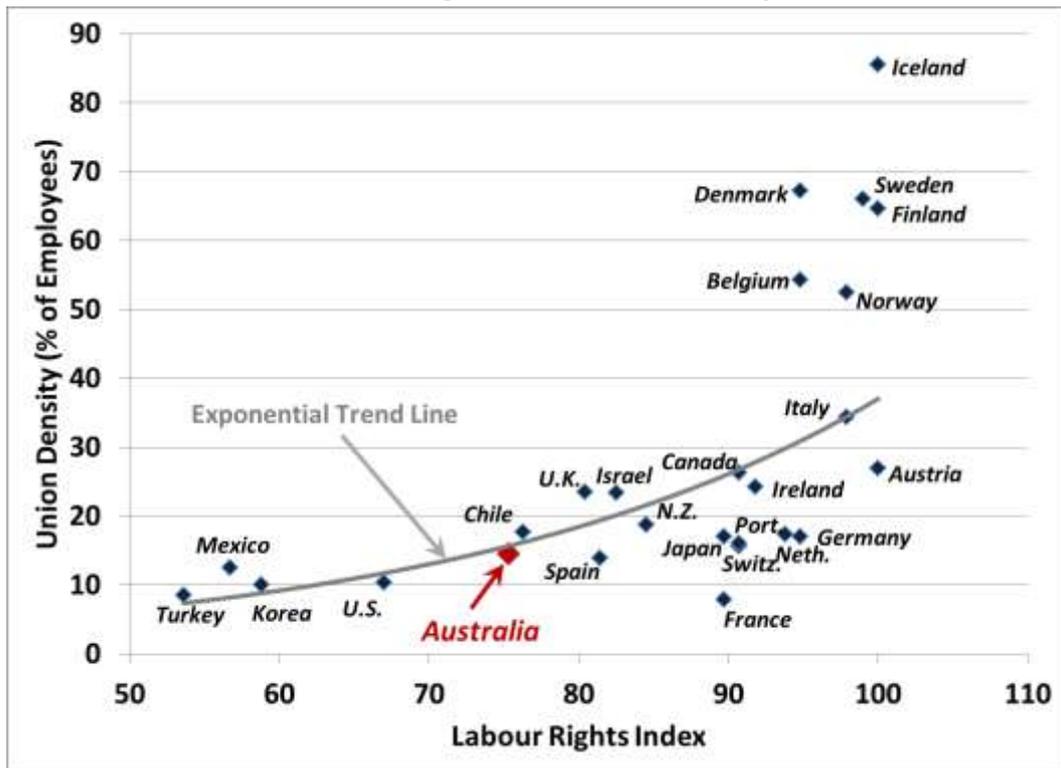
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<sup>10</sup> Upcoming research from the Centre for Future Work will provide further details on the reasons for, and consequences of, various indicators of Australian labour rights violations (including the WEF index).

<sup>11</sup> Some counter-examples, the most extreme being France, will be discussed below.

<sup>12</sup> Obtained from OECD iLibrary, [https://stats.oecd.org/BrandedView.aspx?oeed\\_by\\_id=lfs-data-en&doi=data-00371-en#](https://stats.oecd.org/BrandedView.aspx?oeed_by_id=lfs-data-en&doi=data-00371-en#).

**Figure 1**  
**Labour Rights and Union Density**



Source: Author's calculations from World Economic Forum and OECD data.

in the lower left, along with the U.S.: all demonstrate weak respect for labour freedoms, and correspondingly experience very low union density (in the range of just 10 percent of workers). The other OECD countries are arrayed between these two extremes.

The data indicate an exponential relationship between labour rights and union density, depicted by the curved trend line included in Figure 1. As workers' rights are better enforced, union density tends to increase – and at an increasing rate (thus accounting for the upward curve of the trend line). This relationship can be tested formally by computing the correlation coefficient between the two series. Using the exponential model illustrated in Figure 1, there is a correlation between the WEF workers' rights scores and union density of around 70% (with a correlation coefficient equal to 0.705 between workers' rights and the natural logarithm of union density). This is a very strong and statistically significant correlation.

At the simplest level, this suggests that inter-country differences in the protection of labour rights explain 70% of variation in union density. However, the story is more complex: for obvious reasons, union density also influences the state of labour rights and freedoms. The more workers are represented by strong unions, the better they can demand and win positive laws, regulations, and social policies that reinforce the social and economic status of all workers. In other words, there is a mutually reinforcing, positive correlation between labour freedoms and union organising: the stronger are

workers' rights respected, the more effective is union organising and campaigning, which then reinforces the strong state of labour freedoms. The correlation between labour rules and union membership is strong, and the causation is two-directional.

There are exceptions, of course, to the link between strong worker rights and union density. In particular, there are some European countries which have very strong guarantees for labour freedoms, but where union membership is still relatively low. France is the most extreme example of this conundrum: reported union density is only 8% (the lowest of all 26 countries included in Table 1), even though labour rights and freedoms are strongly guaranteed. Less extreme examples of the conundrum are visible in Germany and Austria, where union membership is lower than would be expected given their strong labour rights records.

An important factor that helps to explain those apparent "outliers" is the particular nature of collective bargaining in those countries. In France, only a small portion of workers are dues-paying members of unions – but almost all workers (98%, according to OECD data<sup>13</sup>) are nevertheless covered by union-negotiated industry-wide collective agreements. In the French system, the costs of negotiating and administering collective agreements are covered through state subsidies and employer-funded works councils; therefore, French unions are able to represent and advocate for a much larger constituency, even though their membership and dues base is small. The most committed and active trade unionists join their unions and pay dues – but those dues are mostly used for broader organisational, social and political activities of the unions, rather than being required to support the apparatus of collective bargaining. A similar result entails in Germany and Austria, where extensive industry-wide collective bargaining structures (in Austria's case also covering 98% of workers, and in Germany's case covering over 50%) also extend the influence and benefits of unions well beyond their direct membership bases.

While there are a few countries with strong labour rights but relatively small unions, there are no exceptions in the other direction: that is, there are no countries where labour rights are weak, but unions are strong anyway. Viewing Figure 1, it is apparent that there are no countries in the OECD which have attained union density equal to 20% of the workforce or higher, without demonstrating a WEF workers' rights score of 80 or higher. The significance of this finding for Australia (with a workers' rights score below that threshold) seems clear: in order to successfully rebuild union density, and obtain the resulting benefits for workers, Australian labour advocates must also win significant improvements in labour laws and basic union freedoms. In other words, "changing the rules" must remain a central priority, complementing the ongoing effort to organise workers and rebuild the union movement.

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<sup>13</sup> See OECD.stat, "Collective Bargaining Coverage," Organisation for Economic Cooperation and Development, [https://stats.oecd.org/Index.aspx?DataSetCode=CBC#\\_ga=2.175105762.1788642944.1559842241-1106906540.1553530741](https://stats.oecd.org/Index.aspx?DataSetCode=CBC#_ga=2.175105762.1788642944.1559842241-1106906540.1553530741).

## ***Conclusion***

Union and social justice advocates have no choice but to play the hand they have been dealt. They spent years successfully raising public awareness of inequality and hardship among working people in Australia, and building support for concrete measures (like a living wage, prohibitions on wage theft, and stronger collective bargaining) to help fix those problems. Hence the election of a government which was mostly silent on those issues during the election campaign, and may now try to push labour market policy in the opposite direction, is a bitter disappointment.

Despite that outcome, however, it is clear that the campaign to “change the rules” was effective and important in shifting the goalposts of public opinion on these issues, and laying a foundation – more fundamental than any particular election result – for positive reforms in Australia’s labour laws. There is now widespread acknowledgement, even from unexpected quarters, of the nature and extent of the problems of inequality, wage stagnation and exploitation. There is also a growing consensus that Australia’s existing labour market rules are not up to the task of fixing things – nor is there any confidence that simply waiting for “market forces” will do the trick.

There is even some evidence that the “rules” have in fact been changing – despite the continued tenure of a government philosophically opposed to most of the campaign’s demands. Indeed, governments and public institutions at all levels have responded to public concern about work and wages with incremental measures to address some of the worst inequities of the present labour market.

For example, several positive changes have been implemented recently by state governments, especially in Labor states: such as new restrictions on labour hire companies, criminal penalties for unsafe employers, stronger equal pay rules, and stronger laws and fines regarding wage theft. But even the previous Coalition government in Canberra, needing to at least appear to care about labour market abuses, has implemented or proposed incremental reforms in several areas:<sup>14</sup> including criminal sanctions for severe cases of wage theft (now potentially applicable to franchisors), new limits on “phoenix” companies, limited registration of labour hire firms, and a right to 5 days (unpaid) leave for victims of domestic violence. These measures are obviously inadequate to fully address the erosion of worker rights in Australia’s current unforgiving labour market – but they will make a difference, and they would not have occurred without the success of the broader underlying campaign to raise awareness about labour injustices.

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<sup>14</sup> Several of these changes were introduced as part of the federal government’s response to the Report of the Migrant Workers Taskforce (chaired by Anthony Fels) in March 2019; [https://docs.employment.gov.au/system/files/doc/other/mwt\\_final\\_report.pdf](https://docs.employment.gov.au/system/files/doc/other/mwt_final_report.pdf).

Even within non-political institutions, a subtle but important shift in attitudes toward workers' rights and wages is visible. For example, the Fair Work Commission seems to have been influenced by strong union arguments and public anger over low wages when it boosted the national minimum wage by 10% over the last three years: not enough, but the best progress in a decade. Our previous research has confirmed the important effect of these minimum wage increases in supporting otherwise weak wage growth.<sup>15</sup> The FWC's recent statements on both the need for higher minimum wages, and its view that doing so does not negatively impact employment, is a clear change from previous decisions – such as its 2016 decision to cut penalty rates, which largely accepted neoliberal arguments about the virtues of wage suppression.<sup>16</sup>

Other FWC decisions also seem to show greater sensitivity to concerns over unfair practices, like recent actions regarding rights of casual workers, food delivery riders, and workers requesting flexible working hours. Even the Reserve Bank of Australia, known as a bastion of rectitude regarding inflation, has complained repeatedly about the weak pace of wage growth – urging employers to lift wage offers, and pledging to keep interest rates down until wages start to improve.

The strong and consistent support among Australians for changes in key labour market rules, and signs that governments and institutions are hearing and at least partly responding to that sentiment, is evidence that the movement for labour market reform is having results – despite and beyond the results of the recent election. The international evidence presented here regarding the correlation between labour freedoms and union organising success should reinforce the conclusion that this campaign is important.

At present, union organising in Australia is constrained by unusual and intrusive restrictions and hurdles. These barriers include:

- Far-reaching limits on union right of entry, information, and visibility in workplaces.
- Extraordinary limits on speech and assembly by union activists, including pickets, boycotts, communications, and flags and badges.<sup>17</sup>

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<sup>15</sup> See Jim Stanford, “The Importance of Minimum Wages to Recent Australian Wage Trends,” Centre for Future Work, May 2019, [https://www.futurework.org.au/the\\_impact\\_of\\_minimum\\_wages\\_on\\_recent\\_wage\\_trends](https://www.futurework.org.au/the_impact_of_minimum_wages_on_recent_wage_trends). The analysis finds that without last year's strong 3.5% minimum wage increase, overall wages would be growing at under 2%.

<sup>16</sup> Similarly, the FWC's rejection of demands by restaurant and club owners for cuts in penalty rates equivalent to those granted in retail and hospitality also indicates a change in attitude; see Anna Patty, “Workers win fight against penalty rates cut,” Sydney Morning Herald, 22 March 2019, <https://www.smh.com.au/business/workplace/workers-win-fight-against-penalty-rates-cut-20190322-p516j1.html>. In 2018 year it even increased penalty rates for Saturday work for casual workers in the retail sector, another indicator of evolving views on penalty rates.

<sup>17</sup> See, for example, *Workplace Express* (no author), “ABCC unmoved on Eureka flag ban despite FWC's contrary view,” 6 June 2018, [https://www.workplaceexpress.com.au/nl06\\_news\\_selected.php?selkey=56836](https://www.workplaceexpress.com.au/nl06_news_selected.php?selkey=56836).

- A web of restrictions on industrial action, including harsh limits on the scope, timing and nature of industrial action; daunting hurdles and procedures to be completed before “protected” industrial action is allowed; being subject to large fines and lawsuits when any of these restrictions are breached; and outright bans on industrial action in numerous circumstances (including if adjudicators decide a strike damages a vaguely defined “public interest”).
- Prohibition of membership and dues systems common in other countries (such as closed shop, union shop, and agency fee arrangements), combined with full legal protection for “free riding” by non-members who are allowed to enjoy the benefits of union activity without contributing financially to them.
- Far-reaching state surveillance and supervision of union activity, including regarding union constitutions, elections, mergers, and financial affairs, and regular judicial intervention into internal union affairs.

The uniquely repressive and far-reaching nature of these restrictions explains why Australia ranks so poorly in international comparisons of basic labour freedoms; these extreme practices are rare in other industrial democracies. But they also help to explain why Australia now experiences one of the lowest rates of union membership of any industrial country. Indeed, it has been an explicit goal of those aggressively anti-union policies, implemented incrementally over the last generation, to undermine union power, delegitimise union activity, and discourage or prevent union membership.

Needless to say, despite this negative environment, Australian trade unionists will continue to undertake determined and innovative efforts, against the odds, to recruit members and build their movement. Australian unions have launched numerous measures and initiatives to improve their performance: from restructuring and merging unions, to implementing new technologies for organising and communicating, to the extension of union organising campaigns to non-standard workers (like temporary migrants and gig workers). These efforts can and must continue.

But it cannot be denied that Australia’s repressive and lopsided labour laws and regulations have been a major factor in suppressing union membership and undermining the ability of unions to fulfil their role as collective advocate for workers’ economic and social interests. And the international evidence is clear that those rules must be reformed, if the union movement is to achieve significant and lasting progress. Moreover, the work of communicating to the public at large about the extent of labour market injustices, and the necessary role of unions in preventing and ameliorating them, is crucial for both winning broader public interest in and support for unions, and building a strong base of public opinion that will eventually force governments – of any political stripe – to improve Australia’s lamentable record of labour freedoms.

In short, changing the rules and building the union movement are two sides of the same coin.