

Briefing Paper:

**How Non-Union Agreements Suppress Wage Growth –
And Why the Omnibus Bill Will Lead to More of Them**

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Introduction and Summary

The Coalition government’s IR omnibus bill proposes sweeping changes to Australia’s labour laws – further tilting the industrial relations playing field in favour of employers. Core features of the legislation include greater employer power to hire workers on a casual basis, avoid overtime loadings for permanent part-time workers (adjusting hours up or down without penalty), and exercise greater wage-fixing power in enterprise agreement (EA)-making.

Several dramatic changes to enterprise bargaining laws will enhance the top-down power of employers to implement their own agreements. Greenfields agreements can be introduced for new projects or businesses for up to 8 years, without input or ratification by affected workers. A wide exemption to the Better Off Overall Test (BOOT) will be introduced, allowing agreements to undermine minimum standards outlined in Modern Awards. The BOOT exemption is proposed for a period of two years, though it will impact EA conditions far beyond this period. This is because EAs continue to apply after their formal expiry date unless they are renegotiated or terminated, so the terms of EAs negotiated under the BOOT exemption could stay in effect for many years afterward.

To hasten the approval of lower-wage agreements, the bill also reduces scrutiny of agreements by the Fair Work Commission (FWC). The bill weakens current obligations on employers to demonstrate to the FWC that their staff have genuinely agreed to an EA¹, introduces a 21-day deadline for the FWC to approve agreements, and blocks

¹ Currently, employers must demonstrate workers have genuinely agreed to the conditions of their agreement – an important protection for workers in cases of employer-designed agreements. The Bill proposes to replace current requirements that employers explain to workers how each clause of the proposed agreement (including how it compares with the minimum Award) with a single requirement to explain the substance of the agreement.

unions from contesting the approval of sub-par agreements being proposed by employers. These Fair Work Act (FW Act) protections are effectively the ‘last line of defence’ for employees who have not received genuine representation or have limited bargaining power during settlement of an EA’s terms and conditions.

Together, the omnibus bill’s changes signal a clear pathway to reducing wages through non-union EAs.² It is remarkable that these agreements exist at all. In fact, Australia is one of the only countries in the world that allows employers to draw-up EAs without the involvement of an independent employee representative body, like a union. By fast-tracking agreements setting the terms and conditions of employment for employees who have had no opportunity to meaningfully negotiate those terms and conditions, the omnibus bill distances the enterprise bargaining system even further from its intended purpose (as outlined in the objects of the Fair Work Act) – namely, to facilitate enterprise *bargaining*. Instead, the bill promotes an employer-centric mode of *agreement-making*.

The federal government claims these EA-making changes will revive EA coverage,³ which has worryingly collapsed in the private sector from 19% of all employees covered by a current EA in 2013 to only 11.7% in September 2020.⁴ Having more workers covered by EAs – in this case specifically non-union EAs – will supposedly deliver better wage increases to workers,⁵ which have been historically weak for several years. But wage outcomes in non-union EAs have been consistently worse than union EAs. In fact, the majority of non-union EAs approved in recent years have not specified *any* wage increases at all. Importantly, this has been the case even while the BOOT was in place. Without the BOOT to ensure that non-union EAs at least match the minimum terms of Modern Awards, there is no doubt that these inferior wage outcomes will get even worse.

For a summary of the various changes proposed by the Bill, see Workplace Express, “Bill streamlines BOOT, imposes approval timeline”, 9 December 2020.

² ‘Non-union EAs’ are agreements where no union has been involved in the negotiation of the EA’s terms and conditions of employment and/or no union oversees enforcement of the EA. Under the FW Act, all agreements are strictly between employers and employees (other than greenfield agreements). One or more unions can elect to be ‘covered’ by the final agreement, giving unions rights to participate in enforcing the EA. This loose definition of union representation in the FW Act, with no statutory requirements for genuine negotiations (bargaining supported with genuine workplace organising and representation), means not all union-covered EAs counted by government EA data involved active union negotiation.

³ See Australian Government, *Proposed reforms to enterprise bargaining*, Factsheet, December 2020. Available at https://www.ag.gov.au/sites/default/files/2020-12/enterprise-agreements-overview_0.pdf

⁴ Data on number of workers covered by current EAs from AGD *Trends in Enterprise Bargaining Report* and total private sector employment from ABS 6310.0, and 6291.0.55.001, Table 26b. 2013 coverage annual average. 2020 coverage at September. We include self-employed individuals in the estimate of total private sector employment (whereas some analysts prefer to compare union membership to employees only); in our judgment, the growth of nominally independent contractors, marginal self-employed, and ‘gig’ workers is another dimension of the growing precarity of employment in Australia, and most of those workers are also effectively denied the opportunity to bargain collectively over wages and conditions; hence it is appropriate to contrast EA coverage with that broader base of total private sector employment.

⁵ The benefits of EA coverage have been celebrated, even by business groups, for delivering higher average wage outcomes compared with other pay-setting methods. See Business Council of Australia, *The State of Enterprise Bargaining in Australia*, August 2019.

This briefing note presents empirical evidence showing an increase in non-union EAs will diminish wage increases delivered by EAs overall, not boost them. It focuses on the private sector, where EA coverage decline has been most dramatic, and where employers have been most explicit and ambitious in their aims to weaken EA-making rules.⁶

The paper shows that the omnibus bill's plan to liberalise and accelerate non-union EA-making will have three distinct negative impacts on wage growth in Australia – compared to having wages negotiated through a genuine collective bargaining process. First, wage increases under non-union EAs are consistently and significantly lower than in EAs negotiated with union involvement. Second, many non-union EAs do not specify any wage increases at all. Third, non-union EAs tend to have significantly longer nominal terms than union-negotiated EAs, locking in their inferior terms for extended periods. This paper provides data regarding each of these three effects. It concludes by considering the likely overall impact on future wage growth in Australia, and proposes alternative policy directions for restoring genuine collective bargaining and resuscitating Australia's moribund wage growth.

Non-Union Agreements Deliver Lower Wage Increases

Wage increases in non-union EAs are consistently lower than for EAs negotiated with union involvement. On average, wage increases in non-union EAs approved in the private sector were 1-percentage-point lower than for union-covered agreements since 2010 (see Figure 1). The non-union EA wage disadvantage was 0.7-percentage-points in 2019.

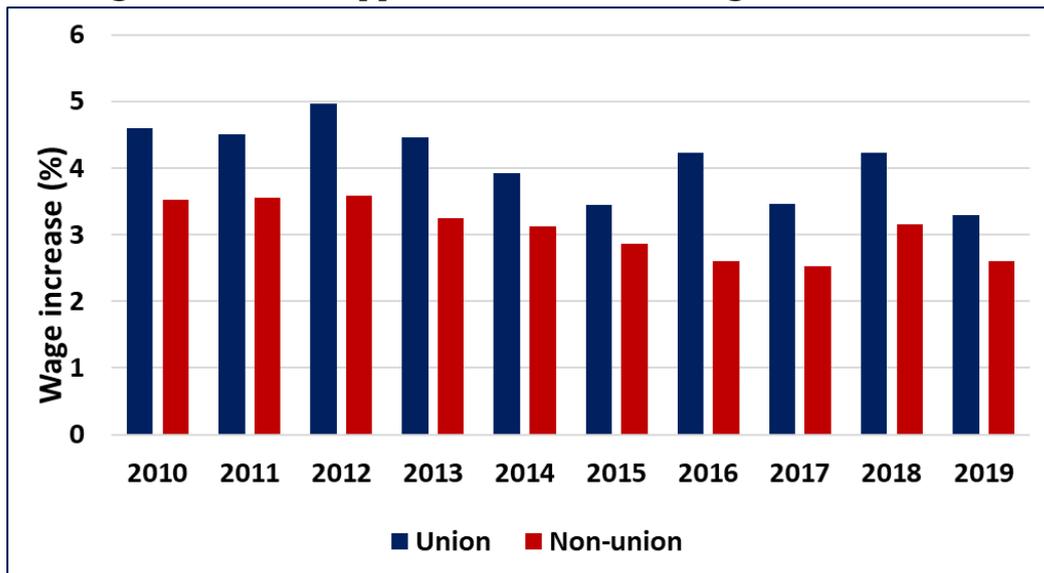
Since the majority (66%) of the current EA stock consists of union agreements,⁷ any increase in the number of lower-wage non-union EAs would increase their proportion within the total EA stock, reducing rather than lifting wages and conditions delivered through EAs overall.

Agreements data shows union representation is critical to achieving higher wage gains in EAs – the very advantage of EAs that the Coalition has extolled as justification for the omnibus bill.

⁶ For a full overview of IR proposals of business representatives for enterprise bargaining changes (proposals with strong parallels with the current omnibus bill measures) and their likely impacts on levels of bargaining, EA coverage and employee representation, see Alison Pennington, *Collective Bargaining "Reform": What Does Business Want? And What Would Actually Fix the System?*, Centre for Future Work, October 2019.

⁷ Includes both private and public sector agreements.

Figure 1. Wage Increases in Approved Private Sector Agreements



Data: Workplace Agreements Database (WAD). Average annual wage increases (AAWI) for agreements approved. Private sector quantifiable agreements only.

Many Non-Union Agreements Deliver No Specified Wage Increased at All

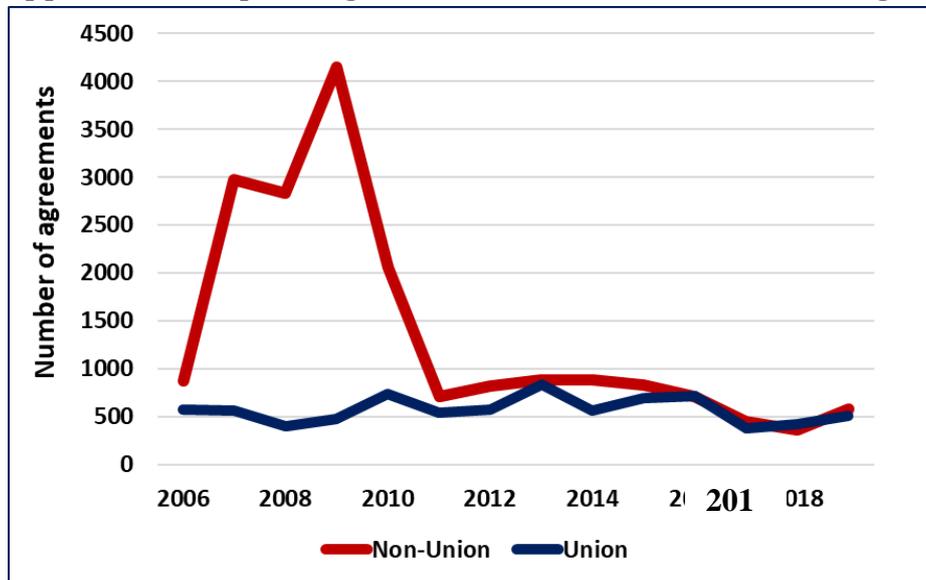
Importantly, the wages data presented in Figure 1 above are only for those EAs that had quantifiable wage increases written into their provisions. The shocking reality is thousands of non-union EAs do not mandate *any* increase in wages at all, instead linking wage increases to non-legislated measures like CPI, minimum wage decisions by the FWC, or entirely to employer discretion.⁸ Figure 2 shows that the number of non-union EAs with non-quantifiable increases that were approved surged from around 850 in 2006, to over 4000 in 2009. The surge in non-union EAs without quantifiable wage increases corresponds with the operation of the WorkChoices legislation implemented by the Howard government in 2006, which abolished the former “no disadvantage test” requiring EAs to exceed minimum conditions in Awards. WorkChoices thus transformed EAs into tools for employers to escape minimum standards – precisely the same strategy that will be allowed by the omnibus bill.

The FW Act was then introduced in 2009, strengthening the role of unions in bargaining, and, importantly, restoring the principle that EAs must match or exceed minimum conditions outlined in Modern Awards (enforced through the Better Off Overall Test). Consequently, the number of non-union EAs without quantifiable increases approved by the FWC dramatically declined, halving to around 2000 in 2010, and falling again to an

⁸ The federal government’s most recent review into EAs with non-quantifiable agreements at December 2015 found 2% of non-quantifiable EAs linked wage increases to performance reviews, 9% to CPI increases, and 26% to annual wage reviews by the FWC. 14% had inconsistent increases due to multiple employee classifications across single EAs. The largest number of non-quantifiable EAs (49% of all) were due to “other reasons”. “Other reasons” include wage increases based entirely on employer discretion, funding arrangements, or where the mechanism for calculating wage increases is unclear. See Department of Employment, *Non-quantifiable wage increases in federal enterprise agreements*, 2016.

average of less than 700 to 2019. Non-quantifiable wage increase provisions are much less common in union EAs, and their number remained largely steady over the same period. These data confirm that non-quantifiable wage agreements are largely a phenomenon of employer-centric, non-union EA-making.

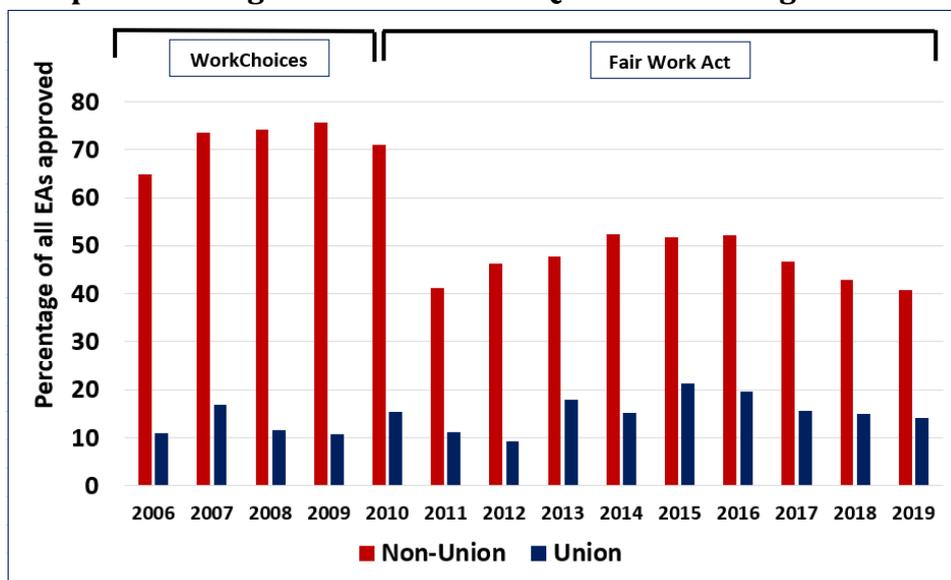
Figure 2. Approved Enterprise Agreements Without Quantifiable Wage Increases



Data: WAD. Private sector only.

Before introduction of the FW Act and the BOOT, between 2007–10 a startling 72% of non-union EAs (on average) did not specify quantifiable wage increases. Under the BOOT, the non-quantifiable share of all non-union EAs then declined to less than half (47%) of all non-union EAs approved from 2011–19. There has been a modest decline in non-quantifiable wage provisions in non-union EAs approved since 2016.

Figure 3. Proportion of Agreements Without Quantifiable Wage Increases



Data: WAD. Private sector only.

The impact of the two IR policy frameworks on EA trends is clear. Before the FW Act and BOOT existed, there were significantly more non-union EAs, the majority of which had no quantifiable wage increases written into their conditions. After the FW Act and BOOT were introduced, fewer non-union EAs were created, and a slight majority of those agreements had quantifiable wage increases.

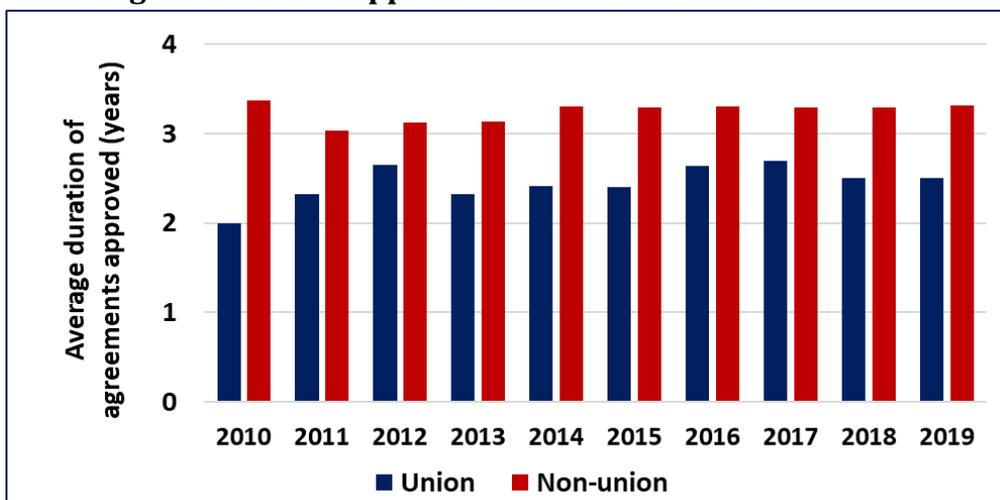
The Coalition government’s omnibus bill plunges enterprise bargaining decisively back into the pre-FW-Act world. Australia’s IR policy history demonstrates that if the measures pass, we can expect both an increase in the number of non-union agreements, *and* a renewed dominance of agreements without any specified wage increases at all.

The high proportion of non-union EAs approved without predictable, specified wage increases is a startling indicator of the dangers of unilateral employer power in EA-making. Without an organised and consistent representative structure through which workers can advance their claims and take action in support of them, non-union EAs are subject to unilateral influence and manipulation by employers. In practice employers can dictate the terms of the EA when there is no process through which genuine negotiation can occur. Without a BOOT in place to backstop the process and ensure that at least prevailing minimum standards are respected, EAs become a tool for reducing wages and conditions – rather than increasing them.

Non-Union EAs Lock in Lower Wages Over Longer Time Periods

In addition to lower (or no) wage increases, non-union EAs also lock in those inferior wage outcomes for longer periods of time compared with union-covered EAs. The average duration for non-union EAs in 2019 was 3.3 years, compared with 2.5 years for union EAs. Approved non-union EAs have had longer average duration than union EAs every year since 2010 (see Figure 4). This indicates a clear employer preference for longer agreements to lock in (low) wage bills and reduce contract renewal costs.

Figure 4. Average Duration of Approved Private Sector EAs



Data: WAD. Figures are for average duration of EAs approved in the private sector each year.

Moreover, additional proposals in the omnibus bill to allow greenfield agreements at new operations to extend for up to 8 years (with no input or approval from affected workers) will expand employer power to lock in low wage growth for long periods of time. This will inflict inferior wages and employee representation.⁹ These 8-year wage-locked agreements will also deepen the adverse impacts of inferior wages across non-union agreements generally.

Conclusion and Policy Recommendations

Wage outcomes in private sector non-union EAs have been consistently worse than in union EAs since 2010: 1-percentage-point per year lower, on average. Other provisions of non-union EAs, including longer agreement duration and even whether wage increases are specified at all, compound the negative impacts of inferior wage outcomes, compared with EAs that involve union participation. Importantly, non-union EAs delivered significantly worse wages outcomes *even while* the BOOT was in place. The omnibus bill's parallel proposal to exempt agreements from the BOOT will open the floodgates for employers to rush the approval of non-union EAs that undercut Award wages, further suppressing wages growth in 2021 and beyond. Wage growth has been consistently weak over most of the last decade, growing at the slowest sustained pace since the end of the Second World War. When the COVID-19 pandemic hit, wage growth slowed virtually to zero.¹⁰ The omnibus bill will lock in that wage stagnation, by further weakening the already-constrained ability of workers to negotiate genuine collective agreements.

Preventing the creation of new pathways for wage suppression through EA-making requires rejection of the Coalition's omnibus bill. The bill will increase the number of lower-wage non-union agreements in proportion to higher-wage union-negotiated agreements, undermine the capacity of EAs to boost wages, and exact a powerful downward pressure on Australia's already-weak wage trajectory.

Despite increased economic activity as COVID-19 health restrictions are lifted, the Commonwealth government forecasts zero change in real wages over its entire Budget outlook – projecting only 7% nominal wage growth over four years, just keeping pace

⁹ Greenfields are the only remaining bargaining instrument under the FW Act that requires unions in the relevant industry to participate in their negotiation. However, significant pressure has been exerted by business lobbyists to weaken union participation and accelerate bargaining timelines on greenfields. In 2015 the FW Act was changed (in the Fair Work Amendment Act 2015) to impose maximum six-month renegotiation periods. This provision allows employers to seek FWC approval of greenfields agreements even if they do not secure agreement from unions within the prescribed bargaining period. Under newly proposed greenfields measures, employers could feasibly exhaust 6-month bargaining periods, then present below-Award 8-year agreements for approval by the FWC.

¹⁰ Annualised increase in the ABS's Wage-Price Index declined to just 0.3% during the September quarter of 2020.

with CPI.¹¹ Treasurer Josh Frydenberg then further reduced his wages forecast to 1.25% for two years in the December MYEFO (rather than just one year as outlined in the October Budget). The government's hopes of an economic rebound depend on tenuous predictions of increased business investment and surging consumer spending. But how will workers buy more if their incomes are stagnant? In refusing to introduce wage-boosting policies or address the growing power imbalances in Australia's labour market, the government's wages forecasts may be accurate. But its policies – including this omnibus IR bill – mark active choices to reinforce those dismal forecasts.

Claims by the government that allowing employers to create EAs that undermine Award minimums will increase the number of EAs may be true. But higher numbers of inferior, below-Award and non-union EAs would clearly make wage outcomes worse, not better. It also perverts the purpose of collective bargaining altogether: sidelining actual bargaining processes, and reducing employees to spectators of employer-controlled EA-making.

If the government's aim really is to rebuild collective *bargaining* and lift wages and conditions, a very different direction is required in reforming Australia's IR laws. The following measures would make some progress toward revitalising a genuine collective bargaining regime in Australia, arresting wage stagnation, and supporting an inclusive economy recovery from the COVID recession:

- *Retain the Better Off Overall Test:* persistent wage stagnation is undermining Australia's post-COVID economic recovery. Combined with growing job insecurity, and working poverty among vulnerable low-wage workers, the importance of protecting the integrity of the Award safety net remains strong. The existing BOOT should remain in place.
- *Conversion or phase-out of non-union agreements:* The legitimacy of collective bargaining would be improved by phasing out or converting non-union EAs into authentic agreements, rooted in democratic representation for affected workers and actual negotiations on their behalf. This could be achieved by introducing a simple notification system alerting the FWC and relevant unions of agreement expiry; provision of institutional supports to allow unions to initiate consultations with affected employees and negotiations with employers; and FWC resourcing to provide bargaining facilitation services to achieve more genuine agreements.
- *Genuine review and approval of agreements:* Instead of weakening already modest requirements on employers to obtain consent from employees for their proposed EAs, "genuine agreement" practices should be strengthened to require

¹¹ For more analysis and commentary on the Coalition's 2020 Budget, see Stanford, Pennington and Nahum, *Commonwealth 2020-21 Budget Update: Dropping the Ball on Economic Reconstruction*, Centre for Future Work, October 2020.

employers to engage in negotiations with a workforce genuinely representative of who will be covered by the EA.

- *Allow multi-employer and sectoral bargaining:* Rebuilding a viable collective bargaining system will require Australia to evolve beyond the current highly decentralised enterprise-level bargaining system which fails to cover the majority of workers. Multi-employer and sectoral bargaining arrangements can resolve deepening labour market power imbalances created by trends such as contracting out, corporate franchising, and the expansion of small firms, re-aggregating workers across sectors or industries, and allowing them to fairly bargain for pay increases and other improvements. Sectoral bargaining systems operate in many advanced economies, demonstrating wide economic and social benefits including higher wages, job security, greater income equality, and increased productivity.¹²
- *Relax harsh restrictions on union activity:* Australia's restrictions on normal union activity undermine collective bargaining, curtailing unions' capacity to reach and represent workers. These restrictions (including 24-hour notice periods, and strict limits on entry) have also undermined the important role of unions in ensuring pay and working conditions are compliant with the current agreement and minimum labour laws. Unions should have their compliance inspection role restored. Australia's uniquely harsh restrictions on industrial action should also be relaxed to enable workers to take collective action to support their economic and social interests.

These changes would restore the ability of the collective bargaining system to lift wages at a time when Australia's economy sorely needs it. After 8 years of real wage stagnation, Australia's recovery from the COVID recession requires stronger wage-boosting measures to kick-start workers' incomes, repair living standards, prevent deflation, and secure inclusive economic growth. Support for faster wage growth should be a key component of a longer-term, sustained public investment program in an inclusive economic recovery from the COVID recession, increasing the spending power of workers to lift aggregate demand, generating more favourable business conditions for job creation, and lifting government revenues to invest in the public programs that secure the wellbeing and safety of all.

¹² See Organization for Economic Cooperation and Development, *Negotiating Our Way Up: Collective Bargaining in A Changing World of Work*, November 2019.