

Damian Treanor

A Nudging ERA? Evaluating the Effects of a Legislative Default
on Union Membership Decisions to Inform the Suitability of
Nudge Theory in Employment Relations.

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Faculty of Business, Economics and
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Abstract

Union decline has been the most significant issue in employment relations for the past 30 years and how to revitalise unionism has been a significant focus of academia and policymakers. In New Zealand, the political zeitgeist favours soft regulation, and eschews hard regulation, of employee union membership decisions but to date, these soft regulations have been ineffective in rejuvenating unionism in New Zealand.

A new approach that has the potential to be an effective soft regulatory tool is nudge theory. Nudges have a strong potential to promote union membership decisions whilst preserving employees' freedom of association, but the potential of nudges in employment relations policy has not been explored. This thesis explores the potential of nudge theory as a method to promote unionism by exploring the impact, and effectiveness of a new regulation that is analogous to a nudge, the requirement under s62a of the Employment Relations Act 2000 for employers to pass-on employee information to the union by default. A mixed-method of both qualitative and quantitative data collection methods was used including survey data, semi-structured interviews and form completion data. A multi-industry case study methodology was used to ensure a breadth of data and limiting section-specific factors.

It was found that nudges are effective at promoting employees to speak to a union and had a small but positive impact on union membership outcomes. Most employees were comfortable with their information being passed on to the union, including those who intended to join but had not, and employees who did not intend to join but did not mind the prospect of being contacted. Negative outcomes were identified; these recommend nudges should be utilised with caution and that many employees were uncomfortable with the nudge.

This thesis explores the potential of nudges to promote union membership, demonstrates that it has strong potential to be an effective tool, and make recommendations on how nudges should be utilised to maximise positive outcome and minimise negative outcomes.

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Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

Damian Treanor

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This research was conducted under the approval of the Auckland University of Technology Ethical Committee (application number 20/392, approved 1 December 2020).

Chapter 1: Introduction

For the past 40 years, political parties, democratic socialists, and liberal progressives have been wrestling with the problem of union decline. Starting from the position that modern capitalist economies structurally disfavour the working class, trade unionism is perceived as a good remedy to restore the balance, but unions are a declining force, and workers are increasingly suffering the predations of employers. Many politically inclined activists, organisers, politicians and policymakers have sought to arrest this union decline in order to promote the welfare of those more vulnerable members of the labour market.

This thesis explores a new, modern tool of public policy to do this and promote unionism: nudge theory. Nudge theory is a soft regulatory tool that both recognises and utilises limitations in human thinking, for making socially acceptable improvements to decisions (Thaler & Sunstein, 2008a). Drawing upon a new framing of bounded rationality in decision making, it provides methods and justification for the state to actively promote outcomes through soft regulation, although the state actively influencing decisions requires a stringent ethical consideration. Nudge theory's potential application in the field of employment relations has been speculated upon but not significantly explored.

This research explores how nudge theory could work when applied to employment relations. The hypothesis is explored by investigating a New Zealand regulation introduced in 2018, where employee information is passed on by default. Because the employer is obliged to pass on the employee's details to the union if the form is not completed, this could be considered a default nudge; where the outcome of inaction is shifted to the outcome deemed to be in the public good (in this case, being in contact with the union). This research will explore this through two key research questions:

- Research Question A: What is the impact of the S62 Process of the ERA in New Zealand workplaces?
- Research Question B: Do antecedent preferences affect the S62a process?

The legislative process will be researched across three case studies where the regulation is in effect. Both qualitative (semi-structured interviews with employers, union representatives, and a sample of new employees) and quantitative (form completion, and a

survey of new employees) methods will be utilised. The research will investigate whether the requirements of s62a of the Employment Relations Act 2000 are influencing union contact decisions, and union membership decisions. It will focus on both the efficacy of the process as a nudge, and the impact of the nudge on the employee.

What This Research Will Contribute

This research will make three substantial contributions to the literature. Firstly it will explore the impact of the default passing-on of information on union membership decisions, employees, and employers and unions. By taking an exploratory and inductive approach to this government regulation we can better understand its impact.

Secondly, it will provide insight into the suitability of nudge theory in employment relations policy. 15 years of substantial research and application have identified nudge theory's strengths, weaknesses, suitability and unintended consequences. Research into the impact of a policy analogous to a nudge can provide insight into whether nudges could, should, and should not be applied to employment relations decisions. This research has the potential to better understand the suitability of nudge theory as a soft regulatory tool in employment relations, and how membership decisions are made.

Thirdly we can gain insight into how employees make union membership decisions. Through this investigation of how employee decisions around union contact and union membership, especially when considered through a new theoretical lens with a different foundational understanding of how humans make decisions, further contributions can be made to understanding how employees decide whether or not to join the union.

These contributions will be significant because there is a need for new ideas and approaches to employment relations policy. Regulation of employment relations is somewhat at a standstill; with the objectives of social justice being clear, but the means of achieving them are limited, if not exhausted. This research will investigate nudges in one aspect of employment relations, union membership, but many other preferable social outcomes could also be advanced with nudge theory; collective bargaining outcomes, conflict resolution, safe work practices, legal compliance and so forth. Establishing if nudge shifts union membership decisions may open the door to further questions of whether it could shift other key employment decisions.

Positioning This Research in the Employment Relations Field

Defining the academic field of Employment Relations is problematic, especially given the nomenclature is still unsettled; with industrial relations, or labour relations still valid labels. With the label unsettled, and the field multi-disciplinary (Kaufman, 2004), a single encompassing definition is hard to come by. At its heart, employment relations is an area of study; the consideration of employment relationships, of the interests and powers of parties to those relationships, and how rules and processes are imposed to regulate and protect. These relations can also be viewed from a range of scales, from the micro (the individual employer and employee) up to the macro (national and international issues and employment relationships workforces) (Deeks & Rasmussen, 2002). It can also be viewed, analysed and explained through a range of theoretical paradigms. Employment relationships have been explained through many academic disciplines and theoretical paradigms, such as Psychology, Marxism, or Economics to name just a few from a wide range.

Science has a long history of drawing theories across fields of study to explore their explanatory power. For instance, game theory emerged from mathematics as a new theoretical model in economics to both explain and predict human behaviour. From there it was applied to a range of other disciplines including employment relations, to explain current observations, predict future observations, and provide guidance to regulators. If regulation is the manipulation of human behaviour at a societal level, then academic theories are the tools by which we find explanations for what we observe, and predict what will happen if certain changes are made.

This thesis considers the decisions of employment actors through the theoretical paradigm of nudge theory, as well as nudge theory's foundational paradigms of behavioural economics and cognitive psychology. This is expanded upon in depth in Chapter 3, but as nudge theory perceives individuals as boundedly rational actors, capable of sensible decision making but also capable of the occasional error, this thesis approaches employees as rational actors, capable of sensible decisions, but prone to the occasional error concerning union membership.

Nudge theory itself is multi-disciplinary; an amalgam of public policy and behavioural economics (itself a hybrid of economics and cognitive psychology). So while this research will

not be taking a strict interpretivist approach through a specified lens, it will share the nudge theory's assumptions of the world. This approach has considerable consistency with social action theory (Parsons, 1968), a sociology theory with a strong focus on the individual, and recognition of the variation between individuals of attitudes and perspectives, although not embracing the unitarist philosophy often associated with social action theory.

The narrow lens of nudge theory is therefore not exclusively used; a wider pluralist perspective is also taken. As discussed in depth in the methodology section in Chapter 5), an inductive approach is also taken to explore the wider impact of the prompting of new employees towards making contact with the union. This consideration draws upon the common employment relations framework of industrial pluralism of Fox (1966) and Dunlop (1958), of conceptions of employment actors (employers, unions, the state) as key drivers with conflicting interests.

The research is firmly embedded in the pluralist model; recognising conflicts of interests between employers, employees and the union are legitimate and inevitable. The legitimacy of conflict, (and the extent of legitimate conflict) has been a key debate in the field of employment relations (Cullinane, 2014), although in opposition to the unitarist philosophy frequently underlying HRM and employers (Geare et al., 2014). This research recognised the heterogeneity of interests between individuals, employers and unions, and their entitlement to chart their own paths.

The Structure of This Thesis

This thesis aims to provide a comprehensive discussion of the key issues, findings and questions of employment relations and nudge theory. The intention is to ensure that all important issues are considered and comprehensively covered and, to facilitate that key points are easily identifiable to the reader, most Chapters include a 'summary' section, the purpose of these being to highlight the key points covered in that Chapter and their interconnections with the other key points of the thesis. It is envisaged that the summary sections may be read to gain an overview of the thesis.

Chapter two of this thesis discusses the precedents in the history of employment relations. Key trends in employment relations, both in New Zealand and internationally, are overviewed. The objective of promoting collectivism embedded in New Zealand's Employment

Relations Act 2000, its success in promoting unionism over the past 20 years, and why the new mechanism of passing on employee details was introduced will be examined. Existing literature regarding union membership decisions is explored as a benchmark against what a behavioural economics perspective could add to current knowledge.

Chapter three discusses nudge theory; its philosophy, theoretical assumptions and success to date. Its unique and potential useful theoretical perspective will be established by discussing its foundations of libertarian paternalism, behavioural economics, and bounded rationality. It also identifies key findings, as well as key issues arising in the debates of nudge theory since its conception.

Chapter four blends together key elements of chapters two and three, to provide a clear foundation of how this research approaches the question of nudge theory in employment relations. It explores what consideration exists of nudge theory's applicability to employment relations policy, and what potential benefits and negatives may arise from the application of nudges to employment decisions. This chapter establishes the foundations for the research questions.

Chapter five outlines the methodology of the research. It establishes the two research questions, how the mixed-method, multi-industry case study was determined, and how the research was collected from completion data, employee surveys, and qualitative interviews. It outlines how the data were collated and analysed.

Chapter six outlines the quantitative findings from the research. It outlines the key findings of the quantitative data, including the form completion data and the employee surveys, covering simple descriptive data as well as more complex comparative analysis. Chapter seven outlines the key findings from the qualitative data, identifying the key themes emerging relating to both research questions. Chapter eight blends together these findings into a wider discussion. It integrates these two sets of findings and compares them to the existing literature discussed across chapters 2-4, to identify new contributions to our knowledge.

Chapter nine is the conclusion, drawing together key findings and contributions to current knowledge and areas of future research. By establishing what can be learnt from this

policy tool of passing on employee information, we can establish how nudge theory could be applied, and what further research could be undertaken to investigate nudge theory in ER.

Chapter 2: Employment Relations in New Zealand

Unionism in New Zealand is both unique and archetypical of the current state of employment relations in New Zealand. The history of employment relations in New Zealand is an interesting one and, while a comprehensive review would be too much, there are a few key elements from our history that inform our present. The purpose of this chapter is to establish a history that informs the present context of employment relations in New Zealand, why soft regulation is the preferred approach to many employment policy objectives, and how the ERA's s62a process fits within this context. It establishes the present knowledge of union membership and union membership decisions.

A Brief History That Informs the Present

The watershed event in New Zealand's employment relations policy was the enactment of the Industrial Conciliation and Arbitration Act 1894 (IC&A), a definitive and radical policy from the Liberal government which established New Zealand's tradition of a supportive and interventionist state (King, 2003). For 97 years, the state played a central role of mediator or arbitrator between capital and labour, with conflict institutionalised with various formalised conflict mechanisms (Deeks, Parker, & Ryan, 1994).

Within this system, the role, legitimacy and solvency of unions were protected by law and national awards. But this system became intertwined with a wider philosophy of heavy government involvement in the New Zealand economy. Although amendments were made to devolve this centralised institutionalism with the Labour Relations Act 1987 (Deeks & Boxall, 1989), the system was increasingly at odds with the neo-liberal social and economic revolution underway through the 1980s and 1990s.

Where the IC&A had been a radical experiment in employment relations, the Employment Contracts Act 1991 (ECA) was an equally dramatic swing of the pendulum to the opposing end of the scale. Enacted by the Jim Bolger National government, it kept the foot on the reform pedal, but this time the unions were not protected by their political connections to the government. The ECA was a big shift from macro to micro level employment relations policy; where standards, protections and restrictions were devolved from industry standards to individual workplace practices, predominantly determined by the employer (Dannin, 1997; Rasmussen, McLaughlin, & Boxall, 2000).

Under the ECA, employer attitudes shifted towards a unitarist perspective, as terms, conditions and workplace rules became predominantly determined by the employer. Department of Labour sponsored research showed that it was the employer who normally decides the bargaining unit and chooses between collective and individual agreements (Armitage & Dunbar, 1993). This resistance to engaging with unions ensconced itself under the ECA and continued through the ERA era, especially among employers without previous experience in collective bargaining (Foster, Rasmussen, Murrie, & Laird, 2011).

The cultural shift resultant from these eras was the falling from favour of hard regulation of union membership. By the 2000s, hard regulation of union membership was perceived as part of the 'bad old days' of heavy government regulation that reached its pinnacle in the 1970s and ended with the defeat of the Muldoon government in 1984. The subsequent Labour and National governments embarked on 15 years of neoliberal reforms, such that by the time a centre-left government came to power with the return to power of the Labour Party under Helen Clark in 1999, the zeitgeist had shifted such that Labour policy would not seek to return any form of compulsory unionism, and has not since.

The ERA

Introduction and Intent

As the Employment Relations Act 2000 (ERA) nears its 25th anniversary a frank assessment would be that it has achieved mixed success but failed to achieve its objective of promoting collective bargaining. Because the Act also protects the integrity of individual choice, the promotion of collectivism has been restrained to soft regulatory approaches of persuasion without compulsion. If collectivism is to be further promoted, new soft regulatory tools are required.

The ERA emerged from the Labour Party's fundamental opposition to the market-focused ECA (Wilson, 2010). Trade unions not only share the New Zealand Labour Party philosophy of protecting the interests of workers, but also several unions hold formal affiliations and roles with the Labour Party, including voting rights in the election of the Labour Party leader (Miller, 2010). Protecting the under-privileged through unionism sat very central

to the core philosophy of the Labour Party, as the ECA did not recognise unions as anything more than potential bargaining agents (Deeks & Rasmussen, 2002).

The ERA was the cornerstone legislation in a new approach for Labour. Returning from their neo-liberal divergence, the centre-left Labour Party returned to its commitment to social democracy while supporting economic growth and fiscal responsibility (McClelland & St John, 2006), an approach to governing consistent with the 'third way' political philosophy (Piercy, Mackness, Rarere, & Madley, 2017), including the ERA (Haworth, 2004). It seeks to reform and modernise an employment relations system that, in the eyes of the Government, had become hostage to an unsuccessful neo-liberal agenda.

It must be noted that the ERA is not solely the Labour party's, but the outcome of policy negotiations between the Labour and Alliance parties that passed it. While it is neither possible nor beneficial to attribute responsibility clause by clause, it is clear that Labour's approach was to find a constructive middle ground between market freedom and social protection (Wilson, 2010), whereas the more traditional left-wing approach of the Alliance saw it promote more traditional union rights and protections (Harré, 2010).

The intent of the ERA is to improve social equity through economic prosperity while promoting cooperative employment practices and inhibiting exploitative practices. This is best outlined in the object of the Act:

The objective of this Act is—

(a) to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship—

- (i) by recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour; and
- (ii) by acknowledging and addressing the inherent inequality of power in employment relationships; and
- (iii) by promoting collective bargaining; and
- (iv) by protecting the integrity of individual choice; and

- (v) by promoting mediation as the primary problem-solving mechanism other than for enforcing employment standards; and
 - (vi) by reducing the need for judicial intervention; and
 - (vii) to promote the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority, and the court; and
- (b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.

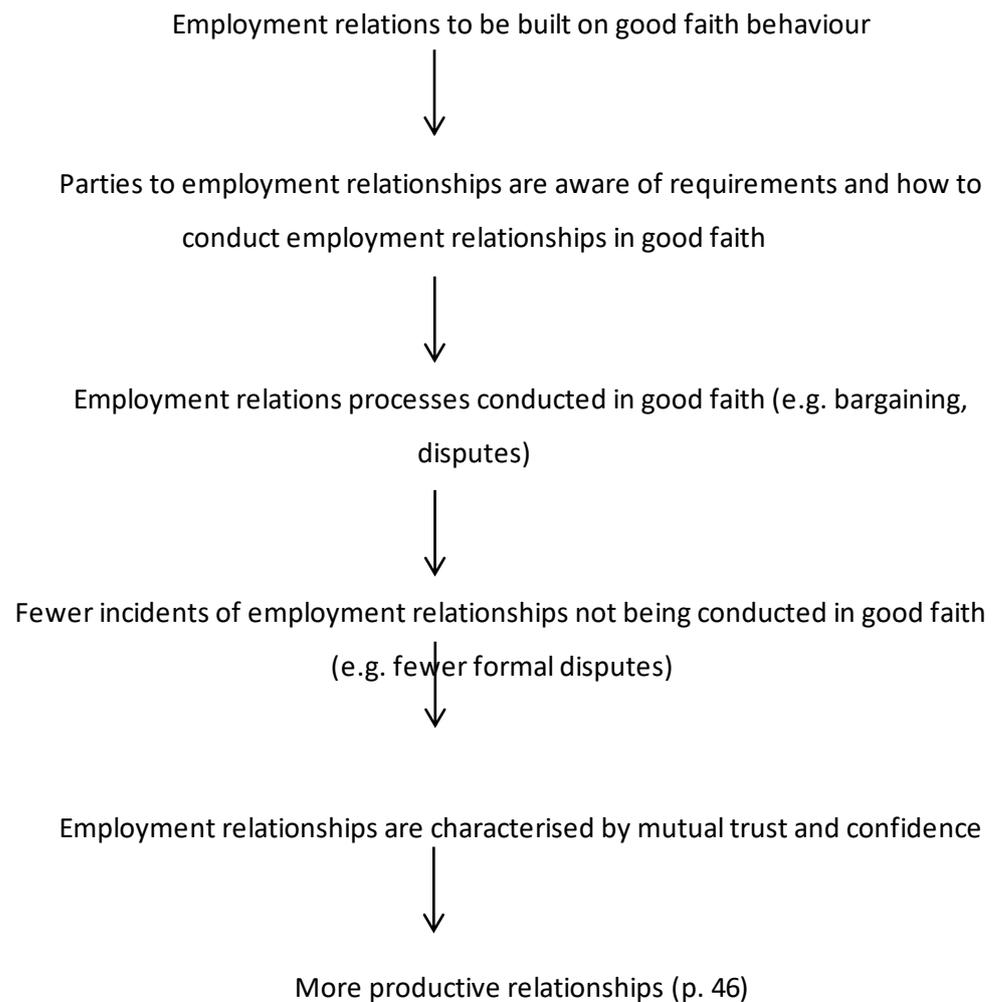
(Employment Relations Act 2000, s3)

To paraphrase key aspects; the object of the Act is to build mutually beneficial employment relations by recognising good faith is necessary by both parties and by acknowledging the inherent inequality of power; ‘by’ is emphasising the underpinning philosophy – through equalised power and good faith obligation we can achieve employment relations that are beneficial for both employers and employees. Through freely chosen collective bargaining, fairer outcomes be reached. Through less litigation and more discussion, mutually beneficial employment relationships can be preserved. In short, if the state can bolster the power of the workers, the mutually beneficial will take precedence over the exploitative.

As Waldegrave, Anderson, and Wong (2003) in their report commissioned by the Labour/Alliance government that introduced the ERA, outlined the underlying assumptions of the ERA’s promotion of good faith:

Figure 1.

The ERA's promotion of good faith



This framework of promotion of worker welfare identifies the indirect focus of the ERA. Instead of direct regulation of employment outcomes, the ERA seeks to provide a supportive environment through good faith for workers to better their conditions by their own means.

Third way

The old philosophy of strong state intervention was dead; there was no going back. While the Alliance Party (primarily due to the philosophy of its New Labour faction) remained committed to the strong interventionist role of the state of traditional left-wing politics (Harré, 2010), the Labour Party's post-Rogernomics philosophy emerged as an amalgam of traditional socialist principles with market efficiencies; to overcome the social impact of the neoliberal reforms and blunt the negative market externalities, but with minimal economic disruption.

The ERA was an attempt to reconcile these two philosophies in employment relations. Conditions would continue to be decided within the market and not by the state, but unions would be afforded special status and be armed with additional tools to address the power imbalance between employers and employees. This approach would have a new underlying philosophy of protecting and promoting workers' interests through collectivisation, without compromising individual freedoms (such as through compulsory union membership or national awards) (Deeks & Rasmussen, 2002).

This new period of post-neoliberal politics has been described by some as 'third way' (Nolan, 2010) or at least heavily influenced by the third way philosophy espoused by the British Labour party, in their similar centrist rebirth, which slightly preceded the NZ Labour party's commencement of government (1997 in the UK, 1999 in NZ). As Howell (2004) describes:

"The term 'third way' is used here as a shorthand for contemporary centre-left governments that have engaged in a critique of the central element of post-war social democracy (full employment, an extensive universal welfare state, a leading role for the public sector in the management of the economy and a corporatist relationship with organized labour), and sought to articulate a form of social democracy that is more appropriate to contemporary 'international' capitalism." (p.2)

Although never formally adopted by the New Zealand Labour Party, key foundational policies aimed at promoting economic growth as well as progressive social welfare aligned well with the third-way approach to social policy (Nolan, 2010; Piercy, 2002). Haworth (2004) included the ERA as part of this wider third-way philosophy, of attempting to achieve social

equity through productive employment. The ERA is the state trying to coax employers to the table with work with groups that they would otherwise prefer not to engage with, or potentially work against.

Whether the ERA was third way by design or by proxy is largely irrelevant to this discussion; that is another academic discussion. The only key facet of third-way thinking was a commitment to a) the preservation of individual rights, and a recognition of the need to balance social good with economic prosperity in the economic decisions, including the decisions of employment actors (employers and employees). Much as the third way seeks a new path between Keynesian-style economics and laissez-faire neoliberalism, the ERA seeks a middle ground of diminishing the negative social outcomes of a free-market labour market.

The most apparent third-way approach, both in ER and other areas of government, was the promotion of social partnership. Between 2000-2008, part of the government's plan for improving economic performance and productivity was to move from 'low road' to 'high road' high-performance models, focusing on skill development, firm capacity building, lean manufacturing, and industry Partnerships with central and local government (Macneil, Haworth, & Rasmussen, 2011).

Soft regulation

This desire for a light touch on economic matters effectively prohibited two traditional forms of hard employment regulation; compulsory union membership, and compulsory collective employment. All that remained for achieving union membership outcomes was soft regulation. Soft regulation, sometimes referred to as soft law, is the idea that states can exert influence beyond strict enforceable boundaries, that the governing body can exert influence over others' behaviour through signals of their preferences, without dictated maxims (Druzin, 2017; Levi-Faur, 2011). While recognisable where it occurs, defining soft regulation is difficult, and frequently defined as the opposite of hard regulation (Kuruvilla & Verma, 2006). Hard regulations are precise legally binding obligations, coupled with delegated authorities for interpreting and implementing these laws (Abbott & Snidal, 2000).

Hard regulation is present throughout the ERA and other employment legislation, but stops short of the key focus of this thesis, union membership. Most hard regulation in the ERA establishes the foundations of fair operation of the labour market, such as minimum

requirements for employment agreements (part 6), rules and rights for industrial action (part 8), and the operation of judicial dispute resolution (part 9). These hard legislative requirements are determined by the state and cannot be varied by the parties to the agreement; sick leave cannot be monetised, good faith cannot be set aside via contract, and labour cannot be paid in kind. The role of the state is to identify imperfections in the market's capacity to provide for the public good, and introduces constraints on the market to correct these imperfections. It is in the tension between market freedom and market constraint for social good, that many of the 'yo-yo' amendments have occurred between successive National and Labour governments (Skilling, 2019). Some hard regulations (i.e. specific legal requirements of employment actors) are union protective, such as union rights in the workplace (s18, s26, s41, s55). The ERA's hard regulated requirements include that employment must be agreed in writing, in detail, for cash, with a range of minimal leave requirements, and may not be terminated unreasonably.

As Rasmussen, Hunt, and Lamm (2006) note, this is a modern role of the state as the provider of minimum protections, as many employee rights and entitlements continued to be provided by the law rather than union membership (health & safety, wages, holidays, privacy, personal grievance rights), which removed several historical drivers for union membership. This is consistent with worldwide trends of the state taking on the role of employee protector with the decline of organised labour (Howell, 2020), and has led to academics reframing the field beyond just traditional union-employer relations (Kaufman, 2004).

Once we strip away these prescriptive regulatory elements, we can identify the soft regulatory interventions of the ERA. Reviewing the ERA through the paradigm of soft and hard regulation, and in consideration of the Act's objectives, there is a clear subset of soft regulatory prompts, to promote union membership and collective bargaining. Prominent obligations include Good Faith (under part 5), obligations to continue collective bargaining, obligations to resolve employment problems, and employer requirements to facilitate the union visibility and activity.

By understanding the dual role of the ERA differentiating its hard from soft laws, we can distinguish the two different ideological foundations within the Act. Through hard rules, the ERA sets the role of the state as a benevolent arbitrator of fair labour rules such as stipulating minimum contractual terms, enabling collective agreement, providing employees with access to justice from the state, and effectively prohibiting employment at will. With soft regulation, the state involves itself indirectly to promote desired outcomes, such as requiring

parties to act in good faith, requiring collective bargaining, and encouraging parties to resolve employment disputes directly.

Put simply, soft regulation is woven into the ERA to promote better economic outcomes via union membership. In addition to hard regulation of what is (and is not) acceptable outcomes that actors may come to, the ERA has an assortment of tools that the unions may utilise to achieve power parity with employers and achieve better outcomes for their members. But these tools are 'sprinkled'; scattered throughout the Act without coherent coordination or integration into a single immutable philosophy, and as such are vulnerable to removal by successive governments.

Promoting collectivism

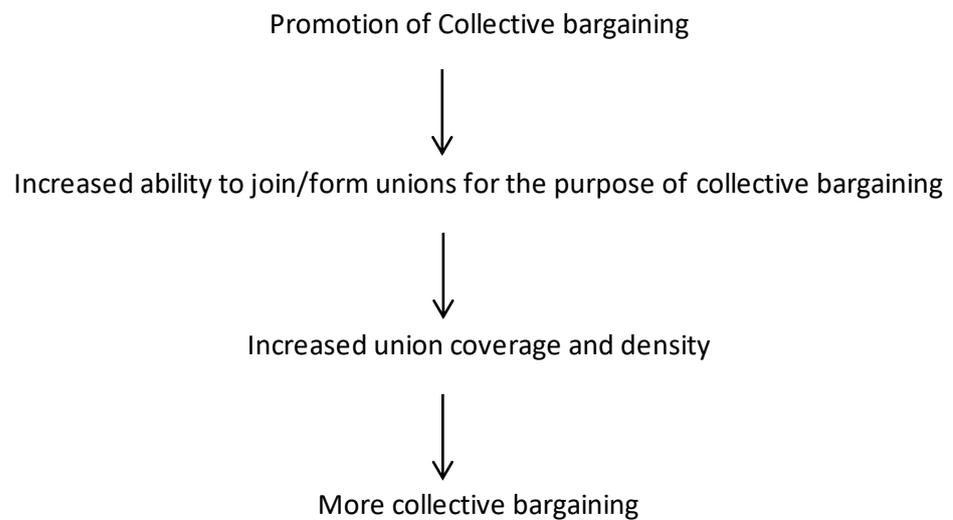
One of the significant desired outcomes is employees being members of unions. Through its support of collectivism but the preservation of individual choice and freedom the state promotes but does not dictate (Rasmussen, Bray, & Stewart, 2019). Through the promotion of cooperation and collaboration between employers and employees (McAndrew, 2006), the New Zealand state seeks foster means for employees to protect their interests through their collectivity (Haworth, 2011; McLaughlin, 2010). With the overall objective of minimising conflict and maximising commonalities, we can see an attempt by the state to steer a middle path between economic efficiency and worker welfare.

Where the ERA is distinct from the prior IC&A model is freedom of association; it preserved the ECA's neo-liberal principle of individual choice to join a union or not. While the ERA gave the unions the monopoly of collective agreements, it remained the individual workers' choice to come under its coverage, either by joining the union or negotiating their own Individual Employment Agreement (IEA). Union success (or survival) became dependent on strong relationships with its member and potential member base, and with employers; under both the ECA (Boxall & Haynes, 1997) and the ERA (Haynes, Boxall, & Macky, 2006).

Although one of the primary objectives of the Act is to promote collective bargaining (s3(a)(iii)), one of the notable features was the lack of hard regulatory measures to promote a significant increase in bargaining density (Anderson, 2012). Instead, the state seeks to promote collectivism through good faith obligations. Waldegrave et al. (2003) in their key report outline the assumptions of the benefits of collective bargaining in the ERA:

Figure 2.

The Benefits of Collective Bargaining



(Waldegrave et al., 2003, p. 25)

How collective would be promoted, was by providing the unions with the sole mandate to form collective agreements, hard regulations to protect their effective operation in the workplace, and good faith behaviour between employers, and employees/unions. Good faith was a soft regulation obligation on employment actors (employers, unions, employees) to act in good faith towards each other (Wilson, 2004). Partnership models of union/employer relations were also promoted through government rhetoric and resources, another soft regulation promoting (but not requiring) specific behaviour (Macneil et al., 2011). As Haworth (2004) notes:

The government's approach to employment relations reflects an explicit commitment to a modern social democratic tradition that recognises the importance of a strong, internationally competitive economy, yet rejects the view

that competitiveness can only be achieved by unitary imposition within the employment relationship. (p.191)

The Success of the ERA

Since its commencement in 2000, the ERA has been somewhat successful, and this section will address how the ERA has been successful, and how it has not met its own objectives of promoting unions, so that unions can be agents for the advancement of the public interest. There is not sufficient scope here to comprehensively review all aspects of the Act (and its multiple amendments), so it is necessary to focus on the key trends and outcomes of union membership over the last twenty years of employment relations in New Zealand.

A new consensus

Perhaps the greatest achievement of the ERA was its relatively unscathed survival of the National government (2008-2017). Despite sixteen amendments, and some contentious issues ‘yo-yo-ing’ in and out with subsequent governments (Skilling, 2019), the majority of the ERA has remained substantially unchanged, indicating a broad political consensus (Anderson, 2012), particularly on the role of unions as agents of public good, by advancing the interests and protections of employees who need it. Many key ‘everyday’ aspects of the law remain unchanged and are now effectively the embedded consensus for the foreseeable future. A strong example of this is fixed-term employment. Under the ECA a fixed term of employment was a contractual term without restriction, leading to some employers utilising this form of employment as precarious employment to avoid legal and financial risk (Brosnan & Walsh, 1998). In 2000 the ERA required employment may only end after a specified time, or on a specified event if the employer has “genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way” (Employment Relations Act 2000, s66(2)(a)). Although there has been no direct research on the effectiveness of this constraint, usage of fixed-term agreements was found to be lower in NZ than in Australia (Campbell & Brosnan, 2005). That this 2000 restraint of exploitative employment practices has continued without amendment for twenty years is an example of the ERA’s durability and consensus.

One key policy decision during the 20 year period of the ERA was the decision by the National Party not to change the ERA wholesale, but only to tinker with key elements considered to be overly prohibitive to economic growth and business flexibility (Le Queux, Rasmussen, Lamm, & Ravenswood, 2016). Nolan (2010) notes an interesting trend in New Zealand's two-party political landscape; that the Labour Party has traditionally been the instigator of all three waves of large-scale political reform, firstly with the welfare state reforms of the first Labour government under Michael Joseph Savage, the second 'Rogernomics' wave of the fourth Labour government, and the third wave (or way) implemented by the fifth Labour government under Helen Clark, all of which were accepted and continued by subsequent National governments with only minor changes.

Unionism in NZ

Although New Zealand employment relations are at equilibrium, it is not an equilibrium the legislation seeks, or at least the legislation under the centre-left governments. Collective coverage is low, and is not an effective mechanism for employees to better their outcomes. Unions as a force for social good and improvement of the disadvantages are less than optimum. Free-loading continues (employees who are not members of the union receiving the benefits of union bargaining because employers are not motivated to give union members more favourable conditions), a tension between employer preferences for homogeneity of employment conditions, and freedom of association. To say it is a crisis is an exaggeration, but the Act is not achieving its objective of promoting collectivism. The hope was that new bargaining rules, good faith obligations, increased union access and bargaining rights would reverse the decline of union density and collective bargaining coverage (Foster et al., 2011).

The core objective of the ERA, the renaissance of unionism has not occurred. Unionism has not substantially promoted and protected the employment outcomes for workers (Feinberg-Danieli & Lafferty, 2007). Despite numerous reforms (the ERA was amended seven times under the 5th Labour government), unionism as a positive social force remains protected, but not promoted. As Blumenfeld and Donnelly (2017) note based on decades of data on NZ union membership and collective agreements:

The ERA brought together a set of legislative requirements and institutional arrangements for employers and employees that would ostensibly

create a more favourable environment for unions and collective bargaining. Yet, after more than a decade and a half under legislation which purports to support the negotiation of collective agreements to regulate pay and working conditions, the share of the workforce covered by them has continued to fall. (p. 124)

notwithstanding the great promise the ERA held for trade unionism and collective bargaining in New Zealand, the share of the workforce whose wages, hours and working conditions were determined through collective bargaining has actually declined from where it stood at the time of enactment. (p115)

Blumenfeld and Donnelly (2017) report that New Zealand has seen a significant decrease in collective bargaining since 1980, with the number of collectives (number of collectives, not total employees covered) decreasing by 28% between 1995 and 2015. By 2017 union density had reduced to 17.3%, down from 42.9% in 1991. While unionisation remained strong across the public sector (59.5%), coverage and union density in the private sector had dwindled (10.3%). If unions are to act as agents for the advancement of the disadvantaged, change is required.

In 2003, Waldegrave et al. (2003) noted the little direct immediate impact of the ERA on the number of collectives; and there was even an immediate decline in the number of CAs due to the expiration of non-union collective agreements (Blumenfeld & Donnelly, 2017; May, Walsh, & Kiely, 2004), although there was an increase in the number of unions, as informal groups were required to formally register as unions (Barry & Walsh, 2007). Rasmussen (2009) attributed this decline in collective agreements in New Zealand to a range of societal and political factors:

- Lack of employer engagement, or resistance to engaging in collective agreements with unions
- Insufficient employee drive to engage in potentially conflictual arrangements (see also Haynes, Vowles, & Boxall, 2005 for younger employee decisions)
- The inability of unions to achieve industry coverage through multi-employer agreements
- The existence of a 'representation gap' where unions are unable to effectively provide or bargain for a collective agreement (see also Haynes et al., 2006)

- Union membership appeal has been inhibited by a tight labour market increasing wages through market forces
- The government increasing standards of employment, reducing the need to fight for them. Examples under the ERA include ongoing real increases in the minimum wage, provision of bereavement leave, an additional 4th week of annual leave, and restrictions of onerous 'zero hour' agreements.

The support for unionism in legislation corresponded with an extraordinary decline in union density in the private sector, with collectivism in New Zealand dominating (and reliant upon) the education, health and social services, and government administration and security sectors (Blumenfeld & Donnelly, 2017). In the private sector, the appeal of union membership has been constrained by a tight labour market and the willingness of employers to pay above inflation pay rises to attract and retain staff, without employees requiring a union to fight for these increases (Foster et al., 2011).

The unions themselves as entities have had to adjust during this period, most notably have been several restructurings of private sector unions, to adapt to the diminishing landscape and ideology. Several private sector focused unions have rebranded themselves and moved away from industry-aligned titles. In 2015, the Engineering, Printing and Manufacturing Union (itself the result of prior mergers in the 1990s) merged with the Service and Food Workers Union to form E Tu. The National Distribution Union merged with Finsec to form First Union. During this period the Unite Union emerged, aiming to organise underrepresented employees such as security guards, cinema and fast food workers (Treen, 2014). Where the private sector unions have been adapting and adjusting to the changing landscape, the public sector unions have remained constant, at least superficially, with few significant mergers or re-brandings over the period.

Broadly speaking, the ERA failed to effect change because it was a compromise of two ideologies and not a new vision. Pragmatic compromise resolves conflict but doesn't drive change. The Waldegrave et al. (2003) report to the government on the immediate impact of the ERA identified substantial resolution of workplace issues, but no significant sea-change in the relations between employers and employees. While some parties reported an improvement in workplace relations (19%), and a few a deterioration (3%), most (76%) reported no significant change in workplace relations. Haworth (2004) notes that while the deep divisions of the ECA had been swept away, consensus was not quite reached, due to deep

divisions in how employment should be structured to contribute to the achievement of social and economic goals.

Employer attitudes

The public opposition by some employers and business advocacy groups during its passing into law was notably vehement and venomous (Rasmussen & Beer, 2000). Aside from the rhetoric, there was a general resistance by employers to engage with the spirit and intent of the ERA. Burton (2004) articulated the NZ Employer's Federation's concerns with the interventionist aspects of the Act:

- Greater centralisation of bargaining, with inflexibility for individual enterprises
- Excessive employment protection
- Collective bargaining to registered unions only
- Amorphous concept of good faith.

Reviewing the new landscape for change, Waldegrave et al. (2003) note several situational barriers to the formation of new collective agreements in the initial years of the ERA, including; unions lacking the resources to target new workplaces, low demand for unions from employees who had low awareness, and employers continuing the practice of passing on. With regard to whether the ERA has seen a change in employers' attitudes, Waldegrave et al. (2003) found some evidence of intentional collective avoidance strategies, including behaviours not in good faith, such as direct communication with staff, offering sign-on bonuses to sign an IEA and supporting the establishment of an in-house union.

Reporting on unions' perceptions of employer attitudes, over half of the unions reported no change in employer willingness to bargain with less than a third perceiving employers to be more willing. But more employers were prepared to sit down and negotiate, whereas before the door would remain metaphorically shut. Where the union had a presence, employers were open-minded to the new regime but with a preference for the old. In the banking sector where the union had maintained a strong presence, employers were mindful of the new environment of the ERA and the need to follow the new rules, but with a strong preference for unitarism (Treanor & Rasmussen, 2003). It is noteworthy that since 2003 the union presence and bargaining power in banking has declined substantially due to increased automation of banking services.

This resulting trend from disruption of new legislation proved to be a shift in behaviour but not attitudes; of employer practices but not beliefs. After 10 years of the ERA, a key study by Foster, Rasmussen, and Coetzee (2013) found New Zealand employers generally:

- Were against collective representation and in favour of direct individual relationships
- Preferred the unitarist approach to setting workplace conditions
- Didn't see union workplace involvement as beneficial and preferred to engage with employees directly themselves
- Saw unions as interfering in the employment relationship, and introducing conflict into the workplace
- Viewed collective bargaining as detrimental to workplace relations, and the performance of the organisation.

This unitarist approach is deeply embedded in the modern HRM school, and is frequently inconsistent with employee preferences for a more pluralist approach (Geare et al., 2014). A notable trend found by Foster et al. (2013) was that many employers have little experience with bargaining and tend to be more resistant to union activity in their workplace, a trend exacerbating as fewer unionised workplaces led to fewer employer agents (i.e. HR professionals) familiar with working with the unions. The trend dates to before the ECA when McAndrew and Hursthouse (1990) found the same resistance to the unknowns of collectivism by employers.

While acknowledging that initial apprehensions by many employers were overblown, Burton (2010) in her further summation of employers' perspectives, described the ERA as ineffective in shifting the paradigm of New Zealand employment relations. Instead of shifting the approach of employment actors, good faith has become just a set of compliance 'tick boxes.

Good faith

As discussed above, a key soft legislative lever to shift the playing field of employment relations in New Zealand was good faith. Good faith was intended to provide the lubricant to reduce friction, and guide behaviours towards those that encouraged good relationships; applying broadly to all aspects of the employment relationships (see part 1 of the Act), and in a more focused manner in collective bargaining.

It was an inauspicious start, with good faith stalling in the starting blocks, as lawyers, courts and the government disagreed over its finer application (see Anderson, 2006a for an analysis of the impact of *Coutts Cars Ltd vs Baguley*). It was left to the judiciary to determine what behaviour could be considered in breach (or bad faith), given the inherently oppositional objectives of two parties attempting to achieve opposing objectives. After some interpretive disputes between the judiciary and the legislature, good faith has primarily settled on employers' obligations to bargain in good faith and to consult with employees and unions in specified circumstances, most notably potential redundancies. However the impact or effectiveness of this consultation obligation is unclear. While legal precedents have established that good faith obliges employers to consult with employees about potential redundancies, it is unclear if this behaviour requirement changes the outcome – soft regulation requiring employers to consider employee inputs doesn't mean that decisions are changed.

Good faith in bargaining. As discussed above, the ERA has not driven (or coincided with) a pluralist renaissance amongst employers. Attitudes formed under the Employment Contracts Act did not shift, although behaviour did; and at the very least it minimised industrial disruption, as employees and unions did not have to resort to industrial action to force resistant employers to the bargaining table (Anderson, 2006b). Waldegrave et al. (2003) reported that nearly half of unions reported that the ERA had made it easier for them to improve bargaining relationships, and although good faith didn't make a significant difference to employers wanting to come to the bargaining table, it did bring employers to the bargaining table.

Initial responses from employers were divided on the direct implication of good faith, but both employers and unions are very aware of good faith obligations (Treanor & Rasmussen, 2003; Waldegrave et al., 2003). Good faith quickly became part of the parlance and language of negotiation, although there was a substantial reluctance to pursue legal remedies for potential breaches of good faith. Unions reported the lack of legislative clarity, no clear gains (either at the bargaining table or in any bargaining outcomes) from pursuing a case, and the risk of a restrictive judicial interpretation frequently dissuaded unions from pursuing employers for breaches of good faith (Waldegrave et al., 2003). Employers and unions sought greater clarity on good faith, but no one wanted to be the test case (Treanor & Rasmussen, 2003).

A further soft regulation accompanied the introduction of good faith, the Collective Bargaining Code; a supporting, non-binding, guideline from the then Department of Labour. It also had an inauspicious start; as a failure by the committee to reach consensus left much for the courts to determine (Hughes, 2001), a solution that required litigation that actors were reluctant to pursue. The collective bargaining code continues to be updated (the latest update being on 6th May 2019), but other than recommending a Bargaining Process Agreement (a pre-negotiation agreement on how bargaining is to be conducted, including issues of dispute resolution, mediation and communication), the code provides little guidance on good faith. Again, there has been little progress on this front, with little academic, political, judicial or media discussions or developments in this area. Waldegrave et al. (2003) reported the code of good faith was of some use, but not often utilised or relied upon.

As well as assessing whether good faith changed the workplace in favour of collectivism, it must also be asked whether good faith remains the force for change it was envisaged to be. It is notable that since 2010 the topic of good faith has gone relatively quiet on all fronts. Few cases have been brought to the judiciary for determinations on good faith, academic publications on good faith have been minimal, and it has not been widely discussed in the mainstream media. It is unclear whether good faith as a soft regulatory tool of change has quietly 'died a death' or whether it has simply bedded-in as the new norm of bargaining behaviour, and, if so, more research on what these new norms are would be greatly beneficial. But, after 20 years of good faith, it appears good faith is no longer a significant force for great change, and new factors for change should be sought.

One of the more politically contentious soft laws promoting collectives has been the obligation to conclude bargaining, which has 'yo-yoed' in and out of the Act between Labour and National-led governments (Skilling, 2019). While not constituting a hard law (i.e. clear requirements or prohibitions on specified actions), it does present a clear behaviour obligation on the parties, particularly the employer. In a 'ratcheting up' of soft obligations to agree to collective bargaining, the 2004 Amendment Act increased the pressure on employers to agree to Collective Agreements; now the "Duty of good faith requires parties to conclude collective agreement unless genuine reason not to" ("Employment Relations Amendment (no.2) Act," 2004, s33). This constituted a strong lean on employers to comply with government policy, but without the hard requirement; employers could still opt to cease bargaining if they could provide justification. But again enforceability of soft regulations was deferred to judicial interpretation; determining what constituted a 'genuine reason' was left to the courts, and

required a union to finance pursuing that case despite substantial legal uncertainty. This obligation was removed in 2014 under the National government and reverted to “duty of good faith does not require collective agreement to be concluded” (“Employment Relations Amendment Act 2014”, s33), only for Labour to reinstate the 2004 obligations again in the Employment Relations Amendment Act 2018.

But these behavioural obligations have not necessarily changed attitudes toward employment relations, or even necessarily employment outcomes. Employers' criticism of good faith is that it has been reduced to a checklist of ‘dos and don’ts’, rather than a meaningful shift (Burton, 2010). There are clear parallels with good faith legal precedent from North America, from which many good faith concepts were borrowed (Anderson, 2006).

Good faith bargaining was established in the USA with The National Labor Relations Act 1935; 85 years of legal precedent have evolved supplementary legal concepts, including ‘surface bargaining’ and ‘hard bargaining’ (Compa, 2014). Where hard bargaining recognises parties may engage in robust negotiation, surface bargaining is going through the behaviour of bargaining, with the hidden goal of never reaching an agreement. Presently New Zealand judicial precedent has not developed in this direction, although it would appear there is scope for this in the future.

Failed partnership

Another soft regulatory initiative was the promotion of partnership relationships between employers and unions. Introduced in tandem with the ERA, and supported through the Partnership Resource Centre (PRC) from 2004 to promote and encourage the adoption of the partnership relationships between unions and employers (Purcell, 1993). Although there was strong initial interest, formal uptake was limited, and primarily only in the public sector, and with the election of the National government in 2008, state commitment weakened (Macneil et al., 2011). While soft regulation was effective in promoting new perspectives and encouraging parties to explore alternative approaches to how they approach industrial relations in their workplace, ultimately it didn’t substantially result in a shift in the employment relations landscape for the following reasons:

- The arguments and evidence of potential productivity gains took time to develop
- Policies were inconsistent and implemented in a piecemeal fashion

- Buy-in outside of partner members waned, with management teams mainly wedded to unitarism, and union members inexperienced in arrangements
- Low union density reduced the potential for engagement in the private sector
- Commitment was hard to sustain and subject to disruption from changes in key personnel
- National union consensus wasn't universal- while the CTU was onboard, not all unions were.

(Macneil et al., 2011)

Soft Regulation

Hard regulation of employment relations, specifically the promotion of collectivism, is presently an unpopular prospect in New Zealand. In the current discussion of Fair Pay Agreements (a proposed mechanism for sector-wide bargaining and minimum employment conditions), the spectre of 'compulsory unionism' is frequently drawn upon by its key detractor, the national employers union, BusinessNZ (Coughlan, 2022). Although Fair Pay Agreements do not constitute mandatory unionism, such dialogue informs us that at least BusinessNZ perceives New Zealanders would be concerned by any such constraint on their freedom of association.

So, in the present New Zealand political zeitgeist, the promotion of unionism is largely constrained to soft regulation. But has the ERA been successful in promoting its objectives through soft regulation? This is an unavoidably subjective question, as without clear benchmarks, what constitutes success varies from individual to individual, but we should at least consider whether a) soft regulation is the best way to promote collectivism, and b) whether the right tools of soft regulation have been deployed by the Labour governments.

Presently soft regulation has been used throughout the OECD for the promotion of collectivism. Across the OECD, centre-left government employment relations policy utilised a range of soft regulatory tools to promote unions while preserving freedom of association (Kuruvilla & Verma, 2006), including the UK (Stuart, Martínez Lucio, & Robinson, 2011), Australia (Baccaro & Howell, 2011), and the EU (Jacobsson, 2002). Union revitalisation will be discussed further in Chapter 4, however it is important to establish that revitalising unionism has been an important objective of many left-wing political parties in the OECD (Ackers, 2015),

but these policy objectives have frequently been sought through soft regulation. Whether it is sufficient is of considerable debate, however it is a popular approach.

In New Zealand, these soft regulation prompts failed to rejuvenate unionism. Declining union membership, particularly in the private sector, (Blumenfeld & Donnelly, 2017), declining collective agreements, and employer antipathy to collectivism (Foster et al., 2013) demonstrate a failure to achieve the objective of the Act to build productive employment relationships by promoting collective bargaining. Promotions of collective agreements through partnership, obligations to conclude bargaining, and good faith bargaining codes have not shifted workplace practices towards increased collective bargaining.

However, it must also be noted that laws not only regulate what is permissible but also play a significant role in determining socially acceptable behaviour. Rangone (2017) demonstrates legal regulations not only establish prohibitions on specified behaviour but also strongly influence social acceptability of that and associated behaviours. Decriminalisation and legalisation demonstrate this well; neither results in punishment, but a decriminalised behaviour still remains formal 'against the law' and therefore less socially acceptable, as the state's position on the behaviour has a significant influence on social acceptance (Rangone, 2017).

In this regard, the soft regulation of the ERA likely influenced employment norms. While direct comparative studies are few, the predatory employer practices of the ECA (see McLaughlin, 2000) appeared to have diminished, notwithstanding the ongoing exploitation of migrant workers (Anderson, 2014). While unionism may not be rejuvenating, the signal from the state of the need for employment relationships to be based in good faith shifted workplace norms such that certain unitarist employers practices (such as undermining the union) are outside of employer and employee expectations of acceptable workplace behaviour (Treanor & Rasmussen, 2003).

From 2000 to 2018, the soft regulatory tools the ERA utilises did not significantly achieve the objective of promoting unionism to build productive and mutually beneficial employment relationships. The 2018 amendments have seen a reinstatement of prior soft regulations (e.g. obligation to conclude bargaining, 30-day new employee coverage) but it is unclear whether these will influence collective bargaining outcomes. An additional soft regulation has been introduced that is a focus of this research – the provision of new

employee information to unions. This is will discussed further but this research proposes that this soft regulation approach aligns well with a specific form of soft regulation, nudge theory, that has the potential to be an innovative form of influencing employment decisions and outcomes.

Summary

As outlined in Chapter 1, this research explores the impact of the s62a amendment both on employees and workplace relations. The key conclusions that should be taken from this chapter are:

- The present condition of the wider existing New Zealand legislative employment relations framework seeks to support unions
- But the consensus (both politically and socially) is that unions should not be directly propped up by the state by direct regulation, such as mandatory union membership
- Hard regulatory tools that impinge upon an individual's freedom of association have so far been left alone, and are unlikely to be viable tools in the foreseeable future
- The present soft regulatory tools are not revitalising unions in New Zealand; there are other attempts at revitalising unions, but there is scope for more soft interventions to improve collectivism.

The policies of those seeking to advance the embedded objective of the ERA (i.e. the Labour Party) have utilised soft regulatory tools to promote unions as means to improve working conditions, but these soft regulation supports to date have proven insufficient. The regulatory interventions deployed by the state to prompt employer and employee choices towards collectivism have not affected meaningful improvements in collectivism. With employers creating a somewhat hostile environment and a wider cultural resistance to returning to any direct promotion of unions, the New Zealand context needs new solutions to the ongoing and tenacious issue of union decline. Are nudges one such new solution?

Chapter 3: Nudge Theory

So what is nudge theory? Specific definitions are discussed further below, but a simple initial explanation is that it is a tool to influence peoples' decisions towards what is considered the better option; what they would consider a better option if they stopped and thought about it. It is both revolutionary and common sense; because whilst so much of modern democracies are founded on principles of individual liberty and the right of citizens to act freely without influence or coercion from government or businesses, such choices are not free from influence. And influencers abound, whether government, familial, marketers or self-appointed social media personalities. Many of our decisions are subject to soft and subtle influences; nudge theory proposes to influence important decisions in the right direction.

That governments seek to influence our behaviour is not new or revolutionary. Whether it is setting interest rates, energy usage labelling, or drink driving campaigns, government intervention in human decision-making is prevalent in all societies, currently and for the foreseeable future. The means and extent of this intervention is an issue grappled with by modern democracies. How big 'big government' should be, varies from country to country, and what is too much or too little, varies from society to society. A current example of this is the wearing of masks in the USA to prevent the transmission of the Covid-19 virus, where voluntary compliance to the Centre of Disease Control recommendation to wear face masks in public is limited, partially due to distrust in their government (Haischer et al., 2020; Lehmann & Lehmann, 2020).

In contrast, mask-wearing in China and South Korea was commonplace and apolitical (Leung, Cheng, Lam, & Migliori, 2020). As discussed in the paternalism section below, the extent of paternalistic involvement by the state in the lives and choices of their citizens varies across a broad spectrum. But, given there are no current liberal anarchic states, all political states place restrictions and requirements on individual freedoms and choices, whether it is a requirement to contribute to communal goods such as roading, defence, education or healthcare, or discouragement of behaviours deemed to be against the best interests of the individual and/or society, such as smoking or recreational drug use.

Nudge theory is a social policy tool to influence behaviour. Nudge theory falls into the category of soft regulation which seeks to influence and persuade, rather than to mandate and punish non-compliance (as discussed above). Nudge theory is not novel as a tool of

government to affect society but it is novel in its conception of the decisions it seeks to influence, and its method of influencing those decisions (Sunstein, 2014).

Nudge theory is founded on behavioural economics, which draws its foundations from cognitive psychology as well as the philosophy of logic (Sunstein & Reisch, 2017). While assuming individuals will seek to apply logic and rationality to their decisions and optimise them to their best interests, behavioural economics recognises the limitations of the cognitive processes utilised, and that limitations or inherent biases can lead to poor decisions (Simon & Tagliabue, 2018; Wilkinson & Klaes, 2017). On the premise that decisions can be flawed, nudge theory proposes to fix them. Nudge theory advocates altering the environment in which a decision is made (the choice architecture) so that cognitive biases are either enlisted or counter-acted, to avoid decision outcomes not in the individual's best interests (Thaler & Sunstein, 2008a). Nudge theory advocates the use of nudges; shifts in the choice architecture (the context in which the decision is made), such that decisions are more likely to be made that are more favourable to the individual, but that they are still practically free to decide contrary to the nudge should they so choose (Thaler & Sunstein, 2008a).

Definition of a nudge

Defining a nudge is easier than most; the authors of the theory have been esteemed, prolific and consistent in nudge discussions. From their early work in the early 2000s to the seminal book *Nudge: Improving Decisions about Health, Wealth, and Happiness*, Thaler and Sunstein have remained productively in the nudge debate, responding to critics, questions and applications. Their initial definition of a nudge is: "any aspect of the choice architecture that alters people's behaviour in a predictable way without forbidding any options or significantly changing their economic incentives" (Thaler & Sunstein, 2008a, p. 6).

A nudge "tries to influence choices in a way that will make choosers better off, as judged by themselves" (Thaler & Sunstein, 2008a, p. 5).

Hansen (2016) defines nudges with a more detailed account of the role of cognitive psychology:

“Any attempt at influencing people’s judgment, choice or behaviour in a predictable way, that is made possible because of cognitive boundaries, biases, routines, and habits in individual and social decision-making posing barriers for people to perform rationally in their own self-declared interests, and which works by making use of those boundaries, biases, routines, and habits as integral parts of such attempts” (p. 4).

Oliver (2013) provides a plainer parlance definition; “Nudge is a non-regulatory approach that attempts to motivate individual behaviour change through subtle alterations in the choice environments that people face” (p.685). After 11 years of debate, discussion, application and misattribution, Sunstein (2019) describes how he sees nudges fitting in the world:

“Nudges are interventions that preserve freedom of choice but that nonetheless influence people’s decisions. A reminder is a nudge; so is a warning. A GPS nudges; a default rule nudges. Disclosure of relevant information (about the risks of smoking or the costs of borrowing) counts as a nudge. Save More Tomorrow plans, encouraging employees to sign up to give some portion of their future earnings to 401(k) programs, are nudges. A recommendation is a nudge. A criminal penalty, a civil fine, and a subsidy are not nudges, because they impose significant material incentives on people’s choices” (p.3).

Since its proposal in 2008, there remains strong consistency on what is a nudge, but there is strong specificity. Since 2008, there have been many inappropriate applications of the new buzzword, ‘nudge’ to a wide range of initiatives, so one must be cautious to label accurately, and not apply the nudge label to any form of social policy prompt (Mitchell, 2017).

Therefore it is important to identify the key mandatory aspects of a nudge:

- Nudges shift the choice architecture (the environment in which people make their decision) (Thaler, 2018)

- These shifts are in a pre-determined manner, in favour of a pre-determined favourable outcome
- The 'favourability' of the outcome must as judged by the intended recipient of the nudge (hereafter may be referred to as the 'nudgee') themselves. What is a good outcome is unavoidably dependent on personal values, so nudges can only lead to outcomes that are better from the perspective of the nudgee or its reasonable assumption that the nudgee would consider the promoted outcome to be the favourable one (Sunstein, 2016b)
- The nudge must be easily avoided. Should the nudgee determine that the promoted outcome to not be their best outcome, they must be freely and cheaply able to ignore, or act against the nudge. There should be no disadvantages placed upon them from the nudge when they choose against the nudge (Thaler, 2018)
- Nudges overcome cognitive constraints (such as cognitive biases), to allow us to make good decisions. Hansen, Skov, and Skov (2016) not nudges also utilise these constraints, and although it is common to utilise biases to overcome biases, it is not a requirement
- Nudges reduce the friction of making the preferred choice. Nudges disable barriers or reduce impediments to taking the option the policy seeks to promote. A distinction has been proposed by some between 'nudges' and 'sludges', where nudges seek to reduce friction to promote the preferred option, whereas sludges seek to increase the friction to the non-preferred option (Mills, 2020). Sludges are somewhat anti-nudges, and debate continues on the merit and justification of sludges as valid actions (Mills, 2020).

An important aspect of nudge, not explicitly identified by nudge theory, but discussed by its critics, is tones of indecision (Mitchell, 2004). In many situations, individuals lack stable and well-defined preferences and in this state of ambiguity, or indecision, can be nudged towards the preferred outcome. This is embedded in the idea of antecedent preference (discussed below) – that a set mind (where attitudes, opinions and preferences are clear and determined) will resist a nudge; whereas an open mind (where attitudes, opinions and preferences are not determined or fixed) is more 'nudgeable'.

Types of Nudges

So what types of nudges are there? Nudges shift the architecture, but there is a range of ways in which they do that. Sunstein (2014a) proposes 10 types of nudges, which are

outlined below. To bring nudge theory closer to the ER focus of this thesis, their potential application to union membership decisions is mooted below for each type.

The *default nudge* changes the default of the decision to the preferred outcome. It shifts the passive outcome (if the individual does nothing) to what is deemed the better outcome. It both counteracts and utilises the status quo bias (where irrational preference is shown towards the present situation). It is this nudge that Kiwisaver, and the s62a process, are analogous to.

Reminders are nudges that remind that the decision needs to be made. Similar to the default nudge, it seeks to counteract the status quo bias, albeit in a less directive way, by reminding that a decision still needs to be made and prompting an active decision over a passive one. For union membership decisions, this could involve reminders to new employees who had not made their union decision.

Simplification is the reduction of complexity in decisions, and decision factors. A more subtle nudge, it counteracts both the framing effect (where the complexity of the message creates a negative framing) and status quo bias (where the 'do nothing' option is more appealing due to the complexity of the decision). In employment relations, this could be the simplification of the collective agreement, which is frequently a complex document, or a summary sheet thereof.

Use of social norms is making deciders aware of the norms applicable in the decision; what most people decide to do. This makes use of the social desirability bias, where individuals are swayed by the decision behaviour of others. It is a nudge frequently utilised in tax compliance (most people pay their tax when it is due to avoid penalties). In union membership decisions, this would be informing employees of current membership levels (e.g. 20%, 50%, 80% of people are members of the union).

Increasing ease and convenience is reducing the barriers to the preferred option, and potentially placing those barriers in the way of the alternative options. This utilises the satisficing bias, where decision-makers opt for the first available sufficiently satisfactory option. Research demonstrates the effectiveness of this nudge with food choices, such as placing healthy options in more noticeable and convenient locations (e.g. on the middle shelf) instead of less healthy options (Wilson, Buckley, Buckley, & Bogomolova, 2016). Nudging union

membership in this manner could be the automatic scheduling of a meeting with the union representative for all new employees.

Warning nudges are commonly seen in NZ and many OECD countries on cigarette packages; graphic and dire warnings of the potential outcomes of a decision. The framing effect bias is heavily used here, where one option is loaded heavily with negative framing. In membership decisions, warning nudges could be advising the employee of the potential outcomes of non-membership, such as decreased pay increases or less management accountability.

Disclosure is the requirement that all information related to the decision be disclosed, such as hidden or obscured costs, in a clear and comprehensible way. This is more of a restraint to the framing effect, removing positive framing that is potentially misleading. Regulations around loan disclosure contracts which inhibit oversimplification and obfuscation of overly onerous contractual requirements and potential penalties are examples of this.

Pre-commitment strategies are nudges that require deciders to pre-commit to a course of action (e.g. stop drinking, lose weight, quit smoking), prior to the decision point. In union membership decisions, this could be requiring the employee to pre-commit to a decision before the commencement of employment (e.g. by receiving an 'intention to join the union form in their pre-employment induction pack).

Eliciting implementation intentions include soliciting individual intended course of action (e.g. do you plan to vote?). Similar to pre-commitment strategies, this could involve soliciting new employees about their intentions on commencement of employment, without requiring the decision be made at that point.

Informing people of the nature and consequence of their own past choices are nudges that inform people of how their prior decisions have worked out for them, such as unnecessary expenditure due to late payment.

Theoretical paradigms of decision-making

To understand nudges, it is necessary to understand their foundational understandings of human behaviour. Nudge theory assumes limitations in decision-making processes, due to

limitations in rationality due to human cognitive processes. While humans are capable of rational and sensible decision-making, humans' utilisation of heuristics can lead to poor decisions. Nudge theory seeks to overcome such cognitive limitations by counteracting them to produce better decision outcomes for the decider.

Rationality

A fundamental question when considering decisions is to understand how we process information to determine relevant factors, weigh their importance, and reach determinations of what proceeding actions we will take. Intellectual considerations of both rationality and logic date back to classic Greek philosophy, to categorisations of rationality by seminal sociologist Max Weber (Kalberg, 1980). Although a broad academic field of study, we must touch briefly on the traditional assumptions of rationality, and how rational decisions were considered to be made, and the new models of bounded rationality.

To consider what is rational and irrational is to enter the intellectual labyrinth of reason and logic and the philosophical debates of what constitutes rationality. What constitutes rational behaviour and rational decision-making is dependent on what assumptions and values one brings to the decision and the potential outcomes, an issue especially prevalent in any political discourse (Abulof, 2015). This does open the potential of relativism; that all decision outcomes are valid outcomes if they were logical at the time, or 'in the moment'. But we need some certainty of what is a rational decision and what is an irrational decision. As rationality is considered the quality or state of being agreeable to reason, and reason is the application of the laws of logic to make sense of things (Kompridis, 2000), we reach this position: a decision is rational if it is internally consistent with logic, i.e a sound argument. A sound argument is when each premise utilised is correct and accurately connected to reach the resulting conclusion. In this way, an observer (who may value the decision criteria differently) may feel the decision was the wrong one, but not irrational. Alternatively, a decision may be irrational if it is internally unsound, regardless of the suitability of the outcome.

Rational decisions constitute the evaluation of relevant decision factors and applying valid logical reasons to reach a decision based on the weighing of those factors and, while we may not agree with those factors or the weight given to them, such a decision should not be held to be irrational. To give examples of this, let us return to the question of retirement

savings. A 25-year-old may choose to opt out of enrolment into a savings scheme, weighing the factors logically to conclude the money is best devoted to her artistic hobby to turn it into a potential career. This may be more rational than enrolling because her mother told her to; as whether a decision is rational or not is not dependent on the outcome, but on the process by which it was derived. Good outcomes may be reached irrationally, and bad outcomes may result from rational decisions.

Bounded Rationality

Bounded rationality is an assumption from the behavioural school of economics that human rationality is limited by; the tractability of the problem, the decision-making environment, and the cognitive processes of our evolved brain (Gigerenzer & Selten, 2002). To date, cognitive psychologists have identified 110 cognitive biases in human decision-making processes where human decision processes led to errors in judgement, ranging from status quo bias, selection bias, and hindsight bias, to the hot-hand fallacy. Put simply, humans are rational in principle but err in practice.

Bounded rationality is a foundational assumption of behavioural economics, which is the theoretical underpinning of nudge theory (John, Smith, & Stoker, 2009). Behavioural economics does not advocate non-utility maximising decision making but instead recognises their existence, describes its causes, and thus validates attempts to influence them. It posits that our traditional assumptions of human behaviour, characterised (and often satirised) as *Homo economicus* should be reconsidered (Mathis & Steffen, 2015). "Many economists hoped that their discipline could be similar to a natural science, and constructed assumptions about the nature of the mythical homo economicus" (Oliver, 2013, p. 670). How people decide and choose was not a major concern, and assumptions were founded on logic, instead of human psychology. Bounded rationality is not the discarding of rationality, but more the recognition of the human brain as an organic entity, shaped through evolution to be fit to make decisions in a range of situations, from investment choices, or under urgency; such as losing one's life or limb to a predator (Dudey & Todd, 2001).

Bounded rationality acknowledges that full rationality is not always brought to bear on a question. Due to not only the constraints of the decision and the context in which it is to be made but also by limitations of the human mind, due to flaws in the cognitive processes employed (Kahneman, 2003). It proposes that decisions may be made sub-optimally, and may

lead to a sub-optimal outcome for the decision maker (Thaler & Sunstein, 2008a). It is important to note that the criteria for whether an outcome is 'good' are consistently viewed from the perspective of the decision maker, not a third party. The individual is the ultimate judge of whether a decision outcome was good or not.

Gigerenzer (1997) notes that bounded rationality is not irrational; that constraints on decision-making do not automatically invalidate the decision made. While greater rigour may result in better decisions, it is not always practical or prudent to gather and process all decision factors, and not doing so, does not always result in irrational decisions, as the human mind utilises a range of heuristics to process information quickly. As Gigerenzer (1997) argues "that models of bounded inference do not necessarily have to forsake accuracy for simplicity, nor rationality for psychological plausibility – the mind can have it both ways" (p.11).

Bounded rationality allows us to seek and redress errors in decision processes instead of decision factors. Cognitive functions of the human mind frequently utilise efficient shortcuts, but these shortcuts can go awry (Kahneman, Slovic, Slovic, & Tversky, 1982). Bounded rationality proposes that bounded decisions may be made sub-optimally, and may lead to a sub-optimal outcome for the decision maker (Thaler & Sunstein, 2008a).

Nudge theory does not share these assumptions of strict rationality, but instead its foundations are in bounded rationality. If this research is to test this theory, it is necessary to consider this difference in assumptions, and any potential new insight that could be found from this alternative approach to understanding union membership decisions.

Union membership decisions

When we apply these two paradigms to the decision of union membership, it brings forth the question; do employees considering union membership do so with rationality or bounded rationality? The literature on union membership decision-making literature is discussed in more depth in Chapter 4; however given the importance of this question to this thesis, it is best to touch on it here. Because should we assume rationality of decision making, we assume that employees apply their minds consciously and cognitively to the weighing of factors they perceive to be relevant to the question (these factors are discussed in depth in Chapter 4). If we assume bounded rationality, we can accept these cognitive processes may occur, but also that the less rational processes (i.e. cognitive heuristics) may alternatively

occur. To put it simply, bounded rationality provides a wider explanatory capacity to decision-making processes, and decision outcomes (Dhami, Al-Nowaihi, & Sunstein, 2019; Figueira & Martill, 2021; Gigerenzer, 2020).

It is important to note that it is not assumed that union membership is a rational decision, and not joining is not rational. It is likely that not joining the union is a rational decision in many circumstances, potentially in the vast majority of decisions, and it would be easy to fall for the ideological 'trap' of assuming collectivism is best for all.

But potentially there is a gap; that some membership decisions result from a 'poor' process by the decision makers; that their decision was made quickly, intuitively and with cognitive bias that may not be in their best interests as judged by themselves. This research seeks to explore the existence of this gap, explanations for this gap, and the suitability of nudge theory as a social policy remedy. This section will explore this alternative paradigm across three key aspects: rationality, behavioural economics, and behavioural sciences. Nudge theory doesn't share these assumptions of strict rationality, but instead shares its foundations in bounded rationality. If this research is to test this theory, it is necessary to consider this difference in assumptions, and any potential new insight that could be found from this alternative approach to understanding union membership decisions.

Dual Process Theory

Strongly associated with bounded rationality, behavioural economics, and a nudge theory is dual process theory which is necessary to overview as it not only forms a foundation for these schools of thought but is also key to the ethical critique of nudge theory. Dual process theory is both a cognitive psychology model of human thought but also a framework for moral psychology. It posits that human thought can be processed through one of two systems, system one or system two.

System one is the fast processing system, where information is processed quickly, efficiently and reflexively. It is strongly associated with intuitive and instinctive thinking, immediate impulses and inclinations, fear, and anger (Kahneman, 2003; Sunstein, 2014) It is an evolved method of providing quick answers to immediate questions. While more efficient, it is more prone to error, and is susceptible to cognitive biases and bounded rationality

(Kahneman, 2003). Fuzzy Trace Theory also demonstrates that system one is very effective at memory formation and retrieval (gists) but prone to errors (Brainerd & Reyna, 2019).

System two is the slow, calculative, and analytical thought process, where logic, rationality and weight are applied to the question at hand (Kahneman, 2011). Sunstein (2014) likens it to Spock from Star Trek; all reason and rationality, and taking the required time to make the best decision. To further expand his analogy, system one is not unlike Captain Kirk; intuitive, quick thinking, and capable of achieving good outcomes in the heat of the moment, but not without occasional errors.

In operating their way through the world, humans switch between these two modes as the situation and the circumstances allow. It is simple to identify several routine daily decisions that follow more system one pattern; what to eat for lunch, which route to drive, what to wear; all decisions that can easily be processed on this instinctive level; what looks appetising, your normal route to work, what's on top of the draw, and doesn't clash with other clothing you've grabbed first.

Nor is it hard to envisage how these decisions can be upgraded from system 1 to system 2, from instinctive to deliberate. A new diet will lead to new decision factors when making lunch choices (such as nutrition, calories, satiety); a long distance and unfamiliar journey will result in more conscious attention to details (e.g. street signs, road conditions, checking oil levels); a job interview or first date will change decision processes on clothing and the resulting appearance. These are all similar decisions but upgraded from system 1 to system 2.

Behavioural Economics

It is important to bring these theories together, to understand their connection and relevance. Research into human decision-making is demonstrating that humans process information in two forms: one slow, deliberative, and more rationally, the other quicker, more efficient, but prone to errors and occasional bad outcomes. Behavioural economics integrates human behaviour into economic models, providing a more accurate understanding of real-world choices, and away from the intuitively flawed model of *Homo economicus*. Through more realistic psychological foundations, behavioural economics increases the explanatory, and predictive power of economics (Camerer, Loewenstein, & Rabin, 2004). In behavioural

economics, we find our underlying assumptions of economic behaviour founded in human psychology, rather than the enlightenment philosophy of David Hume and Adam Smith. Harcourt et al. (2021) have already noted its better explanatory power for market failings, and how unions can act of forces counteracting these failures.

But behavioural economics is not a cohesive theory; and, due to the complexity of human behaviour, it is unlikely that it will be, without a full scientific mapping of human behaviour. As such it lacks the internal validity of classical economics where rules and laws interact neatly with physics-like precision, but has great external validity. Oliver (2013) recommends a flexible approach: behavioural economics may best be thought of as a box of tools – a set of systematic behavioural patterns – that can be used to enrich our understanding of human decision making, and thus potentially allow us to improve the design of public policy on a context-dependent case by case basis (p. 670).

It's probably too soon to know whether it constitutes a Kuhnian (1962) paradigm shift, although it has the potential; the study of *Homo sapiens*, rather than *Homo economicus* (Altman, 2015; Thaler & Ganser, 2015). Wilkinson and Klaes (2017) suggest that while behavioural economics currently sits apart as an alternative approach, it is likely to be absorbed and synthesised into mainstream economic theory.

Cognitive biases

As outlined above, the fundamental shift between classic and behavioural economics is the reliability of the rationality of people. If people are not perfectly and reliably rational, we could (and should) nudge them when they make errors. It is important therefore to consider how they make errors – their cognitive biases. As noted above, there are presently 110 observable biases, but this thesis will just cover those relevant to nudge theory and those biases that potentially could occur in union membership decisions.

A notable early example of bounded rationality is *satisficing* (Simon, 1956). A decision-making strategy of searching through potential solutions until an acceptability threshold is met; reaching a suitably acceptable decision (frequently the first) rather than one that is fully explored and optimised. A pertinent example is shopping behaviour; some shoppers will explore all options to buy the best option (maximisers), whereas some shoppers are willing to settle on the first 'good enough' option (satisficers) (Chowdhury, Ratneshwar, & Mohanty,

2009). There is potential for this to occur in union membership decisions, with new employees seeking sufficient information to make their decision, but not conducting a comprehensive review of all information, such as seeking the opinion of a few people (e.g. the training buddy, their manager, or the union representative) rather than all available information.

Availability bias is the over-valuing of information that is more readily available, frequently due to its greater capacity to be recalled (Lambert, 2017). If a decision factor is easily introduced, it is more likely to bear weight. When deciding whether to join the union, social norms may be over-represented, as to whether your friends, family and colleagues are union members, or is more available for consideration than more complex factors, such as financial pros and cons.

Optimism bias is the cognitive bias that the individual is less likely to suffer a negative outcome than is objectively likely (O'Sullivan, 2015). There is a tendency to overestimate one's capacity to handle a situation, or undervalue the capabilities of those who suffer negative outcomes (Shepperd, Carroll, Grace, & Terry, 2002). There is potential for this bias in membership decisions, should individuals over-estimate their capability to avoid circumstances where they would require union support, or to procure their fair remuneration. Optimism bias may lead new employees to over-estimate their capacity to establish a positive employment relationship with management, procure pay rises and/or promotions, and avoid unfair treatment.

Conversely, there is the *pessimism bias*, that the individual is more likely to suffer a negative outcome than objectively likely (Shepperd et al., 2002), which would feasibly increase union membership. The prevalence and frequency of these biases in union membership decisions is a topic for future research.

Status quo bias is one of the most prevalent biases both counteracted and utilised by nudge theory. Status quo bias is the preference for the present state of affairs, rather than an objective evaluation of alternatives available. A 'better the devil you know' bias, where individuals are more likely to stay with one option if that option is their present reality (Kahneman, Knetsch, & Thaler, 1991). Nudges both seek to overcome this bias, but also utilise it; one of the more common nudges, the default nudge, utilises this bias by setting the status quo as the socially preferred outcome. This can be demonstrated with Kiwisaver; before the enactment of the Kiwisaver scheme, the default was not to have a superannuation saving

scheme. New Zealanders were more likely to not save for retirement, as this was the status quo. The default nudge of automatic enrolment set the status quo to save for retirement and thereby increase superannuation saving. The prevalence of this bias in union contact decisions (to talk to the union or not), and the potential utilisation of a default nudge is the focus of this research.

The framing effect is another notable potential bias that may occur when the decision is influenced by how it is framed, with positive or negative connotations (Tversky & Kahneman, 1981). The effect demonstrates that how decisions are presented influences the outcome, and as such the rationality applied to decisions is potentially faulty if decisions were made with pure rationality, the decisions would be made on the value of the factors to the decider, irrespective of how the factors were presented and framed. The real-world examples of this effect are demonstrated resoundingly in all marketing and branding, with the presentation of the decision factors influencing the decision factors themselves.

The framing effect is a bias that we regularly encounter, where options are presented with positive or negative connotations, connotations which influence our perceptions of these options (Plous, 1993). The framing effect plays a key role in nudge theory, not just a bias to nudge with, or nudge against, but also it factors heavily in the justification of libertarian paternalism and the validity of influencing decision frameworks (to be discussed further below). The framing effect demonstrates influence on the decision by how it is framed and leads to questions of whether unframed decisions exist. Thaler and Sunstein (2003) argue the effective non-existence of a neutral, unframed decision, and that if the decision is to be influenced by its presentation, it is both legitimate and acceptable to frame in a manner beneficial to the individual. In employment relations, the question of framing effects is an interesting one; that a decision could be influenced by how it is framed begs research into how a union membership decisions are framed in the workplace, and whether employers influence union membership decisions (intentionally or otherwise) by how they present them. For the purpose of this research, it is noteworthy that s62a specifies the framing by requiring the government form to be used.

Social desirability bias is a preference to conform (or appear to conform) to social norms (Krumpal, 2013). Decision makers are more likely to opt for decision outcomes consistent with other members of their group or peers, and less likely to decide contrary to these perceived group norms.

The Nudge Debate

Nudge theory has been well discussed and debated, with issues and concerns that inform any consideration of nudge theory in employment relations policy. These key areas are overviewed in this section, focusing on how the literature to date can inform the suitability of nudge theory to employment relations. First, is discussed the philosophical foundations of nudge theory, libertarian paternalism, and then the ethical concerns that have been raised regarding nudge theory. The literature to date demonstrates that nudges can be effective, and can be explained; humans can be nudged to make better decisions. But, like all science applied to the world, we must ask if it should be. In this section, the key debates on the ethics of nudging are discussed, with a focus on finding guidance on the applicability of nudge to employment relations decisions.

Libertarian Paternalism

Better modelling of human behaviour is all well and good; but whether we should harness it is a different question. Nudge theory is the utilisation of human constraints by one actor to influence the choices of a population; it is dangerously close to ‘playing big brother’, the infamous Orwellian symbol of state overbearance. Considering nudge theory requires consideration not only of how we could change behaviour, but also if we should.

In conjunction with nudge theory, Thaler and Sunstein (2003) proposed a complementary political philosophy, of libertarian paternalism. Although presently heavily associated and intertwined with nudge theory (Hansen, 2016), it is a separate answer to the separate question. If nudge theory addresses whether decisions can be nudged, libertarian paternalism is the political philosophy addressing whether you should. As Mitchell (2017) describes it; “under the philosophy of libertarian paternalism, a person in power seeks to create policies that steer people toward outcomes that should promote their welfare but also allow people “to go their own way” (p. 695).

The beauty, complexity, and difficulty of libertarian paternalism is its oxymoronic nature. The contradiction of Libertarianism, which seeks maximisation of freedom without restriction or compulsion (Woodcock, 2018) and paternalism, the limitation of that freedom for their own good without consent (Dworkin, 2015). But this contradiction cannot be set aside

easily, and the inherent tension between these philosophies cannot lightly be remedied. While Thaler and Sunstein have frequently addressed criticism head-on (their seminal 2003 article is titled “Libertarian paternalism is not an oxymoron”) so have their critics; for example Mitchell (2004), “Libertarian paternalism is an oxymoron”; and Veetil (2011), “Libertarian paternalism is an oxymoron: An essay in defence of liberty”.

It is important to note that as to political philosophy, libertarian paternalism cannot be proven; no more than a free press, or isolationism can be proven to be the ‘correct’ option. At best a political philosophy can advocate and justify a policy, and at worst can be demonstrated intellectually or practically to be inconsistent with greater values, or not achieve the goals it seeks to achieve. The rigorous debate on the validity of libertarian paternalism informs the extent of nudge theory’s legitimacy.

Paternalism

Nudge theory is the imposition of a state’s perspective into the individual’s decision, the interference of liberty in the name of what the state believes is best. Any involvement of the state in an employee’s union membership decision is unavoidably a form of paternalism, so we must consider its justification. Libertarian paternalism is a soft form of paternalism, rather than a harsher version of libertarianism (Sunstein, 2006). Therefore it is important to start with the question of paternalism. Therefore it is important to start with the question of paternalism, because paternalism in the wider context is what we are considering when we consider the state interference in employment relations decisions, and whether states can, and should nudge employees to join the union. Paternalism is the interference by an entity (e.g. the state, group, or individual) with another entity without their explicit agreement, and defended or motivated by a claim that the interference will be for their benefit. Paternalism as a method to achieve social good has a strong track record, and should not be dismissed. Safer behaviour mandatorily required with consent (car speed limits and bike helmets are clear examples) have achieved significant social outcomes.

Typically this involves:

- Limitations by an authority on an individual’s autonomy and freedom of choice and action

- A set of more desirable outcomes is either a) determined by the authority, b) determined by the authority and the agent(s), or c) determined by the authority in consultation with the agent(s)
- An assertion by the authority that their judgement of how to achieve those outcomes is superior to that of the agent.

(Dworkin, 2015)

Suber (1999) argues that paternalism is controversial because its end is benevolent, and its means are without consent. Paternalists advance people's interests (such as life, health, or safety), but without their consent and at the expense of their liberty. Paternalism is largely at odds with Mill's harm principle "coercion can only be justified to prevent harm to un-consenting others, not to prevent harm to which the actors competently consent" (Suber, 1999, p. 632). At the core acceptance or rejection of paternalism are three questions; do people make good decisions, does the state make better decisions for them, and do we trust the state to make our decisions for us? These questions are dealt with in detail below.

As discussed in chapter 2, modern states frequently interfere with actors' capacity to self-determine their terms of employment, such as minimum wage, minimum holidays, a fair process of termination and safe working conditions. Parties cannot agree to set aside such requirements. The extent to which society accepts such paternalism varies from state, but when considering employment regulation in any modern state, we are frequently considering paternalism in application; the nature and extent to which the state imposes its ideas of appropriate employment conditions onto the employment actors; often with good and just outcomes.

But not all societies accept all paternalist interventions. New Zealand need only look to the United States for a comparable western liberal democracy with a differing line of acceptance of state involvement in employment relations (Allen, 2019). If we are considering the potential application of nudge theory to employment regulation, we must recognise that even soft libertarian paternalism is paternalism and that each society has its own line of what it will, or will not, accept.

Do people make good decisions? There is precedent in all societies that not everyone is capable of good judgement at all times. Age, mental illness, and anti-social conduct are some justifications for setting aside a person's sovereignty without consent. Parents vaccinate their

babies without their explicit consent, an enduring power of attorney order can remove a dementia patient's capacity to make their own decisions, and Family Courts can remove children from the care of dangerously negligent parents. Sunstein (2014b) argues that to reject paternalism is to claim that humans do a terrific job of making choices for themselves, or at least better than anyone else, (especially anyone in government) at all times. In modern societies, it is safe to conclude some form of paternalism is necessary for the foreseeable future.

Do governments make better decisions? Societal authorities have always imposed outcomes based on selected values (such as religion or ideology) onto their population on the basis that they deem these to be the better outcomes. The mere existence of a state or polity involves some form of imposed value set upon its constituents, even if as simple as communal defence and maintenance of common civic goods such as roads.

But these imposed outcomes are not always good and virtuous. History is overflowing with examples of paternalistic interventions that are ethical (vaccinations, food safety standards, civic zoning) or unethical (racial segregation, religious intolerance), or remain contentious (recreational drug prohibition). It must also be noted that many of these paternalistic interventions seemed right at the time but viewed as unethical in retrospect.

Paternalist impositions are largely asserted without consent. Even in modern representative democracies, the capacity of individuals or groups to exert consent is restrained by limitations of the democratic system; the 'tyranny of the majority' means rules can be imposed without consent or agreement if held by the majority of the population (Mill, 1892). Those affected may concur with the restraint, either through a conscious agreement with the judgement of the authority, or a blanket acceptance of the legitimacy of the authority to make judgements in this field, but explicit agreement is either not sought or is impractical.

Do we trust our state to make good decisions for us? The question of trust in government is an important part of this research; trust in the nudging institution plays a role in the efficacy of a nudge, as discussed below. But when considering paternalism, the consent of the population to have outcomes paternalistically imposed upon them is dependent on their trust in the institution. Whilst it will vary from society to society, trust in the state may be influenced by perceptions of corruption (Nunkoo, Ribeiro, Sunnassee, & Gursoy, 2018), captured by interest groups such as through political financing (Persily & Lammie, 2004), or

perceptions of bias against certain groups, such as racism (Sivasubramaniam & Goodman-Delahunty, 2008). Public trust is not limited just to the state, but also to other institutions of authority within society. For example, the perception of trust in 'science' and 'scientists' has played a role in the acceptance of some key policy questions, whether it is teaching evolution in schools or climate change (Gauchat, 2012) or wearing masks during a pandemic (Kreps & Kriner, 2020).

Paternalism as a term sits poorly with the current cultural zeitgeist. Aycan (2006) notes the difficulty of discussing paternalism without ideological and moral overtones. As they note "Is paternalism "something" to endorse or avoid; moral or immoral; effective or ineffective; empowering or repressing; exploitative or benevolent? These controversies make paternalism an interesting construct to investigate" (p.445). Paternalism is layered with implications of arrogance, presumptiveness and condescension on the part of the authority figure, that one feels the need to explain and expand or avoid the term altogether. It is further hindered by its Latin origins (pater and paternus), bringing implications of fatherly authority, introducing implications of patriarchal dominance. Unfortunately, we may be stuck currently, and in the foreseeable future, with the term and its implied sexism.

Paternalism as a tool of state control of a population's behaviour is embedded, routine, frequently utilised, but not always accepted. In employment relations law paternalist constraints are commonplace, and validly so. But not all laws are accepted by the all population, and disagreement or rejection of such paternalistic constraints is a bedrock of democracy.

Libertarian paternalism: A valid conjunction?

Many of the paternalist examples discussed above are hard regulations (as discussed in Chapter 2), clear and absolute prohibitions of actions and decisions, libertarian paternalism is the soft regulatory promotion of one option without prohibiting the other(s). Libertarian paternalism, and nudge theory, is unavoidably paternalist; the 'libertarian' tempers the 'paternalism' and not vice versa. It is the promotion of one outcome over the other, it is an unequivocal 'cast one's lot' with one choice at the expense of the other, and the defence that this is the right thing to do. As Sunstein (2014b) outlines regarding nudge theory:

The paternalistic aspect lies in the claim that it is legitimate for choice architects to try to influence people's behaviour in order to make their lives longer, healthier and happier. In other words, we argue for self-conscious efforts, in both the private and public sectors, to steer choices in directions that will improve peoples' lives. A policy is paternalistic if it tries to influence choices in a way that will make choosers better off according to their own criteria. Drawing on well-established findings in social science, we show that, in many cases, individuals make pretty bad decisions – ones they would not have made if they had paid full attention and possessed complete information, unlimited cognitive abilities and complete self-control (p. 71).

The key claim of libertarian paternalism is that it is paternalism that does not necessitate a breach of liberty. Governments, cultural groups, and families can guide and promote choice, so long as the freedom of choice is not removed. Under libertarian paternalism, if the individual does not wish to comply with paternal prompt, they are free not to, without penalty or restriction. As Lambert (2017) identifies:

The central claim of libertarian paternalism is that there is middle ground between paternalism, which employs bans and commands to override individual decision-making even absent third-party effects, and libertarianism, under which government stays its hand in influencing individual decision-making unless intervention is needed to prevent third-party harm. Within that territory, libertarian paternalists say, lies an approach under which planners construct "choice architecture" that steers people toward ends that are best for them (as they themselves would judge were they operating free of cognitive and volitional limitations), while simultaneously protecting people's freedom of choice by allowing them to opt out of specified arrangements should they choose to do so (p. 640).

The conjunction of two contrasting ideologies (libertarian and paternalism) as a term is potentially intended to provoke thought and discussion; in doing so, both Thaler and Sunstein (2003) have invited debate on the question of whether policy can be both paternalist and

liberty preserving. As such, the subsequent debate over whether the term is an oxymoron also encapsulates the core of the debate; whether the fundamental but contrary principles of modern political systems (state interventionism for social good, and the preservation of liberty from state constraint) can be reconciled.

Nudges hit an intersection or overlap of two obligations of just government; on one hand, the obligation to treat people with respect, and on the other the obligation to promote their welfare. Ideally, government should seek to achieve both, but nudges are applicable where it is not possible, so the question lies in what is more important- respect for autonomy and self-direction, and welfare (Sunstein, 2014).

Nudges can feel like propaganda, or coercion. The modern democratically elected, benevolent and wholly accountable government we currently enjoy is a historical exception, and is still not enjoyed by the majority of the world's current population. If you live in Germany or Russia with memories of Soviet-era control, nudge would be more concerning than exciting (Sunstein, 2016b).

Lambert (2017) consolidated much of the discussion on the justifications of nudges, and categorises the three assumptions libertarian paternalism relies upon regarding human cognition:

- **Imperfect optimisation:** People's tendencies to make systematic mistakes; that they tend to follow pre-established preferences, often stubbornly so, which may result in suboptimal decisions where the decision parameters mean alternative decisions would be more optimum. Brand loyalty, or brand perception, for instance, influence buyers towards a preference for branded medicine, despite it being identical to generic medicine. People make decision errors when they utilise heuristics to make quick and effective decisions that, while efficient, can be prone to errors due to failure to cognitively equate for all decision factors (Lambert, 2017).
- **Bounded rationality** is the human limitations of imperfect memory, computational skill, cognitive capacity and overall internal limitations of mind (combined with the environmental limitations of information and time) to gather all relevant information and correctly weigh, value and decide accordingly (Lambert, 2017). Decisions are not irrational, but they are not perfectly rational, hence they are bounded. Even non-behavioural economists concede that humans are not computers, and are not perfectly

rational decision-makers. Bounded rationality is a foundational concept of behavioural economics – as it doesn't simply grudgingly acknowledge that humans don't follow rules of logic, but seeks to find new rules based on behavioural patterns instead.

- **Heuristics:** A human solution to the scarcity of time, and the sometimes limited opportunity to gather and process all information in a conscious and rational manner, is to utilise mental shortcuts or heuristics. Time (and attention) constraints often require quick, efficient decisions, which Kahneman describes as 'system one' thinking (discussed above) – an approach that is fast, instinctive, subconscious, and even emotional, and utilises heuristics, or shortcuts to make decisions quickly. 'system two' thinking is an approach that is slower, conscious, deliberate and logical (Kahneman, 2011).

To return to discussions of liberty and paternity, we can identify there is a space for soft paternalism in governance by the state. There will always be decisions that fall within the sphere of individual liberty that, while not preferable to the state, are beyond its capacity to apply hard paternalism. The present debate in many western democracies is the wearing of face masks to prevent the transmission of Covid-19; the present zeitgeist is that it remains the liberty of the individual what they do or do not wear; beyond the capacity of the state to impose requirements (although it is within employers capacity to impose mandatory facemasks). So there is a need for soft paternalism, where the state seeks to persuade and encourage decision outcomes, without prohibiting or requiring them. Whether libertarian paternalism is suitable, in all or some circumstances, is a subject of debate.

The libertarian paternalism debate

Libertarian paternalism has been widely debated, criticised, and defended. A summary is that the debate revolves around whether a) choices are freely made and fully informed, or unavoidably constrained by limited knowledge, cognitive processes, and other external influencers; b) whether it is ethical to attempt to interfere with individual choices, and c) whether good can come from such interference. Whether a decision is unconscious, subconscious or intuitive, the position of libertarian paternalism is that decisions falling short of deliberate, conscious and rational deliberation are prone to erroneous logic (Lambert, 2017). Whilst there is a need for states to have the capacity for soft paternalism (as discussed above), whether it is appropriate to interfere with an individual's decision-making process is debatable.

Can you legitimately interfere with intuitive decisions? Mitchell (2004) in an early critique of libertarian paternalism (pointedly titled “Why Libertarian paternalism is an oxymoron”) voiced several issues that must be overcome before it can be fairly used to justify nudging policies. Firstly, libertarian paternalism claims that systemic failures of cognition result in poor outcomes, specific ‘system two’ thinking (see the discussion on dual process theory above), where we decide more intuitively and rely upon more shortcuts, shortcuts that send us awry. When we apply system one, with conscious and deliberate thought, it is difficult to claim the decision was poorly made, especially under the auspices of libertarian paternalism, which makes the softer claim that of only guiding the decider to what they think is best for themselves.

Libertarian paternalism, and nudge theory by extension, has no business interfering with an individual’s conscious deliberation. Mitchell (2004) questions the binary nature of our present understanding; if it’s a switch between systems, when does this occur? When does the conscious mind ‘kick in’ as it were; analogous to taking a vessel off auto-pilot. Mitchell (2004) further questions the methods of libertarian paternalism; of utilising flawed systems to correct flawed systems. If people sometimes make poor decisions using heuristics, why use heuristics to counteract? If libertarian paternalism’s justification is to guide automated decision processes, then why is the solution to provide guidance (frequently subconsciously) to the less reliable unconscious level, instead of seeking to prompt them to more conscious and rational thought? If the problem is people sleepwalking through decisions, should we not seek to wake them to the decision, rather than guide them in their sleepwalking? Libertarianism should focus only on surmounting the irrational influences, rather than embracing, conceding or at worst exploiting them (Hausman & Welch, 2010). As such libertarianism cannot be happily married to paternalism. While this critique is valid for many nudges, some nudges do prompt rational thought. The full range of nudges is discussed below, but some forms (facilitate nudges, confront nudges) do prompt conscious thought. But Mitchell’s critique does make significant points, which were incorporated in the Hansen and Jespersen (2013) framework for ethical nudging (discussed below).

Should the state interfere? It must be questioned whether we can rely upon the best of intentions of the state, in all matters, at all times (Hansen & Jespersen, 2013; Rebonato, 2014). One could easily point to several modern states that should not be trusted to act purely in their citizens’ best interests (Hausman & Welch, 2010). Even with first-world democracies, there is a strong hesitancy to impart too much authority onto the state to act as it sees fit. A

strong example of this hesitancy arose in the USA in 2015, when the FBI sought to require Apple to facilitate their access to a terrorist's encrypted account; the resistance by Apple and concern by commentators to facilitate such state access is a strong current example of the debate of limitations of US state authority (Coutros, 2016). Since 2016, the impartiality of political institutions, and the public trust in them, have further declined under the Trump administration (Giroux, 2017; Griffin, 2017).

Veetil (2011) questions the benevolence of the state assumed by libertarian paternalism; that Thaler and Sunstein's (2003) assumption of an impartial neutral state acting with the purest of paternal intent is quintessentially Plato's autocratic state. To assume that the state knows best, and is entitled to override the actions of its citizens because it knows better is to hand too much power to unaccountable technocrats (Hansen & Jespersen, 2013; Veetil, 2011). This criticism is valid in many regards; history is littered with the imposition of values by those in authority onto those not, on the justification that is in their best interests (Gill & Gill, 2012).

Even when libertarian paternalism is appropriate, it is also necessary to remain vigilant to such justifications creeping into policy applications where it is not. As Russell (2015) notes, nudges are in vogue. Mitchell (2017) perceives what is a nudge to be any prompt or signal, an evolution of the nudge away from libertarian paternalism, and has encompassed any policy that does not involve bans, mandates, rewards or penalties. Potentially nudges have become shorthand for soft regulation, and justifications could be utilised where not appropriate. To return to a core requirement of libertarian paternalism, decisions should be nudged toward one outcome if that outcome is in the best interests of the decider, but if this is not the case, it is not justifiably under libertarian paternalism. To use a simple analogy, it is justifiable to prompt a diner to eat healthier food, it is not justifiable to prompt her to tip her waiter.

What is the public good? Gill and Gill (2012) note the difficulty of establishing 'what is the public good', as governments are frequently required to balance what is good for the individual with what is good for the community. They argue libertarian paternalists dodge this complexity by making it as per the individual, and oversimplifying the inherent complexity. Nudge could easily be utilised to nudge an outcome not objectively in the best interests – the individual's best interests – but contrary to, and in society's best interest. Whenever nudging towards altruistic behaviour (for example, giving to charity) this justification is heavily tested,

although Gill and Gill (2012) advocate such symmetrical paternalism benefiting society could be justified.

Nudges are weak forces

Libertarian paternalism has been categorised as a form of soft paternalism, as it prompts for and against behaviours, but does not compel or restrict (Mitchell, 2017; Thaler, 2009). Sunstein (2014) argues that libertarian paternalism is a weak force exerted on an individual; anyone firm of mind on their preferences will not be persuaded or dissuaded. Libertarian paternalists want to make it easy for people to go their own way. They do not want to burden those who want to exercise their freedom.

The premise that institutions can legitimately influence individual choices (paternalism), and can do so without compromising their liberty, is contentious. As Hansen and Jespersen (2013) note “State manipulation with the choices of citizens appears to be at odds with the democratic ideals of free exercise of choice, deliberation and public dialogue” (p.5). This position has been widely discussed, criticised, and defended with the debate revolving around whether a) choices are freely made and fully informed, or unavoidably constrained by limited knowledge, cognitive processes, and other external influencers; b) whether it is ethical to attempt to interfere individual choices, and c) whether good can come from such interference (Hansen & Jespersen, 2013; Mitchell, 2004; Sunstein & Thaler, 2003; Veetil, 2011). While consensus has not been reached on the legitimacy of this philosophical underpinning, the current standing of the debate could be summarised as ‘proceed, but with caution’.

Temporal precedence. Another interesting aspect not addressed at present is its temporal component. When evaluating whether a decision outcome is truly in the best interests as judged by the nudgee, this evaluation is likely done from a different temporal state; typically what better suits a future state of the individual. But applying the needs of a future version of the individual is applying a differing set of criteria, a complication further compounded if the states are considered to be two distinct entities. For example, whether it is in the individual’s best interest to save for retirement instead of utilising that money on current needs and interests, is prioritising the interests of the future individual over the interests of the current individual. If we consider ‘retired Dave’ as a distinct entity from ‘young Dave’, and each entity has differing priorities, attempting to evaluate whether it is best to save for retirement is to potentially impose the interests of ‘retired Dave’ over those of ‘young

Dave', with little recognition of the needs and agency of 'young Dave'. To add further complexity, 'future Dave' is a potential state, but not a given – Dave may not be lucky enough to live to retirement age.

The greater the temporal distance between the decider and the version of the decider who the promoted interest favours, the lesser the certainty that the promoted outcome is in fact in the nudgee's best interests. This metaphysical question of identity is consistent with the 'Ship of Theseus', a thought experiment discussed since 500 BCE; if a ship's parts are replaced over time to the point when no original parts remain, is it still Theseus' ship, and at what stage did it cease to be?.

The question of whether future selves are the same as present selves is a complex one. Whether future interests are the same as present interests is a significant philosophical question. Presently this question has not been discussed or considered by nudge theorists, so remains an area for future philosophical consideration.

The Ethics of Nudging

The debate over libertarian paternalism is the question of whether it is just and appropriate for the state to take the role of an active intervener in the decisions of its citizens. This section addresses the ethics of those tools; whether nudges are inherently unethical or ethical, or may be applied ethical or otherwise depending on the situation. Whilst somewhat overlapping, the prior section questions the legitimacy of the state taking that role concerning its citizens, and this section considers discussions regarding the tool of nudges. Also, while nudges are not limited to the state, and may be utilised by commercial organisations and NGOs as well, the focus of this discussion will be the state.

While infrequently addressed directly as such, the question of whether nudges are ethical frequently sways on teleological or deontological perspectives. Arguments in favour of nudges bring forth teleological reasons, demonstrating beneficial outcomes to both the individuals and communities (Kasdan, 2019; Tocchetto, 2010), whereas objections, criticisms and cautionary advice have deontological concerns about the methods of nudges, and whether the ends can justify potential unjust means (M'hamdi, Hilhorst, Steegers, & de Beaufort, 2017; Scoccia, 2019). Such perspectives are valid and reconciliation can only be sought by weighing

each nudge on its own merits and costs. It is an age-old ethical debate in a new bottle; whether the ends achieved by nudges justify the means of nudges.

Unconscious manipulation

Nudge theory requires us to examine one of the most complex, ongoing and potentially unresolvable questions in psychology, if not modern science; where do we make our decisions; in the unconscious or conscious mind, and how do they interact? Some nudges have been demonstrated to be more effective when applied to the unconscious mind (discussed below), which opens a Pandora's box of ethical questions. The existence of the unconscious mind has been proposed and discussed in psychology since Freud. Whilst its existence and characters have been debated thereafter, it has been a founding construct of psychology since; and while such a debate is a thesis in itself, it is best to assume that there is a set of processes that form part of our psychology that operate outside of the conscious mind, and these processes are involved in decision making.

We have two ethical dilemmas, one of the ends, and one of the means. The ethical dilemma of whether the government's perception of public interest is a fair and reasonable one. The second is whether the means are justified. As Ivanković and Engelen (2019) note: "even if we could ensure that governments nudge citizens with only the best of intentions, covert nudge techniques still seem objectionable for not living up to democratic standards of accountability, deliberation, and contestation" (p. 46).

With an understanding of the unconscious comes the potential to influence those processes, and thereby influence others' decisions without their conscious awareness. Such influences are endemic in modern society, albeit mostly relatively benign. Effectively all marketing, whether as simple as a brand name or logo (and it's hard even to find a government department without a logo) seeks to elicit some response from the unconscious, an emotive response through its use of images, colour and font (Ertemel, 2017).

The biggest hurdle nudge theory faces is that nudges can be more effective the less apparent they are, that there is a relationship between efficacy and transparency; that the less apparent the nudge, the more effective it is, and vice versa (Bovens, 2009; Grüne-Yanoff, 2012; Ivanković & Engelen, 2019). More recently the evidence to support this has been disputed (Schmidt, 2017), with some experiments finding no effect of transparency on nudge efficacy

(Loewenstein, Bryce, Hagmann, & Rajpal, 2015), and further research is still required to determine whether this varies according to the type of nudge. But a persistent and central tenet of criticism is manipulating people's choices; that nudges work best in the dark, too reminiscent of behaviourism (Hansen & Jespersen, 2013).

That nudges are open to abuse by technocrats is a strong and recurring concern (Farrell & Shalizi, 2011; Rebonato, 2014), with some arguing there is no place for nudges that only work via a level of covertness incompatible with democratic government (Oliver, 2013). By using nudges "governments are covertly steering citizen behaviour without this being obvious to the citizens themselves, which would make nudges impermissible at least *prima facie*" (Ivanković & Engelen, 2019, p. 44). Nudge theory explicitly and intentionally relies upon cognitive and motivational heuristics, decision mechanisms outside of the conscious mind and its decision processes (Ivanković & Engelen, 2019). A government seeking to go around the conscious decisions of its citizens, and sidestep their personal sovereignty, is to play a highly dangerous game.

Persuasion methods that elicit responses without an engagement with the conscious mind evoke concern. Any bypassing of conscious thought to speak directly to the unconscious mind frequently draws concern, and some significant societal moral panics have emerged from this, such as backmasking in music in the 1960s and 70s (Stollznow, 2014), Dungeons and Dragons in the 1980s (Waldron, 2005) and violence in video games in the 1990s and 2000s (Puri & Pugliese, 2012). One of the earliest examples of both claimed subliminal advertising and public debate occurred in the US in 1957; James Vicary claimed to have increased popcorn and Coca-Cola sales through subliminal adverts (a claim and experiment that were subsequently found to be entirely fictitious). Subsequent research has demonstrated that while subliminal messages potential have some persuasive influence, particularly if the subject is primed or in a condition amenable to the persuasion (e.g. a dehydrated person being reminded of their thirst), the evidence has not substantiated subliminal messages as capable of changing minds without conscious awareness (Florea, 2016)

But of equal significance to the claims is the fear subliminal elicits in public opinion, of unperceivable manipulation through marketing (Nelson, 2008). While specific accusations of unconscious manipulation have proved to be relatively unfounded, the cultural phenomena of the fear evoked by conscious manipulation must be recognised. Subliminal messages as evil plot devices have been used in film, television and books. And it is not so far-fetched; the

original promise of the subliminal advertising in advertising (popcorn sales in movies) caught the attention of the CIA, who commissioned their own investigation of its operational potential (Gafford, 1958).

Hausman and Welch (2010) note the fine line between manipulation and nudging, and whilst they do not argue against nudges, they remain highly cautious of their use and potential for abuse. They put forth these key concerns that must be addressed (and revisited) regarding the use of nudges in public policy:

1. Governments actions seeking to shape citizen choices are subject to abuse and cannot lightly be given, or held
2. Policies should be public, and open to scrutiny
3. Decisions are frequently flawed and fragile, but shaping should be avoided, and rational persuasion should not be set aside lightly in favour of emotional appeals.

Dark nudging

Like so many scientific discoveries, once the discovery is made and publicised, its practical application may not always comply with the scientist's benevolent intent, and such is potentially occurring with nudge theory. It has been suggested that nudge theory (or behavioural science in general) has been utilised in voter manipulation campaigns, which target and manipulate voter decisions (Campione, 2020). For instance, the Cambridge Analytica scandal of 2018 has been a high-profile instance of a worrying trend in new electioneering tactics, where data collected from citizens' social media activities is harvested and utilised by election consulting firms to provide focused election advertising (Barker, 2018). The surprising success of both Trump's election and the Brexit vote have been partially attributed by some to Cambridge Analytica and other organisations involved, due to their capacity to provide targeted messages to individual voters, heavy with emotive content, to either sway their vote, or discourage them from casting it (Pybus, 2019; Ravel, 2018).

Newall (2019) raises similar ethical concerns over nudges misuse in corporate environments, specifically gambling. He identifies several techniques utilised by gambling products that exploit cognitive failings to their advantage, such as 'losses disguised as wins' where positive stimuli are utilised to diminish cognitive assessment of the present situation.

(Narayanan, Mathur, Chetty, & Kshirsagar, 2020) identify several online marketing techniques that seek to exploit cognitive errors.

While it has been speculated that nudge has been used to manipulate citizens and consumers, it remains unsubstantiated, and it is important to recall what is nudging and what it is advertising. While both can use behavioural psychology to provide insight into attitudes, nudges shift the architecture of the decision, not the factors of the decision (Thaler, 2018). To nudge is to change the decision process, not what is considered in the process.

Infringing liberty

A simple definition of liberty is that people should be free to determine how they live to the greatest extent possible within a society of equals (Mitchell, 2017). To fairly consider liberty, it merits considering the writing of John Stuart Mill, one of the great thinkers of the late enlightenment, when liberty was still a construct being sought and fought for: “That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill, 1892, p. 21).

Mill’s above ‘harm principle’ argues that individual sovereignty is sacrosanct, and should only be restrained where it would impose harm upon others. Subsequent discourse, both intellectual and political, have brought a more complex understanding, with social intervention policies seeking to promote social and economic freedom, to reduce indirect repressions, such as through poverty or discrimination, and safeguard. Paternalism certainly holds this view, that the imposition of values upon a community is justifiable and ethical, provided it facilitates the flourishing of the community and its members (Pogge, 2005). It has even been argued that interventions inhibiting individual liberty are both justifiable and ethical, should those burdens not be significant, and the benefits to the society substantial (Gostin & Gostin, 2009). But it cannot be lightly set aside, as Hansen and Jespersen (2013) argue as they caution against the use of nudges: “It impairs our autonomy and ability to make moral choices for ourselves; State manipulation with the choices of citizens appears to be at odds with the democratic ideals of free exercise of choice, deliberation and public dialogue” (p. 5).

But what is a ‘significant’ infringement of liberty (or not) is bound to the values of the society, and its constituent groups and members. For example, public health measures to

contain the Covid-19 pandemic brought a number of liberty constraining non-pharmaceutical public interventions, including bans on public gatherings, compulsory stay-at-home requirements and face mask ordinances (Hartley & Perencevich, 2020). While these interventions have been implemented by several different countries, public reaction has varied substantially across societies, within a notable group is conservative Americans prioritising liberty and the economy over public health (Perry, Whitehead, & Grubbs, 2020). Religious freedom, and constraints on organised worship events, hit resistance in several societies, with super-spreader events occurring at church services in Germany (Boston, 2020), South Korea (Majra, Benson, Pitts, & Stebbing, 2020) and New Zealand (Service, 2020) that occurred despite restrictions on gatherings. It should be noted though that while personal ideology was a factor in compliance, age, gender, personality (conscientiousness) and trust in government were individual factors that played a role in the acceptance of liberty constraints for the public good (Brouard, Vasilopoulos, & Becher, 2020).

But is nudging exercising power over individuals' autonomy of choice? And, if it is, is it on the other hand freeing them from indirect disadvantage? With regard to nudges, the former answer is likely to always be a simple 'yes', and the latter a complex question with subjective interpretations (Grüne-Yanoff, 2012). For example, to nudge someone to save for their retirement is a clear trespass upon their sovereignty of choice; what someone does with their money should be at their sole discretion. Countering this is whether saving for retirement is protecting them from future loss of economic freedom, it is reasonable to assume that living solely on a government pension can constitute a loss of freedom and lifestyle. Such arguments could be made of protecting future selves from disadvantageous situations could be made across of decisions, whether its health eating or cybersecurity, although it's always likely to undergo more complex scrutiny and suffer a high burden of proof (Rebonato, 2014).

Drawing from the assumptions of behavioural economics, Mitchell (2017) asks a question not frequently considered in political philosophy; is it infringing on liberty to promote an option on a sometimes irrational actor? In much the same way as classic economics assumes purely rational actors, philosophy implicitly assumes pure rationality in the sovereign individual. But if we conclude that individuals can act irrationally (or at least not always rationally) is it an infringement on liberty to infringe on their liberty when they are acting less rather rationally? It is necessary to reiterate Mitchell's (2004) prior concerns, that it is both unclear and unforeseeable when the decision maker is acting rationally or not. As Binder (2019) notes: "Individuals often do not know their interests, rely on habits/routines, have self-

control problems and act in boundedly rational ways” (p. 540). While this does not necessarily invalidate the judgement that one should treat individuals as autonomous citizens and consumers, these shortcomings have prompted a revision of the doctrine of intervention for the sake of the individual's welfare.

While the question of whether it is just to impose paternalistic aims over liberty is a question that should be considered, it is also necessary to discuss the means of how nudge achieves this. As Hausman & Welch (2010) note, utilising non-rational processes in contravention of the individuals liberty is a difficult starting point for the ends to justify the means: “Systematically exploiting non-rational factors that influence human decision-making, whether on the part of the government or other agents, threatens liberty, broadly conceived, notwithstanding the fact that some nudges are justified” (p. 32).

However, if humans are prone to episodes of irrationality, is it better to nudge them away from irrationality towards rationality? As Thaler and Sunstein (2008a) continuously reiterate, a nudge “tries to influence choices in a way that will make choosers better off, as judged by themselves” (p. 5). If an intervention moves choosers to a position where they are freer from cognitive and motivational biases, then the nudge is ethical.

Also what people prefer may be vague, or imperfect. Again we must recognise that there may be severe restrictions on how people judge what is in their best interests, especially where they haven't put much thought into it (Hansen & Jespersen, 2013; Rebonato, 2014; Vallgård, 2012), that there is an “elasticity” of preferences, and that these preferences can be superficial, not thought through, and influenced by the question (Plous, 1993). When considering nudges it becomes apparent that dichotomies between right decisions and wrong decisions, rational and intuitive, best as decided by themselves in the decision or in retrospect, are potentially false dichotomies.

Justifying nudges

So what response is given by Thaler, Sunstein and other proponents of nudging to these accusations of manipulation, misuse and violation of liberty? According to Hansen (2016), Thaler and Sunstein seem to admit that nudging is a manipulation of choices, but present a three-pronged defence; There are no neutral choices environments anyway because nudges don't limit the choices (all options remain on the table), freedom of choice is

preserved, and thirdly all nudges should be subjected to Rawlsian publicity principle; that they should be public and defensible (Thaler & Sunstein, 2008a).

Decisions are always framed

To oppose nudge is to presuppose that an un-nudged decision is eminently preferable to a nudged decision; that a neutral choice architecture should be preferred to one that steers towards a preferred outcome. Sunstein and Thaler argue such neutral choice architectures are aspirational, artificial constructs that are rare, if not mythical. As Hansen and Jespersen (2013) summarise:

The position of Thaler and Sunstein can thus be summarized quite simply: because our choices are always influenced by the decision-making context, and because such influence is often manipulated by far more intrusive or subtle measures-taxation, regulation, marketing, etc-nudging is an admissible approach to behaviour change in public policy making (p. 5).

Few choices are presented to us in neutral tones; buying a car is influenced by the salesperson, our consumer preferences, and our personal associations of what type of person drives this type of car. Our choice of breakfast is influenced by our cultural norms, our parents' attitudes, or whether the package has images of natural ingredients. The influencing factors can be ignored, set aside or disregarded by a rational mind utilising system one cognitive processes, but not all decisions are made this way. The argument has been referred to as the 'inevitability argument', that influences are inevitable (Schmidt, 2017), so why not 'lean into' the reality and influence for the right reasons, rather than the self-serving or accidental.

To take another seminal nudge; placing healthier food choices in prominent shelf positions has been demonstrated to improve healthy choices (Bucher et al., 2016). Thaler (2018) notes not just the benefit of nudging better choices, but also that if something is not nudged, something else will be; if the healthy food is not nudged by being placed prominently something else will be, and the selection criteria will likely be profitability for the store itself not what is beneficial to the consumer. Sunstein goes further and argue that such situations require nudging because the decision *is already framed against the better outcome* for the individual; "many nudges, and many forms of choice architecture, are defensible and even mandatory on ethical grounds, whether we care about welfare, autonomy, dignity, self-

government, or some other value” (Sunstein, 2016b, p. 12). That is for the state not to nudge but to take the ethical high ground and preserve its conscience, all the while leaving its citizens at the mercy of unscrupulous actors in society.

Further examples of framed decisions are common, and behavioural science is used by organisations every day. Cai (2020) argues that nudges are already unintentionally made in finance markets by how investment choices are framed to investors. Businesses seek to influence consumers through emotive associations, charities look for ways to tug heartstrings, and public officials look to change people’s behaviour to meet the government objectives. Its prolific, continuous, and a normal part of the fabric of our society (Sunstein, 2016b). Sunstein (2016b) argues such attempts to influence are not inherently unethical if they provide justifiable ends.

Framed choice architecture should not be considered new either. In one of the more interesting applications of nudge theory, Sullivan (2021) analysed Shakespeare’s fictionalised crowd scenes through nudge theory and proposes key characters manipulated the crowd using biased choice architecture. Although a theoretical analysis of fictional events, it does remind us that nudge theory does not invent biased architecture, but merely describes and explains observable phenomena, phenomena that have likely occurred throughout human history.

Critics argue the inevitability argument glosses over one important distinction between the nudge and the influence; intent. As Hausman and Welch (2010) note; to nudge is to set upon a course of action to impose one’s will upon another, frequently from a position of moral or political authority, likely with less than transparent or apparent means. This differs from other social influences that are; less legitimate, intentional or deceptive (Schmidt, 2017).

Nudges preserve choice and may promote it

While continuing the argument that nudging is beneficial, if not necessary, Thaler and Sunstein (2008a) adapted their prior models based on criticisms, to specify that nudges should be ‘easy and cheap’ to resist. Provided the nudge is easily avoided, and the chooser is free to go their own way, no one’s liberty or dignity has been taken away or diminished (Mitchell, 2017). If a customer does not want to eat a healthy snack, they can simply cast their eyes up or down. Employees who do not want to enrol in Kiwisaver simply have to fill out the opt-out form.

Thaler and Sunstein argue that these approaches change human behaviour on the assumption that humans are generally capable of acting rationally or acting optimally, as long as they are given a) true information, b) the right incentives, and c) reasonable rules to guide them (Hansen & Jespersen, 2013). If autonomy is the objective sought by liberty, then nudging is frequently required, if nudges lead to more informed choices (i.e. the choice architecture was already biased). Sunstein (2015) argues:

I suggest that an effort to influence people's choices counts as manipulative to the extent that it does not sufficiently engage or appeal to their capacity for reflection and deliberation. The word "sufficiently" leaves a degree of ambiguity and openness, and properly so. It is not possible to know whether manipulation is involved without asking about the sufficiency of people's capacity to deliberate on the question at hand.....It is important to emphasize that countless choices are at least partly a product of variables that do not involve reflective deliberation – and choosers tend to be unaware of that fact. The problem of manipulation arises when choosers justly complain that because of the actions of a manipulator, they have not, in a sense, had a fair chance to make a decision on their own (p. 6).

However, acting against the nudge should be easy. Nudges should not alter the choice architecture by making one outcome onerous, difficult to select, or hard to achieve. This is described by Thaler (2018) as sludge, or manipulations of the choice architecture by disincentivising one choice by making it hard to obtain, such as discouraging voter registration through bureaucratic barriers and obstacles. There is a difference between influence and coercion. Coercion presents negative consequences should the non-preferred option be taken, whereas influence presents none (Sunstein, 2016b).

But this does not equate for the transparency issue; while nudges should be easy to resist, this requires the nudgee to be aware of the nudge, and that nudges are more effective the more invisible creates an incentive to make the nudges more invisible. As Ivanković & Engelen (2019) summarise of this debate; "resistibility depends at least in part on transparency" (p. 45). Mills (2018) argues that nudges in line with people's ends, are avoidable, publicly available and transparent, need not violate autonomy. To remain a libertarian nudge, choosing against the nudge must remain an easy and accessible option to the chooser (Mitchell, 2017). But these cease to remain in keeping with liberty where the

chooser does not have cognitive, or motivational resources to choose again the nudge; without the capability to resist, the nudge becomes the choice (Mitchell, 2017).

When researching public attitudes to nudges, Sunstein (2016a) found more acceptance of nudges than harder regulation. While many people oppose coercion by the government, they show far less scepticism about nudging. This could also be tentatively held to be the case in New Zealand; as evidenced by public attitudes to mandatory versus nudged superannuation savings. In 1997 a public referendum was held on compulsory superannuation, with 91.8% voting against compulsory retirement savings (Preston, 1997). Nine years later in 2006 the voluntary but nudging Kiwisaver scheme was introduced, with a third of the target population enrolled by 2010, with its voluntary nature playing a key role in its acceptance (Law, Meehan, & Scobie, 2011).

Rawls publicity principle

With regard to the legitimacy of nudges in public policy, the justification of the nudge in the wider society, Thaler and Sunstein rely upon the Rawlsian transparency model (Sunstein, 2014a), that policy is justifiable if freely available for scrutiny. Citing John Rawls' argument for accountable government, Thaler and Sunstein argue that what constitutes a just or unjust intervention into citizen choices is complex, and will vary substantially depending on the values of the society and its constituent members. Rather than seeking any objective standard, Thaler and Sunstein leave it to society to determine what is an acceptable nudge. Thusly, so long as the state is transparent and accountable with the nudge, its purpose, intent and methods, it is for the community to accept or not accept the nudge; "all government action, including nudges, should face a burden of justification (and sometimes a heavy burden)" (Sunstein, 2016b, p. 13).

Transparency is a critical concept in modern democracies – that government attempts to influence and manipulate the general population should be apparent and visible, and subject to scrutiny (Ivanković & Engelen, 2019). The more the nudges are 'behind the back' or 'subliminal to the individual's consciousness', the less in keeping it is with social democratic values. Government policies of attempting to persuade the unconscious while circumventing the conscious should be exercised with extreme caution (Hausman & Welch, 2010). "Using such policy tools does not allow for the kind of scrutiny and contestation that should be possible in liberal democracies" (Ivanković & Engelen, 2019, p. 44).

However this reliance on transparency is unconvincing to some : the espousal of transparency and publicity constraints comes across as an artificial and ad-hoc declaration of values that belies a lack of real interest in the importance of ensuring that those subjected to these subtle forms of state power understand the underlying rationale (Anderson, 2010, p. 374). Furthermore, it assumes a high level of democracy, and capacity for the constituents to hold governments to account. Even putting aside countries with no democratic accountability (e.g. North Korea), or low accountability (such as Russia), 3-4 year election cycles dominated by between 2 to 4 political parties, nudges on public policy are unlikely to carry significant weight in elections frequently dominated by larger social issues such as the economy or social unrest.

A framework for ethical nudging

The ethics of the nudge is contextual to the nudge itself. The strength and validity of the social good sought, the target audience, the cognitive flaw sought to overcome, and the cognitive flaw utilised are all factors that must be weighed when considering whether a nudge is ethical. A broad rule cannot be applied to social outcomes or target audiences, but the nudge debate discourse has moved to: which nudges are inherently more ethical than others. Sunstein (2015) proposes the following guiding principles for ethical nudging:

- An ethical government will try and increase these values, and an unethical one will disregard or work against these values.
- Many people distrust their government – perceiving it to being biased, ignorant or unduly influenced by powerful interest groups. Distrust stems from confidence in whether the government is truly acting to promote one, some or all of those values.
- When evaluating the ethics of government, we must compare against the four values (welfare, autonomy, dignity and self-government) to determine if ethical or not.
- Ethical abstractions can create confusion, and only further our understanding when put into contact with concrete practices. Nudges take many forms, so ethical objections should focus on the particulars of each rather than trying to form a generalised rule.
- Nudges are objectionable if the nudge architect has illicit ends, such as political or political favouritism, or the propagation of bigotry or intolerance.

- Even if the underlying ends are legitimate and the transparency guaranteed, there is still room for ethical objections if the intervention is manipulative, and certainly if people have not consented to them.

As discussed above, the ethics of a nudge are complex and contextual to the decision being nudged. The methods of some nudges raise greater red flags than others, while some outcomes are pressing with greater risk arising from inaction. The most manipulative nudge may be ethically acceptable if in service to a greater social or individual good, such as democracy or life preservation. For instance, in Australia voting in general elections is compulsory, so direct inhibitions of liberty in the name of democracy are acceptable (in Australia at least).

Setting aside the binary of whether nudges should or should not be off the table, are some nudges more ethical than others? Should some be acceptable for everyday usage, whilst others only in drastic circumstances? To this end, the Hansen and Jespersen (2013) seminal framework of ethical nudges will be relied upon, and will further utilise the Caraban, Karapanos, Gonçalves, and Campos (2019) typology of nudges which builds upon Hansen & Jespersen's framework. But first, we must consider the criteria for evaluating a nudge's ethical value.

Figure 3.

Suitable labels of interview types

	<i>Transparent</i>	<i>Non-transparent</i>
<i>System 2 thinking</i>	Transparent facilitation of consistent choice	Manipulation of choice
<i>System 1 thinking</i>	Transparent influence (technical manipulation) of behavior	Non-transparent manipulation of behavior

(Hansen & Jespersen, 2013)

Our first criterion is *manipulation*. Sunstein (2015) proposes: A statement or action can be said to be manipulative if it does not sufficiently engage or appeal to people’s capacity for reflective and deliberative choice. One problem with manipulation, thus understood, is that it fails to respect people’s autonomy and is an affront to their dignity (p.1). Hansen and Jespersen (2013) draw upon dual process theory (discussed above), and its two types of thinking, system 1 (unconscious, automatic, instinctive decision-making process), and system 2 (rational, analytic, reflective). Nudges that influence system 1 processes are less ethically acceptable than those that influence system 2. Nudges are more manipulative and raise more ethical concerns where they do not engage the conscious brain, but instead influence the unconscious.

Our second criterion is *transparency*. A transparent nudge is: a nudge provided in such a way that the intention behind it, as well as the means by which behavioural change is pursued, could reasonably be expected to be transparent to the agent being nudged as a result of the intervention (Hansen & Jespersen, 2013, p. 17). How much a nudge is transparent is how obvious and identifiable it is an attempt to influence. It is important to note here that transparency is subjective and individual, and that perceptions of intent may vary from individual to individual. For instance, an individual's trust in government may influence their perception of the intent, and their acceptance of the nudge and a citizen distrustful of the current government may have a different perception of the transparency of a nudge if they perceive ulterior motives.

To demonstrate the distinction; a nudge may engage the brain on an emotional level but with clear and transparent purposes. Gruesome images on cigarette packaging seek to trigger an emotional response, with the clear and transparent purpose of discouraging smoking. Alternatively, nudges could prompt conscious thought with non-transparent purposes, for example, pharmaceutical advertising that seeks to rationally persuade, but the advertising intends to increase revenue, not patient health.

Hansen and Jespersen (2013) do not draw a line between ethical and unethical. Instead they propose this "framework of four types of nudges that may be used to provide a central component for more nuanced normative considerations as well as a basis for policy recommendations" (p.3). It is useful to think of these typologies as a form of 'weighting' when evaluating the ethics of a nudge, with some requiring greater teleological justification of outcome than others, to justify the deontological impositions.

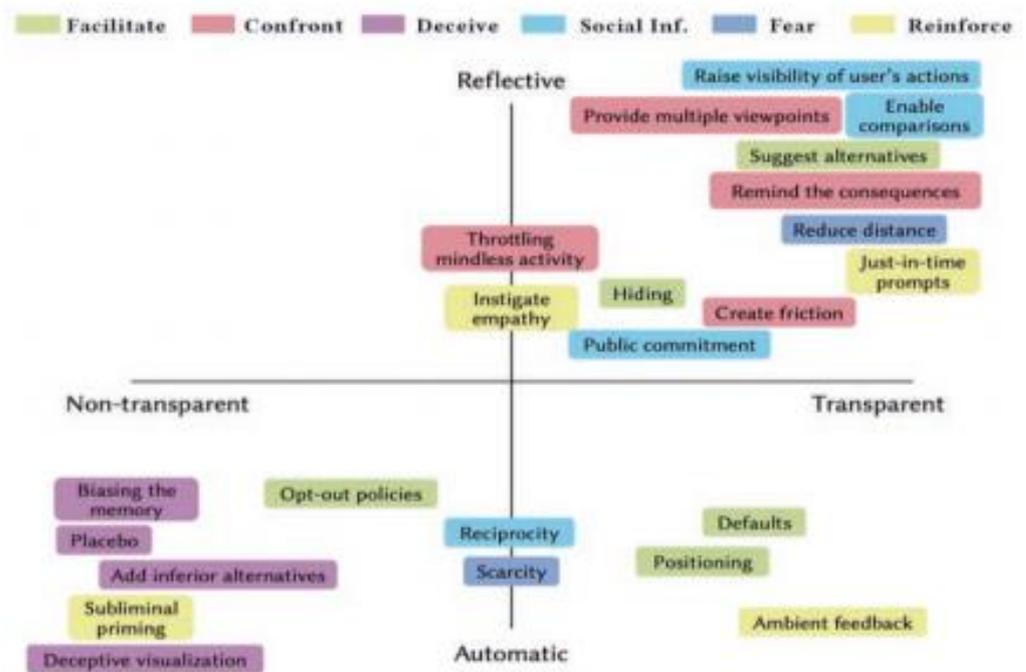
Typology of ethical nudges

Caraban et al. (2019) provides us with a further useful framework in two regards. It proposes 23 types of nudges, building on the 10 types identified by Sunstein (2015). It also maps them to the Hansen and Jespersen (2013) typology. This section will briefly outline these nudges and their location within the Hansen & Jespersen typology, both to lay out the tool in the nudge tool kit but also to discuss their ethical 'ease of use'.

Caraban et al. (2019) group the nudges into six categories, facilitate, confront, deceive, social influence, fear and reinforce nudges. It must be noted that when mapping to Hansen &

Jespersen's (2013) ethical typology, not all nudges fall neatly into each quadrant; while deceive nudges are all non-transparent nudges that influence automatic thinking, facilitate nudges fall across 3 quadrants, and reinforce nudges nearly have a foot in every camp. It should be noted that while the Caraban et al. (2019) findings are based upon a meta-analysis of 71 papers, they were all drawn from human-computer interaction (HCI) studies, where research methods are more experimental in design.

Figure 4.
Typology of nudges



(Caraban et al., 2019)

Facilitate Nudges. Facilitate nudges seek to streamline the decision making process, to reduce complexity and ease the burden of the decision-making process (Caraban et al., 2019). They often utilise biases such as the status quo bias, and availability heuristics to nudge decision-making down a simpler path. Facilitate nudges include:

- *Default nudges:* setting the default to be the better option, e.g. printers defaulting to double-sided and black and white print.

- *Opt-out nudges*: automatic enrolment in policies, e.g. Kiwisaver, automatically booking follow-up appointments.
- *Positioning*: changing the visual arrangement of the options, with the preferred in a prominent place, e.g. healthier food positioning on the more prominent shelf.
- *Hiding*: the inverse of positioning.
- *Suggesting alternatives*: suggesting possible choice alternatives that might not have been considered.

Confront nudges. Confront nudges are nudges that seek to challenge certain decision outcomes to prompt the decider to reflect further on the decision. While more assertive in their promotion of the preferred outcome, they are all reflective in nature; to provoke the decision maker to consciously decide, where perhaps unconscious habit may have occurred. These nudges often tap into the regret aversion bias; the tendency to become more careful when the decision maker perceives risk (Caraban et al., 2019). Confront nudges include:

- *Throttling mindless activity*: putting in safeguard against thoughtless actions – e.g. put in a check on an action that may be taken without consideration of the potential consequences; e.g. ‘do you want to leave this page?’
- *Reminding of the consequences*: utilising availability bias (judge the probability of an event based on our capacity to recall similar). Prompting recollection will provoke consideration of it occurring again; e.g. ‘are you sure you want to leave this page? Unsaved work will be lost’.
- *Creating friction*: nudges that provoke decisions to test whether people truly want/need the situation they have, provoking the decision maker into system 2 thinking on the question at hand.
- *Provide multiple viewpoints*: providing alternative viewpoints to prompt consideration of the alternative option. This often counteracts confirmation bias, the tendency to seek information that matches our belief, or conformity bias, the tendency to make decisions in conformity with those of our peers and/or family.

Deceive Nudges. Deceive nudges use “deception mechanisms in order to affect how alternatives are perceived, or how activities are experienced, with the goal of promoting particular outcomes” (Caraban et al., 2019, p. 6). These include:

- *Adding inferior alternatives*: by introducing false options, a decoy effect can be elicited, as the framing of the decision is shifted.
- *Biasing the memory of past*: seeks to influence the perception of prior occasions that may be drawn upon when making the current decision.
- *Placebos*: is the provision of an element or option that has no real effect, but elicits a placebo effect.
- *Deceptive visualisations*: seek to create illusions of decision outcomes. These frequently utilise the salience bias, where people are more likely to focus on prominent things. Deceptive visualisations leverage the bias to create optical illusions, e.g. smaller plates making servings look bigger.

Social influence nudges. Social influence nudges are nudges that seek to take advantage of social factors that influence decisions. There is some evidence of social norms being very effective nudge tools (Nurfitriany Fakhri & Yanuar, 2020). Caraban et al. (2019) define them as “social influence nudges take advantage of people’s desire to conform and comply with what is expected of them” (p.7). These include:

- *Reciprocity*: by invoking obligations of social reciprocity, it utilises the reciprocity bias – the tendency to return with equivalent action the actions that they receive from others.
- *Public commitment*: By eliciting a public commitment, this nudge prompts people to honour commitments made, even if there is evidence that this is not beneficial.
- *Raising the visibility of user’s actions*: by utilising our tendency to overestimate the extent our actions are noticeable to others, this nudge evokes system 2 consideration of how our actions may be perceived. Choices are influenced when the perception of an audience to it is heightened.
- *Enabling social comparisons*: by providing more information on the decisions, and outcomes of others, decisions can be nudged. Heuristics utilised include herd instinct bias, our tendency to replicate others’ actions, even if it overrides our own. Advertisements of happy, well-off retirees are an example of how superannuation can be promoted by social comparison nudges.

Fear Nudges. Fear nudges are nudges that “evoke feelings of fear, loss and uncertainty to make someone pursue an activity” (Caraban et al., 2019, p. 8). By eliciting negative emotional responses fear nudges seek to promote one decision outcome. These include:

- *Make resources scarce:* By reducing the perceived availability of the nudged outcome, this nudge elicits the scarcity bias, our tendency to attribute more value to an object when we believe it will be difficult to acquire in the future.
- *Reduce the distance:* often people fail to engage because of the temporal distance from the decision to the result. These nudges seek to reduce the perceived distance, to make the future more salient to the present.

Reinforce Nudges. Reinforcement nudges are nudges that do not seek to introduce new factors into the decision but instead increase the weighting or significance of factors in the decision process. These include:

- *Just-in-time prompts:* draw attention to behaviour at appropriate times, or when a decision point may be reached but not necessarily recognised. For example, warning signals to drivers when they reach the speed limit prompt a conscious decision whether to speed, rather than an unconscious decision to speed due to the proverbial 'heavy foot'.
- *Ambient feedback:* are methods of enticing decision outcomes with minimal disruption to the decision maker. Caraban et al. (2019) cite a water fountain that emulates a rippling water illusion to passers-by to motivate them to stop and drink water.
- *Instigating empathy:* is a nudge that brings forth the feelings of empathy as decision factors.
- *Subliminal priming:* within this category are the subliminal priming or messages discussed above. As discussed above, such nudges seek to promote an existing factor in the decision, such as feelings of hunger.

The Evidence for Nudges

Having discussed the theoretical and philosophical foundations of nudge theory, let us consider what has been learnt about its efficacy in application, both through academic research and policy application. Nudges have been utilised across a range of applications, from small prompts on routine matters to large life and world-enhancing projects. Helpful nudges can include useful signage, and text messages around appointments (Thaler, 2018). A predominant application of nudges has been in norm nudges, typically in the form of providing information on how others behave, and what is deemed appropriate in the specified

situations; ranging from tax compliance, charitable giving and energy consumption (Bicchieri, Dimant, & Xiao, 2018)

Nudge theory has substantial appeal to governments. Since the 2008 Global Finance Crisis (and the leaner government budgets) liberal-minded politicians (both left and right) searching for new ways to change behaviours (limiting those harming and maximising those helping the public good) without resorting to dirty and expensive regulation and enforcement (Oliver, 2013). Nudges are cheap and effective ways to change behaviour without recourse to injunctions/prohibitions or incentivising (Hansen & Jespersen, 2013). Nudge approaches have a great capacity to affect beneficial social change in key challenging areas – global warming, obesity epidemics, and poor economic decision-making. Nudges are efficient ways to change behaviour without paying a cost of money or liberty.

Academic research

Nudge theory has seen considerable experimentation in a number of fields, as academics seek ways to improve social outcomes without the direct application of hard laws (Kosters & Van der Heijden, 2015). Since 2008 experimental research has been conducted across a range of fields, and the efficacy of nudges to influence decisions investigated in many contexts. Sufficient nudge research exists for useful meta-analyses to be conducted; Caraban et al. (2019) were able to identify 23 types of nudges from a population of 71 studies, and Hummel and Maedche (2019) drew from across 100 nudge studies.

The application of nudge theory has been studied across a range of human behaviour. Research has demonstrated that nudges (and nudge-like prompts) are effective in application across a wide range of public good initiatives. Below is a sample:

- To combat obesity and promote healthy eating (Arno & Thomas, 2016; Cadario & Chandon, 2020); (Ensaiff, 2021; Hanks, Just, & Wansink, 2013; Hansen et al., 2016; Trafford & de la Hunty, 2021; Wisdom, Downs, & Loewenstein, 2010); (Laiou et al., 2021)
- Improve patient choices and long-term health outcomes field (Kraus, Poterack, & Strand, 2021)
- improving education outcomes (Damgaard & Nielsen, 2018; Dizon-Ross, 2019; Doss, Fahle, Loeb, & York, 2019)

- Encourages positive early childhood classroom behaviours (Park & Clemson, 2020)
- improving organ donation (Johnson & Goldstein, 2003)
- participating in health screening (Lipkus, Klein, Skinner, & Rimer, 2005) (Misawa, Fukuyoshi, & Sengoku, 2020)
- increase clean energy usage (Momsen & Stoerk, 2014) (Chang, Huh, & Lee, 2016; Schultz, Nolan, Cialdini, Goldstein, & Griskevicius, 2007)
- promote positive citizen behaviour during the Covid-19 outbreak (Minoi, Mohamad, Arnab, & Hock, 2020); (Dhawan, Bhattacharyya, & Mukherjee)
- environmental behaviour (Michalek, Meran, Schwarze, & Yildiz, 2015; Milford, Øvrum, & Helgesen, 2015)
- to online behaviour, such as assisting safe online purchases (Esposito, Hernández, van Bavel, & Vila, 2017)
- Reduce fish sauce consumption in Thailand (Kanchanachitra et al., 2020)
- Assist HR managers to promote vaccine uptake (Sinha & Jain, 2021).

Civic behaviour has been a strong focus of nudges, in particular tax compliance, with several studies investigating how nudges could be used as soft regulation over hard regulations such as fines and penalties (Kosters & Van der Heijden, 2015). Antinyan and Asatryan (2020) in their meta-analysis of 45 trials of tax compliance nudges, only found significant efficacy in deterrence nudges – nudges that emphasise the penalties of non-compliance. They also found nudges work better on subsamples of late payers, and when delivered in person, and are less effective in the long run, and in poorer countries.

Meta-analyses of nudge theory successes have found mixed success with nudges; in some circumstances, the nudge achieves its desired outcomes, in others, it does not (Kosters & Van der Heijden, 2015). What has emerged in other literature is that nudges also appear to be very contextual; and what works in one choice environment doesn't work in others (Hausman & Welch, 2010; Michie & West, 2013; Willis, 2013).

Presently research into nudges remains significantly underdeveloped, as it remains to be mapped out what nudges work well in what contexts, and to what outcomes. So while nudge theory has success and impacts in other fields, when considering nudge theory's application in the field of employment relations, it is important to draw learnings from other fields but also recognise what worked elsewhere may not work in ER.

Government initiatives

An unavoidable observation of a literature review of nudge theory is that there is a large volume of studies that suggest it works. Many small studies, often of single behaviours that can be reduced to dependent variables have been nudged successfully. But despite 10 years of good evidence that it has ‘got legs’ very few policymakers have adopted nudge.

Several governments have ‘toyed’ with nudge theory, with some success. Sunstein himself was appointed by Barack Obama to be the administrator of the Office of Information and Regulatory Affairs – the regulatory body designed to review and oversee policies and regulations to minimise ‘red tape’ or streamline rules to reduce administrative costs (Lambert, 2017). In 2015 Barack Obama signed executive order 13707, “Using Behaviour Science Insights To Better Serve The American People” (2016), which saw some practical applications; with the automatic enrolment of poor children into free school lunch schemes, improved fuel labelling, nutritional facts panels made more health focused. Nudge-based programmes continued under the Trump administration (although without White House leadership), to be picked up again by the Biden administration as a tool for effective vaccine rollout (Sunstein, 2021).

In 2010, the conservative party government under David Cameron introduced the Behavioural Insights Team, unofficially known as ‘the nudge unit’, to utilise nudge theory in UK policy. The unit introduced a range of initiatives, with a strong focus on tax and fine compliance, and with reasonable success utilising social influence nudges (Hallsworth, List, Metcalfe, & Vlaev, 2017). Nudges to prompt people to become organ donors added 100,000 to the register in one year (Sunstein, 2016b).

Similar success was achieved by utilising norms for tax payments in Norway (Bott, Cappelen, Sørensen, & Tungodden, 2019) and Poland (Hernandez, Jamison, Korczyk, Mazar, & Sormani, 2017). In contrast, government tax compliance initiatives found little success in Colorado (Cranor, Goldin, Homonoff, & Moore, 2020) or TV licence compliance in Austria (Fellner, Sausgruber, & Traxler, 2013). Explorations into nudge theory’s application have also been made in Australia, Denmark, Sweden, Canada, Singapore, Israel, South Korea, the Netherlands and Mexico (Sunstein, 2016b). Pan-state organisations such as the OECD, the World Bank, and the EU have also recommended a range of nudges to positively influence social outcomes (Sunstein, 2016b).

As a public policy method, nudge so far has been trialled and toyed with, but it has not reached mainstream usage in government policy, even in the UK, where adoption was early and strident (Kosters & Van der Heijden, 2015). Sunstein (2021) describes the adoption of nudge methods in the USA federal government as successful, and whilst momentum was lost during the Trump administration, nudge methods remain circulating in government with potential for further application. This potential remains to be seen, as it doesn't appear to have established critical mass within the massive bureaucratic machine of the US government (both federal and state) to promote it as more than a side experiment. Nudge as a policy method appears to have strong potential, and sufficient supportive evidence, but it hasn't produced a revolution in public policy. A pragmatic answer would be that for a policy tool such as nudges to achieve consensus across the political spectrum, the outcomes must be non-contentious.

Nudges that fail

After 10 years in the public and academic consciousness, academic criticisms and public testing of nudge theory have identified its limitations. Nudges have proven to be of limited efficacy where either a) the public good sought by the policy is not accepted by the public it seeks to influence or b) where actors choose to avoid or subvert the nudge in their self-interest. As Sunstein (2017) himself acknowledges in his critique of his own theory: The general point is plain: when default rules or other forms of choice architecture are ineffective, it is often because self-interested actors have the incentive and the opportunity to impose some kind of counter nudge, leading people to choose in their preferred way (p.13). He sets out key reasons why nudges fail to achieve their desired outcomes:

1. The nudges produce confusion.
2. Some nudges only have short-term effects.
3. Some nudges produce reactance (reacting to, and deciding in opposition to the nudge because of the nudge).
4. Some nudges are based on an inaccurate understanding of what kinds of choice architecture will move people.
5. Some nudges will produce compensating behaviour, resulting in no net change.

(Sunstein, 2017)

Research has demonstrated that nudges can fail, due to errors in their design (Sunstein's reasons 1, 2 and 4) or aren't suitable to the context (reason 3), or the nudges are recognised by the actors, and compensated for, to neutralise this effect. In Chapter 4 is discussed how good faith bargaining in New Zealand employment law is arguably a nudge on bargaining agents, but these nudges are ineffective as bargaining agents compensate by changing their bargaining behaviour, with no net change in bargaining outcomes.

Prepared to fail. It has been argued by some that the uncertainty of nudge success equals uncertainty of nudge outcomes (Bradbury, McGimpsey, & Santori, 2013; Goodwin, 2012); to nudge is to accept that the nudge might not work, on both an individual and a group level. By this logic, nudges are only appropriate where failure is acceptable, and not appropriate where the cost of failure is substantial and to be avoided. In short, nudges are only appropriate for outcomes that are 'nice to have' not 'need to have', or as Kusters and Van der Heijden (2015) put it, soft outcomes instead of hard outcomes.

This is relevant to employment relations policy and informs us that nudge theory should only be applied to outcomes that are nice to have, but necessary to have. For example, employees joining a union is a 'nice to have', but not necessary, also is conflict resolution through mediation. By contrast, it is not appropriate to nudge employers to comply with statutory minima; nudge theory is not sufficient a tool to ensure employers provide their employees with the basic requirements such as pay and leave entitlements.

Antecedent preferences

Another factor, perhaps more applicable to the employment relations context, is the ineffectiveness of nudges in the face of existing positions. Described as 'antecedent preferences', pre-existing positions or opinions play a significant role in the effectiveness of the nudge. This is particularly prevalent with policies and political alignment, with individuals more likely to react to policies that run contrary to their personal political alignment. As Tannenbaum et al. (2017) identify, acceptance of nudges were significantly lesser when the nudge outcomes was contrary to the personal political alignment (i.e. democrats and republicans). In short, nudges are less likely to work where the decision maker has a pre-existing attitude or opinion on the decision. While acknowledged as key factors in nudge success (Sunstein, 2017, 2018), antecedent preferences have received little consideration for their role (Tor, 2020). As Sunstein describes the central maxim of a nudge as "better off, as

judged by themselves” (Sunstein, 2018, p. 1); it stands to reason that if an individual has already formed an attitude for themselves what is better for them, a nudge is unlikely to hold much sway. But this is not to write off nudges capacity; as discussed above, so pre-existing positions may be habitual or made via system 1 (intuitive) processes that could be swayed through nudges, such as provoking system 2 thinking.

Reviewing the context of most nudges, both academic and practical, there is a clear trend that the types of decisions that nudged have either neutral or favourable antecedent preferences. Most people are likely to agree that eating healthier, saving, and paying taxes on time are things they should be doing; therefore the nudges do not work contrary to pre-existing attitudes (i.e. antecedent preferences). Antecedent preferences are a key focus of this research, so will be discussed in more depth in Chapter 4.

Nudges that backfire

Nudges have been found to not just fail, but ‘backfire’, eliciting decisions contrary to those sought. Typically this is due either to poor design, or reactance. Poor design has been found to elicit decision outcomes not in line with those intended by the nudge, because of the presence of the nudge. Examples of this reactance have occurred where nudges have attempted to decrease agricultural water usage through social comparison nudges, where (when presented with social norms of water usage) heavy users decreased usage, but low users increased usage, likely because they saw they were ‘ahead of the pack’ and could justify the increase (Chabe-Ferret, Le Coent, Reynaud, Subervie, & Lepercq, 2019). While the effect may be specific to social comparison nudges, it does demonstrate poor nudge design can have unintended negative outcomes. John and Blume (2018) in their research into the efficacy of nudges on taxpaying, found that nudges with reminder notices can backfire; although this was partially attributed to wording, and the target population.

Reactance

When first formally tabled by Thaler and Sunstein (2008), nudge theory was a proposition of public policy, a recommendation brought forth from studies of psychology, economics and public policy. It was an idea worth exploring. From that point nudge theory has been tried, with some success, demonstrating it has potential but is not perfect, and its

application requires nuance. Further research has been conducted into the impact nudges have had on the target population; how people react to nudges and what role their responses play in the efficacy of nudges.

Most significantly, decision-makers can react against the nudge. Reactance is acting against the nudge and because of the nudge (Arad & Rubinstein, 2018; Sunstein, 2016a), which is distinct from deciding contrary to the nudge. Reactance differs from rejection due to the motivation of the decision; a nudge is rejected because the 'nudgee' prefers the alternative outcome to the one the nudge favours. After all, that is their preference. Reactance is where the alternative outcome is chosen because of the presence of the nudge. Reactance to nudges results from either a) belief that private decisions are not the government's business, b) concerns over manipulation, c) concerns of neglect of personal responsibility, or d) concerns over a 'slippery slope' (Arad & Rubinstein, 2018; Richter, Thøgersen, & Klöckner, 2018).

Reactance (also referred to as the boomerang effect) is not a construct exclusive to nudge theory and is an established phenomenon within psychology. Defined as attempts to overcome or reject constraints, frequently due to hostile perceptions of the restraining entity (Entwistle, 2020). In reconciling how a nudge can be reacted to, but remain ostensibly in the best interest of the individual, it is useful to consider the distinction between beneficial and popular (Fitzsimons & Lehmann, 2004); healthy food is beneficial, but not necessarily popular (amongst both children and adults). In short, as John (2018) puts it, sometimes people do not like being told what to do, whether rich, poor, educated or otherwise.

Trust

So why would people react against a nudge? Putting to one side a 'back-fire' nudge, where the outcome is more an accidental effect due to poor design or fit, why would people react to a nudge? Trust in the nudger plays an important role, particularly trust in the public institution, which has been demonstrated to play a key role in acceptance of, or reactance to the nudge (Fitzsimons & Lehmann, 2004; Kroll & Stieglitz, 2019; Sunstein, 2016b).

To gain some insight into reasons for reactance, we return to the nudge debate and the legitimacy of impositions upon personal liberty. The inevitability argument puts forward that we always face influences in our choices, so why not the state, seeking benevolence? The evidence seems to align with the debate, of cautious acceptance of nudges in principle, but

nudges may be rejected if perceived as an onerous or insidious intervention into one's personal decisions (John, 2018). Sunstein and Reisch (2019) continue to progress, in this regard, proposing a 'bill of rights' for the correct and appropriate application of nudges to ensure democratic legitimacy.

Sunstein seems to be following a project implementation plan; after designing, testing, and refining, his subsequent studies have included feedback (research into nudge acceptance). Generally, the research has found reasonable social approval of nudges. A cross-national survey of Belgium, Denmark, South Korea and Germany found strong support for nudges (Sunstein, Reisch, & Kaiser, 2019). A similar study of European countries including Denmark, France, Germany, Hungary, Italy and the UK also found strong support for nudges, although it was lower in Denmark and Hungary (Reisch & Sunstein, 2016).

The Jung and Mellers (2016) study of American attitudes to nudges found reasonable support for nudges, with some interesting details. System 1 nudges (those that influence intuitive automatic responses) were less supported than system 2. Individualists were less supportive of nudges, as were conservatives. Notably, Reisch and Sunstein (2016) did not find sufficient evidence of political affiliation playing a role in nudge acceptance. Sunstein (2016a) also found greater acceptance of system 2 nudges in the US, but no differences in the rate of acceptance across political affiliation. An interesting study of minority acceptance of nudges (Palestinian and ultra Conservative Jewish groups within the state of Israel) found nudge acceptance within these communities, except where it was perceived the nudge was contrary to existing social norms (Pe'er et al., 2019).

This area of the nudge debate will continue with further reconsideration and refinement, but for the consideration of nudge into employment relations, simple takeaways can be gathered: for nudges to work, citizens must trust the intentions of the public institutions nudging them, and without that trust, the nudge can be avoided or reacted against.

Summary

Nudge theory has been discussed extensively within academia, ranging from its philosophical and theoretical underpinnings to the ethical implications of its practice. This chapter sought to cover these key discussions so that there is a clear framework of how they

work, why they work, where they could be used and why perhaps they shouldn't be used. The key takeaways from this chapter are:

- Nudges assume that sometimes we take shortcuts in our decisions, and those shortcuts can lead to poor decisions
- Nudge theory is a soft regulatory tool that promotes better outcomes for citizens as judged by themselves
- Nudges are effective, but tread dangerously close to infringing upon an individual's liberty, and can be perceived as covert state manipulation, although some nudges are less ethically questionable than others
- Some nudges are more ethically questionable than others, especially where they target our system 1 thinking, or are less transparent. The justifiability of these nudges is dependent upon the social good they seek to achieve; the more universally accepted the social good, the more ethically acceptable it is to use such nudges
- Nudges can fail, especially if the nudgee has pre-existing attitudes to the question, or if they have concerns over the trustworthiness of the nudger.

Consideration of these points provides us with guidance of the suitability of nudges in employment relations. Knowing how nudges work and when they do not when they are suitable and when they may be unethical is important when exploring nudges in employment relations.

The fair use of nudges is dependent on whether it can reasonably be assumed the individuals would agree with the promoted outcome, and any negative effects it may have on the individual. This drives us to investigate to what extent employees agree with promoted social good of talking to the union, and what effects it may be having on employees.

Chapter 4: Nudging Employment Relations Decisions

Can we, and should we nudge employment relations decisions? In Chapter 2, union decline, and the reasons for this decline were discussed, as well as suggestions about past, present and future methods to revitalise unions. In Chapter 3, nudge theory was discussed; how it works, why it works and what we have learned so far from its application. In this Chapter, these discussions are synergised, to consider nudge theory's potential application to employment relations policy.

There are many employment decisions that could be nudged. Decisions such as whether to raise grievances, to escalate bullying allegations, or to comply with health and safety requirements, are all examples of important decisions employees may make in their employment. Employers decide whether to engage in collective agreements, whether to act within legal regulations or guidelines, whether to internally develop career paths or seek external labour resources. Union decisions include whether to pursue industrial action, assist employees to pursue legal claims or resolve employment relationship problems through mediation.

But perhaps the most significant employment relations decision is whether an individual joins a union. Whether to cast one's lot with the collective, go one's own way, or place trust in the benevolence of their employer, is a significant decision with far-reaching implications, both for the individual, and for the wider group. For these reasons, this research focuses on the potential for nudging the union membership decisions. That is not to say that there are no other key employment decisions that could, or even should be nudged.

As discussed in chapter 1, the purpose of this research is to investigate the suitability of nudge theory in employment relations policy. But as outlined in chapter 3, nudge theory is not without its critics, with valid concerns for how nudges could be used, or misused. This chapter will not only explore the suitability of nudges, but also investigate any potential concerns, so that these concerns can be explored in the research.

This chapter will be structured as follows: Firstly, it will consider union membership decisions and existing literature on why people join unions. Secondly, it will consider nudge

theory as a soft regulatory tool, an instrument available to public policymakers seeking to promote unionism with minimal encroachment on citizens' liberty. Thirdly, it will consider union membership decisions from the underlying behavioural economic paradigm of nudge theory. Fourthly, it will consider the suitability of nudges for union membership decisions, how nudges might work, and how nudges might fail. Fifthly, it will consider the suitability of nudge theory as a soft regulatory method in employment relations policy.

Union Revitalisation

The decline of trade unions is arguably one of the most significant employment relations (ER) phenomena of the past forty years, and the restoration of unions has been a key focus of many ER policymakers. Union density has declined across 33 of the 37 countries of OECD between 1998 and 2018, with the four exceptions only maintaining stable levels (OECD, 2020). Trade union decline in New Zealand was also consistent with this international trend, with union density dropping from 42.9% in 1991 to 17.7% in 2016 (Ryall & Blumenfeld, 2017).

As discussed in Chapter 2, the decline of unionism has also been a major concern of employment relations research for over 25 years and arresting this decline is a policy focus of many centre-left governments, including the NZ Labour party, and the fifth and sixth NZ Labour-led Governments. While other political and structural issues are also in play and contributing to this trend, one trend is undeniable: fewer people are deciding to join the union. But we should not assume the inverse; that more people are deciding not to join the union; failing to decide to join the union is not the same as deciding not to join the union. When considering the decline in union membership at the level of individual decisions, non-membership outcomes are not just attributable to active decisions not to join, but also circumstantial factors (such as union representation not being available or accessible), or the decision not being made. Haynes et al. (2006) identified a 'representation gap' of 17.8% in New Zealand, of workers interested in joining a union, but the decision effectively not being available to them. This representation gap has been identified in other OECD countries; 38.5% in Australia (Pyman, Teicher, Cooper, & Holland, 2009) 32% in the USA, (Freeman & Rogers, 2006) and 32% in the UK (Charlwood, 2002).

Across the developed world, the significance and impact of trade unions have declined, diminishing the bargaining power of workers (Bryson, Ebbinghaus, & Visser, 2011; Kollmeyer, 2018; Meyer, 2019). Howell (2020) dates the beginning of the decline for UK unions

to the defeat of the unions during the Thatcher Government of the 1980s as the state took on organised labour that it perceived to hold too much influence on the economy. In Australia by comparison, the shift to enterprise agreements from awards was more gradual. This did lead to big drops in union membership, but stronger unions did well whereas the weak struggled (Peetz, 2012).

Considerable academic consideration has gone into this, looking at the phenomenon from a range of perspectives, from a macro-societal perspective where the focus is on the legal frameworks and political institutions, to a micro-level consideration of individual behaviour (Bryson, Freeman, Gomez, & Willman, 2019; Ibsen & Tapia, 2017; Vachon, Wallace, & Hyde, 2016). Because the central focus of this research is to consider the soft regulatory influence on individual decision-making, we will focus on the micro factors; why, and how, people decide to join unions.

Decreasing trade unionism is important because declining bargaining power leads to poorer pay, working conditions and security. It is not surprising that the decline of trade unions across the OECD has coincided with rising income inequality (Atkinson, 2015; Kollmeyer, 2018; VanHeuvelen, 2018), increased precarious employment (Kalleberg, 2009), declining social outcomes (Wright, 2016), and declining influence of lower socio-economic citizens in national policy (Avdagic & Baccaro, 2014). Declining unionism equals a decline in working-class citizens' capacity to protect and improve their lot in both employment and society (Gumbrell-McCormick & Hyman, 2013).

The facts of declining trade unionism are well-established; the explanations are less so. Academics have sought to explain this phenomenon, although it must be noted that the heterogeneity of the OECD countries (with significant variations in culture, economy, and legal frameworks) allows only broad generalisations of the wider phenomenon. As Gumbrell-McCormick and Hyman (2013) note, trade unions are national organisations, representing local constituencies in primarily local issues within national legal and political frameworks; and one should not sweep too broad a brush when discussing unionism in a global context.

Ackers (2020), does however provide useful broad explanations, arguing that the multitude of factors contributing to union decline can be categorised into 'external material changes' (shifts into the structure of industry and markets) and 'external ideological changes' (shifts in attitudes and perceptions of employers, employees, the state and the general public),

and finally the shift in union strategy to adjust to these new factors. The three external material changes are the shift to the post-industrial society, globalisation, and new flexible models of operation. As many developed countries' industries shifted away from manufacturing towards service, where value is added through intellectual rather than physical labour, the number of traditionally unionised workplaces declined. The number of large-scale blue-collar workforces declined, replaced by smaller, more heterogenous industries, presenting unions with workplaces harder to organise in (Ebbinghaus, 2007). Globalisation has also been a negative pressure on trade unionism, as capital has become transnational, with downward pressures on labour costs and standards through international competition. Ackers (2020) further argues that flexible firm structures, through increased outsourcing of production and services, have fractured the large workplaces, and employers, that are well suited to union organising.

The ideological changes are post-modern affluence and consumer capitalism, and the decline of socialism as a significant world ideology (Ackers, 2020; Vachon, Wallace, & Hyde, 2016). As choices are often guided by an individual's sense of identity, key driving forces of unionism (self-identity with the working class, and alignment to working-class political movements) have waned. Post-modern affluence has facilitated the shift of identification from what we do, to what we have. The ideological attraction will be a focus of this research, as pre-existing preferences are a factor in nudge efficacy; and attitudes to unions potentially play a key role in whether a nudge will work (Ackers, 2020).

Understanding the reasons why people join unions, the process of how they make such decisions, and exploring the potential to nudge those decisions is important to attempts to arrest union decline. This research has the opportunity to make a practical contribution to these issues, by exploring these decision processes, and to investigate a new method for policymakers to support unionism.

While unionism has declined, it is not a lost cause. While their niche in society has shrunk, they continue to be beneficial to the working conditions of the members they support (Blanchflower, 1996; Thelen, 2012), and if, and how, they can be revitalised is a topic of academic discussion (Ibsen & Tapia, 2017). While many political groups advocate the revitalising of unionism for the benefit of lower socio-economic groups, how to do this remains unclear, with increasing pessimism about the potential of union revitalisation (Hyman, 2016).

Some literature focuses on legal frameworks, and the need to shift back from the neo-liberal structures found in many countries (Ibsen & Tapia, 2017). Other literature has focused on re-aligning the roles of unions in society, advocating new avenues of action; through new mediums such as social media, new unrepresented sections of society, and new issues such as multi-national companies and global supply chains (Ibsen & Tapia, 2017; Reinecke & Donaghey, 2015; Vandaele, 2020). Some scholars have considered the structure of the unions themselves, noting the potential for union structures to inhibit revitalisation in the modern world (Clark et al., 2020), and the failure to recruit and train activist employee delegates (Uetrict & Eidlin, 2019). This research has the potential to make a theoretical contribution to this revitalisation debate by bringing a new perspective on union membership decisions (whether made purely rationally, or with bounded rationality) and whether union membership could be promoted effectively and ethically through nudge theory.

Why People Join Unions

There is a long history of the study of union membership, with a strong focus on why people join unions. Various factors have been mapped, categorised and weighed. Wheeler and McClendon (1991) structured their categories of drivers of union membership decisions into instrumental, utilitarian and ideological, whereas (Rasmussen, 2009) suggests 3 primary explanations for individuals' decisions: utility benefits, situational reactance, and ideological drivers.

Van de Vall (1970)'s model of motives includes a mixture of a) personal needs, b) social environment, and c) the image of the union or unions in general. The actions and behaviour of the employer also influence the decision, as employer behaviour can further influence membership decision, as breaches of the psychological contract can increase union engagement and commitment (Deeks & Rasmussen, 2002; Turnley, Bolino, Lester, & Bloodgood, 2004).

Tolich and Harcourt (1999) surveyed EPMU members in New Zealand, and found that most people joined because:

- **Protection of their interests at work** -33.5% responded that 'support if I have a problem' was the main reason given
- **Direct economic benefits**- 27% for economic benefits of being on the collective

- **Ideological reasons**- 23.6% put this down as their main reason- 'because I believe in trade unions'
- **Group solidarity** - 8.8% responded most people at work are members.

(Tolich & Harcourt, 1999, p. 68)

The interaction of these factors, and the role of the employer, has long been discussed. A common theme of union commitment has been the dual thread of ideology and instrumentality, with the relative weighting varying across individuals (Sverke & Sjöberg, 2019; Wheeler & McClendon, 1991), although it has been noted that ideology plays a more significant role in Europe than North America (Wheeler & McClendon, 1991). Some note that both the union and the employer play a role in the decision and that the employee's motivation to membership is based on their perception both of the union as an effective and supportive institution in the workplace (Van de Vall, 1970), as well as the attitude of the employer (Deeks & Rasmussen, 2002). Rasmussen (2009) describes these forces as centrifugal and centripetal forces, forces that either push the employee away from the employer (conflicting interests of pay, conditions, autonomy); or draw them together (mutual interest and common purpose). The greater the conflicting interests between employers and employees, the greater the demand for union support. Likewise, Turnley et al. (2004) argue that the psychological contract plays a key role in this equation; that breaches on the part of the employer increase motivation to membership.

In addition the benefits to the individual, unions provide benefits to society as advocates of social justice. As Flanders (1970) notes in his seminal work, unions further act as agents for change, as 'swords of justice' against perceived inequities and injustice within their respective societies. This role in society continues unabated, as unions continue to play a role in society promoting social change beyond just the workplace (Metcalf, Hansen & Charlwood, 2001) although this societal role is subject to wider economic trends (Johnston, Kornelakis & D'Arci, 2012). It should be noted that membership decisions are not simply limited to the benefits presented to the individual, but also include the individual's potential inclination to support the union, the union movement.

How People Decide To Join Unions

As well as understanding *why* people are (or are not) joining unions, we must consider *how* people decide whether to join or not join unions. Understanding why people join unions

has been the greater focus of research, and justifiably so. In the context of this research, what is more important is to understand the 'how'; what are the mental processes by which individuals decide to join the union or not?

Theoretical approaches fall into three schools of thought; the rational choice approach, the interactionist or social custom approach (interaction with group culture and social context), and macro-economic drivers (such as business cycles, institutional support, and employer attitudes (Ebbinghaus, Göbel, & Koos, 2011; Schnabel, 2003)). While the macro-perspective provides a useful wider understanding of group behaviour, this research will focus on the micro; the individual behaviour and the individual's decision. At this level, we need to consider why individuals join unions.

But it has been recognised that the picture is not complete; many academics have recommended seeking a better understanding of how union membership decisions are made (Fitzenberger, Kohn, & Wang, 2011; Jensen, 2019; Jódar, Alós, & Vidal, 2011; Toubøl & Jensen, 2014). There are some promising indicative research findings in this area; research of union recruiters found a perception of bounded rationality in membership decisions; that decisions are frequently made via shortcuts, and to satisficing outcomes (Rivers & Truitt, 2014). With a simple shift of assumptions from rationality to bounded rationality, we can look at how (not why) people decide to join unions.

The focus of this research will investigate how union membership decisions are shaped by new public policy. So the focus will not be on employee motivations and reasons for joining the union, but on the decision-making process; the 'how' more than the 'why'. Why people join the unions does inform the process, as there may be some connection between individual's reasons, and their decision process, so while the focus will be on the 'how', the 'whys' will also be taken into consideration.

Rational Choice Theory

Rational choice theory approaches the decision of union membership as an individual cost-benefit choice, weighing up potential gains and costs, and union membership as a tool for utility maximisation (Ashenfelter & Pencavel, 1969; Berkowitz, 1954; Ebbinghaus et al., 2011; Hirsch & Addison, 1986; Schnabel, 2003). Kelly (2012) lays out the key assumptions on employee union decisions:

- Actors are self-interested agents
- Their behaviour is future-oriented
- They have a set of preferences, ranked in order of value or utility
- They use logical means to achieve their ends
- They act strategically to achieve, including considering other agents' course of action

(Schnabel, 2002) goes as far as expressing the demand for union membership by this equation:

$$U^d = d(p, y, wdifff, z, s, t)$$

Where union demand (U^d , d) is comprised of a combination of price (p), income (y), wage differential between membership and non-membership ($wdifff$), non-pecuniary benefits (z), cost of substitute services (s), and individual taste for unionism (t).

While having its merits, this theory does not provide a full explanation of observable facts as it fails to account for non-membership free-riding behaviour. Olson (1965) argues that where gains are non-exclusive to members, utility maximising behaviour would trend towards free-riding non-membership, as purely rational individual decision-makers would opt not to pay for what they could receive for free. While free-riding is an ongoing issue in employee relations, that it is not universal is evidence against the model that membership is a purely rational economic decision. Thus, to complement the rationally based theory, it is necessary to consider social factors in union membership decisions. Gomez & Gunderson (2016) further argue that union membership is an 'experience good', not fully appreciable of its full value and meaning when viewed externally, although it is necessary to note that although rational estimations of a good or service may be flawed and incorrect, the point is that rational tools are applied.

Social Custom Theory

To complement this, social custom theory was proposed. A supplementary sociological explanation, it proposes individuals consider taking the social norms and expected behaviour of their workplace into their decision as an additional social factor to be included in

an individual's rational decision (Akerlof, 1980; Booth, 1985; Checchi & Visser, 2005; Goerke & Pannenberg, 2004; Ibsen, Toubøl, & Jensen, 2017; Toubøl & Jensen, 2014; Visser, 2002). Social capital theory further expands by proposing that individuals consider the potential gains or losses in social status from membership, as well as social norms.

But, like all social norms, there is a critical mass. The strength of the norms' influence on the individual is proportional to its adoption and adherence with the group (Booth & Chatterji, 1993). Visser (2002) found that unions' membership attractiveness can diminish not only if they fail to deliver the goods and services the members expect, but also if they fail to uphold the norm or social custom of union membership. Social norms can also diminish due to increased employer opposition, rapid changes in the labour market, and high worker mobility and turnover; resulting in a diminished capacity for 'incremental sanctioning'. The more diminished the norm, the less likely that union members will proselytise others to join and thereby enforce the norm (Visser, 2013).

Behavioural Economics of Union Membership Decisions

The decline of unionism has been a major concern of employment relations research for over 25 years and arresting this decline is a focus of centre-left policies. Recommendations for future research have included understanding union membership decisions (Fitzenberger et al., 2011; Jensen, 2019; Jódar et al., 2011), and why people decide to join unions (Toubøl & Jensen, 2014). With a simple shift of assumptions from rationality to bounded rationality, we can apply the new paradigm of behavioural economics discussed above to cast a new perspective on the question of how people decide to join unions.

Bounded rationality allows us to seek and redress errors in decision processes instead of decision factors. Cognitive functions of the human mind frequently utilise efficient shortcuts, but these shortcuts can go awry (Kahneman et al., 1982). Bounded rationality proposes that bounded decisions may be made via the quicker system one (outlined in chapter 3), and may lead to a sub-optimal outcome for the decision maker (Thaler & Sunstein, 2008a). It is important to note that the criteria for whether an outcome is 'good' are consistently held to be from the perspective of the decision maker, not a third party; that the ultimate judge of whether a decision outcome was good or not, is the individual, not the state.

Behavioural economics integrates human behaviour into economic models, providing a more accurate understanding of real-world choices, and away from the intuitively flawed model of *Homo economicus*. As Camerer, Loewenstein & Rabin (2004) note the benefits of this new paradigm “behavioural economics increases the explanatory power of economics by providing it with more realistic psychological foundations”. Kahneman (2003) describes bounded rationality as exploring the ‘system biases’ that separate people’s actual choices and beliefs, from the optimal choices and beliefs they are assumed to have. In behavioural economics, we find our underlying assumptions of economic behaviour founded also in human psychology, rather than solely the rigid assumptions of rationalism, the roots of which we can trace back to the enlightenment philosophy of Descartes and Adam Smith.

Making Limited Decisions? Applying this paradigm to union membership decisions prompts one significant question; are individuals sometimes making sub-optimal decisions on whether to join the union, based on how they make these decisions?

If we consider union membership decisions from the rationalist approach to union memberships, we must consider decision outcomes as the results of the rational processes brought to bear on the question by the decision maker. An individual who is not a member of the union has weighted the factors as they saw them and decided accordingly. All any union recruiter can do is present factors the decider may have missed.

If we consider a union membership decision from the bounded rationality approach, we have more scope to consider the outcome, whether a quicker, intuitive (system 1) decision was made, and whether this resulted in a bad decision. With this broader scope, we can consider a wide range of factors that may act on that decision, whether poor cognitive shortcuts were used, or whether the choice architecture was biased. There is promising indicative research in this area; research of union recruiters found a perception of bounded rationality in membership decisions; that decisions are frequently made via shortcuts, and to satisficing outcomes (Rivers & Truitt, 2014).

Nudge Theory as a New Approach

Hansen and Jespersen (2013), in their seminal paper critiquing nudge theory, recognise the value of behavioural insights to public policy, because it can provide real insight into how

to influence public behaviour. When discussing the advances in behavioural economics, they note:

In the area of public policy-making, particularly, such advances teach us how neglecting these insights may be responsible for failures of public policy to reach intended effects, and why paying more attention to them seems likely to provide a key to dealing effectively with important societal challenges such as global-warming, obesity epidemics, and poor economic decision-making (p.3).

So where to start? There are a plethora of employment decisions, of which outcomes could be improved potentially via nudges. But as union revitalisation is a key concern (of both policymakers and academics) the best place to start is at the beginning; where the individual chooses to join the collective or not. To consider the potential of nudge in union membership decisions, we must first consider a) whether such decisions made with bounded rationality, and b) whether it is fair and reasonable to impose upon the liberty of the decision-maker in their decision.

Behavioural Economics and Bounded Rationality as an Alternative Paradigm

Employment relations is not a discipline lacking theoretical perspectives; with foundations in Marxist theory, sociology and critical perspectives from numerous theoretical disciplines, what value is behavioural economics? What new contribution does this paradigm bring to our understanding of employment relations behaviour and decisions?

Simply put, it provides us with answers to 'how' questions about actor decisions. Existing theoretical perspectives provide us predominantly with understanding of 'whys'; why labour organises and strikes, why conflict arises in the workplace, why discrimination occurs. Behavioural economics helps us understand how humans interact with the world around them. In the field of employment relations, a behavioural economics perspective has the potential to provide insight into how humans behave about these factors – particularly how decisions are made.

This new paradigm provides us with a new opportunity to reconsider existing explanations of observable phenomena. Scientific theories are explanations of observations,

and if they do not fully and sufficiently explain all facts, it is appropriate to seek new explanations through new theories. Fewer people are joining the union, despite it continuing to be rationally beneficial to join. Research continues to demonstrate the benefits of trade unions membership (Blanchflower, 1996; Thelen, 2012). If the current theory does not fully explain observations, then a new explanatory theory should be sought.

If current theory assumes membership decisions are made rationally, yet less than fully rational decisions are being made, this inclines us to seek alternative theories on decision-making. The alternative paradigm being turned to (particularly in economics) is bounded rationality. Bounded rationality assumes less than pure rationality at all times, therefore providing explanations for less than perfectly optimum decision outcomes.

Libertarian Paternalism as a New Approach

Chapter 3 discussed the distinctions between paternalism and libertarian paternalism, and at the heart of the differentiation is the concept of ‘best as judged by themselves’. Paternalism (the imposition of restraints upon the liberty of actors for their betterment, as judged by the imposing party) is a philosophical approach adopted frequently by the state in the regulation of employment relations; arguably anything beyond *laissez-faire*, free-market self-determination is paternalism. Minimum wages, safety regulations, leave requirements, fair process, and good faith are all paternalistic assertions by the state, assertions that have no regard for whether the parties would agree that the outcomes are in their interests. Such paternalistic policies have achieved significant social good; and have advanced working conditions and economic outcomes for both employers and employees. There is and will always be a place and need for paternalism in employment relations.

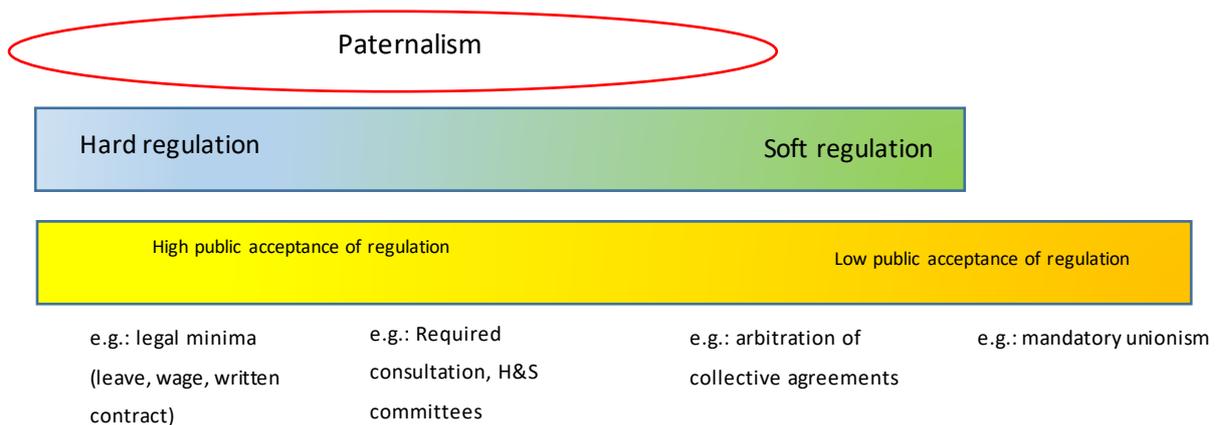
It is necessary to consider the question of freedom. Reiff (2020) makes a persuasive argument that unionisation increases freedom for employees in the workspace, and irrespective of whether that unionisation was achieved through free or mandatory requirements, the overall outcome is a greater capacity to act freely without constraint. Whilst this is a valid argument and not to cast easily aside, it is necessary to recognise the constraints of our paradigm. As outlined in chapter 3, nudge theory, and libertarian paternalism method of social improvement is involvement in the decision process, so its justifications best lie within the parameters of the decision.

But paternalism is not without limit; the paternalistic imposition of judgement is dependent on the consent of those to whom it is applied; at least in a democracy. Although the representativeness and responsiveness of political parties to popular opinion is a complex question that varies by country and form of democracy, we must assume that the democratic paternalistic law is either accepted or rejected by the population, albeit through the very limited mechanisms of modern representative democracies. The paternalistic assertion “we know what is best for you, and it is X” is rejected or accepted by the population the constraint is applied to. What paternalistic constraint is acceptable will vary from country to country (for example, many French labour requirements would not be accepted in the USA), time (for example, mandatory unionism was generally accepted for decades in NZ but is no longer acceptable), or may oscillate in and out of favour with successive governments (Skilling, 2019).

There is a pattern to this; in matters in which the society expects government intervention, direct paternal interventions (through hard regulation) are acceptable. In matters where government intervention is not expected, direct paternalistic hard regulation is not accepted. To consider the relationship between paternalism, public acceptance and regulation, it is helpful to map paternalism on both a continuum of hard and soft regulation and public acceptance, with New Zealand employment regulation examples. The purpose of Figure 5. is to demonstrate the purpose and place of paternalism in the regulation of employment relations, but also the potential gap.

Figure 5.

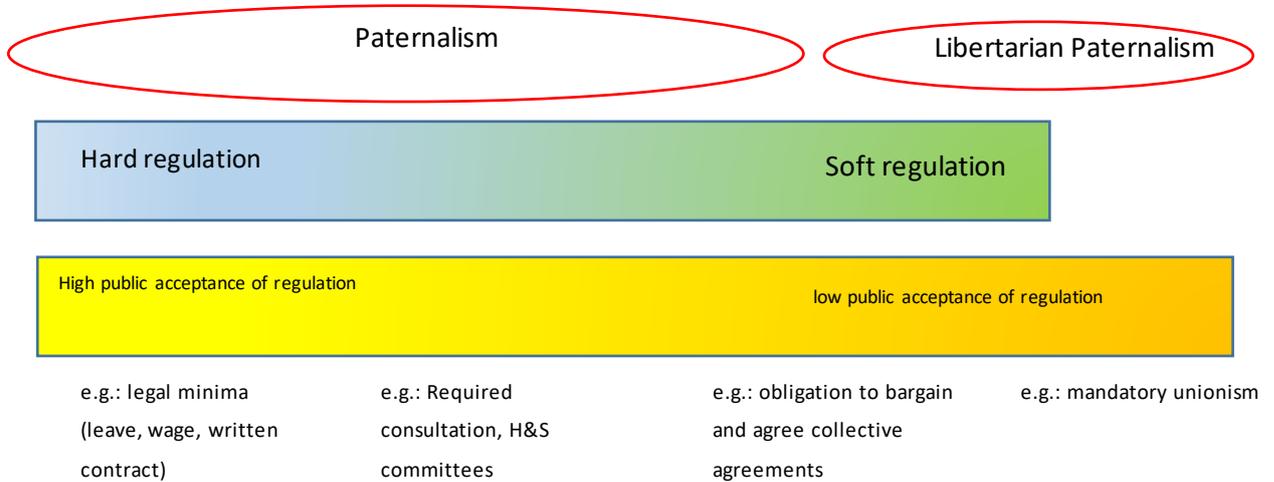
Soft regulation and Paternalism



But paternalistic policies do not carry a light touch; impositions of paternalism (and its constraint of liberty) on a population risk the rejection of that policy. The potential for libertarian paternalism (and nudge theory) as a new approach to regulation is to provide regulatory access to issues that would risk public rejection if paternalism was applied. To demonstrate visually:

Figure 6.

Libertarian Paternalism and Soft Regulation



To demonstrate this further, it is useful to consider two areas of regulatory contention; one that has occurred (90-day trials) and one that is proposed (default union membership). In 2008, the centre-right National Government introduced the capacity for employees to agree to trial periods, during which they would waive their rights to raise a personal grievance for any perceived wrongdoing on the part of the employer for the first 90 days of employment. Initially only available to small workplaces (less than 20 employees), this was extended to all employers in 2010, but then restricted again to small workplaces in 2018 by the centre-left Labour-New Zealand First coalition Government, a ‘yo-yoing’ of employment policy between subsequent governments and political ideology (Skilling, 2019).

The capacity to include a trial period in an agreement was introduced due to perceptions that the obligations placed upon employers were too onerous, restricting and inhibiting of their capacity to grow, particularly for small businesses (Walker & Hamilton, 2009) In terms of paternalism, the 90-day trial is the removal of regulation; as without a trial clause, employers are subject to fair process obligations, and the removal of this restraint a shift in public acceptance of this regulation. This matter of regulation ‘yo-yoing’ in and out of application to employment is an example of contentious paternalist policy; of whether the state should impose requirements upon employers as to how they should manage their new staff.

A proposed policy regulation, and one particularly poignant to this thesis due to its common topic, is the Harcourt, Gall, Vimal Kumar, and Croucher (2019) proposal for union membership by default. Harcourt et al. (2019) propose and justify the benefits of a union default, whereby new employees would default to enrolling into joining the union upon commencement of employment. It is further demonstrated that such a default would enjoy strong public support (Harcourt, Gall, Wilson, Rubenstein, & Shang, 2020). This proposal has substantial merit, and it is not the opinion of this author or the purpose of this discussion to disagree with these proposed policies. Instead, it allows us to consider the distinction between paternalism and libertarian paternalism. It is important to note that while defaults are frequently utilised as nudges, not all defaults are nudges, and not all defaults are libertarian paternalism; it is possible to apply default policies without them constituting nudges, and it is important to note Harcourt et al. (2019) do not claim such union defaults would be nudges, or rely upon nudge theory.

For a policy to fit the framework on nudge, and to be libertarian paternalistic in policy, we must go back to Thaler & Sunstein's initial definition of a nudge as a policy that "tries to influence choices in a way that will make choosers better off, *as judged by themselves*" (Thaler & Sunstein, 2008b, p. 5). Again we must pay close attention to 'as judged by themselves', as discussed in Chapter 3; this plays a key justification in the imposition of the policy-makers' beliefs upon the decision makers' liberty. Public support for the union default is meritorious, however the justification of a nudge does not lie with public opinion but with the individual. Nudges can only be justified if the nudgee agrees that the preferred outcome is better for them, not if society at large believes it is better for them. Paternalist policy only requires society's agreement that this policy outcome is for the best, libertarian paternalism requires the individual agreement the policy outcome is in their best interests.

Because nudge is not macro social engineering, but micro social engineering; it does not seek to remedy poor outcomes for society, but instead saves the individual from their own mistakes. Gill and Gill (2012) raise a good point in their analysis of libertarian paternalism when they question what is a public good and what an individual good. Advocates of nudge are very clear, that the sought good in the individuals' good, as judged by them. In employment relations, this is very clear – the individual must benefit personally; not personally sacrifice for the good of the collective. Without the criteria of 'good as valued by the

individual' we become untethered from libertarianism and slide directly into paternalism.

Returning to our model above, it's fair to consider the Harcourt et al. (2019) union default nudge as fitting within the paternalism bracket. It is also fair to note that (to date at least) their proposal has yet to achieve political currency, and while it may not be fair to speculate why, this may in part be due to a lack of social or political agreement that the policy is best for society. If such a default could be justified as best for the individual decision-maker the proposal may gain more acceptance.

Nudging Union Membership Decisions

Could we nudge union membership decisions? We have discussed why people join unions, but how do they make these decisions? Chapter three outlined the extensive literature on how not all decisions are fully rational, optimised decisions, but instead frequently utilise heuristics to make efficient but more error-prone decisions. Do employees use heuristics when making union decisions? One must assume that, in some cases, (if not many), system-one heuristics are utilised by people when making union membership decisions. If such processes are utilised in other decisions across a range of individual dispositions in a given population, it is best to assume they also occur in union membership decisions, with the burden of proof to demonstrate that they are not made in such a way.

But how important the decision is will likely influence how the decision is made. There is probably some relationship between the utilisation of heuristics and the significance of the decision (although existing research and literature have yet to demonstrate this). Major decisions (e.g., a house purchase), are not made 'on a whim', compared to more routine and minor decisions such as what to eat for lunch.

While some individual decision-makers are more likely to utilise a system-two (considered, rational and logical) approach to a wider range of questions, presently there is no research to provide us with guidance on the prevalence and frequency by which such decisions are made, and what variance may occur between types of individuals. However, there are two reasons why it is reasonable to conclude a healthy prevalence of system one heuristic processes in union membership decisions.

Firstly, important questions can be nudged. Saving for retirement is not an insignificant life decision; it is a reasonably significant financial undertaking which could be viewed as an equivalently important decision that can be nudged. Setting aside money for retirement is broadly analogous to paying union dues, and while amounts, returns and benefits may vary substantially, it is not unreasonable to suggest both decisions as broadly being of equivalent importance, and not trivial in nature. If retirement savings is a moderately important decision, but this can be nudged because it is made through system one processes, then it is reasonable to consider union membership as roughly congruous.

Secondly, social custom theory heavily implies the utilisation of heuristics in union membership decisions. As outlined above, social norms are factors in membership decisions. Some psychologists have argued norm adherence is at least partially a social heuristic, a system one method of determining the best outcome by replicating others' behaviour (Gigerenzer, 1997; O'Gorman, Wilson, & Miller, 2008). That decisions follow norms established by our friends, families and peers have been demonstrated to be influenced by a range of conformity biases, such as social desirability bias (Grimm, 2010), ingroup bias (Castelli, Tomelleri, & Zogmaister, 2008; Giannakakis & Fritsche, 2011) and groupthink (McCauley, 1989)

It is likely that union membership decisions are made intuitively, are prone to heuristic usage, and are therefore 'nudgeable'. While direct research is yet to be conducted as to how union membership decisions are made (another area of potential future research), the fact that existing research demonstrates that social norms and customs play a role in union membership decisions and that such norm-based decisions are prone to conformity biases (resultant from intuitive system one thinking), it is conceivable if not likely that such decisions are made intuitively and are, therefore 'nudgeable'.

Potential Heuristics and Cognitive Biases in Membership Decisions

To speculate beyond the bounds of existing knowledge, there are also several other potential biases that may creep into how employees decide whether or not to join a union. Examples of such biases, and how they may influence membership decisions include:

- Framing effects: how decisions are influenced by how the facts are presented, or how they are framed (Plous, 1993). Framing effects include the contrast effect, the decoy effect, the default effect, the denomination effect, and distinction bias. Employee

decisions are likely to be swayed by whom (union or employer) and how they are presented with the decision.

- Logical fallacies: are erroneous applications of logic, frequently through misattribution of causation (Kahneman et al., 1982). These include: the gambler's fallacy, hot-hand fallacy, irrational escalation, zero-sum bias, and plan-continuation bias. It is conceivable that 'the gambler's fallacy' occurs in union membership (basing decisions on prior but unrelated experience, e.g. assuming a dice roll is influenced by prior dice rolls), with employee perception of trustworthiness of either the employer or union being likely influenced by prior experiences with other employers or unions.
- Ego-centric bias: The tendency to overestimate one's capabilities, perspective and uniqueness (Schacter, Gilbert, Wegner, & Hood, 2011). These include; the illusion of control, the illusion of validity, the overconfidence effect, and the planning fallacy. There is strong potential for employees to be prone to these biases by over-estimating their own personal capacity to manage their problems and their prospects of promotion to management positions.

It is also probable that several biases occur in combination; decisions to continue with strikes or lockouts are also likely to be influenced by logical fallacies such as irrational escalation (continuance of a behaviour despite unfavourable outcomes, (i.e. encapsulated in the saying- "in for a penny, in for a pound"), social biases such groupthink (conformity bias to adhere to a perceived consensus), and confirmation bias (perception of new information through pre-existing conceptions, such as cynicism towards the other parties' behaviour).

There is also a strong potential for framing to occur. As discussed in chapter 3, a key defence of nudges is the rejection of neutral choice architecture, but instead that all decisions are framed in one way or another. Applying this argument to employment relations decisions, we must question whether the question of union membership or union contact is presented in a neutral manner. This is question of framing will be explored in the research.

Behavioural economics assumes that while people don't always behave rationally, when they behave irrationally, it's often predictably irrational (Lambert, 2017). If people make irrational ER decisions, are they predictable? As discussed above, there is extensive literature on the reasons people join unions, and many rational reasons employees do or do not join

unions. But as the literature on cognitive bias grows, the presumption of the rationality regarding these decisions weakens, and we can consider beyond rational reasons why people do, or do not join the union, to whether people make bounded rational decisions about joining the union, and whether we can nudge them towards joining the union because it would be in their best interests to do so, *as judged by themselves*.

Antecedent Preferences

An important constraint of nudges can be drawn from the nudge literature and must be placed at the forefront when considering nudges in employment relation policy; antecedent preferences. As discussed in Chapter 3, pre-existing attitudes on the decision context affect the efficacy of the nudge. Employment relations nudges can fail due to antecedent preferences if the employee has strong pre-existing attitudes towards the decision; union membership nudges can fail (i.e. be ineffective) if the employee already has existing preferences on the question, e.g. they have been a union member before, or have an existing opinion. This is consistent with ER knowledge; Kuruvilla, Gallagher, and Wetzel (1993) found that key variables in the formation of union attitudes include prior membership, contact with or exposure to the union, friends' attitudes and their personal beliefs about unions are key factors in an individual's attitude to union membership.

Reactance

Reactance is an important issue when considering nudging decisions with less benign motivations. As discussed in Chapter 3, nudges can be reacted to, and acted against, where the nudgee doubts the motivation of the nudge. Sunstein (2016a) identified two reasons for reactance. Firstly, people reject nudges that they perceive have illegitimate goals, particularly if they are seen to favour a political party or interest group; "whenever people think that the motivations of the choice architecture are illicit, they will disapprove of the nudge" (p. 195). Secondly, people oppose nudges that are perceived to be inconsistent with the values of the majority; that nudges may be rejected if they go against perceptions of the communal *zeitgeist*, although Sunstein notes the distinction between this and personal values, is ambiguous and in need of more research.

If a political party is to implement nudges that have the potential to benefit themselves or their political allies, such nudges will likely encounter resistance amongst those that do not hold opinions or beliefs consistent with the party's. Within nudge theory, these are considered 'antecedent preferences', acknowledging that nudges' application will frequently interact with pre-existing preferences or attitudes (Sunstein, 2018). This is consistent with ER theory, where attitudes towards the union (whether social custom or political ideology) are key decision factors.

It is worth considering how nudge theory has been applied by governments to date, by whom and in what decisions. In both the USA and New Zealand, nudge theory has been utilised when employees default on retirement savings schemes (Hansen & Jespersen, 2013; Ly & Soman, 2013; Suter, 2008). While these nudges were introduced by centre-left governments of the Obama administration and the Fifth New Zealand Labour Government, nudge theory was utilised in the United Kingdom under the Conservative Government of David Cameron. While the much praised, maligned and debated 'Nudge Unit' focused on improving tax revenue and reducing expenditure (Oliver, 2011; Rutter, 2015), there is a commonality across the political divide; a preference for a lighter touch of government, or soft regulatory persuasion over hard regulatory coercion. As Sunstein et al. (2019) note "If governments can achieve policy goals with tools that do not impose high costs, that preserve freedom of choice, they will take those tools seriously" (p. 1418).

Union Membership is a Political Nudge. In New Zealand, and in most countries where they are present, unions are political organisations. In New Zealand, although the involvement of trade unions in national politics has varied over time, governments, and unions; strong ties (both formal and informal) exist between the Labour Party and the trade unions. Six large unions (E tu, MUNZ, DWU, MWU, RMTU, CAWU) are formally affiliated, and cast votes in party leadership elections. The NZ Council of Trade Unions has a close relationship with Labour Party, and many Labour Party Ministers with ER portfolios are former union organisers. There is a clear relationship in New Zealand politics between the NZ Labour Party and the NZ trade union movement; a relationship that has always been public and well-known (Deeks et al., 1994; Miller, 2010).

In New Zealand, trade unionism membership is politically aligned, and very likely to be perceived as such by those making union membership decisions. A nudge by a political party to the benefit of their political allies may easily and validly be perceived to be less than

benevolent, or not in the interest of the decision maker, but in the interest of the nudger. As discussed above, nudge theory is justified by the claim that the nudged outcome is actually in the best interests of the individual, as judged by themselves. If this is in doubt, i.e., the decision maker has concerns about the legitimacy of the motivations of the nudger, it should be of concern. As discussed above, trust in the legitimacy of the nudger and the nudge is critical, and non-acceptance may lead to rejection or reactance.

So nudges that benefit the political allies of the nudging institution are fraught with risk, and so should be nudged with care. While saving for your own retirement or paying your taxes is relatively apolitical, joining the union is less so. Furthermore, if the philosophy of Libertarian Paternalism is to be adopted and nudges utilised for the public good in ER decisions, the threshold we must satisfy is not that the decisions are contrary to the public good promoted by the policy, but that cognitive biases in the decision making processes have led to poor decisions outcomes, as judged by the decider themselves.

Are Employers Already Nudging? We should not assume that nudges (of a form) are not already happening. As Sunstein (2006) points out, we should not automatically assume that choices are neutrally framed; as discussed in Chapter 3, it should not be assumed that choices are not already influenced, and nudges are not already in play. Employment relations literature already identifies a swathe of social influences acting upon employees in their decision to join the union, including by the employer upon the employee to adhere to the values of the organisation and avoid the conflictual relationship that comes with joining the union. Presently there is no research on employer nudges on decisions, but it should not be assumed there are none.

Sunstein (2015) argues that defaults, nudges and biased architecture are prolific, commonplace, and significantly more prevalent than neutral architecture. To choose not to nudge in the public good is to allow other 'nudges' to occur, with more self-interested motives. It can be proposed that for the government to choose not to nudge employment relation decisions is to allow employers to nudge in their own interests. In a comparable vein of thought, Harcourt et al. (2019) point out that non-membership is already the default; the status quo is that you are not a member of the union. While freedom of association is typically interpreted as the right to join should you choose, the focus should be on the ease of association or not, rather than aligning the default.

To look more broadly, from the paradigm of bounded rationality we can now see employers and employees neither as purely rational actors nor as outcomes of macro-level social factors. Instead, we can recognise the agency of actors to act in their own interests, while identifying their limitations. In the Author's professional career, the Author frequently cited the aphorism, Hanlon's law; advising to 'never attribute to malice that which is adequately explained by stupidity' (Bloch, 1977). By recognising that humans err, and identifying how and why they err in ER decisions, we can shift our perspective from assumptions of malice, to investigating and remedying where they err.

S62a and the Union Intention Form

The Employment Relations Amendment Act was introduced in 2018, as part of the new Labour-NZ First Government's first-100 day reform plan. The amendment's purpose was to "provide greater protection to workers, especially vulnerable workers, and to strengthen the role of collective bargaining in the workplace to ensure fair wages and conditions" (Lees-Galloway, 2018, p. 1). This amendment was not a shift in the Act's philosophy or objectives but a bolster; including reinstatement of old union-promoting rules, restraints on employer privileges, and a provision of new mechanisms for the union to promote itself in the workplace. The Amendment was more of the same soft regulatory prompts, but more interventionist and directive than prior.

Should we cast an eye over the Amendment from the theoretical perspective of nudge theory, looking for attempts by the state to influence decisions without hard regulation, two notable amendments meet this criterion. The duty of good faith requires parties to conclude a collective agreement unless there are genuine reasons not to (s33); and the requirement to provide a new employee's information to the union unless the employee objects (s62a). While a further investigation into the obligation to conclude bargaining would be of merit, employer attitudes against bargaining (Foster et al., 2011) would suggest this potential nudge would have limited effect, although there is potential for future research.

It must also be borne in mind that this amendment was a product of a coalition government of both Labour and NZ First; although introduced by a Labour Minister, in a field of fundamental interest to the Labour and a minor focus of the NZ First party, it must be remembered both parties hold responsibility for its passing. This is relevant to the research, as

we must consider the implications of those whose political support aligns with either Labour or NZ First.

Section 62a

Of greater research potential is the passing on of employee information unless the employee objects (s62a). Below is the section in full, for completeness:

62A Employer must share new employee information with union unless employee objects

(1) This section applies to an employer who enters into an individual employment agreement with a new employee under [section 62](#).

(2) The employer must, within 10 days after the employee commences employment with the employer, provide the employee with a form approved by the chief executive under [section 237AA](#) that the employee may complete and return in accordance with subsection (4) for the purposes of—

(a) notifying the employer whether the employee intends to join a union (or a particular union):

(b) objecting to the employer providing information about the employee to,—

(i) if the employee does not intend to join a union, any union; or

(ii) if the employee intends to join a particular union, any other union.

(3) The form must be accompanied by a notice that—

(a) specifies the period during which the employee may complete and return the form, which is the period described in subsection (4); and

(b) explains that, unless the employee objects in accordance with this section, the employer will provide the following information to each union that is a party to a collective agreement that covers the work to be done by the employee:

(i) the name of the employee:

(ii) whether the employee has, during the period,—

(A) notified the employer that the employee intends to join the union; or

(B) notified the employer that the employee does not intend to join the union; or

(c)not completed and returned the form.

(4)The employee may complete and return the form during the period that—

(a)starts when the employee receives the form; and

(b)ends 30 days after the employee commences employment with the employer.

(5)The employer must, within 10 working days of the expiry of the period described in subsection (4), provide the following to each union that is a party to a collective agreement that covers the work to be done by the employee (unless the employee has objected in accordance with this section):

(a)the name of the employee:

(b)if the employee completes and returns a form in accordance with this section, the completed form:

(c)if the employee does not complete and return the form in accordance with this section, notice that the employee did not complete and return the form.

(6)Nothing in this section limits or affects the right of an employee to become, or not to become, a member of a union or a particular union at any time.

(7)An employer who fails to comply with this section is liable to a penalty imposed by the Authority.

("Employment Relations Act," 2000)

Let us simplify this requirement and extract the key points. Firstly the process: the employer must provide a government-specified form, which asks the employee if they intend to join the union. The employee completes and returns the form to the employer, who passes-on to the union if the employee intends to join the union. If the employee completes the form that they do not wish the form to be provided to the union, the information is not passed on. If the employee does not complete the form their name is passed on to the union. The complexity of what happens if there are more than one applicable union (i.e. there are two or more Collective Agreements covering the work) is accounted for in this process, but this is immaterial for this research; 'the union' is the key consideration, and the fact that this may constitute one of range of specific entities is not sufficiently relevant.

It is important to note that this section specifies a four-step process; 1) the employer provides a form, 2) the employee has a period of consideration of up to 30 days, 3) the employee returns the form (or does not), 4) the employer passes-on the completed form or the name to the union. There is arguably a natural 5th step when the union contacts the employee, but this is not required by this section. Throughout this thesis, these requirements will frequently be described as the s62a process. This is to encapsulate not just the requirement to pass on information, not just the form, but all the actions required under this section, and the document involved. The present form (and only form to date, and the form at all stages of the research) is included in Appendix A.

There are a number of key points that must be focused on due to their significance and relevance to this research:

- **The employer is responsible for administrating the process.** This section plays the responsibility for the completion of this process; they must provide the form, gather the form, and pass it on the union. They are the only party potentially liable for a penalty should they not meet their obligations under this section.
- **It's a complex process.** Although implied above, it is necessary to draw explicit attention that it's a 4 step process, of administrative mundanity. For it to result in a union membership outcome, it's a 5 part process; 6 if you consider the employee still has to make the final decision to join the union.
- **It's an innocuous government form.** Reviewing the present form (see Appendix A), its mundane, unremarkable, and decidedly governmental in nature; a generic form with inoffensive colours and fonts designed to not offend or confront. But this mundanity belies its potential significance, and its inoffensiveness renders it unremarkable and unlikely to draw attention and sufficient consideration.
- **It can act against the preferences of the employee.** The form asks two questions; do you intend to join the union, and do you object to this information being passed-on. An employee not wishing to the join union can fail to object to their information being passed on. Furthermore, the form must be provided so the union is aware that they are not intending to join the union. It is easy to imagine this was not the intent of the employee and that this outcome is contrary to their preferences. Reviewing the form, these questions and their implications are not clear at all.
- **It only seeks to elicit intention.** The form only seeks to elicit information, and the employee is free to provide, withhold, or abstain (by intention or not). It only elicits the

employee intentions regarding union membership, and neither gathers a decision or even a concrete undertaking. It is a straw poll of employee inclination only.

- **It's a lead.** The outcome of the form is a potential 'lead' for the union to recruit ('leads' being a common sales term for a potentially interested party to whom a sale could be made, or paid service provided). Of the three outcomes (intend to join, do not intend to join, did not complete), two provide opportunities for the union to contact and recruit. Of these leads, three points can be made:
 - Those who complete that they intend to join are likely to be better leads.
 - The lead must be followed up on by the union.
 - The s62a process is a new avenue for these leads, where no avenues existed prior unless the employer and union had similar arrangements.
- **It's a default pass-on.** The employee's information (name, and whether completed form) will be passed on by default to the union unless the employee objects.

An Analogous Nudge

It is this final point that bears the most significance to this research. Here we meet the criteria of a nudge; a shifting of the choice architecture (whether to be in contact with the union), without forbidding any outcome (not being in contact with the union). It is important here to identify the key characteristics of this pass-on that are analogous to a nudge.

S62a requires employers must provide new employees with the government-specified form (see Appendix A), asking them to indicate whether they wish to join a union. If the employee does not complete the form, their contact information must be passed onto the union, exactly as if they had actively agreed to this. This meets the criteria of a default nudge; shifting the outcome of the passive choice; what happens if the individual does nothing (Campbell-Arvai, Arvai, & Kalof, 2014; Sunstein, 2017).

But a significant caveat must be placed across this; the default passing on of information is not a nudge by intent. There is no evidence in any government or political party policy to suggest nudge theory or nudge theorist directly or indirectly influenced the process. To this end we can only consider the s62a process to be an analogous nudge; a process with actions, mechanisms, impacts and outcomes comparable to a nudge (but it is not a nudge by design). When we consider what can be learnt from nudge theory's efficacy and impacts on

union membership decisions, we are constrained but what can be inferred from an unintended experiment.

It is important to distinguish the decision potentially being nudged; the decision to be in contact with the union, and not the decision to join the union. While the latter nudge has been argued (see Harcourt et al. (2019)), the only decision presently being potentially nudged is whether to be in contact with the union. The nudge intends to influence the membership decision, but the decision nudged is the contact decision. This research will consider both decisions while recognising only one decision is being nudged.

But it does share key characteristics of a nudge. It does meet other the criteria of nudges; most significantly (as discussed in Chapter 3) nudges must be easily acted against, and the outcome nudged towards must be in the best interests of the individual, as judged by themselves. Because the employee can easily opt-out of being put into contact with the union simply by completing the form, such a nudge can be easily acted against.

The more complex question is whether being put into contact with the union is what the employee would see as being in their interests, as judged by themselves. Such criteria is much simpler to evaluate with less contentious questions such as eating healthy foods, recycling, and protecting your computer from malware. Speaking to the union is less self-evident as a social good, it is less clear that the individual would agree is this in their best interests. Attitudes towards unions vary from individual to individual, and to an extent, from culture to culture.

This is a key variable this research investigates. Whether the employee agrees that contact with the union is in their interests, but at this stage when considering whether it meets the criteria of a nudge, we should be guided by the intent of the legislators- that they perceived it to be in the best interests of the employees, not other parties. Whether this can be held to be true is part of this research.

Privacy Issues. This provision of information without consent is a potential breach of individual privacy. As noted by the Privacy Commissioner in his submission to the Amendment Bill's select committee; "it goes beyond what is necessary to achieve the objective of ensuring employees are being provided with a genuine choice about joining the union. Requiring an individual to opt-out of having their personal information disclosed is poor privacy practice"

(Privacy Commissioner, 2018, p.1). Iain Lees-Galloway (Minister for Workplace Relations and Safety) defended these concerns in the parliamentary debate; “I respectfully disagree with the Privacy Commissioner. I considered his points, but I respectfully disagree with him. The opt-out gives people the ability to withhold that information from the union if they so choose. It is absolutely their choice, and that is what is laid out in this legislation” (Lees-Galloway, 2018, p.13).

The form attempts to address these issues, but does so poorly. It has a privacy statement; which advises the employee of their rights to see a copy of any personal information held, which does not address the concerns of the privacy commissioner – that personal information will be shared without agreement is contrary to the principles of the Privacy Act. At best this advisement is assuring the employee, at worst it is a cynical misdirection or false assurance. This research intends to avoid consideration of political machinations, so the intent of the privacy advisement is out of its scope. It is best to conclude that a) passing on information without consent was a concern of the privacy commissioner, b) this concern may be shared by employees, c) the privacy advisement may provide employees with comfort, or further exacerbate concerns if viewed as misleading.

A Default Nudge

As discussed in chapter three, a default nudge is one of the ten nudges originally identified by Sunstein (2014a). A default nudge changes the outcome that occurs if the decision maker is inactive to the preferred outcome. It counteracts the status quo bias and inertia that would have resulted in the ‘wrong’ outcome, and instead utilises it toward the ‘right’ outcome. Without this s62a prompt towards union contact, the default (if the employee does nothing) is that employees will not be in contact with the union. The s62a process shifts this default (i.e. does nothing) to the employee being in contact with the union.

Default nudges have two primary effects; the initial status quo bias, and ongoing inertia (Harcourt et al., 2019; Venema, Kroese & De Ridder, 2018). At presentation of the decision, a default nudge presents a status quo that is implied to be more socially acceptable, if not preferable. As Harcourt et al. (2019) identify specifically with union membership decisions, whatever the status quo outcome is, is implied to be greater acceptability, both within the workplace and wider society; by non-membership being the default outcome, the implication is that this is more acceptable outcome.

Default nudges also utilise the individual's inertia; their tendency remain in the same situation without taking active steps to re-evaluate the decision. Inertia as pattern of human behaviour is an interesting factor that can multiply the effects of both a heuristic, or a nudge, although it applies after the initial decision (Cai, 2020). A force multiplier of sorts, it is a status quo bias that applies after the initial decision, as the decision maker shows a preference towards the decision outcome previously decided upon, and a resistance or hesitancy to reconsidering the decision or considering the alternative (Malodia et al., 2022). Its relevance to union membership decision is that there is a certain 'stickiness' to union membership decisions, that once made, employees tend not to come back to the question of membership, that once a member or not a member, there is a strong tendency for them to stay with that status quo (Harcourt et al., 2019).

An Opportunity to Investigate Nudges in Employment Relations

The s62a process of defaulting new employees into contact with the union is an opportunity to explore how nudges work in employment relations decisions. If the pass-on is analogous to nudge it presents us with an opportunity to measure the impact that nudges have, both on the employees, the outcomes that policymakers may seek to achieve, and any unexpected impacts it may have on employees or the workplace.

Summary

Chapter two discussed the current employment relations environment in New Zealand; the objectives of current legislation, the preferred soft regulatory approach and its lack of success to date. Chapter three explored nudges; how they work, when they don't work, when they should be used and when they should not. This Chapter explored how nudges could be used within employment relations to promote policy outcomes, with the following key points:

- Union revitalisation is an important topic both in New Zealand and worldwide, as new approaches are sought to promote unionism.
- Nudge theory could provide a new approach to union revitalisation.

- Joining the union is a contentious social good. It is not universally accepted that joining the union is in the individual's best interests (as judged by themselves), so more caution should be exercised when nudging.
- It is assumed that union membership decisions are made rationally (i.e. with full logical consideration of the information available), whereas bounded rationality can provide an alternative perspective on how people decide to join the union (i.e. sometimes through the utilisation of heuristics).
- Potentially some poor membership decisions are occurring because employees are making their decisions quickly, intuitively and with cognitive biases that may not be in their best interests as judged by themselves.

In 2018 a new requirement was introduced that defaults employees into contact with the union. This is sufficiently analogous to a nudge to allow us to measure how this change has worked since then. This research can also provide a general indication of how nudges might work in employment relations decisions.

Chapter 5: Methodology

The literature review presents us with an interesting but inadvertent potential watershed in New Zealand employment relations regulation. The ERA stills endeavours to promote unions as a means to improve employee outcomes but remains largely unsuccessful in achieving this aim. However it does contain one mechanism that shares key characteristics with nudges. While nudges have demonstrated success in improving individuals' decisions and may be an effective tool in improving employee decisions, presently it is largely 'uncharted territory'. This research seeks to 'chart this territory', by exploring the impact of the default pass-on of employee information introduced in 2018 to provide insight into how nudges may work in employment relations.

The purpose of this research is to investigate the impact of a soft regulatory intervention in New Zealand employment relations by the Labour/NZ First Government through a mixed method, multi-site case study. To gather a range of data and to utilise triangulation of sources, a mixed-method of both qualitative and quantitative data collection methods will be used including survey data, semi-structured interviews and form completion data. To ensure a breadth of data and limiting section-specific factors, data will be gathered from a range of industries, and therefore will use a multi-industry case study methodology.

This breadth brings complexity. It asks two research questions; it utilises a broad theoretical lens (pluralism), but also a narrow theoretical lens (nudge theory). For the most part, it applies inductive reasoning, but is deductive on some questions. It uses both quantitative and qualitative methods, across three case studies. It is complex and perhaps overly ambitious, so in this chapter the logic that underpins the research will be laid out, and will demonstrate the foundations of appropriate data collection from which valid findings can be drawn. The research design will be outlined and also the rationale for the method utilised. Firstly the research questions identified will be discussed, and the methodology selected to best provide answers to them. Secondly, the research methods and tools utilised and the benefits and constraints of these tools will be outlined. Thirdly, there will be a description of how the research was conducted and the limitations encountered, and fourthly the data analysis process will be explained.

The Research Questions

The literature identifies the strong potential of nudges in employment relations, but also that nudges have both practical limitations and ethical implications that need researching. We need to explore both a) the impact of this legislative requirement on actors, and their decisions, so that we can understand their efficacy and b) the future potential soft regulatory nudges. If nudge theory has potential in employment relations policy we need to gather data on what impact it has where it is applied. This will be undertaken in two related but distinct subparts referred to hereafter as research questions A and B.

Research Question A: What is the Impact of the S62 Process of the ERA in New Zealand Workplaces?

Research question A will explore the impact of the s62a process legislative requirement on employment practices in New Zealand. It will investigate this process in a holistic and inductive process, utilising a mixed method methodology of semi-structured interviews, form completion data, and employee surveys to capture a wide range of data that can be integrated into an interconnected understanding of how this soft regulatory intervention by the state has affected employment relations outcomes. This research question will provide a more comprehensive understanding of how the legislation has impacted employment parties (employers, employees, and unions) and how it has advanced the overall purpose of the legislation and the objectives of the Employment Relations Act. It is therefore beneficial to identify subparts to this question:

Research Question B: Do Antecedent Preferences Affect the S62a Process?

From the assumption that the information pass-on defaults of s62a are sufficiently analogous to a default nudge, this research question investigates an aspect of nudge theory determined in the literature review to likely be of particular significance when nudge theory is applied to employment relations decisions: that pre-existing attitudes and beliefs (antecedent preferences) influence both the success and the impact (both intended and unintended) of the nudge. This research question will also utilise the same range of data collection methods both

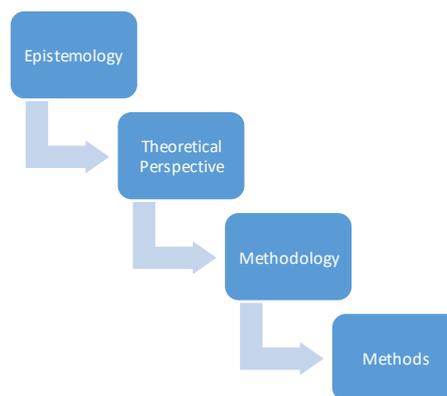
quantitative and qualitative, but with a strong focus on the impacts on employees through quantitative survey data and qualitative interviews. This research question includes some deductive hypothesis testing of key relationships with the survey data (outlined below).

Research Purpose and Objectives

Crotty (2020), stipulates four elements of research design, in a hierarchy whereby each element forms a foundation for subsequent elements. These are:

Figure 7.

Research Design Framework



(Crotty, 2020, p. 4), p4

Although this research was not conceived and conducted in this order, when discussing the process of the research, and the rigour of its findings, it is best to consider first its philosophical and logical underpinnings. Crotty (2020) recommends that the researcher first turns their mind to the selection of methodology, as it must be appropriate to the research topic and objectives.

Epistemology

A simple explanation of epistemology is that it is the study of knowledge, and what can be determined and held to be true (Steup, 2005). Research that purports to provide knowledge must consider both what it assumes to be 'true', and what is 'knowledge'. Epistemological foundations must also be based on ontological assumptions of the certainty of the subject being researched, and the extent to which true knowledge can be asserted upon it. It is generally recognised that a key division is between concrete (e.g. plants, planets and places) and abstract objects (such as citizenship, rights and identity) (Honderich, 2005). Although this is a very cursory summary of a very large and complex scientific field of study and debate (for a more detailed discussion see (Al-Saadi, 2014; Goerke & Pannenberg, 2004; Wakefield, 1995)), its application to this research is: there must be an appropriate fit between what can be known about what is researched and the methods by which the data is collected and analysed.

These research questions investigate the impact of legislative change on employment relations actors (employees, employers, and unions). They investigate the impact upon the perceptions and attitudes held by these actors, and their socially constructed perception of their reality. An employee's attitude to the union, the state and a nudge is a social construct of what they see and make sense of in the world. This research seeks to measure these social constructs, and it utilises, and relies upon these individual social constructs to gather and form as collective an understanding as possible. As such its epistemological foundations are constructivist; that the subject we seek to observe and measure is the mental constructions held by the population (Crotty, 2020, Saunders, Lewis, & Thornhill, 2009).

Theoretical Perspective

As discussed above, this research constitutes two parts, a) a broad investigation of a legislative requirement on New Zealand ER practices and b) an exploratory investigation through the theoretical perspective of nudge theory. This is exploratory research: a preliminary research to explore the scope and potential for further explanation, through an existing theoretical model. As identified in the literature review, the use of nudge theory has not hitherto been explored with regard to employment relations decisions.

Employment Relations Theory. Research question A seeks to take a broad and unrestricted approach to understand the impact of the legislation, with as minimal a filtered perspective as possible. But research carries some assumptions, even if not intentionally applying a theoretical model. Therefore the research question of Part A will consider through the foundational perspective of the Oxford school of industrial relations, of pluralism of parties and interests in the workplace (Fox, 1966). When considering the decline of unionism as an institution to rebalance the bargaining power of the employers, one is taking a pluralist perspective (Budd & Bhawe, 2008). This question is approached by a pluralist frame of reference because the ERA is pluralist (Anderson, 2011).

Nudge Theory. Given that the focus of this exploratory research is on nudge theory in the context of employment relations, it is necessary to consider the ontological assumptions and epistemological precedents of nudge theory, and *ipso facto* there should be an appropriate fit of theory to methods. The question is: what epistemological assumptions best serve to inform our understanding of the efficacy of nudge theory?

As Hortal (2020) notes in his discussion of the epistemology of bounded rationality and nudge theory, assumptions that decision-making errors can be predictably and measurably flawed lends itself to objectivist assumptions and quantitative measures. If we can predict outcomes of nudges, we can test, we can measure, and we can use controls. We can generate data independent of the perspectives of the subjects. But, as Horton (2020) discusses, elements of rationality are unavoidably subjective. Rationality is not just logical and goal-oriented, but also socially founded (embedded within the social norms and customs) and expressive (such as personal emotions, enthusiasm, fears and sympathies). To understand human decisions and decision-making processes, there is a capacity for qualitative contributions to these subjective factors, and well as personal reactions to the nudges.

As discussed in Chapters 3 and 4, nudge theory's suitability to employment relations decisions is not simply dependent on whether it works, but also on whether it is a significant imposition upon individual liberty, and whether the social good of union membership outweighs this imposition. We must consider not simply the objective success of the nudge, but also the subjective effect of the nudge upon the employee. Therefore both quantitative and qualitative investigations are valid methods of generating knowledge. But nudge theory does allow predictions; all good theories should not only describe existing observations but also predict future observations. As discussed below, this research not only makes inductive

conclusions based on both qualitative and quantitative data but also tests hypotheses. As outlined below predictions were made and tested, allowing deductive conclusions to be reached.

Methodology

To cover the research questions and theoretical perspectives, a mixed method multi-industry case study was used. There are benefits and disadvantages to each method, and the selection of a methodology is a process of determining the suitability of the research questions (Bryman, 2003; Holden & Lynch, 2004). Quantitative methods provide a wider range of simpler data and are more suited to deductive testing, whereas qualitative data provides a depth of understanding and capacity to delve deeper such as into individuals' perspectives and bring together data inductively (Choy, 2014). This research seeks to cover both breadth and depth through a mixed method approach, utilising both qualitative and quantitative methods to develop a blended picture.

Quantitative methods were used to gather data and generate knowledge in two ways. Firstly measuring how people have acted in response to the s62a forms; did they complete them, did they return them, and were they passed on by choice or default. This provides a wide breadth of simple data. It captures a wider population of simple data. Secondly, data were collected via employee surveys; this both collected a smaller but more detailed set of data but also allowed for deductive theory testing better suited to answering research question B, for which quantitative methods are more appropriate (Saunders et al., 2009).

Qualitative methods were used to gather data on how the s62a process affects employees and their decisions. The most significant characteristic of this research topic is its exploratory nature; both exploring the impact of legislation requirements, and exploring the potential application and implication of nudge theory with a practical, real-world focus. Qualitative research is well suited to such exploratory and inductive research, as it allows for flexible enquiry into emerging trends through the process, and is less encumbered by a rigid design (Saunders et al., 2009; Stebbins, 2001)

The combination of a range of qualitative and quantitative research methods also allows for triangulation. Methodological triangulation occurs when multiple methods of data generation are used, and synthesised into a more comprehensive understanding of the subject

(Cowles & Nelson, 2015; Denzin, 2017). By utilising a range of research methods we can not only establish a more cohesive understanding of our research area (Cohen, Manion, & Morrison, 2002; Sari & Bogdan, 1992), but also overcome (or at least the constraints) the weaknesses of the component methods (Heesen, Bright, & Zucker, 2019). Through a mixture of research method, we can triangulate datasets to build a balanced and integrated understanding of how the s62a process is affecting employees in New Zealand workplaces.

Mixed methods and triangulation is useful, if not necessary, where data cannot be easily gathered via a single method. As McCusker & Gunaydin (2015) identify, not a populations are easily accessible for observation and measurement with a single research tool. As noted above, the targeted research population of new employees within unionised workplaces prepared to provide the private information of their union membership is not easily extracted. As will be noted below in Chapter 6, the survey population data proved to be less than sufficient to be utilised in isolation, but through triangulation with form completion data and qualitative data, we can gain a meaningful observation of the form's impact on new employees.

Case Study

To investigate the impact of a legislative impact on the workplace, a case study approach was determined to be the most appropriate. Case studies are well suited to investigate such impacts where it is either impractical or inappropriate to attempt to exert control, and where the research focus is on a contemporaneous phenomenon (Cronin, 2014; Yin, 2009). Case studies are also well suited to mixed method approaches and to exploratory research, as it draws together multiple sources of data to build integrated knowledge (Luck, Jackson, & Usher, 2006; Creswell, 1994)

This research is a multi-industry case study. As discussed above, research methods are often a compromise between depth and breadth, and research design is a consideration of the benefits of each tool and method to seek the most appropriate and rigorous way of addressing the research objectives (Saunders et al., 2009). While a single case study allows for a greater depth of investigation in the real-world facts, it inhibits the generalisability of the findings beyond that specific environment (Huberman & Miles, 2002; Yin, 2009). Because the purpose of this research is to produce generalisable findings, it was considered more appropriate to minimise this restraint through a multiple case study design.

Case Selection. This research was conducted across three industries, tertiary education, fast food and healthcare. These sectors were selected due to their heterogeneity, providing a variety of socioeconomic statuses and attitudes towards unionism and union membership. The criteria for selection of case studies were:

- The novelty of the union membership decision. Because this research seeks to explore the impact of legislation on employee union membership decisions, it is important to identify the set of circumstances where decisions are made. As outlined in the literature review above, there is a habitual nature to union membership decisions, and once made, the decision is likely to be repeated. In short, frequently, once an employee has made their decision on union membership, they are likely to replicate and infrequently revisit. For example, it is better to investigate the new graduate making their decision on whether to associate with the union nearer the beginning of their career than the experienced professional who has made their decision previously.
- The variety of industry and industry employees. A diversity of industries provides a wider range of age of employees and employee motivations, union densification, and union strategies. A wider breadth of contexts provides a greater generalisability of findings.

The industries selected were health, tertiary education, and fast food. These industries exhibit a wide range of employees' education, remuneration and vocational dedication. In fast food, employment is low-paid, rarely vocational, and typically precarious for part-time students (Campbell, 2019). The tertiary education and health care sector employ a range of employees, covering a wide range of professional vocational staff (such as doctors, nurses, and academics), as well as waged work not typically associated with vocational employment (e.g. cleaning and hospitality). The health sector was specifically the New Zealand public health care system of the District Health Boards (DHBs), and does not include private health providers, or public organisations outside of the DHB remit. A range of industries were approached to participate, but because this project was undertaken during the 2020-21 Covid-19 pandemic, a number of organisations (e.g. in the manufacturing, banking and supermarket industry) declined to participate because of the disruptions to their businesses at that time.

Protecting anonymity is a key concern in the reporting of these findings. Because this research includes a discussion of relationships and tactics between organisations that are frequently in conflict, it is important to avoid personal details as much as possible, or revealing the organisations' identities. In line with ethical requirements stipulated by the Auckland University of Technology Ethics Committee (AUTEC) under whom this research was conducted, anonymity was provided to all research participants, including the interviewees, the survey respondents, and the organisations themselves. In addition to the anonymity of participant identity, any information that could be used to deduce or infer identity was not reported. It is important that readers cannot infer identities from the responses. Therefore no more identifying information can be provided than below of the participating organisations:

- Healthcare: 2 DHBs and 1 union
- Education: 1 university and 1 union
- Fast food: 1 fast food company and 1 union

Research Methods

A range of data collection was utilised across the industries, as summarised below:

Table 1.

Case study industries and research methods

Industry	Form completion data	Key informant interview	Employee survey	Employee interviews
Healthcare	2 DHBs	2 Employer interviews 1 union interview	Employee surveys	
Education	1 university	1 employer interview 1 union interview	Employee surveys	Employee interviews
Fast food	1 organisation	2 employer interviews 2 union interviews		

Not all tools were applied across all industries and organisations. Access to all fast food employees could not be achieved in all industries, and employee interviews were focused on one industry. Access to employees to conduct interviews was a complex issue with a high risk of impacting their relationship with their employer or union if arranged through the union or employer, and therefore it was considered important that contact was made independently. However, this also brought similar issues for employees, who could also perceive such direct

requests as potentially harmful to their relationships with the union and/or employer if not 'endorsed' or 'approved' by either party. Because employee interviews were to be used as supplementary to the employee survey (see below) it was concluded that it would only be applied in the education sector, where employees are more likely to be more understanding, and less apprehensive of research.

The Covid-19 pandemic (2020-2021) significantly disrupted the data collection by diminishing participants' willingness to be involved, and the capacity to access the workplaces. Periodic lockdowns, business disruption, fear of job loss and an overall fear in uncertain times inhibited interest in participation. Access to surveying in fast food could not be achieved due to lockdowns and constraints imposed on entry into the workplace. Employee surveys in the healthcare sector were constrained by the high strain of the industry at that time, and surveys could only be distributed twice in periods of relative calm; it was determined that RMOs could not be asked to complete the survey during surges of Covid-19 patients.

Quantitative Methods

Form Completion. The s62a form is a government-mandated form that employers must be provided to the employee. The employer must provide, but employees may return it completed, partially completed, not completed or fail to return it at all. These data were collected with the following constraints:

- The forms are private information, and employers are prohibited under the Privacy Act 1993 from providing the forms directly for research. Therefore the employer is unable to provide the specific forms or any individualised details of the form.
- The information is owned by the organisation, and access requires the consent of the organisation itself. It was anticipated in the research design process that any request for specific information may require senior management or board approval, and the more general the data and least at risk of privacy concerns, the more likely the organisation would consent to provide.
- The organisation may not already be collating the data, and therefore the request may necessitate additional work for the organisation to pull this information together.
- What and how organisations collect data is likely to be specific to that organisation. Some organisations collect information across a range of employees and collective

employment agreements, some employers request employees complete the forms online.

Therefore the form, range and extent of the data were left at the discretion of the employer. By reducing the imposition of these factors (above), it was anticipated that more data could be collected. Data collection was conducted with the approval of the AUT ethics committee (AUTECH) and in adherence to its requirements. The data request to employers was to provide total numbers only (see Appendix C for the Organisational Information Sheet), of the following:

- the total number of new forms issued (i.e. the number of new employees)
- the total number of forms fully completed and returned/not fully completed/not returned
- the total number of responses ticking they intend to join the union/do not intend to join the union
- the total number of responses who ticked they do not want the information passed on
- the total number of new union members.

Employee Survey. Surveys are effective tools for researching constructivist content and are useful tools for assessing thoughts, opinions and feelings (Saunders et al., 2009; Shaughnessy, Zechmeister, & Zechmeister, 2000). Furthermore, surveys are effective tools for conducting deductive hypothesis testing of these constructs (Nardi, 2018), as well as being well suited to exploratory research (Saunders et al., 2009). Surveys do have limitations, as the inflexibility of the questions makes them only suitable where the standardised questions will be interpreted the same way by all respondents (Saunders et al., 2009; Robson & McCartan, 2016).

An employee survey was developed to measure employee actions in response to the s62a form, and their attitudes towards the s62a form and process (i.e. the 'intention to join the union form' and the process of passing on if not completed). The two surveys can be found in appendices D and E). Two surveys were used, with only minor differences to fit industry (i.e. question 2, the eligibility question, which is specific to the industry and organisation). Otherwise, the surveys all follow the same structure:

- Section 1 (Questions 1– 3): Participation Information Sheet and consent and confirmation of participant suitability
- Section 2 (Questions 4–7): Attributive data (age, gender, ethnicity, location)
- Section 3 (Questions 9–15): Behavioural data about completion of the form (including whether completed, returned, or joined the union)
- Attitudinal data about comfort with their name being passed on to union(s)
- Section 4 (Questions 16–20): Behavioural data about union membership
- Section 5 (Question 20–34): Attitudinal data on union membership (replicating 2003 NZWPRS)
- Section 6 (Questions 35–37): Attitudinal data on trust in government
- Behavioural data on 2020 voting behaviour

Section 5 replicated questions from a pre-existing study of employee ER attitudes. Section 5 (questions 21-36) replicated questions from a pre-existing study of employee ER attitudes, the worker participation and representation survey discussed below. Demographic questions followed recommendations made by AUTEK. Only questions relating to areas unique to this field of research (i.e. Section 3- responses to the s62a form, and section 6- trust in the NZ government) were unique to this survey.

Respondents were not asked every question. For example, respondents completed questions 21–25 (if they joined the union or intended to), or questions 26 –32 (if they had not or did not intend to join the union). Participants who reported not receiving the form were not asked further questions on how they completed it (questions 9–11) and those who could not recall completing the form were not asked how they completed it (questions 10–11). A flow chart that details the response pathways is included in Appendix B.

Participants were invited to participate 30 days after commencement of employment in an online anonymous survey (because employees had up to 30 days to complete the form

before any pass-on). Surveys were distributed with the approval of AUTEK and in adherence to its requirements (see Appendices C to I for associated documents). The survey was conducted online via Qualtrics; participants were able to access the survey via an anonymous link or QR code.

Worker Representation and Participation Study .

In 2003, Peter Haynes undertook a Worker Representation and Participation Study (WRPS) of work representation and participation in New Zealand, to contribute to a greater understanding of New Zealand workers' representation (Haynes & Boxali, 2004; Haynes, Boxall, & Macky, 2005; Haynes et al., 2006; Haynes, Vowles, et al., 2005). His research conducted a randomised survey of 1000 workers, polling their attitudes toward workplace practices, unions, and union-management relations. It was itself based on WRP studies conducted in the US (Freeman & Rogers, 1995), and the UK (Rogers, Freeman, & Haiven, 2002), for comparability of data. This study was further replicated in Australia by (Pyman et al., 2009). While it does not appear that all of these surveys follow strict methodological adherence to each other, they do share common questions, and as such are comparable.

The key element of Haynes' WRPS survey is that it includes questions on employee motivations to join the union, and motivations not to join the union . Reviewing the survey's question bank, these questions provide data on employee motivations to join or not join the union and their perception of the role of the union. The relevant questions are:

- *Question 25:* for respondents that have not or are unlikely to join, they were asked whether they agree with the following common reasons people don't join unions (responding on a 5-point Likert scale, from strongly agree to strongly disagree).
 - Membership fees are too high / too expensive
 - People doing my job don't join trade unions
 - The union does not achieve anything I value
 - There is no point joining since I get all the benefits anyway
 - I don't believe in unions
 - Unions do not cooperate enough for the good of the workplace

- *Question 33:* for respondents that have joined, or would join if possible, they were asked whether they agree with the following common reasons people join unions (responding on a 5-point Likert scale, from strongly agree to strongly disagree).
 - My friends and colleagues were already union members
 - You get better treatment if you have a problem at work
 - The people in my family have always been union members
 - The more people that join a trade union the more effective it is in advancing pay and work conditions
 - I would join the union in any workplace because I believe in unions
 - The union offered financial services such as insurance and credit cards

- *Question 35:* for respondents in a workplace with a union on site, they were asked to rate how important it was for the unions to perform the following roles, or adopt the following approaches to the workplace (responding on a 5-point Likert scale, from strongly agree to strongly disagree).
 - Winning fair pay increases
 - Protecting existing jobs
 - Understanding and knowledge of your employers' business
 - Being open and accountable to its members
 - Working with management to improve quality or productivity Making work interesting and enjoyable
 - Protecting workers against unfair treatment
 - Helping management develop long-term business plans

From these 17 questions the survey collects data on worker motivations for joining the union; key 'why' elements in union membership decisions. These questions explore the centripetal motivation drivers identified above, social custom, improved conditions of work, employment support, ideological reasons, and other economic benefits. They also explore the opposing motivating factors for why people may be motivated to not join the union, although it must be noted that they are not exclusive options; employers may have other reasons for not wanting to join the union, or equally may not have reasons not to join at all. These 'why' elements will be utilised in the data collation of this research.

Survey Recruitment. Many steps were taken to recruit as many participants as possible for the survey, but because the period of the research coincided with the NZ Covid-19 pandemic and public health lockdowns, recruitment was considerably constrained. All 20 New Zealand DHBs were approached, with seven agreeing to assist in disseminating the survey. Key contacts were contacted every six months between November 2020 and February 2022 in line with new rounds in RMO recruitment. Responses (both by contacts and potential participants) were frequently limited, primarily because hospitals were suffering from significant staffing shortages throughout. The Author was cognisant that during a significant public health emergency such a survey was not a priority and adapted the approach accordingly.

The education sector survey distribution was more successful, but was also limited by Covid-19 lockdowns. As department and team meetings went online, fewer employees were present at the workplace, so survey distribution was limited to the less effective method of email recruitment. When employees were on site, spent considerable time was spent delivering home-baking to staff meetings where employees could be introduced to the survey (by their manager). This method proved more effective but was frequently unavailable.

Other organisations were approached to agree to the dissemination of the survey, but these discussions broke down with each wave of outbreaks and lockdowns. For example, discussions were ongoing with fast food organisations for access to their workplaces and agreement was once reached in principle, but these stalled and ceased with successive lockdowns, and the changing rules on access into the workplace. While the organisations were interested in participating, allowing any form of access into the workplace was a risk that ultimately was considered too great.

Qualitative Methods

The research method utilised for gathering qualitative data from unions, employer and employers was semi-structured interviews. Interviews are a popular qualitative research tool for investigating constructivist subjects (Bryman, 2003; Patton, 2014) and semi-structured interviews are well suited where the core questions of the research are sufficiently known, but not all potential answers can be anticipated (Morse, 2012). Semi-structured interviews are not without their limitations and are vulnerable to interviewer bias and distortion of data as these are fitted to pre-existing perceptions (Alvesson, 2011).

Semi-structured interviews were conducted across two groups;

- Key informants:
 - 2 employer participants from the health sector,
 - 2 employer participants from the fast food sector,
 - 1 employer participant from the education sector,
 - 1 union participant from the health sector,
 - 2 union participants from the fast food sector.
 - 1 union participant from the education sector.
- 15 employees from the education sector.

Interviews were conducted either online or in person, and data collection was conducted with the approval of AUTEK and in adherence to its requirements (see Appendices C to I for associated documents). It was preferred to conduct the interviews in person to build rapport and participant comfort but, due to a combination of geographical distance, and/or Covid-19 lockdown constraints, the majority of interviews were conducted online using the Zoom software application. Seven interviews were conducted in person (6 key informants, 1 employee), and 17 were conducted online (3 key informants, 14 employees).

Participants were provided with a copy of the interview questions before the interview to ensure that they were aware of the topics to be discussed, and to make them comfortable that the interview would not be difficult or confronting. Field notes were taken for all interviews, noting key observations of the interview event and overall interviewer impression (Saldaña, 2021). All interviews were audio recorded. Audio recordings were transcribed via the otter.ai software application, manually checked and corrected.

Key Informant Interviews. Participants were recruited via existing industry contacts, cold-call contacting and snow-balling. Of the nine participant recruitments, two participants (1 union, 1 employer) were prior co-workers I had worked with, and who now worked in different organisations. Five participants were identified via industry research- identifying key organisations and key people within those organisations and initiating contact with them via email. Two participants were recruited via snowballing; existing participants recommended that I speak to them, and facilitated contact with them.

Employee Interviews. Employee interviews were recruited via a snowballing method. The research population was AUT Teaching Assistants (TA) and Research Assistants (RA). Some connections had been made through existing AUT networks and these individuals were approached to participate or pass on the opportunity to others. To avoid a conflict of interest or undue pressure and comply with AUTEK requirements, no participants were recruited from the Author's department, so all participants were from other departments within AUT. Recruitment via this method was very successful, likely because it was conducted during the August to November 2022 Covid-19 lockdown. A spreadsheet was kept of key responses (completed form, comfortable with pass on). This was determined after the end of the interview and was based upon the employee's answers, body language and reflections throughout the interview.

Data analysis

Quantitative Analysis

Form Completion Data. Due to the requirements to preserve employee privacy, only simple data totals were collected (e.g. a total number of forms issued), and the need to preserve organisational anonymity within an industry, data were combined into industry groups. This constrained data analysis to simple descriptive summaries of totals and percentages.

Employee Survey Data. Data were analysed using the SPSS statistics software package. Data from both surveys were combined into 1 dataset, for a total of 100 surveys. Firstly the process of data cleaning was undertaken, to remove participants that did not complete the survey (either by not answering any questions, or did not meet the participant screening requirements of questions 2 (Are you an employee of the organisation?) or 3 (Have you been employed for 30 days or more?). One survey was removed because consent had not been given, 9 were removed because they did not meet the criteria of being an employee of the organisation or employed for 30 days, and 8 were removed because no data were provided other than consent.

Of the 100 survey responses received, only 82 were viable datasets. Within those datasets, not all questions were answered, either due to participants skipping questions or the

survey design. For instance, employees reporting that they had not received the form were not asked questions on how they completed it. These non-responses further limited the analysis when investigating the responses to multiple questions; for example, because only 20 respondents either were, or intended to join the union, there were only 20 responses to questions 21-25 (investigating reasons people joined the union).

Data analysis followed a four-step process. Firstly, descriptive statistics were run and reported, including demographic responses (location, age, gender), form responses (receipt, completion, intention to join), comfort with the pass-on, union membership, reasons for joining/joining, attitudes to unions, trust in the state and voting behaviour. Basic descriptive reporting includes number and percentage of responses, distributions, and average responses.

Secondly, further descriptive analysis was undertaken by integrating comparable datasets to identify common trends. This included combining the equivalent responses to questions 12 (I am comfortable that my employer was required to pass on my name to the union) and 14 (I am comfortable that my employer may have been required to pass on my name to the union). It also included integration of data across question sets in line with reasons for union membership; for example, questions were grouped by motivating drivers across the reasons for joining/not joining datasets, consistent with theoretical models discussed in chapter 4. This created some new datasets such as utility benefits, situational reactance, and ideological drivers.

The third step was to investigate relationships across the datasets, to test hypotheses determined from the literature that were relevant to research question B. These are shown in Table 2.

Table 2.
Quantitative Data Hypotheses

Hypothesis	Relationship between questions:
1. Attitudes towards unions will be positively related to comfort with their name being passed on the union(s).	a) Q12/14* & Q 21-26/Q27-32† b) Q12/14 & Q33-36
2. Attitudes towards unions will be related to comfort with the union contacting them.	Q13/15 & Q 21-26/Q27-32 Q13/15 & Q33-26
3. Employees with low confidence in the nudge architect (the 2017-2020 Labour-led coalition government) are less comfortable with (a) their name being passed on the union(s), and (b) less likely to join the union when they have been nudged to be in contact with the union(s).	Q12/14 & Q37
4. Employees with low trust in the NZ state are less likely to be comfortable with their name being passed on the union(s).	Q12 /14 & Q38
5. Employees who did not vote for the political parties that implemented the s62a process (Labour, The Greens or NZ First) are less likely to be comfortable with their name being passed on the union(s).	Q12 /14 & Q18 & Q39

For the ordinal datasets, 1-tailed Spearman correlations were conducted and independent sample t-tests of nominal datasets. Regression analysis was conducted where appropriate for statistically significant relationships. The fourth step was to conduct inductive tests; to explore any other potential relationships or interactions that could provide knowledge, either in isolation, or complementary to the qualitative data.

Qualitative Analysis

It is important that the qualitative analysis fits the research question and the epistemological positioning of the research (Barbour, 2013). This research comprises two core research questions; the inductive exploration of the impact of the s62a form in the NZ workplace (question A), and the deductive theory testing of the impact of the pass-on provisions on employees (question B). It is important therefore that both objectives are met in the qualitative analysis. Firstly that the data is utilised to provide direct answers to the research questions (i.e. how are the forms working?) for this *a priori* codes were used. For the second, where insight was sought into the underlying reasons for beliefs, attitudes and decisions, emergent and inductive codes were used, so that emerging themes could be identified and explored.

The coding process followed the two-step process recommended by Hay (2000), of an initial first cycle of basic coding to capture overall themes, followed by a more in-depth interpretative coding process of specific trends and patterns. All transcriptions were coded utilising the Nvivo coding software. The two sets of data, set A (key informants) and set B (employees), were initial coded separately due to the differing perspectives of the research population, and the different research questions focused on the interview questions. Grounded coding was used. Due to the wide variety of perspectives and opinions the participants brought to the research topic, it was important to be able both capture their constructions of the reality they perceived and operated within, while also being able to bring these ideas together.

Emergent coding was used as the data were reviewed. Interview transcripts were first coded using a range of code types, including attribute coding, descriptive coding, magnitude coding, structural coding, values and versus coding (Saldaña, 2021). Reviewing codes, many codes are structural codes, identifying the individual's perspectives of a question common across the data (such as form confusion), but some codes are values codes, capturing individual expressed values (such as solidarity). Simultaneous coding was also done where multiple codes were apparent, and very broad criteria were taken to what could be coded; applying the recommendations of Richards and Morse (2007) "if it moves, code it" (p. 146).

99 codes were developed through the coding process (37 codes for employees, 62 for key informants). These codes were assigned 364 times, 209 for key informants, and 155 for

employees. These distributions of codes and code events are considered acceptable, given the employees are speaking to a narrower range of topics and experiences (i.e. their interaction with the form and its accompanying environment), whereas the key informants are speaking to a broader range (e.g. the form, employer-union relationship, the wider political environment, employee attitudes, membership recruitment). Codes were identified and created as the transcripts were reviewed. Once the first cycle analysis was completed, prior transcripts were 'went back over', and reviewed against codes that emerged in later transcripts.

After the first cycle of coding, a thematic framework was developed from the coding, combining the codes from both data sets (Clarke, Braun, & Hayfield, 2015). At this stage, the two sets of data were merged and then divided into the research questions. Each theme and the code within was taken back to review the data to flesh out the themes. Additionally these were checked against the other themes to ensure data were contributing to each theme appropriate – sense checking. Occasionally points in one theme grouping contributed to others. Each code was analysed and key findings extracted. At this stage, the data was 'anonymised' removing identifiable details. Once the key findings were extracted into the key themes, the data were brought together into key findings and written up, blending detail into broader themes and findings.

Summary

Chapter four identified the research opportunity that emerged from the introduction of a default pass-on, to explore how nudges may work in employment relations. To explore this, the following approach was applied:

- A multi-industry, mixed methods methodology was utilised to establish both a broad and a detailed understanding of how the s62a process impacts employees, unions and employers.
- Two research questions and approaches were taken:
 - A broad inductive research question was developed to investigate the wider impacts of the process (research question 1), utilising all datasets (form completion data, survey data, as well as employer, union and employee interviews).
 - Further, a specific deductive research question was taken to test the predicted impacts of nudges on employees (research question 2), utilizing the survey data.

The following was achieved:

- Form completion data was collected from 4 industries, capturing the form completion decisions of 1450 employees.
- Employee survey data was collected across 2 industries, capturing the behaviour and attitudes of 100 employees.
- Key informant interview data was collected across 4 industries of 5 employers and 4 unions.
- Employee interview data were collected from 15 employees.

Data were collated and analysed utilising a range of quantitative and qualitative analysis tools. The findings of these analyses are presented in Chapter 6 and discussed in Chapter 7.

Chapter 6: Quantitative Findings

Through the triangulation of quantitative and qualitative data, we can explore the impact of the s62a process on employees, and gain insight into how nudges may work as a soft regulatory tool for promoting better employment relations decisions. This section will report the findings of the quantitative methods, firstly through descriptive analysis of the key characteristics of the population, their actions and their attitudes and secondly, a more complex analysis of any key relationships that could provide insight into what attitudes and attributes may influence other attitudes or actions. Important findings are discussed regarding the extent of discomfort the nudges cause, and identifiable characteristics of those who reported discomfort.

Employer Form Completion Data

This section discusses the form completion data received from employers. As outlined in the methodology, participating employers were also asked to provide data on how often the forms were completed. Due to privacy, these data were restricted to simple totals, with no identifying characteristics (see Appendix J for the organisation participation consent form). To find and diminish any potentially identifiable characteristics the data are integrated into industries.

Table 3.

Form completion data

Sector	Forms issued	Forms completed		Forms not completed	
		Number	Percent	Number	Percent
Education	743	147	19.8%	596	80.2%
Healthcare	347	287	82.7%	60	17.3%
Fast-food	360	259	71.9%	101	28.1%
Total	1450	693	47.8%	757	52.2%

The most significant finding here is that only approximately half of employees complete the form (47.8%). For 52.2% of new employees, their details are passed on to the union(s) by default. The s62a default occurs frequently, and (despite the simplicity of the data) this is a key dataset for understanding how the s62a process is operating.

Within this data, we can see a variance between sectors, with healthcare and fast-food employees returning significantly more forms. Many reasons could be suggested for this variance, from differences between the workers, the industry and the employer, but sufficient detail is lacking to provide a definitive explanation. It is anticipated however that the HR practices likely play a key role, and whether the HR practices require the return of the form as part of the onboarding process, or whether employees can commence employment and complete the form (or not) at a later date.

Employee Survey

The survey questions were divided into qualifying questions, demographic questions, form completion questions, pass-on comfort questions, union membership questions, membership reasons questions and finally political questions. As discussed in Chapter 5, not every respondent completed every question, and therefore some datasets have smaller totals. Of the 100 respondents, 18 did not provide any data or did not provide their consent. Some questions allowed participants to not respond (either by not answering or by responding that would prefer not to answer. Percentages were determined of valid responses (i.e. excluding non-responses). A flowchart of the survey and its response pathways can be found in Appendix B. It is important to note that as a consequence of this questionnaire flow, not all respondents completed all questions, and there are some notably small populations for responses to some questions, but all data has been included for sake of completeness. These small populations mean that no findings are derived from these insufficient populations, except in triangulation with qualitative data.

Demographics

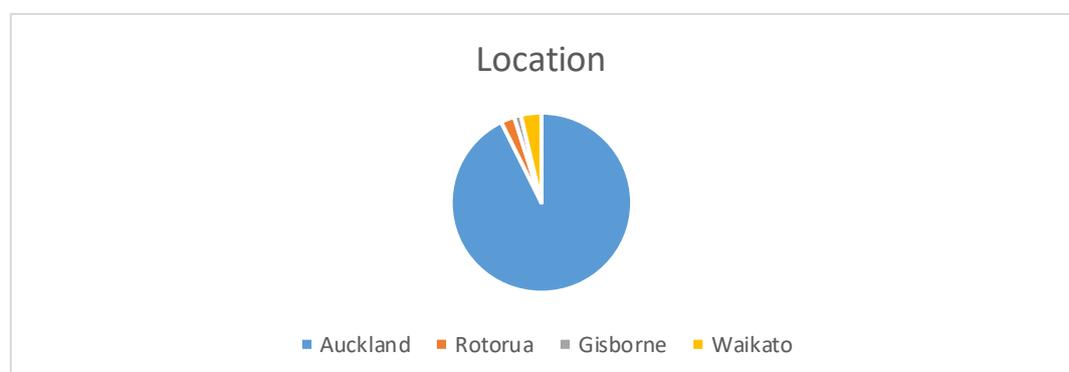
Location. The majority of respondents were located in Auckland. Because the question was not limited to one answer, participants were able to select multiple locations if they felt they were located in more than one region. This significant majority of respondents in one location effectively prohibits any meaningful geographical analysis.

Location	Number	Percent
Auckland	76	92.7%
Rotorua	2	2.4%
Gisborne	1	1.2%
Waikato	3	3.7%
Total:	82	100.0%

Table 4.
Location of survey respondents

Figure 8.

Location of survey respondents



Age. There was a higher proportion of younger participants; 73.2% of respondents were aged 35 or younger. However, this was evenly spread across the more youthful adult

bracket (25 or younger) and the (relatively) more experienced bracket of 26–35. This trend was anticipated given the research population of Teaching Assistants and RMOs. While there was an under-representation of older participants (46 and older), the high proportion of 26–35-year-olds (of whom we can assume some reasonable life and workplace experience) is positive.

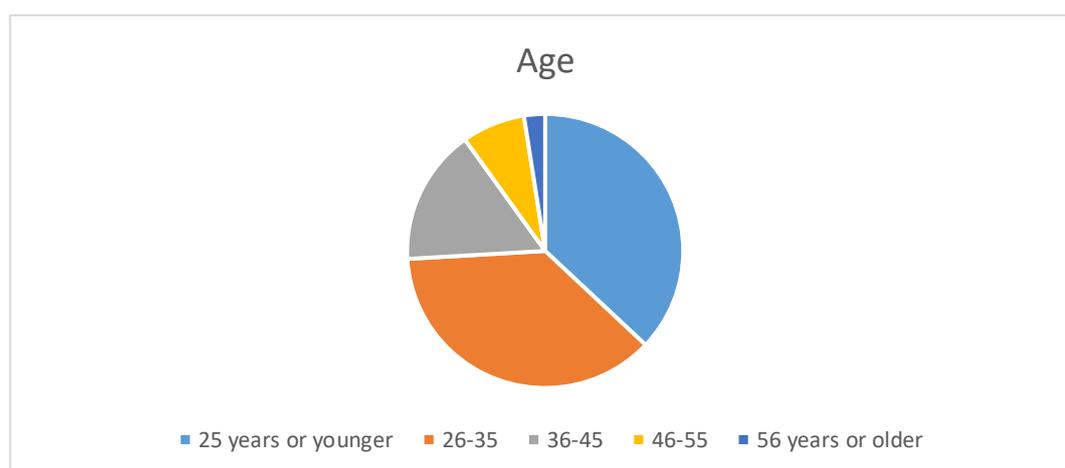
Table 5.

Age of respondents

Age	Number	Percent
25 years or younger	30	36.6%
26-35	30	36.6%
36-45	13	15.9%
46-55	6	7.3%
56 years or older	2	2.4%
No answer provided	1	
Total	82	

Figure 9.

Age of respondents



Ethnicity. The distribution of ethnicity was varied and reflective of the population of Auckland. The majority self-reported as European, although it is unclear whether they identified as New Zealand-born European (i.e. Pakeha) or from Europe (e.g. Lithuanian). The

very broad categories (Asian, Middle Eastern/Latin American/African) grouped some disparate ethnicities, but the utilisation of these categories was in line with the AUTECH recommendations. Many participants self-identified themselves into narrow groups (e.g. American, Chinese, Russian).

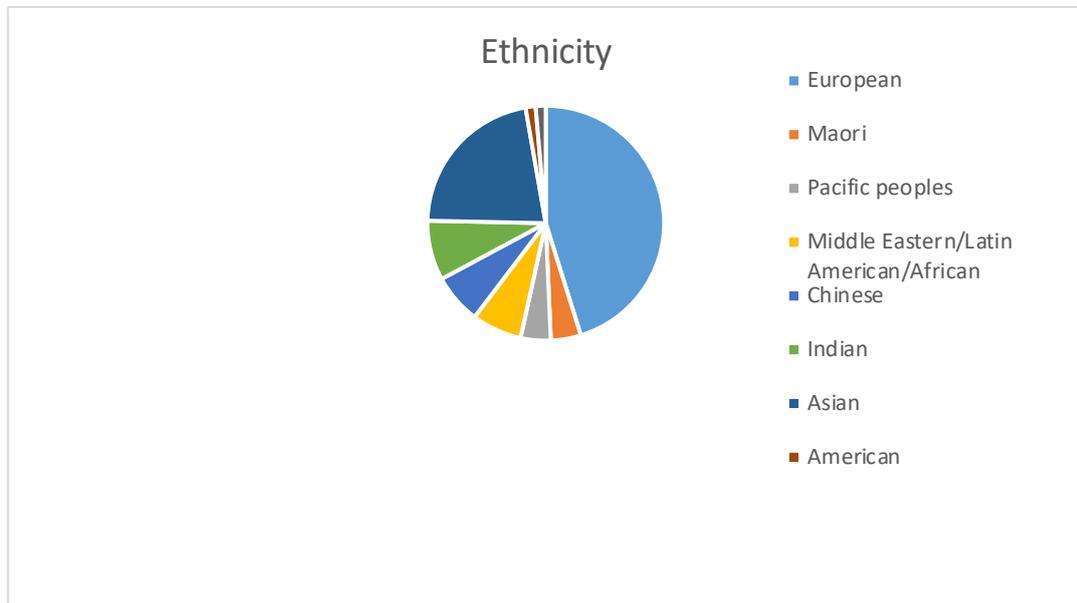
Table 6.

Ethnicity of respondents

Ethnicity	Number	Percent
European	33	40.2%
Maori	3	3.7%
Pacific peoples	3	3.7%
Middle Eastern/Latin American/African	5	6.1%
Chinese	5	6.1%
Indian	6	7.3%
Asian	16	19.5%
American	1	1.2%
Russian	1	1.2%
No answer provided	9	
Total	82	

Figure 10.

Ethnicity of respondents



Gender. Females were the dominant category within the survey population.

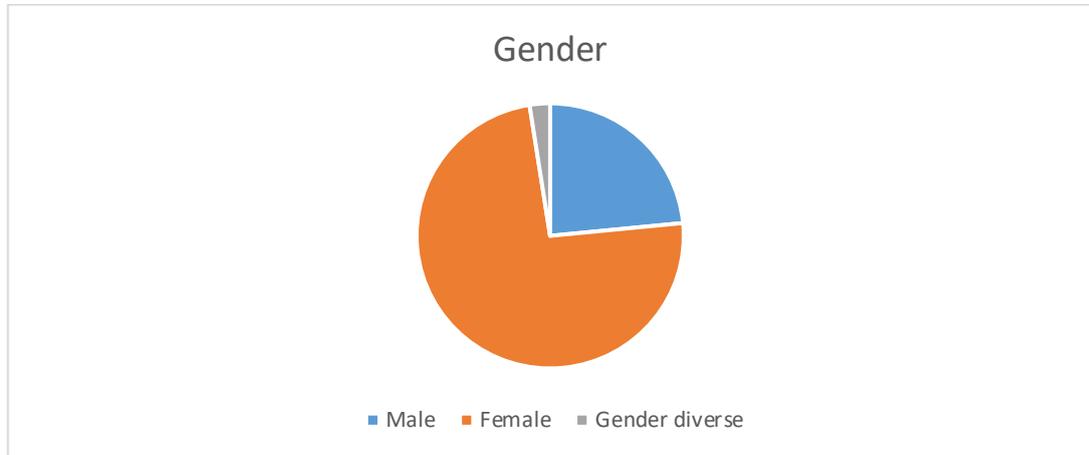
Table 7.

Gender of respondents

Gender	Number	Percent
Male	19	23.5%
Female	60	74.1%
Gender diverse	2	2.5%
No answer provided	1	
Total	82	

Figure 11.

Gender of respondents



Form Completion Questions

Form Receipt. The first substantive question asked is whether they received the form. A high proportion of survey participants did not recall receiving the form; 24.4% reported they did not receive it, and 19.5% could not recall. Given that all respondents were employed by organisations with online and automated induction processes where a standard package of forms are delivered digitally to the new employee and it would require significant system failure for an employee not to receive this form (because the forms are bundled digitally, to not receive the form would likely involve receiving no forms or employment agreement), it is unlikely that such a high proportion of non-receipt would occur. It is more likely in these circumstances that the respondents did receive but did not recall, but we are unable to definitively know.

It is important to note that those that responded that they did not receive the form did not complete questions 9–15, which relate to their responses to the form, and perceptions of the pass-on and union contact. It would not be appropriate to require respondents to answer questions about a form they report not receiving, but this does reduce the response populations of questions 9 to 15.

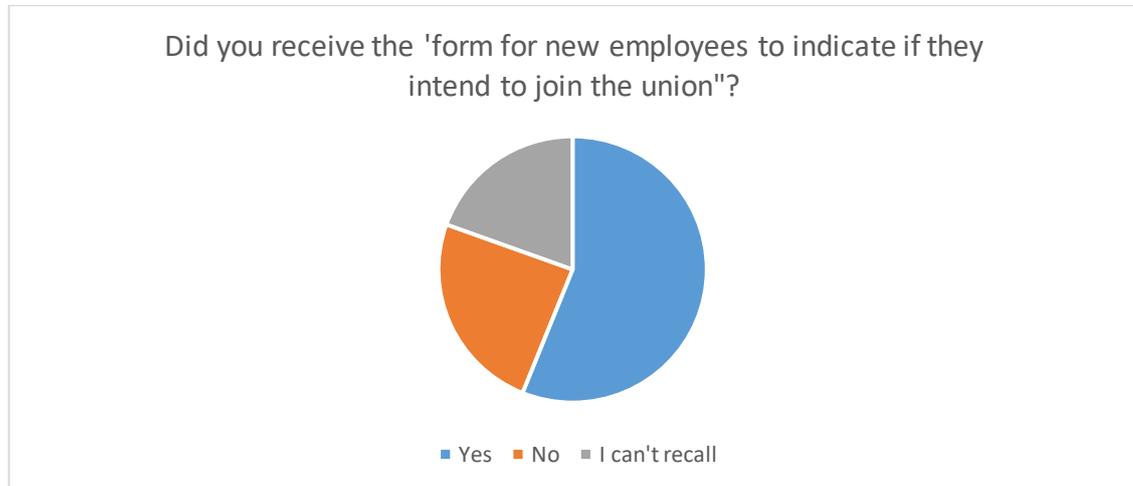
Table 8.

Form Receipt

Q8: Did you receive the "Form for new employees to indicate if they intend to join the union"?		
Response	Number	Percent
Yes	46	56.1%
No	20	24.4%
I can't recall	16	19.5%
Total	82	

Figure 12.

Form Receipt



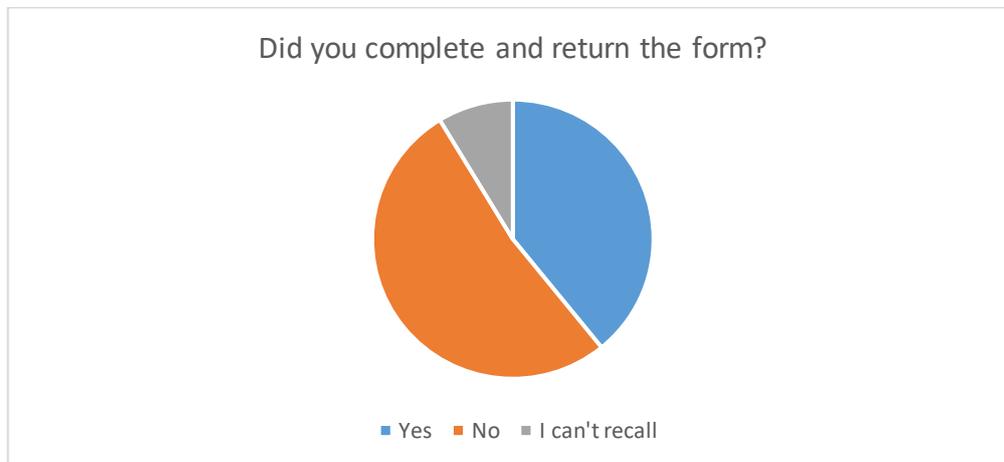
Form Completion. The second question of this section is whether they completed and returned the form. This question was only asked where respondents advised they received the form (see flowchart in Appendix B), and therefore this population does not include those who responded 'no' or 'I can't recall' to question 8. Only 39.1% returned the form, 52.2% did not, and 8.7% could not recall.

It is also beneficial to review not only the percentages of respondents who answered this question but also the number of respondents who returned the form relative to the total population.

Table 9.
Respondent Form Completion

Q9: Did you complete and return the form?			
	Number	Percent	Percentage of total forms issued (82)
Yes	18	39.1%	21.9%
No	24	52.2%	29.2%
I can't recall	4	8.7%	4.9%
Total	46	100%	

Figure 13.
Respondent Form Completion



Intention to Join the Union. This question was only asked where respondents advised they completed the form (see flowchart in Appendix B). For the key question, “do you intend to join the union?” Of the 18 that responded that they completed the form, 50% chose that they intended to join the union, and 50% chose that they did not intend to join the union.

Table 10.

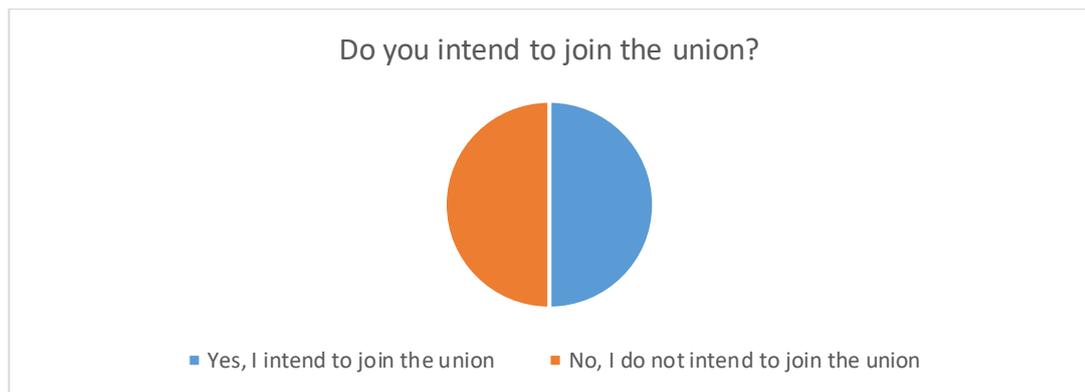
Intention to join the union

Q10: For the question "do you intend to join the union", which did you choose?

	Number	Percent
Yes, I intend to join the union	9	50%
No, I do not intend to join the union	9	50%
Total	18	100%

Figure 14.

Intention to join the union



Do Not Pass on My Name. An important question is whether participants completed the requisite tick box for their name not to be passed on to the union. Of the 18 participants that completed the form, only 5 people recalled ticking that they do not want their information passed on.

Table 11.

Chose for information not to be passed on

Q11: Did you tick either box that you do not want your information passed on?		
	Number	Percent
Yes	5	27.8%
No	5	21.4%
I can't recall	8	50%
Total	18	100

Figure 15.

Chose for information not to be passed on



An important question emerging from the data above is the number of the people who did not want to join the union but failed to tick the box to stop the pass-on; if a respondent does intend to join the union, it is somewhat immaterial whether they prohibited the information pass-on. But for those who do not intend to join the union, failure to stop the pass-on is significantly at odds with their preferences. The data below are the responses of the 9 people who answered 'no, I do not intend to join the union' to question 10, and whether the pass-on occurred:

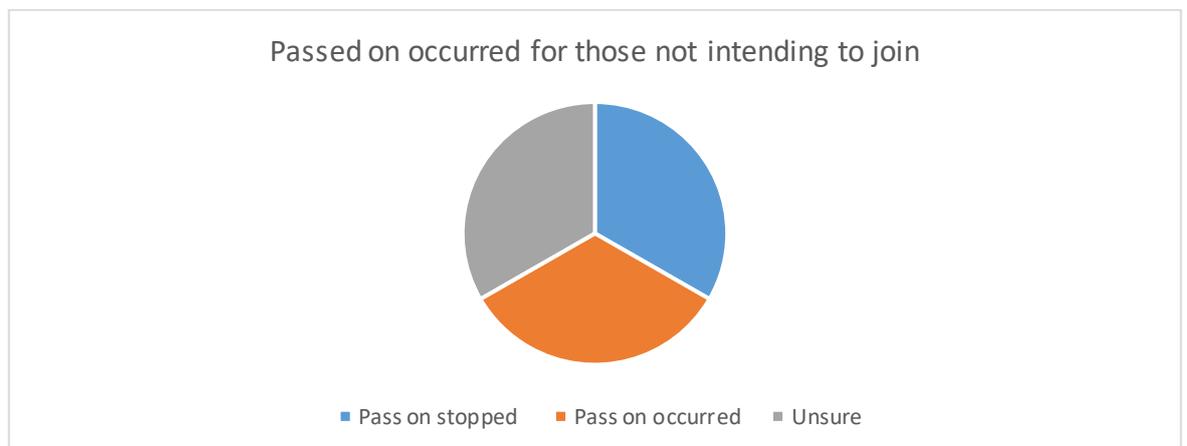
Table 12.

Intention to join the union and whether pass-on occurred

Did not intend to join the union (Q10) and whether stopped pass on (Q11)		
	Number	Percent
Pass on stopped	3	33.3%
Pass on occurred	3	33.3%
Unsure	3	33.3%

Figure 16.

Intention to join the union and whether pass on occurred



Default Pass-on. An important dataset is whether a default pass-on occurred. This dataset includes those who chose for their name to be passed on, those who chose for their name to not be passed on, or whether it was passed on by default. A pass-on by default includes the following outcomes; where the employee reported that did not receive the form (because an employer is obliged to pass on an employee's name even if they failed to provide the employee with the form), the employee did not complete or return the form, or if they failed to tick 'do not pass on the union'.

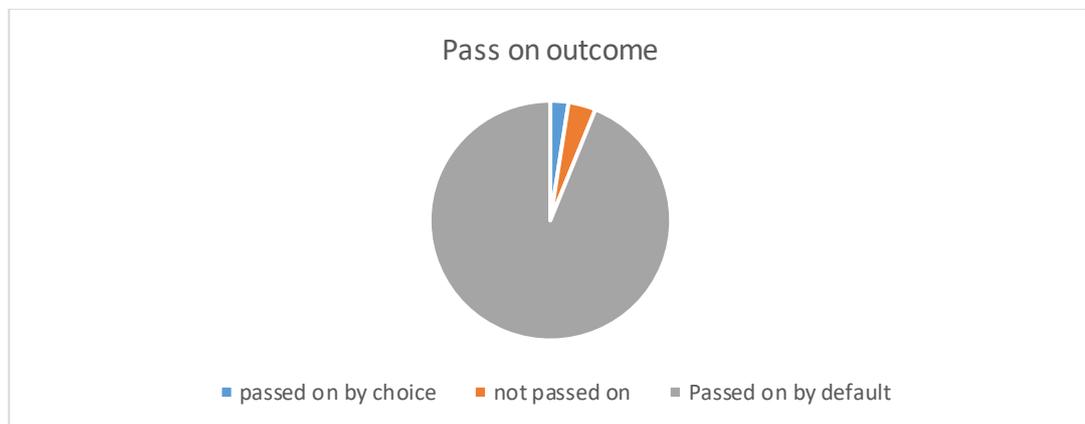
Table 13.

Pass-on outcomes

Pass-on outcome		
	Number	Percent
Passed on by choice	2	2.4%
Not passed on	3	3.7%
Passed on by default	77	93.9%

Figure 17.

Pass-on outcomes



These data may be distorted by the limitations of self-reporting, based on recollections of a minor form completed at least 30 days prior, and responses of 'I can't recall' or 'I never received' are likely over-reported. But with the outcome for 93.9% of respondents being that their names were passed on to the union(s) by default, pass-ons by default is a very common outcome for new employees.

It must be kept in mind that employers are required to advise the union of new employees who did not complete the form, even if the employer failed to provide. So while it is unlikely that the employer's automated onboarding process failed to deliver the form to 24.4% of employees (i.e. those who reported in Q8 that they did not receive the form), and more likely they did receive but did not recall, the outcome is the same; if the employer was required to pass on the form by default. This potential error of recollection does inhibit these findings because those reporting not receiving were not asked their attitudes to the pass-on.

Recruitment Prospects within Default Pass-Ons. Within the default pass-on dataset, we can further investigate how many of these respondents are strong prospects for union contact and recruitment through their answers to questions 19 & 20 (are you a member, or do you intend to join?); to identify how many are not currently members, but intend to join. For this group, employees who did not answer the question (7 respondents) or were already members (10 respondents) were not included in the population.

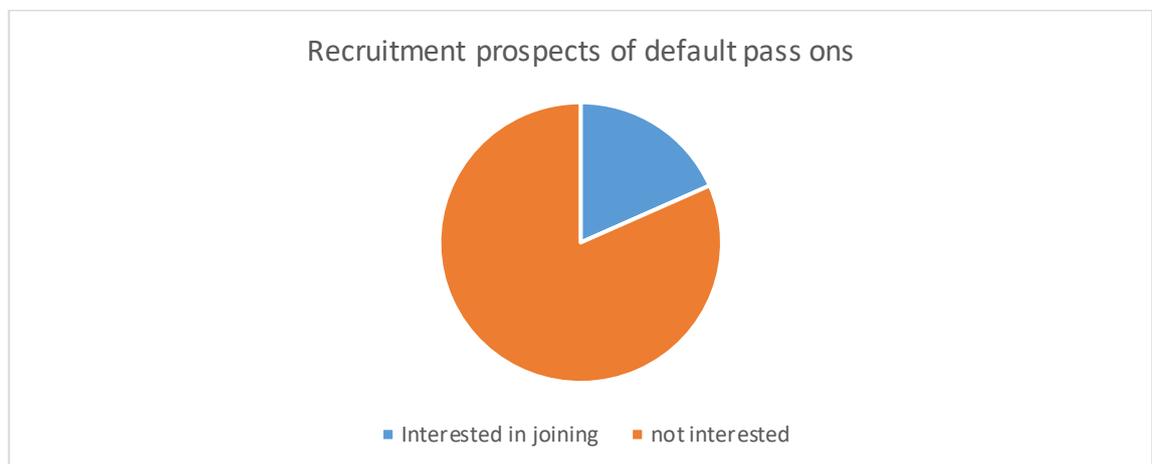
Table 14.

Recruitment prospects of employees passed on by default

Passed on by default	Number	Percent
Intend to join	11	18.3%
Do not intend to join	49	81.7%
total	60	

Figure 18.

Recruitment prospects of employees passed on by default



Comfort with nudge. The most significant question bank in the survey is questions 12-14, which relate to employee comfort with their information being passed on to the union. These questions are important to this study in two regards; firstly they are key questions in their own right regarding what impact the nudge (default pass on of name) has on employees, but also because they are key dependent variables in the analysis.

Two questions are asked across two scenarios (see the flowchart in Appendix B); if the employee's details were passed on to the union (as per their responses to questions 9–12 above, such as they failed to return the form or prohibit their name being passed on) they are asked questions 12 and 13:

- Question 12: Please respond to this statement: I am comfortable that my employer was required to pass on my name to the union.
- Question 13: Please respond to this statement: I am comfortable that the union will contact me.

If it is unclear whether their name was passed on (such as they could not recall if they received the form, completed it, or prohibited the pass on), they are asked questions 14 and 15:

- Question 14: Please respond to this statement: I am comfortable that my employer may have been required to pass on my name to the union.
- Question 15: Please respond to this statement: I am comfortable that the union may contact me.

Comfort with pass on. These are the results for questions 12 and 14, a comparison, and a combined dataset, combining the responses to questions 12 and 14.

Table 15.

Comfort that the employer was required to pass-on

Q12: Comfortable employer was required to pass on my name		
	Number	Percent
Strongly agree	4	16.0%
Somewhat agree	7	28.0%
Neither agree nor disagree	8	32.0%
somewhat disagree	2	8.0%
Strongly disagree	4	16.0%
total	25	

Figure 19.

Comfort that the employer was required to pass-on

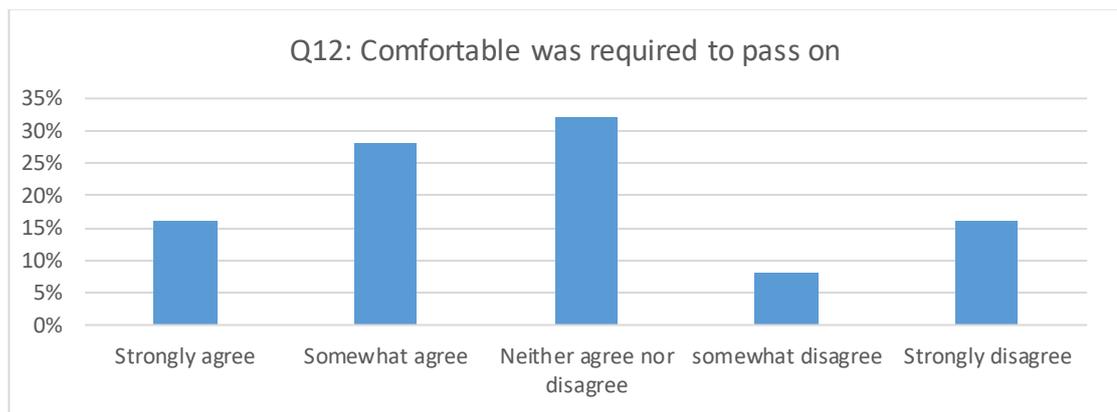


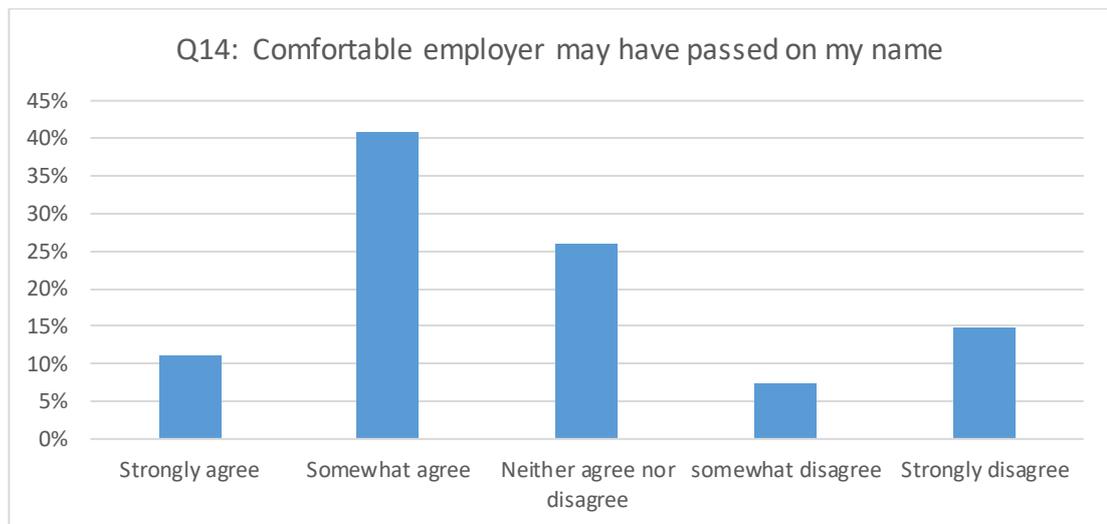
Table 16.

Comfort that employer did pass-on their name

Q14: Comfortable employer may have passed on my name		
	Number	Percent
Strongly agree	3	11.1%
Somewhat agree	11	40.7%
Neither agree nor disagree	7	25.9%
somewhat disagree	2	7.4%
Strongly disagree	4	14.8%
total	27	100%

Figure 20.

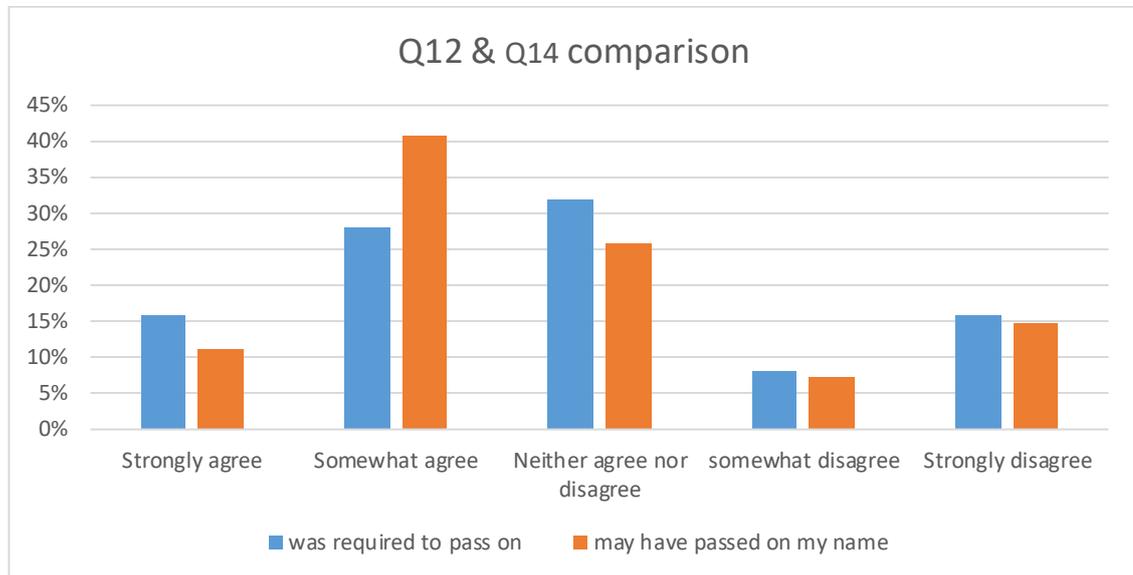
Comfort that employer may have passed-on name



Q12 and Q14 are asked of different sets of respondents; where it was clear that their name would be passed on, and where it was unclear. Comparing these two sets of data, there is no significant difference between the two, other than a higher proportion of 'somewhat agree' where it may have occurred. Notably, the proportions of respondents who disagreed are nearly identical.

Figure 21.

Comparison of comfort between when pass-on did occur, and may have occurred



Due to the high similarity of these two datasets, and because a greater statistical power can be achieved through a larger dataset, these datasets can be combined and used for further analysis.

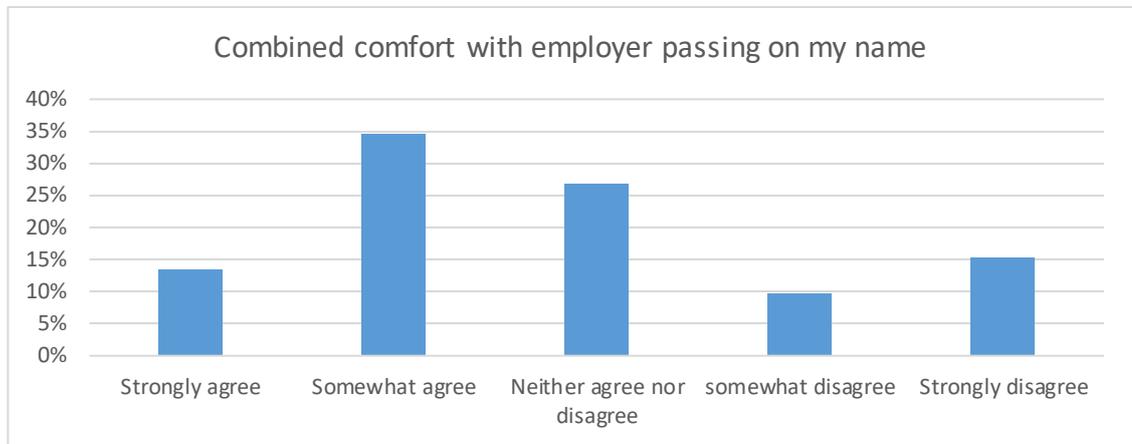
Table 17.

Combined comfort with their name being passed on

Combined comfort with employer passing on my name		
	Number	Percent
Strongly agree	7	13.5%
Somewhat agree	18	34.6%
Neither agree nor disagree	14	26.9%
somewhat disagree	5	9.6%
Strongly disagree	8	15.4%
total	52	

Figure 22.

Combined comfort with their name being passed on



There is a strong trend in the data; most employees (75%) are not uncomfortable with their name being passed on to the union. But 25% report being uncomfortable, and this is not a trifling percentage; that 25% of respondents find the nudge uncomfortable evokes considerable cause for caution when exploring nudges in employment relations decisions.

There's a likely assumption here that merits further investigation; what proportion of those who are uncomfortable with their names being passed on (somewhat disagree or strongly disagree) are union members (current or intending), versus those who are not (are not currently and do not intend):

Table 18.

The proportion of those who are uncomfortable who are union members or not members

Uncomfortable with pass on		
	Number	Percent
Member	3	23.1%
Non member	10	76.9%
total	13	

Figure 23.

The proportion of those who are uncomfortable with pass-on who are union members or non-members



It would be reasonably anticipated that this group would be dominated by non-members, and while 76.9% is a high percentage, it is interesting that some are uncomfortable despite their being union members (1 respondent) or intending to join the union (2 respondents).

A further investigation of the data is what differences exist between comfort with pass-on between members and non-members.

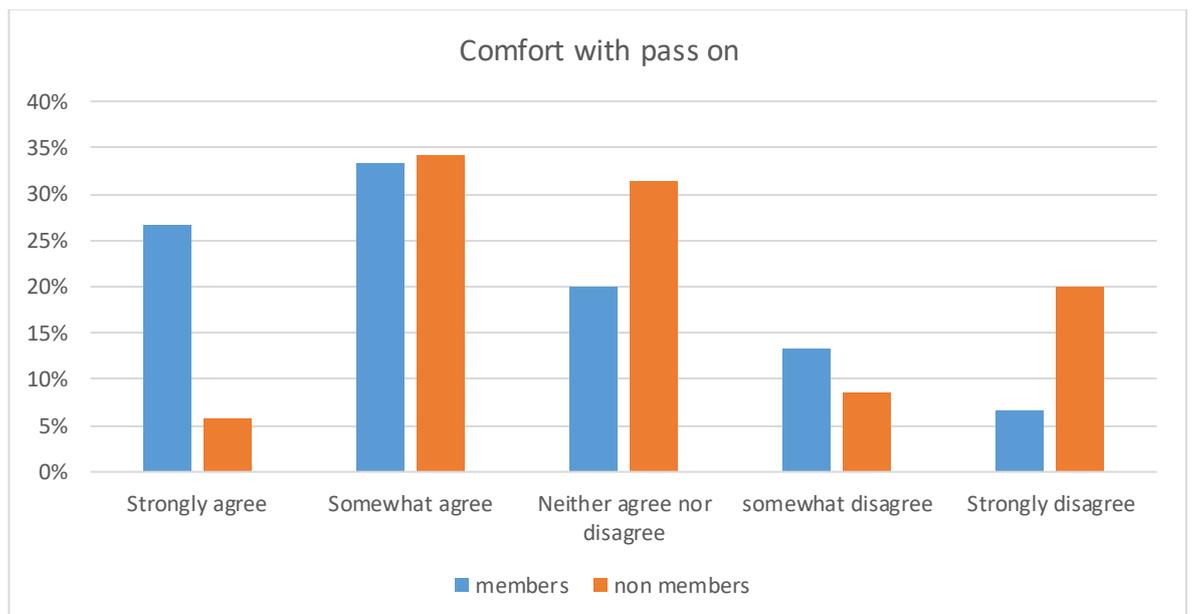
Table 19.

Proportion of those who are comfortable with pass-on, who are union members or not members

Comfort with pass on		
	Members	Non-members
Strongly agree	27%	5.7%
Somewhat agree	33%	34.3%
Neither agree nor disagree	20%	31.4%
somewhat disagree	13%	8.6%
Strongly disagree	7%	20.0%

Figure 24.

Proportion of those who are comfortable with pass-on, who are union members or not members



While there is a difference between members and non-members, it is less than expected. Within this data we can see a higher level of comfort amongst union members (current or intending to join), with 60% reporting comfort with the pass-on, which is to be expected—those intending to join the union are likely to be comfortable with the pass on. 40 % of those that were not intending to join reported being comfortable with the pass-on, and 71.4% expressed no discomfort.

28.6% of non-members reported discomfort with the pass-on, compared to 20% of members. It must be noted that 20% of non-members reported that they strongly disagreed that they were comfortable – this is an important finding – that the nudge does not sit comfortably with a small but not insignificant number of respondents. That 7% of union membership reported strong disagreement is interesting, but the total population of this group is 2, so it would not be advisable to attempt to draw any conclusions from such a small population.

Comfort with Union Contact. The second question comfort question was whether employees were comfortable with the union contacting them.

Table 20.

Comfort with union contact

Q13: I am comfortable the union will contact me		
	Number	Percent
Strongly agree	3	12.0%
Somewhat agree	7	28.0%
Neither agree nor disagree	7	28.0%
somewhat disagree	5	20.0%
Strongly disagree	3	12.0%
Total	25	

Figure 25.

Comfort that the union will contact

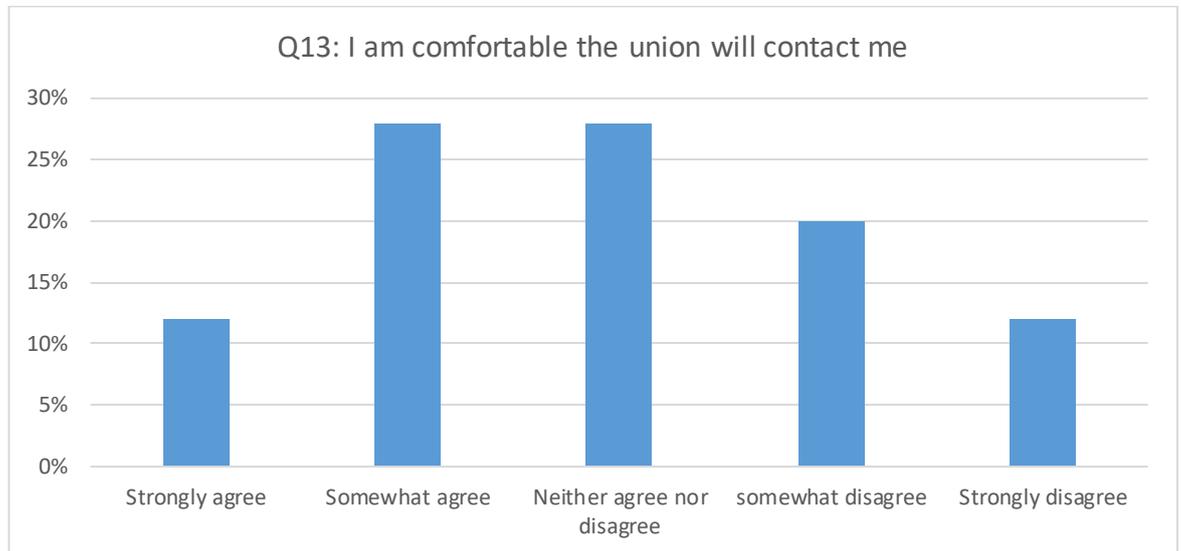


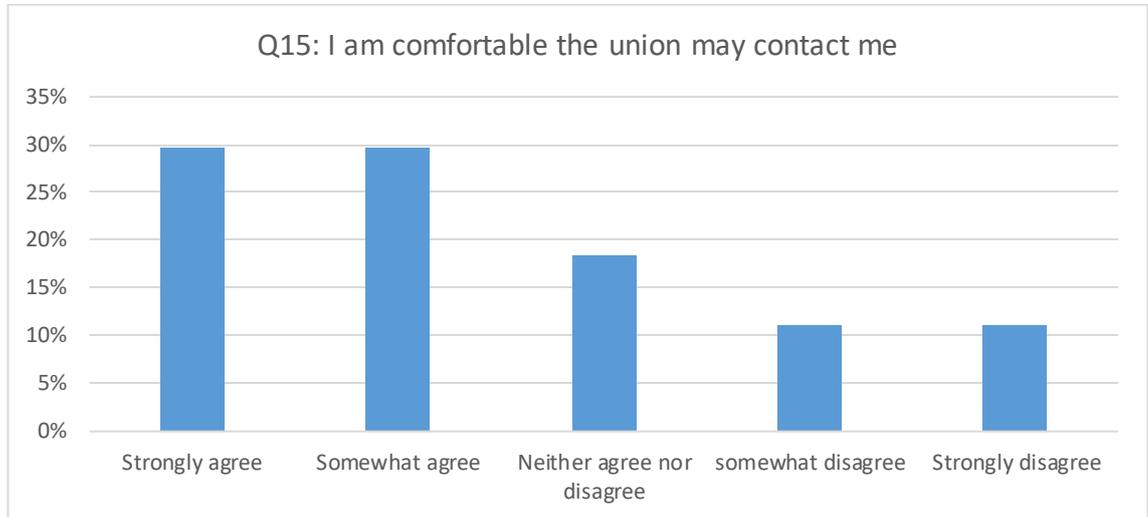
Table 21.

Comfort that the union may contact

Q15: I am comfortable the union may contact me		
	Number	Percent
Strongly agree	8	29.6%
Somewhat agree	8	29.6%
Neither agree nor disagree	5	18.5%
somewhat disagree	3	11.1%
Strongly disagree	3	11.1%
total	27	

Figure 26.

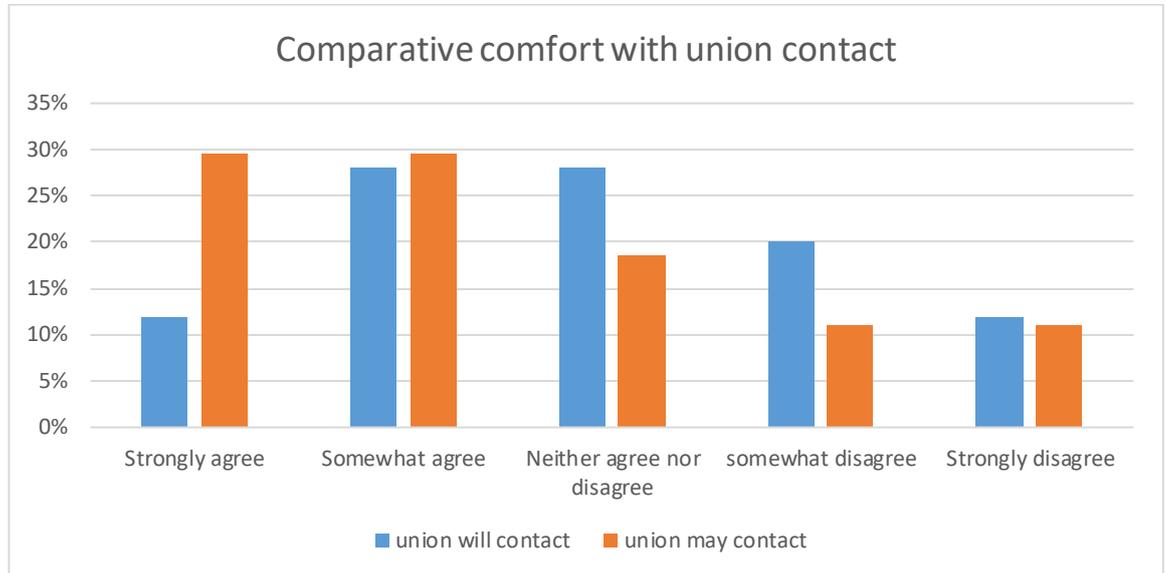
Comfort that the union may contact



By combining the data to assess their comparability, we can see some variance across the datasets, with a higher frequency of comfort for those unsure whether they would be contacted compared to those where it was clear they would be (although the union may not take that initiative). It is not surprising that potential discomfort is elicited more where the event is more certain, although this does not fully explain higher levels of comfort.

Figure 27.

Comparative comfort that union: may contact vs will contact



Employee comfort with being contacted by the union is very similar to attitudes towards names being passed on; a general ambivalence with a trend toward being comfortable. There is a notable difference between the 'will' and 'may' questions, that employees are more comfortable with the possibility of being contacted, and less comfortable where they expect to be contacted. This is to be expected (that people are less uncomfortable the lesser the certainty that it may happen) and does not inhibit our capacity to use combined data for further analysis. This dataset will be used throughout this analysis, as 'combined comfort with union contact' and is a combination of the datasets from questions 13 and 15.

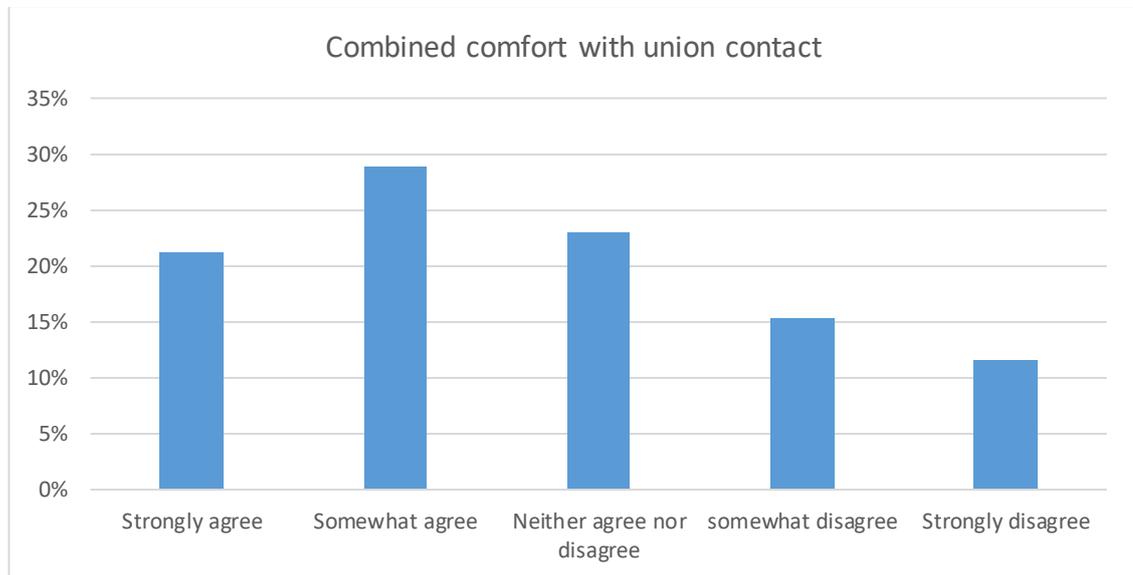
Table 22.

Combined comfort with union contact

Combined comfort with union contact		
	Number	Percent
Strongly agree	11	21.2%
Somewhat agree	15	28.8%
Neither agree nor disagree	12	23.1%
somewhat disagree	8	15.4%
Strongly disagree	6	11.5%
total	52	

Figure 28.

Combined comfort with union contact



A further useful breakdown of this data is to distinguish between those who are union members (including those that are or intend to join the union), and non-members (those who are not, and do not intend to join the union).

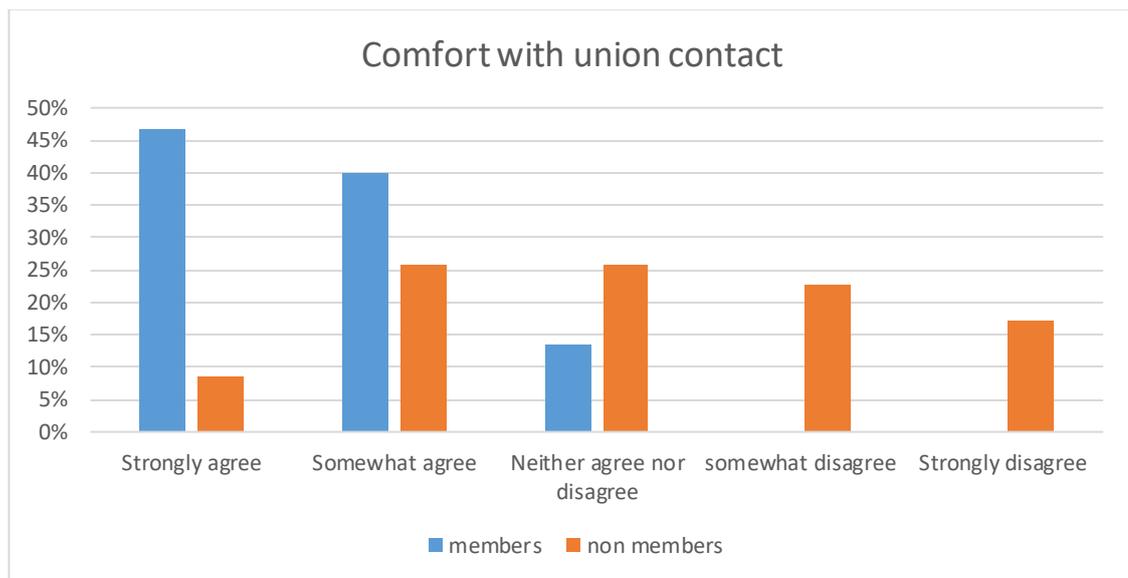
Table 23.

Comparison of comfort with union contact, between union members and non-members

Comfort with union contact		
	Members	Non-members
Strongly agree	46.7%	8.6%
Somewhat agree	40.0%	25.7%
Neither agree nor disagree	13.3%	25.7%
somewhat disagree	0.0%	22.9%
Strongly disagree	0.0%	17.1%

Figure 29.

Comparison of comfort with union contact, between union members and non-members



Here we can see a distinction between members and non-members, with members being more comfortable with the pass-on, and significantly more comfortable than those who were not members and did not intend to join. It is notable that (unlikely the pass-on question) no union members were uncomfortable with being contacted, and 100% of those who were not comfortable were not intending to join the union.

Union Membership

This section relates to union membership history and outcomes. The questions are discussed in a non-sequential order because what is a logical flow for the respondents is not the same for discussion.

For question 19, the survey provided the name of the union(s) that the employees may be members of; it has been amended here to decrease the identifiability of the organisations and unions participating.

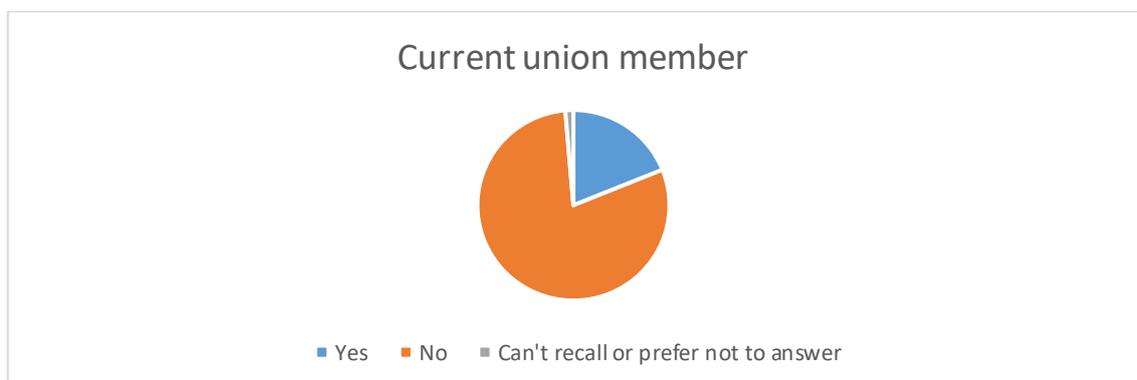
Table 24.

Current union membership

Q19: Are you a member of the Union?		
	Number	Percent
Yes	11	14.9%
No	60	81.1%
Prefer not to answer	3	4.1%
Total	74	

Figure 30.

Current union membership



Prior Membership. A minority of people have been members of a union previously, at a proportion (18.9%) roughly equivalent to national current union membership levels.

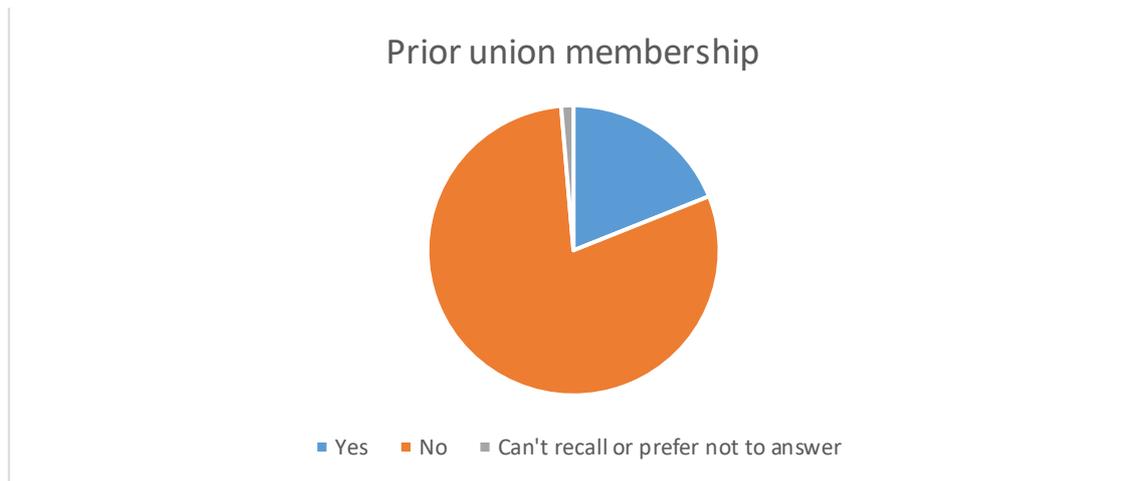
Table 25.

Prior union membership

Q16: Have you ever been a member of a trade union ?		
	Number	Percent
Yes	14	18.9%
No	59	79.7%
Can't recall or prefer not to answer	1	1.4%
Total	74	

Figure 31.

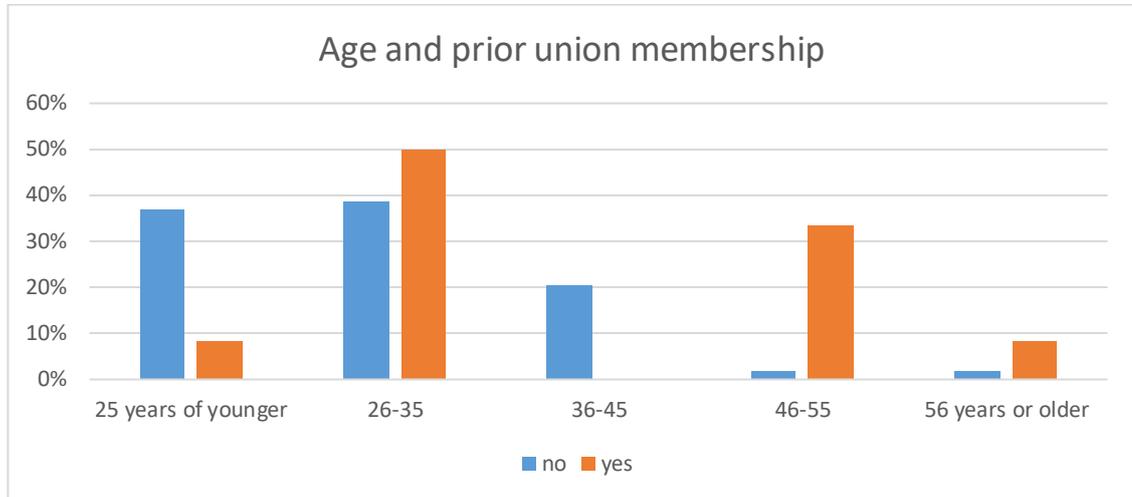
Prior union membership



Age is a clear factor in prior union membership, with a higher proportion of older respondents amongst those that have been union members before.

Figure 32.

Age and prior membership



Did the Union Contact You? The majority of respondents, they were not contacted by the union.

Table 26.

Whether respondents were contacted by the union

Q17: Did the Union contact you?		
	Number	Percent
Yes	8	10.8%
No	61	82.4%
Can't recall	5	6.8%
Total	74	

Of those that were contacted, 5 joined as a result of that contact. Because question 18 ('did you join the Union as a result of that contact?') was not conditional on the answer to question 17, it includes all respondents. The data below is reported in full for completeness.

Table 27.

Whether respondents joined after contact by the union

Q18: Did you join the Union as a result of that contact?		
	Number	Percent
Yes	6	8.1%
No (most were not contacted)	64	86.5%
I was already a member	4	5.4%
Total	74	

Table 28.

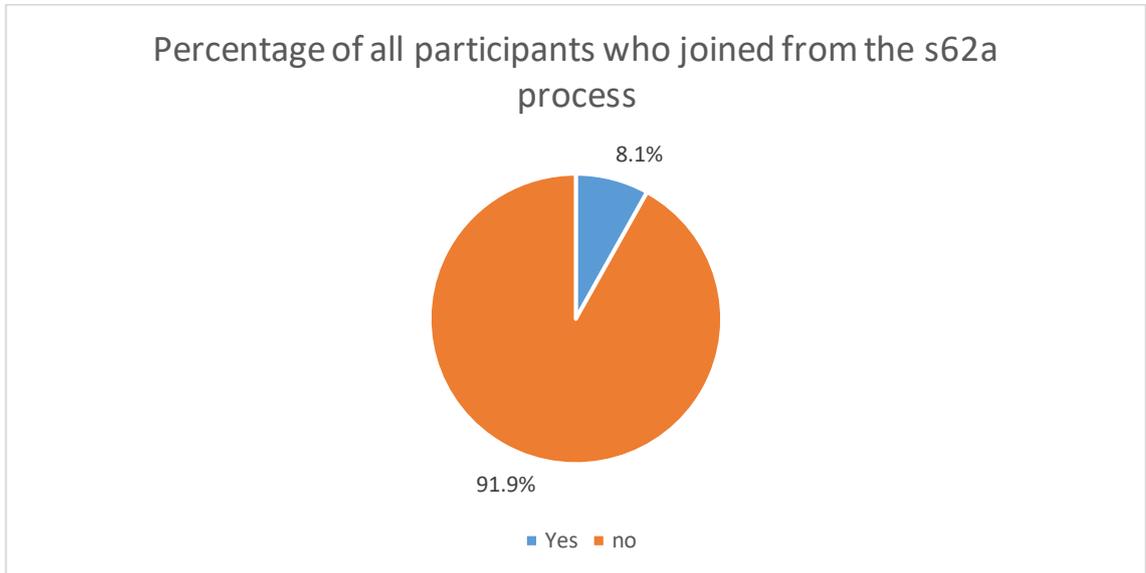
Number of respondents who joined the union after being contacted

Q17 & Q18: Those who were contacted and whether they joined from the contact		
	Number	Percent
Yes	6	6.8%
no	2	2.7%
Already a member	1	1.4%
Not contacted	66	89.1%
Total	74	

From these data, we can establish the efficacy of this process of recruitment. By combining those who were not recruited through the process (i.e. not contacted, did not join, were already members) we can establish those that were recruited via the s62a process. It is important to note although it is a small number (6.8%), this is a significant number when attempting to revitalise union membership from the current national union membership of 17.3%.

Figure 33.

Number of respondents who joined the union after being contacted



Union Membership Decisions. Respondents were asked if they were members and if they were not members, whether they intended to become a member. Because Q20 was only asked of those who responded 'no' to question 19, the total here matches the total of those who answered 'no' to that question.

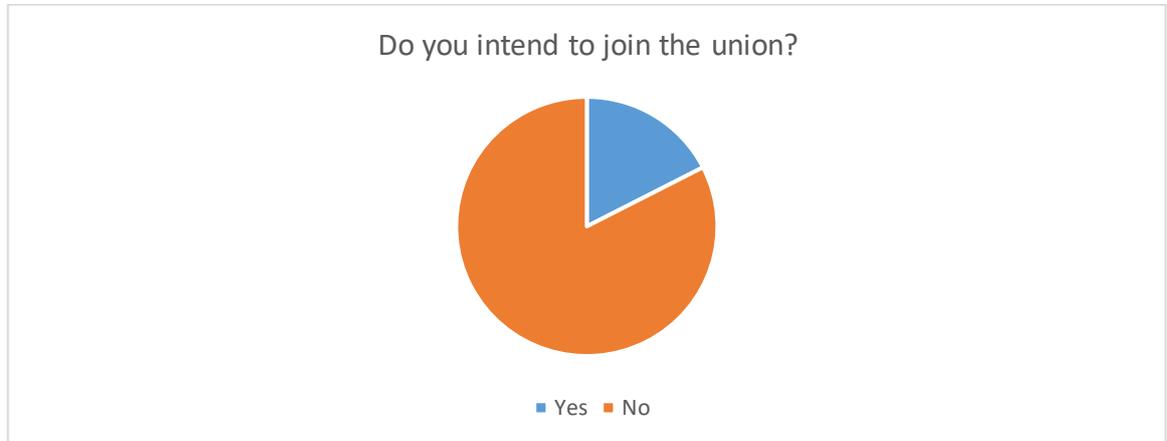
Table 29.

Respondents who intended to join the union

Q20: Do you intend to join the Union?		
	Number	Percent
Yes	10	17.5%
No	52	82.5%
Total	62	

Figure 34.

Respondents who intended to join the union



It is important here to investigate those 10 people who are not members of the union but intend to join, specifically regarding the form, the purpose of which is to put such people in contact with the union. Of the 10 people who intend to join but have not, this is what happened with their forms.

Table 30.

Employees who intend to join the union but have not

Form Outcomes	Number
Did not receive or recall form	7
Completed but union did not follow up	1
Did not complete the form	2

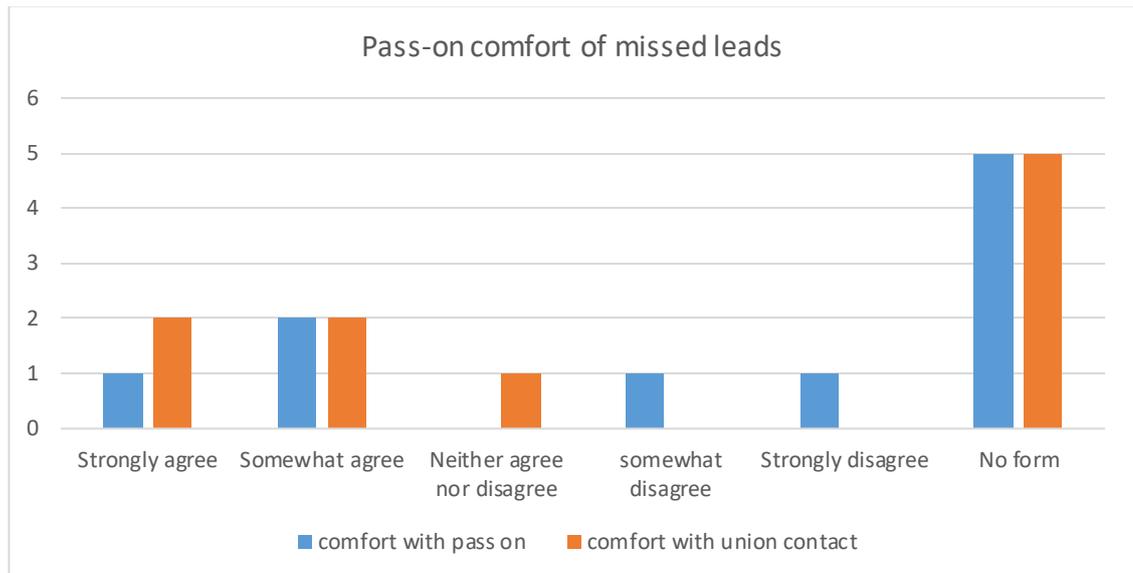
This group is a missed opportunity for the union, that the form seeks to facilitate finding. These are potential members who could easily be recruited but do not come through to the union as clearly wanting to join the union. This is will be discussed above, but these are 'missed leads' within the forms; new employees who want to join the union, but were not contacted, or this motivation to join was not revealed to the union by the process.

It is useful to reflect on this group's comfort with the pass-on process. Of these 10, five claimed not to have received the form (and therefore did not complete questions of comfort

with pass on), and 5 did complete the form but were not followed up on by the union . Of the five that did complete questions on comfort, they were generally comfortable with the process, although notably, two were uncomfortable with their names being passed on (but not being contacted), despite intending to join the union.

Figure 35.

Pass-on comfort of missed leads (intend to join but have not)



Membership Outcomes. So of the 74 respondents who completed this section, what were their outcomes?

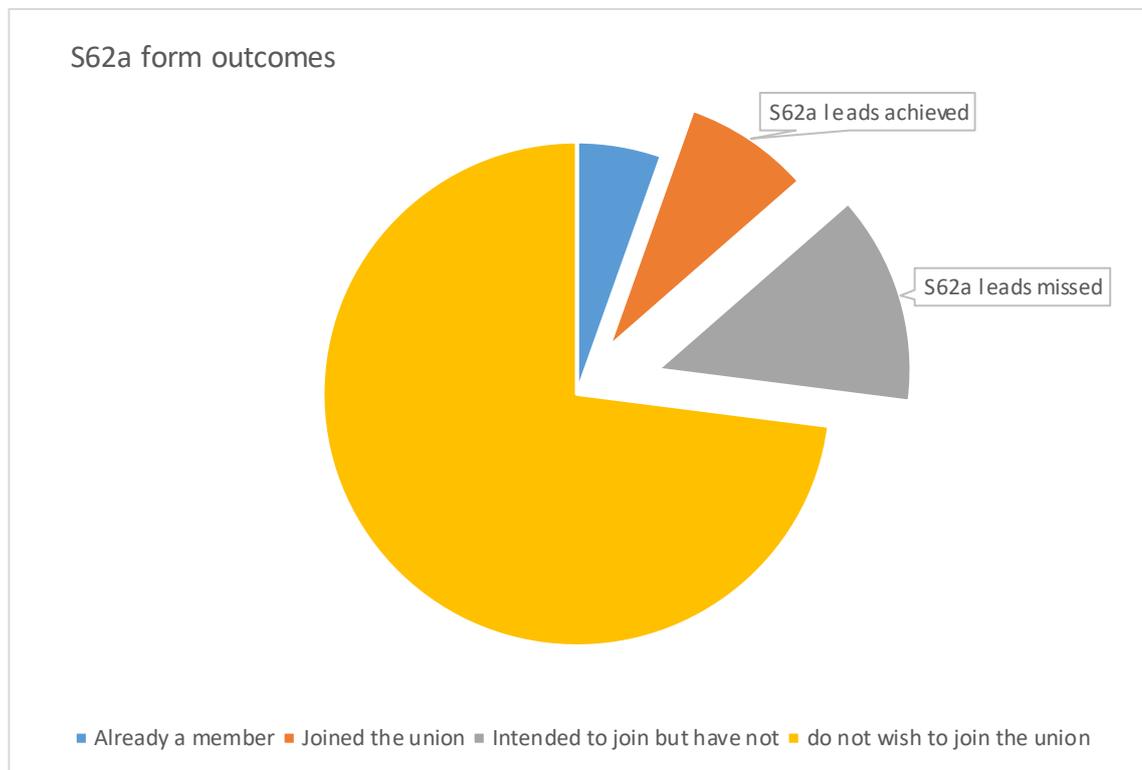
Table 31.*Membership outcomes of survey respondents*

Membership outcomes	Number	Percent
Already a member	4	5.4%
Joined the union after union contact	6	8.1%
Intended to join but have not	10	13.5%
do not wish to join the union	54	73.0%
total	74	

Of this population, 73% did not and did not wish to join the union, and 5.4% were already members. But 8.1% joined once they had been contacted by the union, and while we cannot attribute this member solely to the s62a form (the union may have recruited otherwise) we can at least see the objectives of the form being achieved; new employees being put into contact with the union and joining. But 13.5% intended to join the union, but were not contacted by the union, discussed above the form's success is conditional on the union acting upon the opportunities the form presents; following up on the leads it creates.

Figure 36.

S62a form outcomes



Membership Motivation

This section will be reviewing the motivation questions of joining (Q21-25) or not joining the union (Q26-32). These questions will be grouped into motivation reasons discussed in the literature (see chapter 4) and in the methodology (see chapter 5) of utility benefits, situational reactance, and ideological drivers. This is why they are not in numerical order.

Reasons for Joining the Union. For respondents who answered they were or intended to join the union, they were asked questions 21-26, which relate to common reasons for joining the union. All questions had the option 'don't know' so they may 'pass' on the question; these answers are excluded from the histograms to avoid visual distortion. All questions commenced with this statement – "How important was the following factor in your decision to join the union". The data is grouped into social, pragmatic and ideological drivers for membership.

Situational Reactance. This category is a broad grouping of the external factors that influence an employee’s decision. In this context it is the social factors of family, friends and colleagues that influence the employee.

Table 32.

Friends and colleagues important reasons for joining the union

Q21: My friends and colleagues were already union members.		
	Number	Percent
Very important	4	21.1%
Quite important	5	26.3%
Not very important	5	26.3%
Not important at all	6	31.6%
Don't know	0	0

Figure 37.

Friends and colleagues important reasons for joining the union

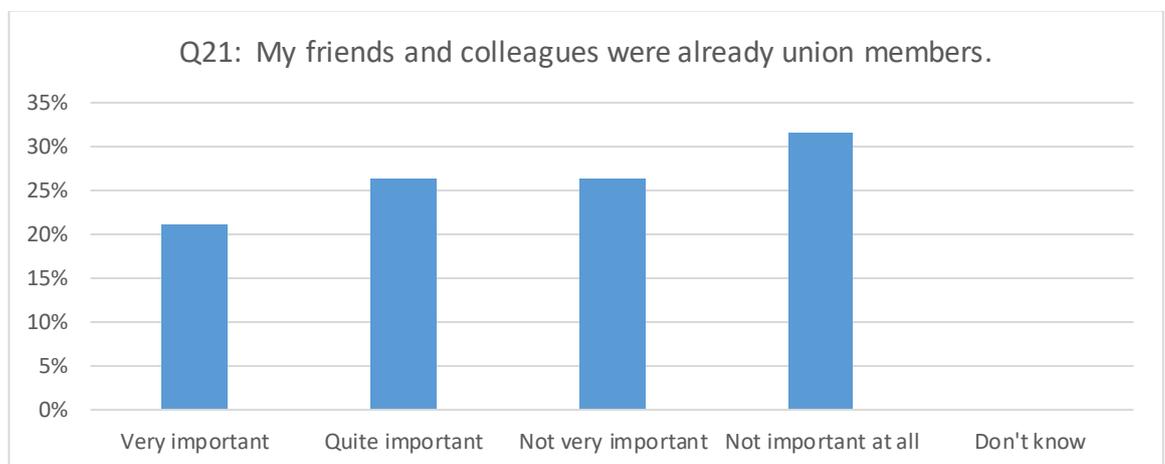


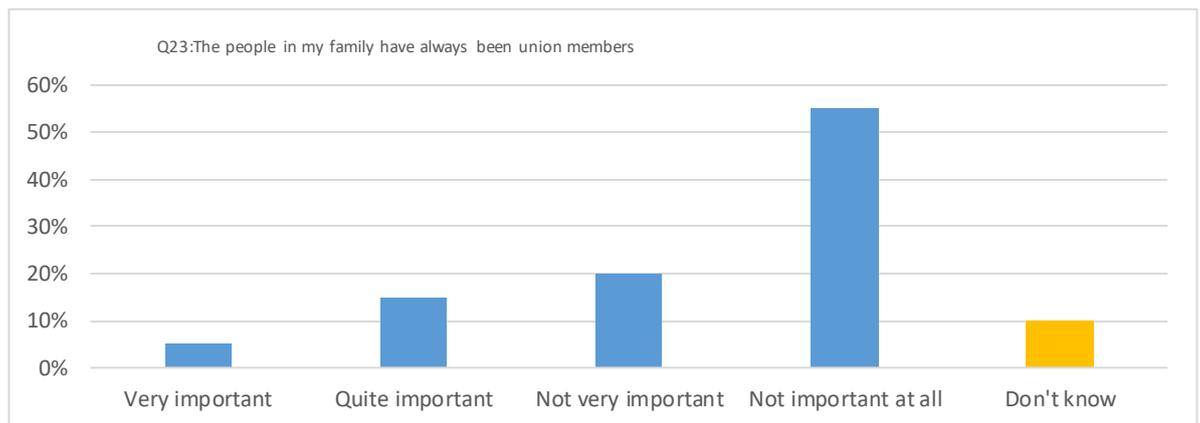
Table 33.

Family members are an important reason for joining the union

Q23: The people in my family have always been union members.		
	Number	Percent
Very important	1	5.0%
Quite important	3	15.0%
Not very important	4	20.0%
Not important at all	11	55.0%
Don't know	2	10.0%
Total	21	

Figure 38.

Family members are an important reason for joining the union



Respondents are very equally spread on the influence of friends and colleagues, whereas family is only an influence for a very small proportion of respondents (20%).

Utility Benefits

Table 34.

Importance of problem assistance for joining the union

Q22: You get better treatment if you have a problem at work.		
	Number	Percent
Very important	10	52.6%
Quite important	8	42.1%
Not very important	2	10.5%
Not important at all	1	5.3%
Dont know	0	0%
Total	21	

Figure 39.

Importance of problem assistance for joining the union

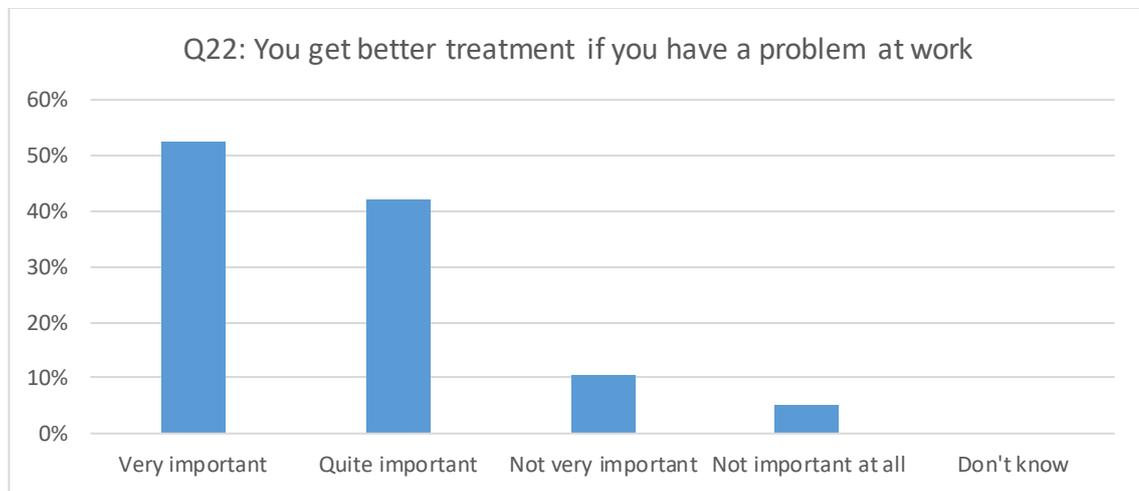


Table 35.

Importance of collectivism for joining the union

Q24: The more people that join a trade union the more effective it is in advancing pay and conditions.

	Number	Percent
Very important	11	52.4%
Quite important	6	28.6%
Not very important	4	19%
Not important at all	0	0%
Don't know	0	0%
Total	21	

Figure 40.

Importance of collectivism for joining the union

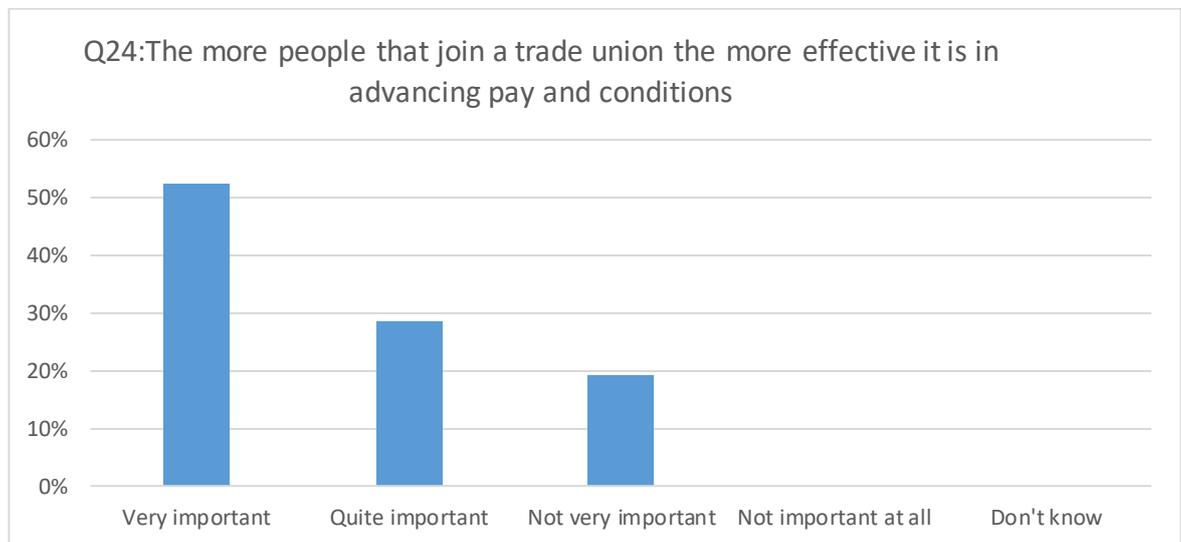


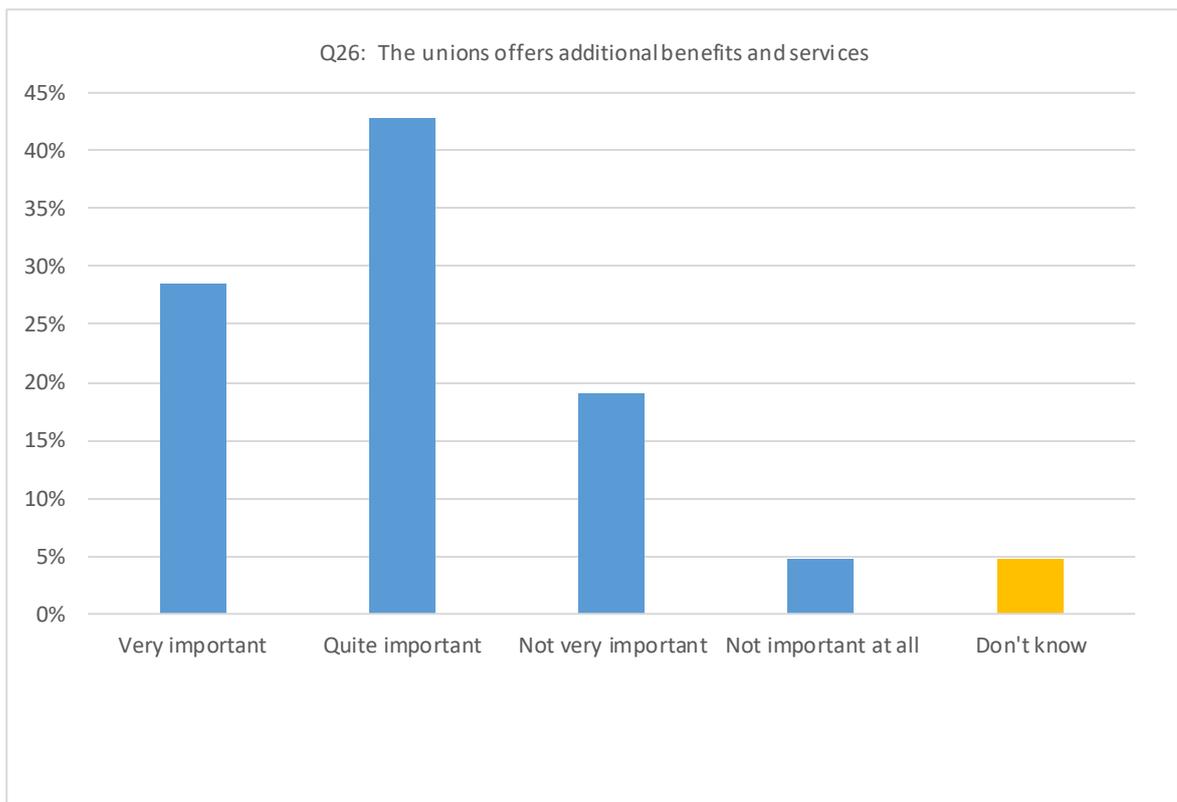
Table 36.

Importance of additional benefits and services for joining the union

Q26: The unions offers additional benefits and services.		
	Number	Percent
Very important	6	28.6%
Quite important	8	42.9%
Not very important	4	19.0%
Not important at all	1	4.8%
Don't know	1	4.8%
Total	21	

Figure 41.

Importance of additional benefits and services for joining the union



There is a very clear trend that the pragmatic benefits of the union are important drivers in why respondents join the union. That joining the union can provide support and

provide benefits and services are important, as well as the practical consideration that better conditions of work can be achieved through collectivism.

Ideological Drivers

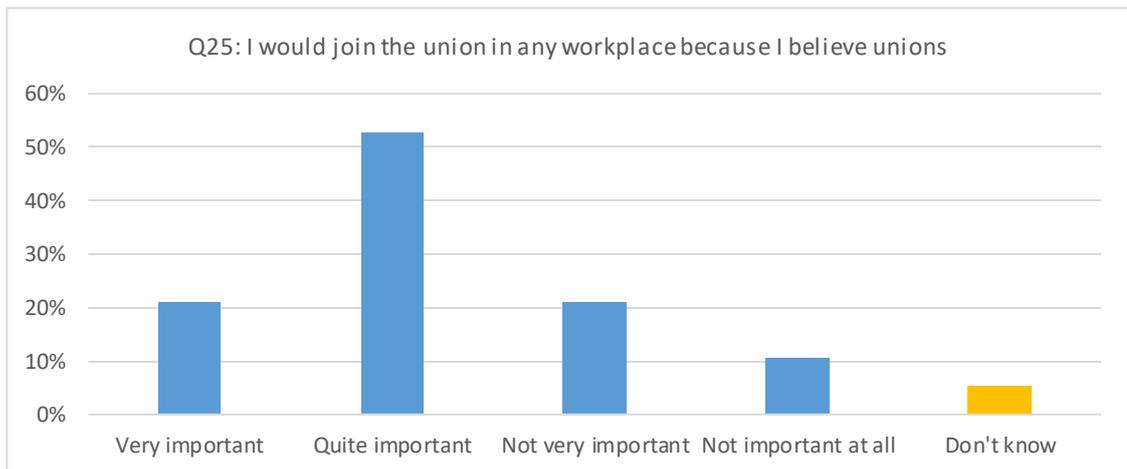
Table 37.

Importance of belief in unions for joining the union

Q25: I would join the union in any workplace because I believe unions.		
	Number	Percent
Very important	4	21.1%
Quite important	10	52.6%
Not very important	4	21.1%
Not important at all	2	10.5%
Don't know	1	5.3%
Total	21	

Figure 42.

Importance of belief in unions for joining the union



Ideological commitment to unionism is an important driver in union membership, although decidedly 'lukewarm'. 73.7% of respondents agreed that they would join unions due to belief in unions, although 52.6% of respondents signalled it was only 'quite important'.

Comparisons of Reasons for Joining the Union

Table 38.

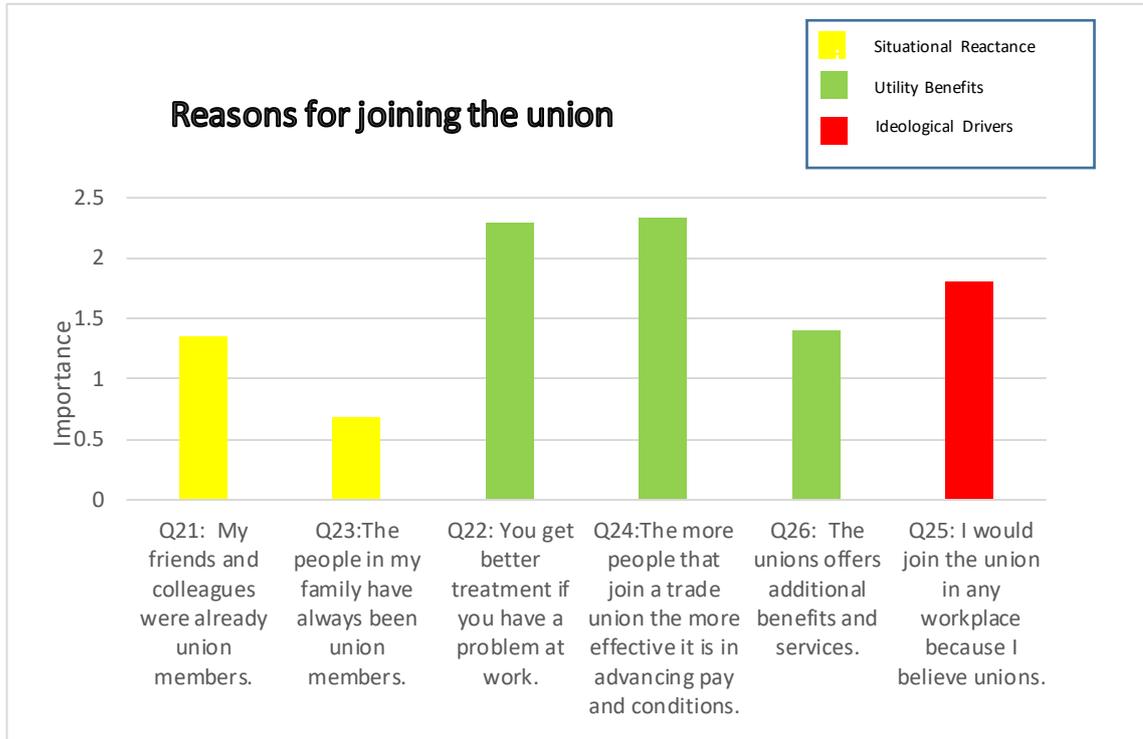
Comparative averages of reasons for joining the union

Reasons for joining the union (1= very important, 4= not important at all)	Mean	SD
Q21: My friends and colleagues were already union members.	2.65	1.14
Q23: The people in my family have always been union members.	3.32	0.95
Q22: You get better treatment if you have a problem at work.	1.71	0.85
Q24: The more people that join a trade union the more effective it is in advancing pay and conditions.	1.67	0.80
Q26: The unions offers additional benefits and services.	2.60	1.06
Q25: I would join the union in any workplace because I believe unions.	2.20	0.89

In the graph below, the means have been inverted (subtracted from 4) so that visually it's more comprehensible with the stronger agreement (and therefore more important) presenting as a higher score.

Figure 43.

Comparative averages of reasons for joining the union



Reasons for not Joining the Union. For respondents who answered they were not, or did not intend to join the union, they were asked questions 27-32, which relate to common reasons for joining the union. All questions had the option 'don't know' so they may 'pass' on the question; these answers are differentiated by colour in the histograms to avoid visual distortion. All questions commenced with this statement –“Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union?” The data is grouped into industry, pragmatic and ideological drivers for membership.

Situational Reactance

This category is a broad grouping of the external factors that influence an employee's decision. In this context, it is the social factors to influence perceptions that unions are not suited to their profession or their workplace.

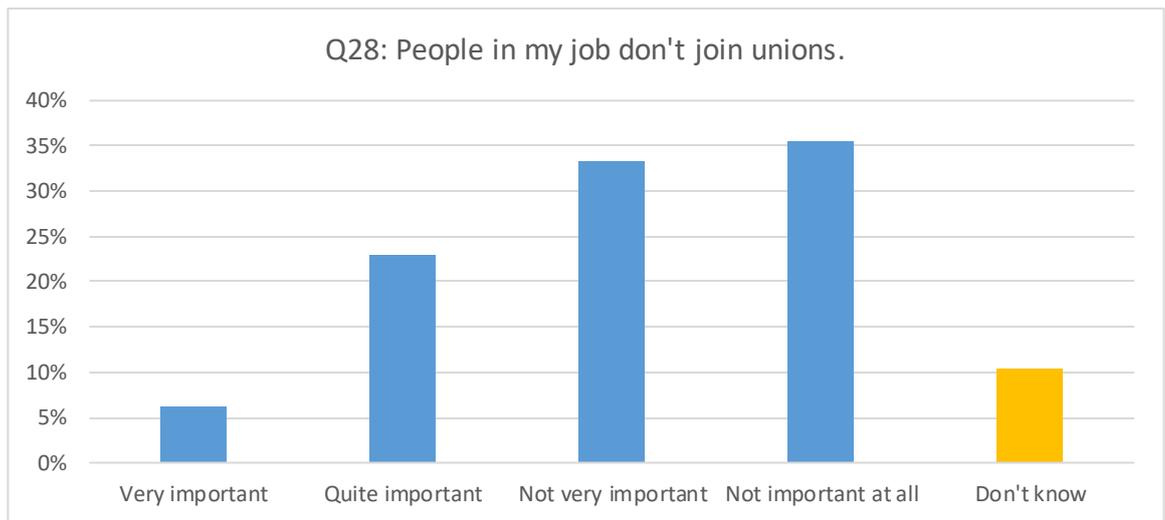
Table 39.

Importance of job type as a reason for not joining the union

Q28: People in my job don't join unions.		
	Number	Percent
Very important	3	6.3%
Quite important	11	22.9%
Not very important	16	33.3%
Not important at all	17	35.4%
Don't know	5	10.4%
Total	52	

Figure 44.

Importance of job type as a reason for not joining the union



Here we note amongst this population a low perception that unionism is not appropriate to their role or industry. Only 29.2% agreed it was important, compared to 68.7% who did not agree. While we see a small percentage of respondents not sure, we can conclude that only a small proportion (29.2%) felt that union membership is not compatible with their role.

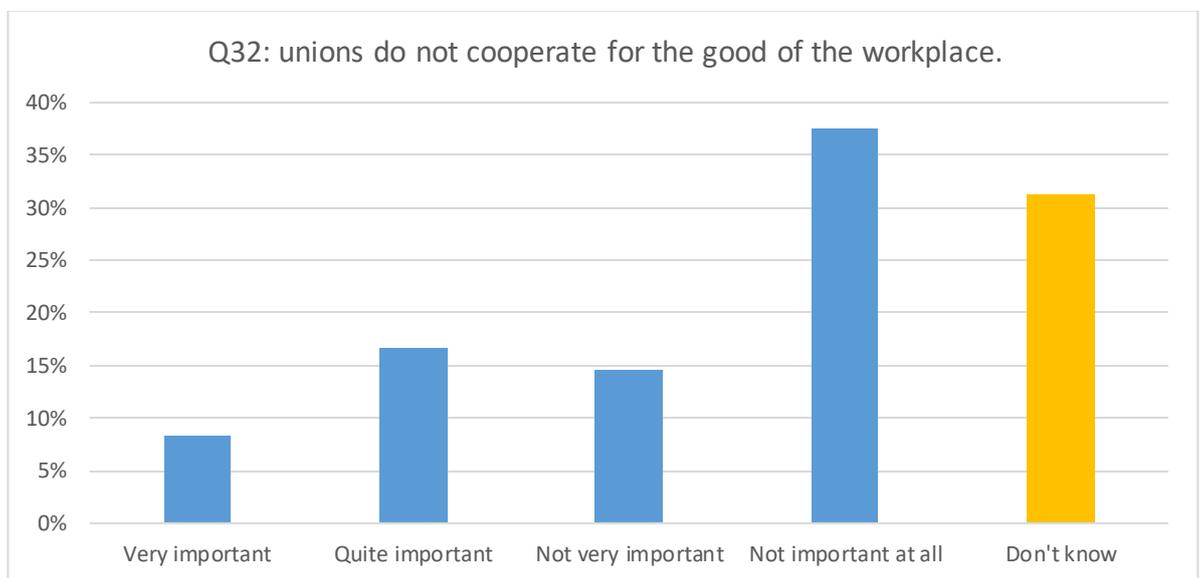
Table 40.

Union cooperation in the workplace as a reason not to join the union

Q32: unions do not cooperate for the good of the workplace.		
	Number	Percent
Very important	4	8.3%
Quite important	8	16.7%
Not very important	7	14.6%
Not important at all	18	37.5%
Don't know	15	31.3%
Total	52	

Figure 45.

Union cooperation in the workplace as a reason not to join the union



Most respondents did not identify these situational drivers as important reasons they don't join unions. For this question of non-cooperation, a high proportion of 'don't knows'; respondents who likely either had no opinion or had not formed an opinion on whether unions should cooperate or should not in the workplace.

Utility Benefits

These drivers are comparable to the drivers above – practical reasons why the individual may perceive it to be in their interest to not join the union.

Table 41.

Membership costs as a reason not to join the union

Q27: Membership fees are too high / too expensive		
	Number	Percent
Very important	11	22.9%
Quite important	14	29.2%
Not very important	10	20.8%
Not important at all	6	12.5%
Don't know	11	22.9%
Total	52	

Figure 46.

Membership costs as a reason not to join the union

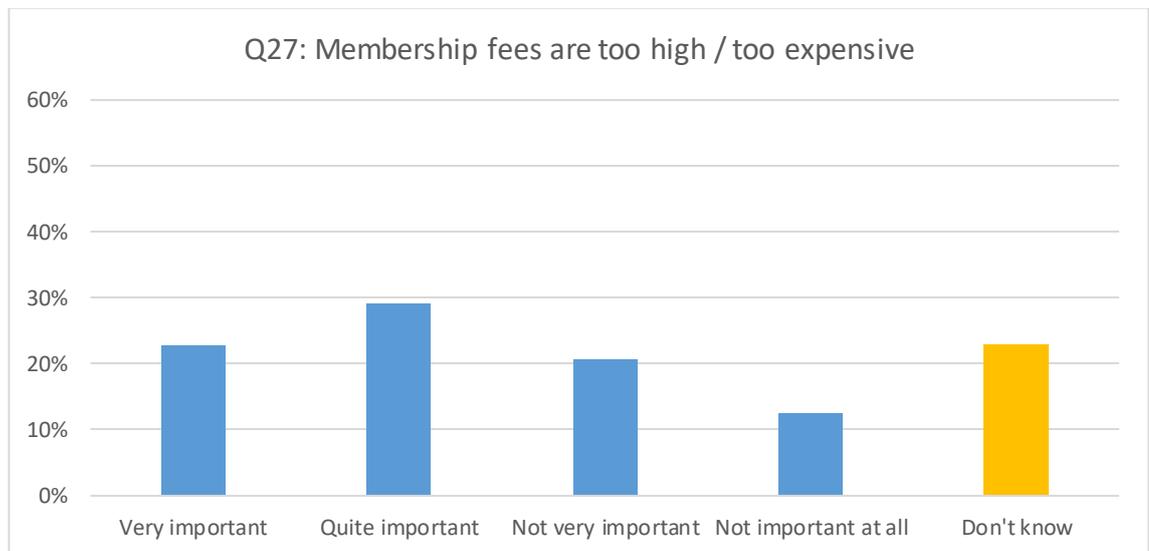


Table 42.

Union achievements as a reason not to join the union

Q29: Unions do not achieve anything I value		
	Number	Percent
Very important	8	16.7%
Quite important	11	22.9%
Not very important	13	27.1%
Not important at all	10	20.8%
Don't know	10	20.8%
Total	52	

Figure 47.

Union achievements as a reason not to join the union

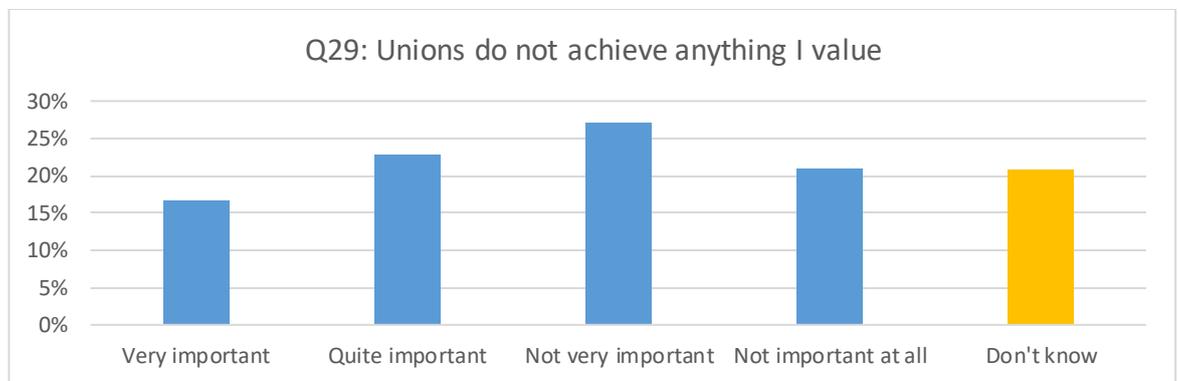


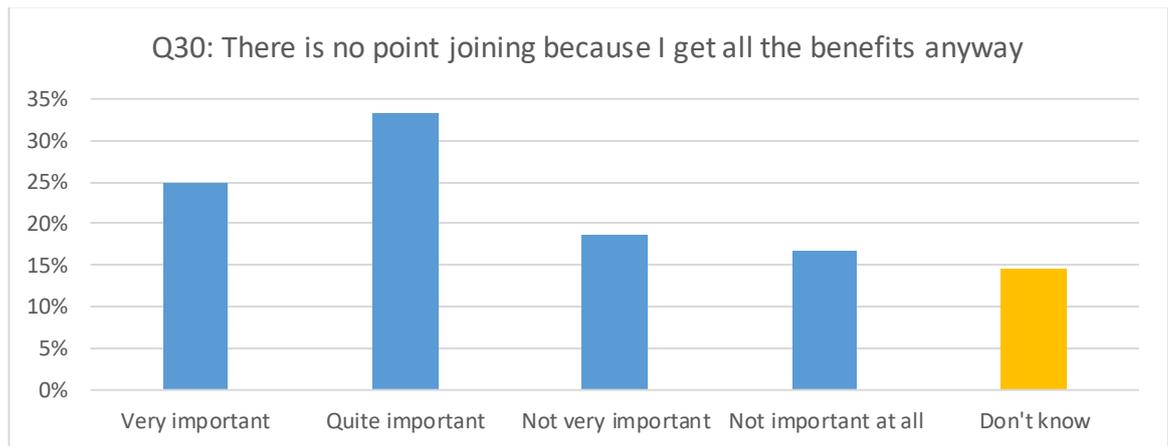
Table 43.

Getting the benefits without membership as a reason for not joining the union

Q30: There is no point joining because I get all the benefits anyway		
	Number	Percent
Very important	12	25.0%
Quite important	16	33.3%
Not very important	9	18.8%
Not important at all	8	16.7%
Don't know	7	14.6%
Total	52	

Figure 48.

Getting the benefits without membership as a reason for not joining the union



There is a minor trend of respondents not joining the union because of these self-interest reasons – a combined total of 58.3% of those not joining the union felt that costs were too high, compared to 33.3% who did not agree it was a factor. 58.3% did not join because they get the benefits, compared to 35.4% who did not see this as an important factor. Again we see a high proportion of ‘don’t knows’; as people are either unsure or undecided on how much this is a factor in why they do not join the union.

Ideological drivers

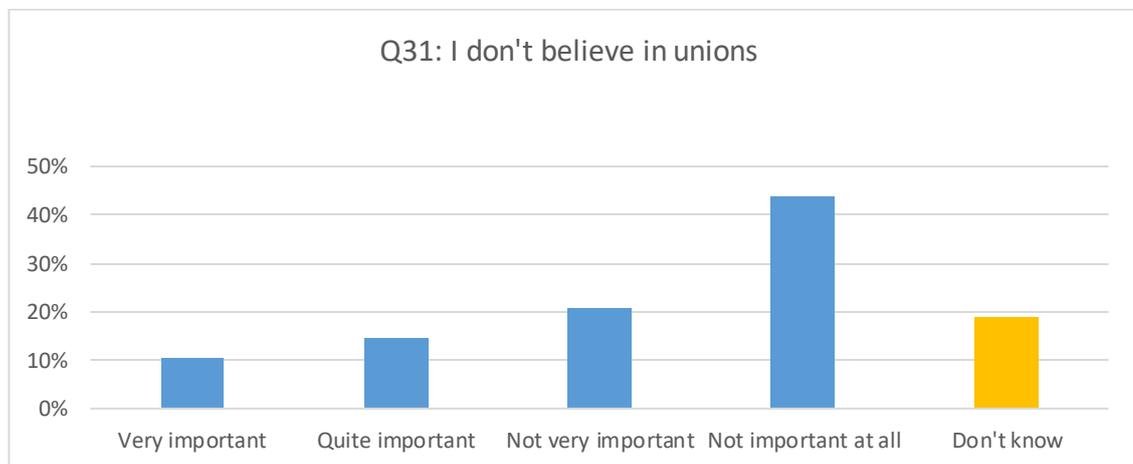
Table 44.

Non-belief in unions as a reason for not joining the union

Q31: I don't believe in unions		
	Number	Percent
Very important	5	10.4%
Quite important	7	14.6%
Not very important	10	20.8%
Not important at all	21	43.8%
Don't know	9	18.8%
Total	52	

Figure 49.

Non-belief in unions as a reason for not joining the union



Few respondents agreed that they didn't join the union because they don't believe in unions. Only 25% agreed it was a factor, compared to 64.6% who did not believe it was a factor. 18.8% were unsure.

Comparisons of reasons for not joining the union

Table 45.

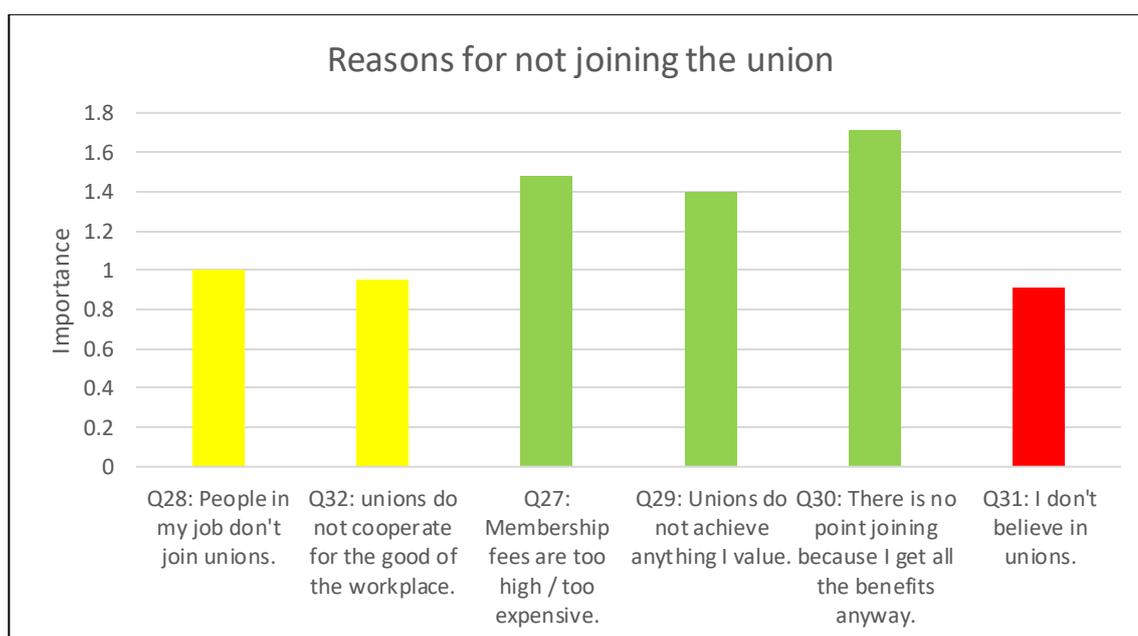
Comparative averages of reasons for not joining the union

Reasons for not joining the union (1= very important, 4= not important at all)	Mean	SD
Q28: People in my job don't join unions.	3.00	0.93
Q32: unions do not cooperate for the good of the workplace.	3.05	1.08
Q27: Membership fees are too high / too expensive.	2.52	1.15
Q29: Unions do not achieve anything I value.	2.60	1.06
Q30: There is no point joining because I get all the benefits anyway.	2.29	1.05
Q31: I don't believe in unions.	3.09	1.06

In the graph below, the means have been inverted (subtracted from 4) so that visually it's more comprehensible with stronger agreement (and therefore more important) presenting as a higher score.

Figure 50.

Comparative averages of reasons for not joining the union



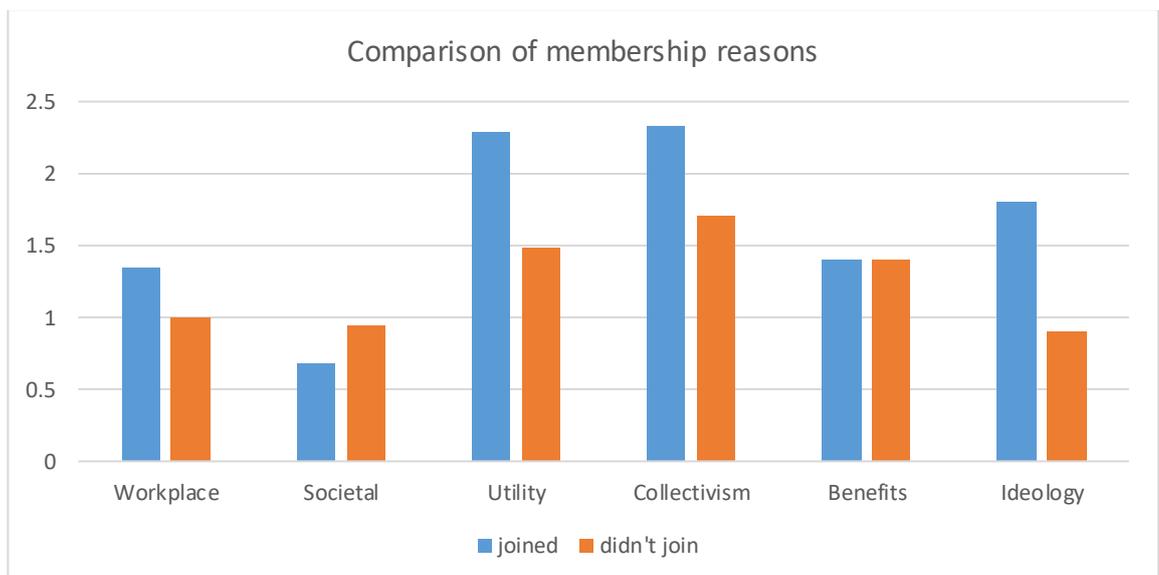
From the data above, it's clear that pragmatic drivers are key reasons why people don't join the union; the cost of membership, the benefits they receive from them and whether the benefits are exclusive to members.

Comparative Analysis. A clear trend in the data is the difference in conviction; respondents who join the union agree more with the reasons they join the union, relative to those who did not join, who agree less with the reasons not to join. Also, there is a higher frequency of 'don't know' answers for reasons not to join.

The table below demonstrates the differences amongst conviction of opinion. To provide some comparison, the drivers paired across the two groups (some pairs were easily compatible, some only broadly, so it is best to focus on the comparisons rather than these new categories). The workplace category compares Q21 (my friends and colleagues are members) to Q28 (people in my job don't join unions). Societal compares Q23 (my family have always been members) with Q32 (unions do not cooperate). Utility compares Q22 (you better treatment at work) with Q27 (fees are too high). Collectivism compares Q24 (more members advances pay) to Q30 (I get the benefits anyway). Benefits compare Q26 (union benefits and services) to Q29 (the union does not achieve anything I value). Ideology compares Q25 (I believe in unions) to Q31 (I don't believe in unions).

Figure 51.

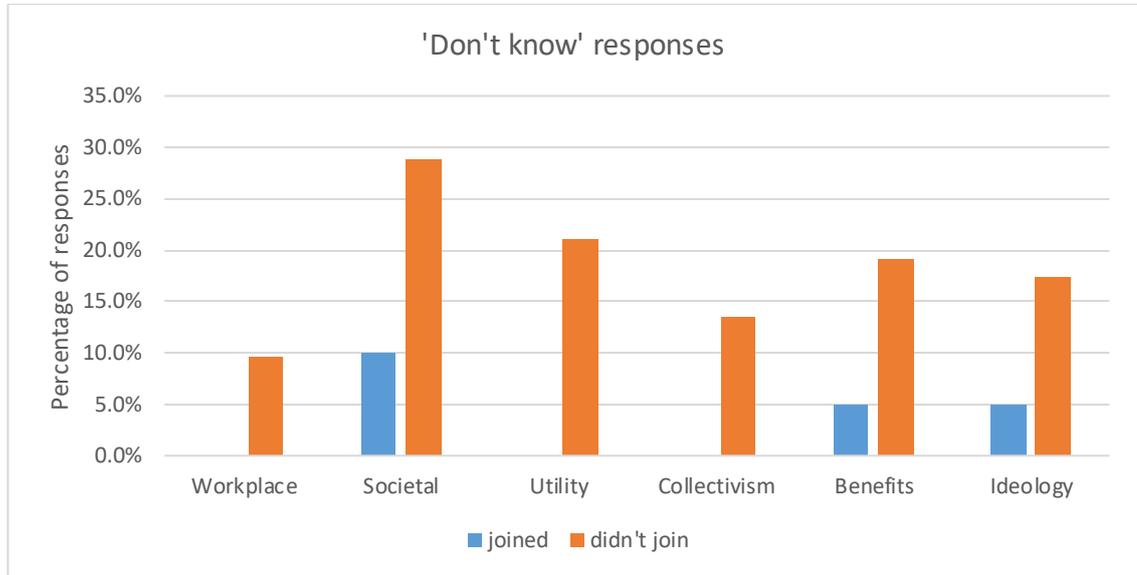
Comparisons of reasons for joining/not joining by similar drivers



In addition, the usage of 'don't know' responses is beneficial to consider:

Figure 52.

Comparison of 'don't know' responses between members and non-members



The trend emerging from these datasets is that those that joined the union were more certain in their reasons to join, whereas those that did not join were less certain. It is unsurprising given one is taking an action, and the other is not taking an action; it is expected that people will know why they did something, more than they would know why they didn't do something. However, it does also present a picture of lesser conviction, is and potentially more persuadable. Those that did not join the union are less certain of why they didn't; there is more scope to persuade them to do so.

Attitudes to unions

Questions 33 to 36 asked all participants (both members of the union and non-members) their opinions on the role of unions. The category of 'union member' is based on those who either are members of the union or intend to join the union, and the category of 'non-member' includes those that are not members and do not intend to join.

Figure 53.

Comparison of importance for unions to win pay increases between members and non-members

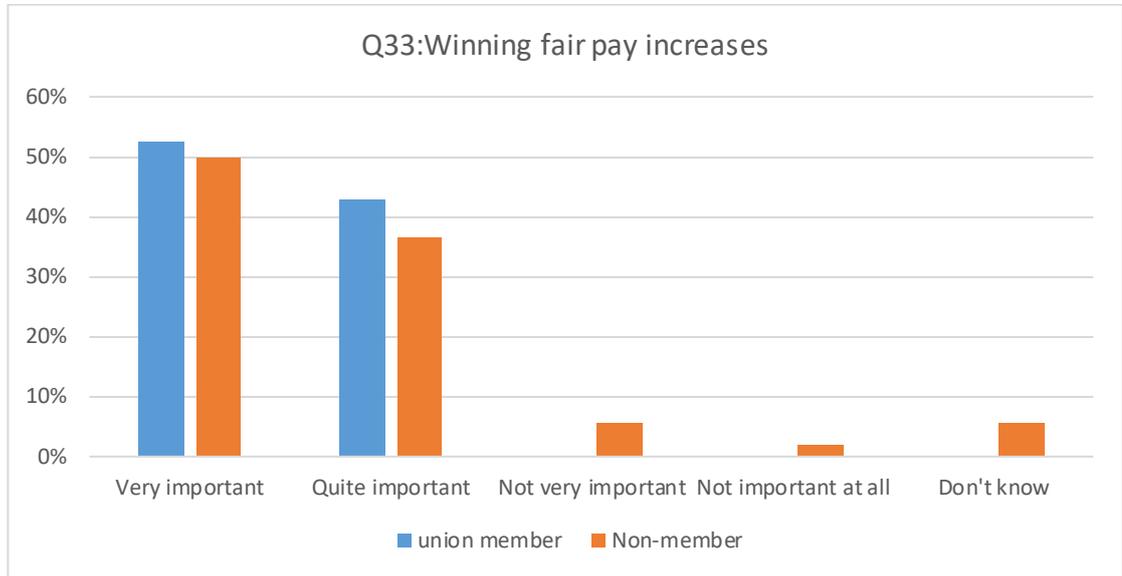


Figure 54.

Comparison of importance for unions to protect jobs between members and non-members

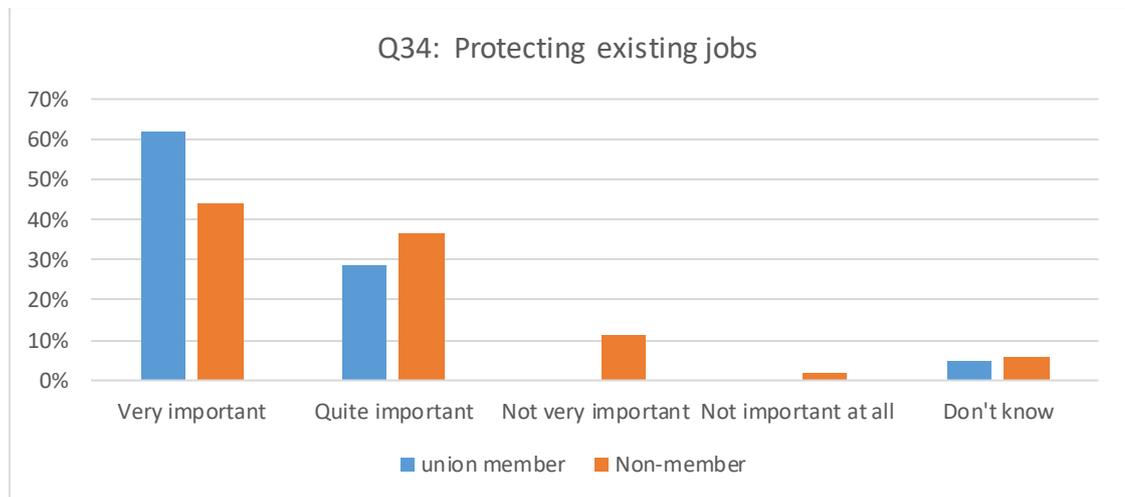


Figure 55.

Comparison of importance for unions to work with management between members and non-members

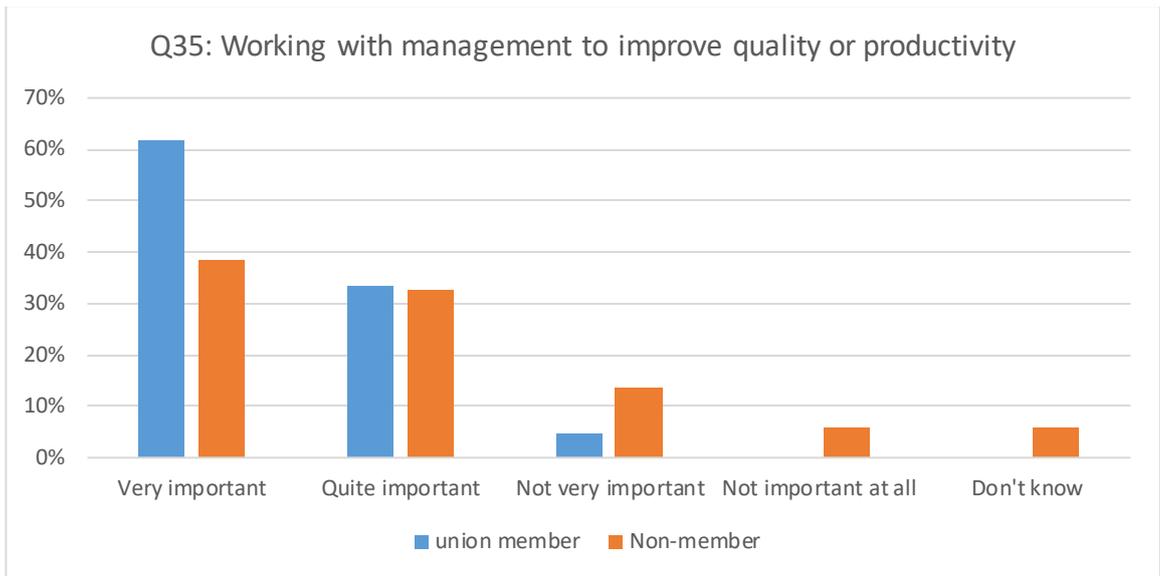
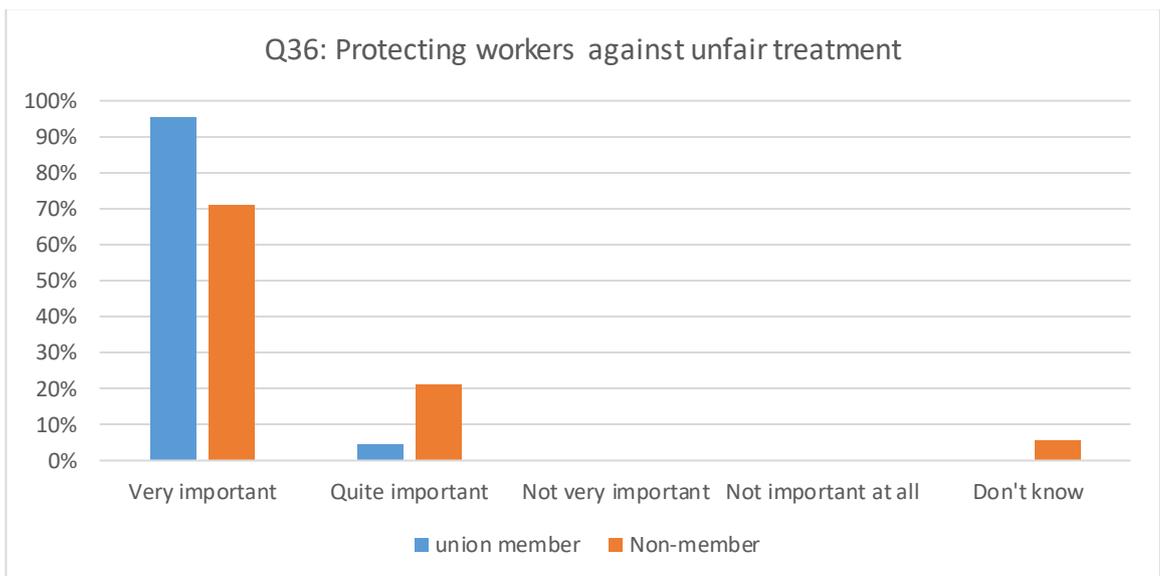


Figure 56.

Comparison of importance for unions to protect workers between members and non-members



From the data above, there was clear agreement that unions should perform these roles, by both union members and non-members. There was also no disagreement between members and non-members, only a lesser degree of conviction amongst non-union members, with only a handful of respondents that disagreed. The key findings are that both union members and non-union members believe that unions should be winning increases, protecting workers' jobs and from unfair treatment, and working with management, only union members

more so. That those that didn't join share the same opinion of the role of the union in the workplace is a key finding that will be discussed further in Chapter 6.

Political opinions

Questions 37 and 38 investigated respondents' political attitudes. Specifically, it investigated confidence in the government that introduced the s62a process, and overall trust in the NZ state.

Table 46.

Confidence in the Labour-led coalition Government

Q37: I had confidence in the 2017-2020 Labour-led coalition government		
	Number	Percent
Strongly agree	14	20.9%
Somewhat agree	28	41.8%
Neither agree nor disagree	14	20.9%
Somewhat disagree	5	7.5%
Strongly disagree	6	9.0%
Total	67	

Figure 57.

Confidence in the Labour-led coalition Government

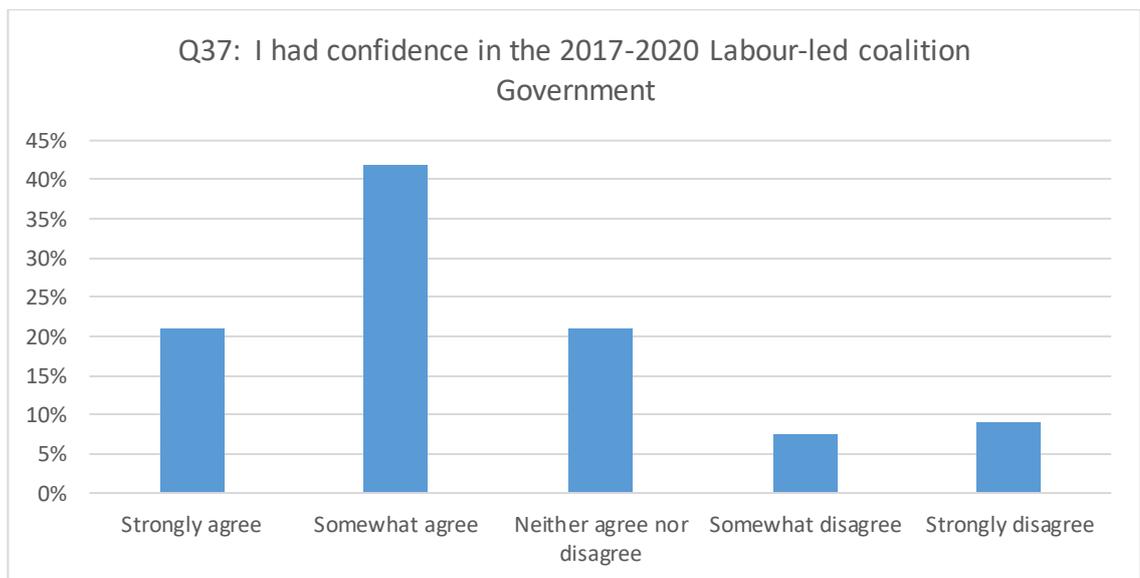


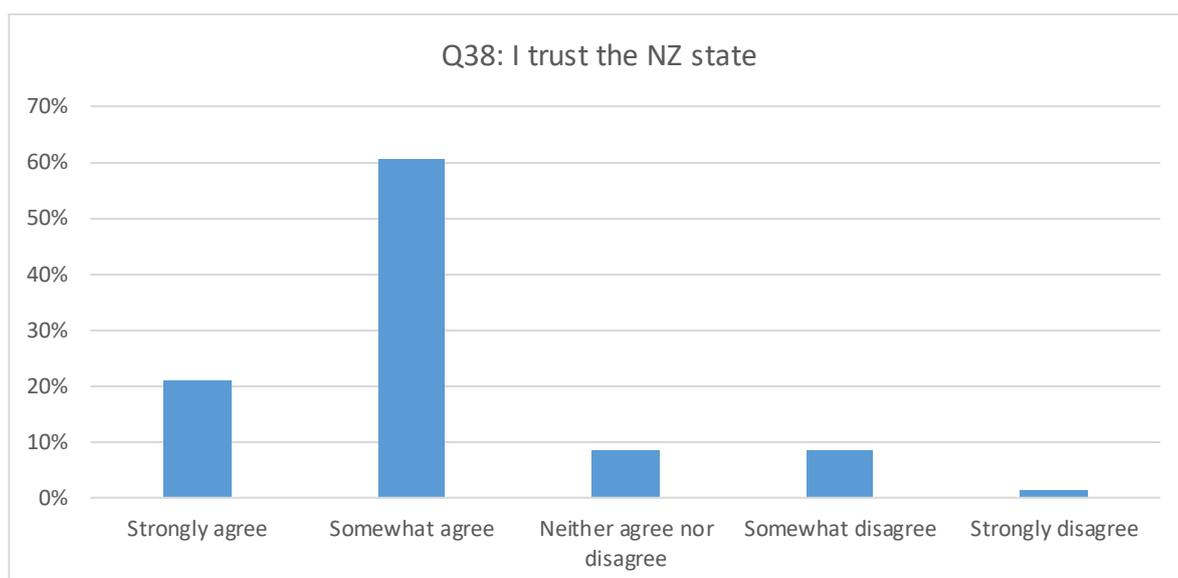
Table 47.

Trust in the NZ state

Q38: In general, I trust the NZ state to act in the best interests of New Zealanders.		
	Number	Percent
Strongly agree	15	21.1%
Somewhat agree	43	60.6%
Neither agree nor disagree	6	8.5%
Somewhat disagree	6	8.5%
Strongly disagree	1	1.4%
Total	71	

Figure 58.

Trust in the NZ state



Both datasets provide similar findings of general trust in both the state in general, and the government of the day in question. It is a qualified trust rather than an absolute trust, with the highest proportion for both in the 'somewhat agree' response. There is more trust in the state in general (81.7% strongly or somewhat agreeing) than in the Labour-NZ First government (62.7% strongly or somewhat agreeing).

Respondents were also asked whom they voted for in 2020. There was a high response of non-answers in the question, with 29% responding that they didn't vote, can't recall, or prefer not to say. While National did perform poorly in the election (26%), there is an underrepresentation of National voters amongst the respondents and an over-representation of Green voters.

Table 48.

Voting behaviour in 2020

Who did you vote for in the 2020 election?		
	Number	Percent
Labour	28	34.1%
National	6	7.3%
ACT	2	2.4%
The Greens	13	15.9%
NZ First	1	1.2%
TOP	2	2.4%
Didn't vote, can't recall, or would prefer not to say	30	36.7%
Total	82	

The purpose of the voting behaviour question is to understand the political dispositions of the respondents, and whether they continued to support those parties that introduced this nudge. On that basis a simple distinction was made; whether they voted in support of the 2017–20 Government by voting Labour, Greens or NZ First, or whether they voted against the Government (i.e. by voting for National, ACT, or TOP). Non votes were disregarded.

Table 49.

Voted for or against the Government

Voted for or against the coalition government		
	Number	Percent
Voted Labour, Greens or NZ First	42	80.8%
voted for opposition party	10	19.2%
Total	52	

Analysis

Having established the basic descriptive data, what potential drivers can we establish for these findings? This section is divided into two parts; a) deductive analysis of pre-determined hypotheses, and b) inductive analysis of any findings emergent from the data or indicated by the qualitative findings. Substantive findings will be highlighted in bold. Analysis conducted but not found to be substantive is not reported, except where it was hypothesised, or where it beneficial to include for comparative purposes.

Deductive Analysis

Considering research question 2; ‘Do antecedent preferences affect the s62a process?’, it is necessary to investigate what potential drivers may be influencing the process. What pre-existing attitudes influence attitudes to the nudge, and nudge outcomes.

The significant questions within the dataset are those that relate to attitudes to the pass-on; questions 12-15 (are you comfortable with the pass-on and potential contact). Data relating to actual nudge outcomes would have also been of value, specifically, data captured by question 18 (did you join as a result of that contact). Unfortunately, as identified above, only 7 people were contacted by the union, and only 3 joined as a result of that contact. Of those 3, 2 completed the form that they wanted to join the union and for their details to be passed on, and 1 reported never receiving the form. This does not provide a sufficient population to conduct any meaningful analysis.

Relationships between Demographics and Pass-ons

This section outlines analysis that was undertaken into potential relationships in the survey data, primarily between comfort with the pass on and comfort with the union contact, and other variables. The comfort datasets were combined to form a larger population. Questions 12 (I am comfortable that my employer was required to pass on my name to the union) and 14 (I am comfortable that my employer may have been required to pass on my name to the union) were combined into the variable - 'combined: I am comfortable with pass on'. Questions 13 (I am comfortable that the union will contact me) and 15 (I am comfortable that the union may contact me) were combined into the variable - 'combined: I am comfortable with union contact'.

Populations were further reduced conducting relationship analyses. As discussed in chapter 5, participants were able to not answer some questions, and therefore the total populations here are constrained to only those that completed both sets of questions.

Comfort with nudge & union membership.

An important question is the comfort of those who did not join the union (either are not members, or do not intend to join the union). One key question is: is there a difference in comfort between union members (current or intending to), and non-members (not current members and not intending to join)?

Table 50.

Comparison of comfort with pass-on between members and non-members

Combined: I am comfortable with pass-on	union members	non-members
Number	15	35
Mean	2.40	3.03
Std	1.24	1.22
T-test		-1.656
Df		48
Sig. (2-tailed)		0.104

Table 51.*Comparison of comfort with union contact between members and non-members*

Combined: I am comfortable with union contact	union members	non-members
Number	15	35
Mean	1.67	3.14
Std	0.72	1.24
T-test		-4.29
Df		48
Sig. (2-tailed)		0.001

So there is a significant difference in comfort between union members and non-union, but only significantly when it comes to actual contact. Non-union members are less comfortable with the pass on (but not significantly so) but this becomes more pronounced when considering the prospect of being contacted by the union. The mean score for non-members is 3.14 (3 is on this scale is neither agree nor disagree), which compared to the member mean of 1.67 (where 1 is strong agreement that they are comfortable with the union) paints a picture that non-members are on average neither agree or disagree that they are comfortable, whereas members are very comfortable with being contacted.

Literature generated hypotheses

As discussed above, this section of research has significant deductive elements. The survey design incorporated factors derived from the literature that may form antecedent preferences or factors that influence employees' nudge comfort. As discussed in the methodology chapter, the following hypotheses were developed prior to be tested in the data:

Table 52.*Literature generated hypotheses*

Hypothesis	Relationship between questions:

1. Attitudes towards unions will be related to comfort with their name being passed on the union(s).	Q12/14 & Q 21-26/Q27-32 Q12/14 & Q33-26
2. Attitudes towards unions will be related to comfort with the union contacting them.	Q13/15 & Q 21-26/Q27-32 Q13/15 & Q33-26
3. Employees with low confidence in the nudge architect (the 2017-2020 Labour-led coalition government) are less comfortable with (a) their name being passed on the union(s), and (b) less likely to join the union when they have been nudged to be in contact with the union(s).	Q12/14 & Q18 & Q37
4. Employees with low trust in the NZ state are less likely to be comfortable with (a) their name being passed on the union(s) and (b) are less likely to join the union when they have been nudged to be in contact with the union(s).	Q12 /14 & Q18 & Q38
5. Employees who did not vote for the political parties that implemented the s62a process (Labour, The Greens or NZ First) are (a) less likely to be comfortable with their name being passed on the union(s), and (b) less likely to join the union when they have been nudged to be in contact with the union(s).	Q12 /14 & Q18 & Q39

* Participants only answer question 13 or 14.

† Participants only answer either questions 21-26, or questions 27-32, depending on their answer to question 20.

The findings below will report on these hypothesised relationships, including where found and not found. In addition, other relationships were tested, such as potential

relationships established by the qualitative between comfort and possible migrant status. Findings below will include only those found to be relevant (i.e. a useful relationship and statistically significant); other findings are not reported. Because 'I don't know' responses were not included, the population of these datasets were further reduced.

Hypothesis 1 Attitude Related to Name Passing-on

Table 53.

Hypothesis 1

Hypothesis	Relationship between questions:
1. Attitudes towards unions will be positively related to comfort with their name being passed on the union(s).	a)Q12/14* & Q 21-26/Q27-32† b)Q12/14 & Q33-36

To test this hypothesis, first a Spearman correlation test was conducted. The important findings are highlighted in bold.

Union Members

For those that joined, or intended to join the union, and their reasons:

Table 54.

Correlations of comfort with pass-on and reasons for joining the union

How important was the following factor in your decision to join the union:		Combined: I am comfortable with pass on
Q21: My friends and colleagues were already union members.	Correlation	-0.44
	Coefficient	
	Sig. (1-tailed)	0.049
	N	15

	Correlation	
Q22: You get better treatment if you have a problem at work.	Coefficient	-.57
	Sig. (1-tailed)	0.013
	N	15
	Correlation	
Q23: The people in my family have always been union members.	Coefficient	-0.47
	Sig. (1-tailed)	0.043
	N	14
	Correlation	
Q24: The more people that join a trade union the more effective it is in advancing pay and conditions.	Coefficient	0.36
	Sig. (1-tailed)	0.096
	N	15
	Correlation	
Q25: I would join the union in any workplace because I believe unions.	Coefficient	0.51
	Sig. (1-tailed)	0.032
	N	14
	Correlation	
Q26: The unions offers additional benefits and services.	Coefficient	0.05
	Sig. (1-tailed)	0.429
	N	15

This data shows a very strong relationship between these reasons why people joined and their comfort with the pass on. The significant finding is the negative relationships between questions 21 and 23; that those who are comfortable with the pass-on are less likely to agree with these are reasons to join the union, and the opposite – that those less comfortable are more likely join for these reasons. These factors are the situational reactance factors (my friends, colleagues and family are union members).

Reviewing the distributions (above) and scatter-plotting the data, there are no clear clusters, with a reasonable range of response combinations. This means the more people join for social reasons and unions support, the less comfortable they are with the pass on, and vice versa; the more people are comfortable, the less likely they are to join for social reasons and union support.

The positive relationships are between ideological reasons (I believe in unions), as well as weak positive relationships with a utility benefit (more people are more effective).

Non-members. For those who were not members of the union and did not intend to join, and their reasons.

Table 55.

Correlations of comfort with pass-on and reasons for not joining the union

Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union:	Combined: I am comfortable with pass on	
Q27: Membership fees are too high / too expensive.	Correlation Coefficient	0.06
	Sig. (1-tailed)	0.386
	N	27
Q28: People in my job don't join unions.	Correlation Coefficient	0.12
	Sig. (1-tailed)	0.266
	N	31
Q29: Unions do not achieve anything I value.	Correlation Coefficient	-0.14
	Sig. (1-tailed)	0.230
	N	29
Q30: There is no point joining because I get all the benefits anyway.	Correlation Coefficient	-0.01
	Sig. (1-tailed)	0.487
	N	31
Q31: I don't believe in unions.	Correlation Coefficient	-0.01
	Sig. (1-tailed)	0.486
	N	30
Q32: Unions do not cooperate for the good of the workplace.	Correlation Coefficient	0.13
	Sig. (1-tailed)	0.268

Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union:	Combined: I am comfortable with pass on	
	N	26

It is notable here the lack of relationships between any reasons for not joining the union, and comfort with the name being passed on. As identified above (see table 15), employees were largely not uncomfortable with their names being passed-on, although there was a higher frequency of discomfort amongst the non-members (see table 23).

The Role of the Union

Finally the data for all participants and their opinions on the role of unions:

Table 56.

Correlations of comfort with pass-on and perceptions of the role of the union

How important is it for unions to deal with the following:	Combined: I am comfortable with pass on	
Q33: Winning fair pay increases.	Correlation Coefficient	0.2
	Sig. (1-tailed)	0.436
	N	48
Q34: Protecting existing jobs.	Correlation Coefficient	-0.05
	Sig. (1-tailed)	0.371
	N	48
Q35: Working with management to improve quality or productivity.	Correlation Coefficient	0.14
	Sig. (1-tailed)	0.165
	N	48
Q36: Protecting workers against unfair treatment.	Correlation Coefficient	0.12
	Sig. (1-tailed)	0.217
	N	48

The most important finding is the lack of findings; there are very few correlations between participant's comfort with their information being passed on, and their attitudes to unions. There are no meaningful relationships (both statistically significant, and/or strong correlations) between comfort with pass on and; opinions on the role of the union, and reasons for not joining. It is important to note that the near-universal agreement on the role of the unions (above) and very little disagreement results in limited stratification which inhibit potential relationships.

The positive correlations are between comfort with the pass on, and joining the union because of belief in unions, and the importance of collectivism. These are weak relationships (p values of 0.1 and 0.132) with low correlations (0.321 and 0.399) so are indicative only of a potential relationship.

So from this, we can find the following for hypothesis 1: There are strong relationships between pre-existing positive attitudes towards unions and comfort with the pass-on amongst those who intend to join the union. But there are two clear relationships in this dataset; those who join for ideological reasons are more comfortable with the pass on, and those who join for situational factors are less comfortable with the pass on.

There are no relationships between pre-existing attitudes and comfort with the pass-on amongst those who do not intend to join the union. This lack of pattern is notable in its absence and points to an overall lack of clarity or reason for not joining the union or position on comfort with the pass-on.

Hypothesis 2 Attitude Related to Union Contacting

Table 57.

Hypothesis 2

Hypothesis	Relationship between questions:
Attitudes towards unions will be related to comfort with the union contacting them.	Q13/15 & Q 21-26/Q27-32 Q13/15 & Q33-26

To test this hypothesis, first a Spearman correlation test was conducted. The important findings are highlighted in bold.

Union members. For those that joined, or intended to join the union, and their reasons:

Table 58.

Correlations of comfort with union contact and reasons for joining the union

How important was the following factor in your decision to join the union:	Combined: comfortable with union contact	
Q21: My friends and colleagues were already union members.	Correlation Coefficient	-0.04
	Sig. (1-tailed)	0.45
	N	15
Q22: You get better treatment if you have a problem at work.	Correlation Coefficient	-0.27
	Sig. (1-tailed)	0.173
	N	15
Q23: The people in my family have always been union members.	Correlation Coefficient	-0.31
	Sig. (1-tailed)	0.142
	N	14
Q24: The more people that join a trade union the more effective it is in advancing pay and conditions.	Correlation Coefficient	0.66
	Sig. (1-tailed)	0.004
	N	15
Q25: I would join the union in any workplace because I believe unions.	Correlation Coefficient	0.40
	Sig. (1-tailed)	0.077
	N	14

Q26: The unions offers additional benefits and services.	Correlation Coefficient	0.50*	15
	Sig. (1-tailed)	0.029	
	N		

There is a strong relationship between comfort with being contacted by the union and utility and ideology reasons for wanting to join the union. What is notable here is the inverse of the relationships found above; positive relationships for utility and ideology, compared to the negative relationships for situational reasons.

Non-members. For those who were not members of the union and did not intend to join, and their reasons.

Table 59.

Correlations of comfort with union contact and reasons for not joining the union

Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union:	Combined: comfortable with union contact	
Q27: Membership fees are too high / too expensive.	Correlation Coefficient	0.29
	Sig. (1-tailed)	0.074
	N	27
Q28: People in my job don't join unions.	Correlation Coefficient	0.09
	Sig. (1-tailed)	0.325
	N	31
Q29: Unions do not achieve anything I value.	Correlation Coefficient	-0.26
	Sig. (1-tailed)	0.090
	N	29
Q30: There is no point joining because I get all the benefits anyway.	Correlation Coefficient	-0.14
	Sig. (1-tailed)	0.227
	N	321
Q31: I don't believe in unions.	Correlation Coefficient	-0.12

	Sig. (1-tailed)	0.262
	N	30
Q32: Unions do not cooperate for the good of the workplace.	Correlation Coefficient	-0.13
	Sig. (1-tailed)	0.259
	N	26

The two significant (although weak) relationships here are a positive relationship between cost and comfort with contact, and a negative relationship between not providing value and contact.

The Role of the Union.

For all participants and their opinions on the role of unions:

Table 60.

Correlations of comfort with union contact and perceptions of the role of the union

How important is it for unions to deal with the following:	Combined: comfortable with union contact	
Q33: Winning fair pay increases.	Correlation Coefficient	0.09
	Sig. (1-tailed)	0.275
	N	48
Q34: Protecting existing jobs.	Correlation Coefficient	-0.02
	Sig. (1-tailed)	0.454
	N	48
Q35: Working with management to improve quality or productivity.	Correlation Coefficient	0.194
	Sig. (1-tailed)	0.093
	N	48

Q36: Protecting workers against unfair treatment.	Correlation Coefficient	0.18
	Sig. (1-tailed)	0.121
	N	48

Again we see little evidence to support the hypothesis, with few correlations between comfort with being contacted, and reasons for union membership (or not), and opinions on the role of unions. What correlations are a strong positive correlation between those who are comfortable with being contacted, and a) that more can be gained collectively as well as b) that the union provides tangible benefits.

So from this we can find the following for hypothesis 2: Employees who are motivated to join the union for the ideological and utility reasons are more likely to be comfortable with the union contacting them. Employees are not members are more likely to be comfortable to be contacted if cost is a factor in their decision, and less likely if they do not believe the union can add value.

Hypothesis 3 Trust in the Government.

Table 61.

Hypothesis 3: Trust in the Government

Hypothesis	Relationship between questions:
Employees with low confidence in the nudge architect (the 2017-2020 Labour-led coalition Government) are less comfortable with their name being passed on the union(s).	Q12/14 & Q37

As discussed in the literature review, there is a strong potential that trust in the nudger has the potential to influence the nudgee's response. In this case, the employee's trust in government, specifically the political parties that implemented the pass on.

Table 62.

Correlations of comfort with union contact and pass-on, with confidence in 2017 coalition Government

		Comfortable with pass on	Comfortable with union contact
Q37: I had confidence in the 2017-2020 Labour-led coalition Government.			
	Correlation Coefficient	0.08	0.11
	Sig. (1-tailed)	0.298	0.240
	N	45	45

Based on this data, the hypothesis is rejected, and the null hypothesis accepted, that trust in the government that was the nudge architect did not influence pass on or contact comfort.

Hypothesis 4 Trust in the NZ State.

Table 63.

Hypothesis 4: Trust in NZ state

Hypothesis	Relationship between questions:
Employees with low trust in the NZ state are less likely to be comfortable with (a) their name being passed on the union(s) and (b) are less likely to join the union when they have been nudged to be in contact with the union(s).	Q12 /14 &Q38

Similar to trust in the government of that day, the broader concept of the state has strong potential to play a key role in nudge comfort. Question 38 investigated participant trust in the state:

Table 64.

Correlations of comfort with union contact and pass-on, with trust in the New Zealand state

		Comfortable with pass on	Comfortable with union contact
Q38: In general, I trust the NZ state to act in the best interests of New Zealanders.	Correlation Coefficient	0.16	-0.11
	Sig. (1- tailed)	0.143	0.221
	N	49	49

Based on this data, the hypothesis is rejected, and the null hypothesis accepted, that trust in the state did not influence pass on or contact comfort.

Hypothesis 5 Voting Behaviours

Table 65.

Hypothesis 5: voting behaviour

Hypothesis	Relationship between questions:
Employees who did not vote for the political parties that implemented the s62a process (Labour, The Greens or NZ First) are (a) less likely to be comfortable with their name being passed on the union(s), and (b) less likely to join the union when they have been nudged to be in contact with the union(s).	Q12 /14 & Q18 & Q39

Unfortunately there are insufficient data for this hypothesis. As discussed above, 36.7% of participants could not vote or recall, or would not recount their vote. 51.2% voted for the government, and only 12.1% voted for the opposition. After categorising respondents into the votes for (this includes Labour, The Greens and NZ First) the government that implemented the nudge, and those in opposition to that government (National, Act, and any other party) produced the following data.

Table 66.*Correlations of comfort with pass-on with voting behaviour*

I am comfortable with pass on	Voted for Govt	Voted against
Number	28	8
Mean	2.79	2.25
Std	1.12	0.89
T-test		1.172
Df		34
Sig. (2-tailed)		0.249

Table 67.*Correlations of comfort with union contact with voting behaviour*

I am comfortable with union contact	Voted for Govt	Voted against
Number	28	8
Mean	2.57	2.87
Std	1.07	1.46
T-test		-0653
Df		34
Sig. (2-tailed)		0.518

The findings here are better interpreted as inconclusive rather than a rejection of the hypothesis. The low population of those voting against (number =6) does not provide sufficient data.

Summary

This Chapter presents the findings of the quantitative data of this research. It presents all the findings from the data collected, irrespective of the significance of the finding, to ensure that all data is available for completeness. Further analysis was undertaken across variables, to investigate any key relationships, of which only the significant findings are reported. The importance and implications of these findings are explored in Chapter 8, the discussion chapter.

Chapter 7: Qualitative Findings

The following section is a summation of the qualitative data gathered, utilising data gathered from interviews with key actors from the case study industries (employer participants and union participants) and employees who completed the form. All key actor views discussed are from the participants' perspective and reflect their views and not those of their respective organisations.

The Form

First let's consider the core of the first research question; the form, what impact it has in the workplace, and ultimately- does it work? Does this intervention into the workplace, into the employment relationship at its formation stage, achieve what the intervention intends to do, of promoting union membership? Overall, what impact does the form have?

It Didn't Change Much

All key informant actors (employers and unions) reported it didn't change much and had little impact on 'business as usual'. For most union actors, they felt it didn't significantly assist their recruitment of new members. The form was particularly irrelevant in one highly unionised industry. One employer participant perceived this was because most new employees have already made the union membership decision years ago. Very few are making a genuinely new decision – most are essentially maintaining the status quo of a decision they made years ago. When employees are coming to the decision for the first time, the decision is given more gravity and consideration.

Some workplaces were already passing on details on new employees. One actor reported one workplace where the relationship between the union and the employer was positive and constructive, the form did not disrupt this process, and a prior process of sharing information in a more useful form continued (a collated payroll report instead of a collection of paper forms).

The Form Itself has Some Problems

The form is poorly structured. Many actors (all the employer and union actors, plus many employees) commented the form is confusing regarding how it should be filled out, with the two pathways, each with two tick boxes to complete, and it is unclear what people should do to declare what they want to declare. Having two ticks to achieve the same thing is confusing and unhelpful. This was perceived by some union participants as the result of a government not wanting to upset employers, so compromising and creating a form that doesn't work well.

Another union actor reported that the form disrupted the prior process to the detriment of the union. That was an informal process that had been established through conflict and negotiation, where the employer notified the union of new employees. This arrangement was replaced by this process, which was perceived to be less effective for the union.

The form is unremarkable and many people don't understand its significance. The form doesn't draw people's minds sufficiently to the significant question it is asking. Many of the employee participants could not recall the form at all, and many of those that did recall the form could not recall how they completed it. Some ticked the negative answer (in this case, I do not wish to join the union) because they found the question confusing, so opted for the status quo, which they perceived to be the safer option. One employer participant reported that they sometimes receive forms with all boxes ticked.

It was perceived by many participants (all employers, unions and many employees) as another government administrative form (in addition to IRD and two Kiwisaver forms) that coupled with employer forms (payroll details, offer letter, agreement, house rules and any other induction forms). It buries an important question in the banality of MBIE formatting and wording.

The outcome of a completed form achieves very little. By asking an employee's intended action (i.e. the name of the form is 'intention to join the union, and the core question "do you intend to join the union?") but not requiring an action, the form only serves to establish an employee's potential actions; it does not result in a decision. By creating a two-step process of joining the union, the form adds complexity and increases the chance of the

process failure. Some union actors felt the form was 'too soft' and needed to be a harder push on people, and that it would be more beneficial to push people to action at this stage.

People Think They are Joining the Union by Completing the Form

A common misunderstanding reported by many participants (including union, employer and several employees) is the belief that completing the form constitutes joining the union. This is understandable as the question 'do you intend to join the union' could easily be misunderstood as 'do you want to join the union?' and thus ticking 'yes- I want to join the union' is reasonably be perceived as joining the union. Many employee participants believed they were currently union members, although had had no contact with the union, had completed no membership forms nor paid any deductions. The form can create an illusion of a task sorted, or a job done.

Union participants reported common problems of people thinking they are members after completing the form and were now seeking assistance. Predominantly the union will assist on the misunderstanding, however, the employee has not been paying union fees, and such misunderstandings are to the union's disadvantage, both in terms of union fee income, but also workplace power and leverage with the employer.

The Forms Are an Administrative Burden

The form has a high administrative workload for both employers and unions. Multiple steps need to be potentially completed over an extended time period by the employee, the employer and the union, creating an extended administrative process with many potential failure points. For all employer and union participants, the process was not seen as a high priority, so is delegated to administrative support, and often this leads to actions not being completed. The process frequently stops if one party (either union or employer) doesn't prioritize it sufficiently to put effort and organisational resources into it.

The Form has Some Positives Outcomes

The form does increase employee awareness of the union in the workplace. By presenting new employees with a decision (do you intend to join the union?) the form

increases both the awareness of the union in the workplace and the impending decision the employee needs to make. This was perceived as particularly beneficial in workplaces where a union presence is harder to maintain, such as a small site that falls under a multi-employer collective agreement. It was also reported union participants as beneficial in a site where the union's presence was only recently achieved; for instance, one union had recently expanded into a new industry and workforce which had traditionally been covered by another union – the form makes new employees aware on the participant's union as an alternative.

The form has more impact on employees unfamiliar with the decision to join the union or not. Employee participants who had not been a member of a union prior or had previously worked in a workplace with a collective agreement reported reading the form and considering the question. Employees with prior experience spent less time considering both the form and the question of union membership. Several employees felt it prompted them to consider what they wouldn't have considered otherwise. This was also reported by union and employer participants; employees who have previously been union members or not, tend to move past the decision quicker – they already know their answer to the question of union membership.

The Political and Legal ER Environment

The New Zealand legal environment does not support the form process, because it's neither monitored by the state, nor easily enforced by unions. As discussed above (and below) employers are not always compliant in passing on the forms to the unions. Union participants complain that there are no effective penalties for non-compliance, other than those the union seeks to enforce themselves. But taking a case to the Employment Relations Authority would incur costs, with little substantial gain – financial or otherwise. Unions also do not either perceive much likelihood of Government Labour Inspectors investigating or enforcing compliance.

With this form there is a perception of only token support for unions by the government and the union participants perceive it as being a very weak and insipid tool of union promotion. One union participant perceived it as nothing more than another 'sticking plaster' over the general failure of the ERA, and that they believed the union movement needs more supportive legislation, however it could not voice its frustration as it is too closely aligned to the Labour Party that introduced the forms. The other union participants took a more sympathetic approach to the situation and the wider factors that influenced the legislation; of

New Zealand society's expectation of freedom of association, and the government's preference to keep employers onside. By comparison, employer participants expressed no concern over the form, other than a mild annoyance of its additional compliance obligations.

The Workplace ER Environment Influences Employees

All parties identified that the dynamics of the workplace influence new employees' union membership decisions. It was frequently reported by all parties that pragmatic reasons for joining the union were frequently common factors in union membership decisions. Some new employees are ideologically motivated to join or not join the union, but many base their decision on the environment of the workplace.

One employer identified that some join due to social norms in the workplace and the wider community, and another employer encouraged employees to join the union due to the ease of only having one set of terms and conditions for the workforce.

The Perceptions of the Employer

Concerns over the employer also inhibited employees from completing the form that they intend to join the union. Some employees reported concerns about joining the union and being perceived as a 'troublemaker'. Union participants described circumstances where employees would avoid completing the form, and then later join the union in such a way that would not make the employer aware they were members.

Whether the employer could be relied upon is a common factor in membership decisions.

One employer noted that membership numbers jump in more turbulent times, such as when there is a heightened risk of redundancies. Employees frequently cited their trust in the employer as a reason to not join the union, with some identifying previous occasions where their employers unreliably drove them towards joining the union.

Employer-biased Choice Architecture

That the employer controlled the form process also biased the decision against joining the union. As noted above, unions reported that some employees felt uncomfortable providing a form to their employer showing that they intend to join the union. It should be noted that because joining the union or not determines the terms and conditions of employment, it is both necessary and unavoidable that the employer knows whether the employee is a member. However, it should be acknowledged that it is a potentially confronting action for an employee to advise the employer directly that they are potentially going to join an opposing organisation, particularly for a new employee. Furthermore, regarding employees preferring not to complete the form in front of the employer; should they not complete the form at a later date, may lead to new employees who would otherwise wish to join the union and be contacted defaulting into the harder to contact, non-completion group discussed below.

Many union participants believed the employer biased the choice architecture to discourage employees from ticking if they intend to join the union. One employer acknowledged they downplayed the form's importance and took minor steps to reduce the conspicuousness of the form by placing it towards the back of the pack. Most union officials did not trust the employer to present the form in a neutral form, and many argued that the employer presenting the form to the employee constitutes a degree of pressure to tick 'not interested in joining the union'. One union participant strongly held the view that they were dealing with employers who actively discouraged new employees from joining the union and made new employees uncomfortable to indicate an interest in joining.

Bargaining fees were also a factor in some employees joining the union. Under the ERA, if they are bargained into a collective agreement, non-members may be required to pay a bargaining fee, often a very similar amount to union membership fees. Where in place, both union and employers agreed that this frequently prompted employees to join the union; a pragmatic action whereby they get the benefits of the union as well.

Union Recruitment Strategies

The union's strategic approach to the workplace also plays a role in employee membership decisions. These strategies were often adapted to the characteristics of the workplace, the needs and preferences of the membership, and the vision of the union itself.

The Form as a Recruitment Tool

The three unions had different strategic focuses that influenced their utilisation of the form. One union representing a very diverse range of workplaces had shifted to online organising and recruitment, with a strong focus on action and achieving outcomes through member direct action. They found the form incompatible with their recruitment process and found it of limited use; they had limited interest in supportive legislation as the means to bolstering unions. The two other unions took an organising strategy of promoting their members' interests, and both were keen on participating in the research to further understand the form process and how it may be functioning in the workplace and how it could be better utilised as a recruitment tool. They believed it is best used as a supplementary tool to face-to-face recruitment by the local organiser, but that it was no substitute for direct recruitment.

The completed forms do provide a useful source of recruitment, to varying degrees. One union found it useful due to the wide geographical and organisation distribution of their sites and members, so consequently took both a digital approach to organising and a 'boots on the ground' approach. A centralised collection of forms and passing on of key information to site organisers, assisted them in recruiting new employees. The other unions focused more on their site delegates to recruit, and be aware of new employees, and utilised the forms primarily to cross-check with new employees.

Utilising Non-completions

Unions were not effectively utilising the non-completions (new employees who did not complete the form, so just their names were passed on to the union). All unions had a system for contacting new employees where they received a form that the employee wished to join the union, but none had a clear system to contact the non-completions. One union only wished to focus on interested employees (in part due to high industry turnover), whereas the two other unions felt they could be better utilising the opportunities of the non-completions. The under-utilisation of these opportunities was primarily due to:

- Lower potential returns within this group, relative to those that wished to join the union

- A discomfort with being seen as a ‘pushy’ union, and concern about what impression the union may make with employees who had not expressed a preference
- Limited information received about these non-completions; as the employer is only required to advise the union of the name of the employee, and whether they have completed the form or not, this information cannot be utilised for any digital communication and can only be pursued onsite by a union delegate or organiser
- Inconsistent provision of information from the employer; as discussed above, all unions expressed frustration over the inconsistent and irregular provision of forms and related data by employers.

The analogy of the forms as (sales) ‘leads’ was frequently made. All unions perceived the forms as potential leads for recruitment – opportunities to ‘sell’ union membership, although there was a clear aversion to aggressively pursue and convince employees who had not expressed interest (i.e. non completions). There was a strong preference for those interested keen and motivated to join the union (i.e. those completed as interested in joining). By the ‘leads’ analogy, the unions were interested in pursuing the ‘hot leads’ (those who have indicated an interest in joining) in the forms provided but hesitant to pursue ‘cold leads’ (those who have not shown an interest).

It is worth noting the disparity in the quality of the ‘leads’ the form generates. That the form allows the employees who are interested in joining the union to provide contact details (email address, phone number and role), making contact with these individuals much easier, and many union systems fed the addresses and/or numbers into their system to send automated correspondence. Whereas for non-completion employees for whom only a number is provided, the union reports that such people require tracking down which can take some time, during which the employee may have ‘moved on’ from the decision, and settled into a status quo on non-membership (likely resulting in the status quo bias discussed below).

Employee Attitudes

Employees who did not complete the form expressed little concern about being contacted by the union. No employee participants were certain that they completed the form, so none could rule out the possibility that the union may contact them. None had been contacted by the union, and none had joined. Very few expressed that this would cause discomfort, including those that did not wish to join the union. Many expressed that they

would be comfortable being contacted by the union, potentially considering the union's position, or giving a 'thanks but no thanks response'. Primarily this was due to their comfort and support of unions in society and the workplace. This will be explored further below, however it is important to address here that the unions may be acting overly cautious.

No union was utilising the unintended leads; those whose intention was not to join the union but were passed on because the form was not fully completed. Because the form requires the employee to tick two boxes (do you intend to join the union; do you wish/not wish this information to be passed on) if an employee does not wish to join the union but does not tick 'do not pass on to union' the employer is required to pass on, essentially contrary to the employee's wishes. No union was approaching these employees to discuss membership as they did not feel it would be appropriate or beneficial to do so.

All of the employers perceived the unions to not be fully utilising the opportunities the forms presented. All appeared somewhat vexed at the administrative requirements placed upon them, and uncomfortable that it presented another source of conflict with the union, but all gave the impression of relief that it was not having as significant an impact on union membership as it might have done.

The Form Exacerbates ER Conflict

The form is somewhat unique in the New Zealand employment relations environment because it sets up a process that involves all actors – employees, employers and unions. The employer must provide a form to the employee, who returns the form to the employer, who passes it onto the union, who contacts the employee. As discussed above, the process is often not highly prioritised by the employees, the employers, or the union, and is frequently not completed promptly, if at all. But if the employer fails to meet its obligation to complete its parts of the process this could be to the detriment or frustration of the union, and the form process was a frequent source of conflict between unions and employers.

Damage to Reputation

Delays in the forms being provided to the union can damage the union's reputation. Two union participants expressed frustration at how employer delays can make them look disorganised; if an employee ticks they want to join the union but then fails to hear from the

union, their conclusion may be that the union has failed to contact them, due to union incompetence or disinterest. Both described receiving bulk lots of forms stretching back months, in which some employees may have wanted to join the union months prior but heard nothing, which the union feels will reflect poorly upon the union.

Damage to Trust

The process requires the employer to facilitate union membership, and the unions are suspicious of errors. Employers are required to collect and return forms to the union, and inform the union of non-completions, of a quantity unknown to the union – the union does not know how many new employees start and when, other than what the employer provides. All unions reported that employers are unreliable and need close monitoring and frequent chasing. This unreliability is perceived by the unions as intentional (if not for all instances, then at least some of the instances of system failure). As one union participant recounts:

“This fluffing around, and whether it’s negligent or malicious, who’s to know?”

(union participant)

As a consequence, the forms and their timely provision (or otherwise) are a frequent source of conflict between unions and employers, an ongoing source of ill will, and a detriment to good faith between unions and employers. Although no union or employer identified themselves as working, or seeking to work, in partnership, it is clear that the provision of the forms to the union could be a small but significant barrier to productive collaborative relationships.

Both employers and unions report these forms exacerbate mistrust. All unions and some employers reported issues arising from the forms that only heighten the actor's mistrust of each other. Errors perceived by employers as minor, commonplace and easily remedied, are perceived by the union as intentional, malicious, insidious and evidence of the need for close and distrustful monitoring. As discussed above, the lack of active government monitoring of the forms means that the unions are only going to get the forms if they actively seek them and all union participants see agitation as the only effective form of enforcement. This creates a vicious circle of sorts, as one employer participant describes the forms as just another battleground for the same themes to play out again and again.

Employers report feeling that they are doing their best but not always being onto this very minor administrative process, and when errors are made (frequently due to turnover in HR administration roles), these errors are made more of than merited. As one employer accounted:

“If you have turnover in your team in the HR team and it's one of those things that falls off the tracks, off the radar. And in the short time that it's been introduced these forms, we've twice had to go back and do a clean-up”.

(employer participant)

Union participants are frustrated by their reliance upon employers, whose performance is variable and testing. One union participant was certain that employer cooperation with the forms was withdrawn as retribution as part of another conflict between the union and the employer. Some union participants did identify that they did not agitate on every instance of employer failure, as one union participant describes, they need to establish whether it was 'worth the fight' and whether there are 'bigger fish to fry' on that particular occasion. However whilst it may not be raised, it was still perceived as an instance of potential malice, and likely added to a catalogue of suspicious employer actions.

Opportunities

All of the union participants wanted change and improvement of the form, whereas the employers saw it as another compliance obligation they would simply prefer to do without. The union participants wanted a range of changes to improve how the form prompts employees towards union membership, employers saw it as another government compliance burden placed upon them.

The Form has Potential

The unions are not fully utilising the forms for recruiting. All union actors acknowledged they were not utilising all the membership leads the forms were presenting as much as they could be, although some were utilising them more than others. Interest in the form was a motivator for two union participants to participate in the research; they expressed

an interest in further understanding how the form works in other industries and were keen to hear what the findings of the research would be.

The form does raise awareness of the union decision new employees need to make. All union participants found that it promoted awareness amongst new employees of the union membership decision – of joining the union or not. But it is necessary to note that, because the employee's terms and conditions would also be covered by the 30-day rule, new employees would be made aware of the form in other ways.

Improving the Form

As discussed above, the form does not result in an outcome; the form only solicits an intention, not a decision. A common problem identified by the union is that the form defers the actual decision to an unspecified, unknown occasion in the future. As one union participant describes, it 'kicks the can down the road' and too many people don't come back to the decision. He perceived any improvements to the process should either bring the decision forward or set a specified event on which the decision should be made.

Another union participant identified a comparable arrangement with an employer (that this form made defunct) which proved to be much more effective at prompting membership decisions and promoting union membership. This union had a mandatory choice form presented to new employees, to join the union (by completing the union membership form) or sign an individual employment agreement. This mandatory choice process required an immediate decision on the commencement of employment and will be discussed further below, but it does constitute a different form of nudge, a 'throttling mindless activity' nudge (Caraban et al., 2019) that confronts people into making a decision rather than deferring and making no decision at all (which results in the status quo bias on non-membership).

Having the employer as the administrator of the form creates many issues. As discussed above, having the employer facilitate and administer any part of the union recruitment process is a source of friction, potential bias or mistrust. All union participants sought a process of introducing employees to the opportunity to join the union without the involvement of the employer.

Do Antecedent Preferences Affect the S62a Process?

Comfort with the Pass-on

All 15 of the employee participants were very unclear about the outcome of their form process and unaware that their names may have been passed onto the union. Most employees could recall the form, but none were certain that their information would not be passed on (either could not recall completing the form, returning the form, or ticking 'do not pass this information onto the union'), therefore, after some discussion, all participants agreed that their information may have been passed on the union. All participants except for two found the process confusing and unclear. Only one participant wanted to join the union and actively chose for their details to be passed on. As a result, 14 participants discovered through the interview process that their name was likely to have been passed on to the union without their knowledge or consent.

The majority of employees interviewed were comfortable that their information was passed on to the union. Nine of the employee participants responded that they were comfortable with this and unconcerned with their name being passed on the union, despite being unaware this was occurring. The reasons for this are explored below.

This is consistent with the unions' and employers' perceptions of employees' responses. Employer participants reported that they get very little negative feedback on the form, either at the time or after commencement of employment, when the union may have contacted people. The employers felt that the form was inconspicuous and unremarkable to employees when provided to them, and is largely perceived as just another government form (see above). Only one employer reported any later instances of objection from employees regarding their information being passed on:

There are three answers. You know, so a routine- what would I say- objective response? Which is, yes, I intend to join, you may pass on. Silence, the vast majority of people- seems to be the trend, absolute silence; and then a tiny percentage, registerable and consistent, 'under no circumstances'

(Employer participant)

The unions all reported people were generally ambivalent to the pass-on and reported no reactance when contacting employees (although, as discussed above, the unions are not fully utilising the opportunities to contact non-completions). One union that was contacting non-completions felt that if people are not interested, they would advise they were not interested, without any negative reactance. As one union participant described employees' responses after being approached by the union:

'they'll go: "Oh, yeah, I forgot about that. Really not interested, that's why I didn't fill it out"'.

(Union participant)

Discomfort with the Pass-on

Some employees were uncomfortable with their names being passed onto the union. Four reported a mild comfort with their name being passed on, and two reported not liking the pass-on, although none found it to be distressing. As one employee described their instinctive feelings about the pass-on:

"It's feel a bit iffy- I don't really care, but it's iffy"

(Employee participant)

The employer and union participants felt there was a small minority of people who did not like the idea of their information being passed on but had different perspectives on the frequency and strength of those responses. In workforces where union membership is common but not universal, objections were stronger felt, whereas where union membership was very high, or very low, no objections were reported because employees were either frequently in contact with unions in the workplace, or not at all.

There is a clear difference in perception between unions and employers about employee discomfort being put in contact with the union. All parties approached the issue from the position of wanting to protect the employees from undue pressure from the other side. The employers expressed the need to ensure employees were able to make a free choice of association without pressure from the union. The unions feel the same but in reverse. One

union participant felt that this is often why employers sought to protect employees from discussions with the union, that the employer was apprehensive that meeting the union would make an employee feel uncomfortable. This union participant felt this was not the case, and even those who were ideologically against the union, often they were at least open to the conversation, as there were potentially practical or monetary benefits to union membership.

What Are Their Antecedent Preferences, and How Do They Influence Their Feelings About the Pass-On?

Why are employees largely comfortable with their information being passed on, and being nudged towards being in contact with the union? What are the pre-existing factors and attitudes (the antecedent preferences) that influence their reactions? In this section the distinction is made between the pre-existing conscious attitudes employees hold, and any background factors that may be influencing them.

Background Factors

Understanding of Unions. Many employee participants had very limited background knowledge of unions, so approached the question having very limited 'union literacy'. No participant employee had been a member of a union before, most had little to no experience of a union, and comprehension of their purpose and history was frequently only superficial. Only one employee spoke with any certainty of the function of unions and what they have to offer. Many had narrow associations of unionised workforces, and frequently didn't associate themselves with those groups, and did not think of themselves as the type of person that unions are for, associating them primarily with hourly-paid factory workers. Many of them had a clear vision of their career and did not associate their career with union membership.

Several employees perceived the unions to be state institutions. Many employees thought the unions were government organisations, and many thought of them as quasi-governmental organisations, or social institutions that have a sense of legitimacy. The impact of this is discussed below.

This was also the perception of unions and employers – that many employees have limited awareness of unions. This was particularly common for new entrants either into the workforce (e.g. graduates or school leavers), or new entrants to an unionised industry (for

example, a food service worker commencing work in an education or health organisation with a background in café work). One union participant felt younger people don't know what unions are for, and unless their parents or an older relative is a union member, they are unlikely to know anyone with a good understanding of what unions are for. One participant speculated this could be due to class not being topical in the current *zeitgeist*. In a comparison with other topical issues (gender, and gender identity) disparity of outcomes for the working class is not important at the moment. As a result, awareness of the unions and their role in the workplace is not common knowledge that an individual is likely to have learnt without seeking it.

Cultural Background. This question of familiarity with the role of unions in the New Zealand workforce was more significant for migrants. It was clear from many sources (employees, employers and unions) and somewhat self-evident that the less time an employee has lived in New Zealand, the less familiar they are likely to be with New Zealand trade unions. This was potentially enhanced if they were familiar with trade unions in another country that functioned differently to trade unions in New Zealand. For example, one employee participant had emigrated from a European country where unions work closely with employers, and this influenced their perception of trade unions and their function in the workplace.

Employees with less familiarity with unions in New Zealand, as well as a different frame of reference for unions (i.e. unions in another country's workforce) were more hesitant to join the union. The key impacts outlined below, although it is necessary to note this incorporates a range of experiences on migrant workers – from recently arrived, to those who have lived and worked in New Zealand for over a decade. The key focus is on how these different cultural perspectives formed (or were perceived to form by the employees) antecedent preferences to the union membership question.

Migrant workers are more hesitant to join the union. Union participants found recent migrants to be harder to recruit, and more likely to defer the decision until they understand the dynamics of the New Zealand workplace. Several employee participants also reported a hesitancy to join the union and a preference to not involve themselves in potential workforce conflict. Employees who were working in New Zealand temporarily were more hesitant to join the union because they feel that had no entitlement to involve themselves in workplace matters, and that they did not have a valid voice. As one employee described their perception of their rights to be part of a union pushing for better conditions from the employer:

I don't think I belong to this country yet. It's more like, I already have less of a voice as a citizen. So let me just not make waters more muddy for myself, I'll be happy with what I am given at this point.

(employee participant)

Cultural background also plays a role in comfort with conflict with the employer. Two employee participants (who had migrated to New Zealand with their parents) described their parents' attitude of 'keeping one's head down and not causing trouble' is a significant influence on their attitude towards union membership. One union participant also reflected this as a barrier to recruitment, although they did note that this does vary from background culture to culture, with some cultures more conflict and union adverse, whereas other cultures may be comfortable with workplace conflict and/or union membership.

The union participants described some new migrant groups as needing more persuading. One union participant felt that some cultural groups (giving the example of Chinese) can be 'hard to crack', but once a certain critical mass has been achieved, a core of staunch members can be achieved once they find that they may not be treated fairly by their employer, but they can stand up for themselves via the union. But (as another union organiser noted) new migrants were generally very open to approach and discussion about union membership, and motivated to seek support and help, but more hesitant toward the form and the joining process. This was not resistance to union membership but wariness of the consequences, but a willingness to consider further. Potentially this is a status quo bias towards non-union membership (to be discussed further below).

Conscious Attitudes

Data Sharing

There is a present cultural issue of data sharing, and passing on personal information is data sharing, albeit the very simple of data of the employee's name and whether they completed the form. All of the employee participants identified that the sharing of information is a cause for concern, and that the provisioning of data from their employer to a third party (with whom they have no present connection) is a negative, primarily because of the risk of misuse of their information, or further passing on to others. While this varied from individual

to individual, none thought this to be a positive event, for all it was a question of the extent of the negative.

The focus of the research is not on data sharing, so the focus of these findings will not be on the impact of data sharing. As discussed in chapter 3, default nudges can result in default outcomes, some of which are minor (such as buying fruit), some are significant (such as putting money into an inaccessible savings fund) impositions upon the individual should they fail to act against the nudge. It is important to identify data-sharing as the outcome for the individual should they fail to act against the nudge.

Political Opinion

Political opinion was an anticipated antecedent preference to nudges. As discussed in Chapter 4, antecedent preferences play a role in a nudge, and trade unions in New Zealand have a long and public association with the New Zealand Labour Party, as well as a strong left-wing philosophy. It was anticipated that nudging new employees towards being in contact (and potentially towards membership) with a trade union may be impacted by the employee's antecedent political opinions.

But pre-existing political opinions do not have a significant impact on employees' comfort with their details being passed on to the union. For the employee participants, only one person reported that their political alignment caused them discomfort with being put in contact with the union, and this was only perceived as minor by that individual. For all other employees, who identified themselves across the left-right spectrum, their political opinions did not play a key role in their comfort with the pass-on.

For those participant employees who identified themselves as right-wing (either right-wing, right-leaning, centre-right, or a National or Act voter), there were a number of explanations provided that mitigated their potential discomfort with their information being passed on. Some reported that they did not perceive the unions as strongly ideological, but instead more focused on practical workplace issues and problems, commenting that they were more focused on their position in the workplace rather than in national politics. None identified the union as in opposition to them, or their ideals. This was discussed through using several contexts and comparisons, with the underlying theme that none saw the unions as 'in opposition' to their personal views, or groups that they would align themselves with.

Predominantly the unions were seen as a special interest group within the workforce, with a just focus on improving the conditions for workers; all employees supported the unions' purpose.

The unions and employers agreed that personal political opinions have little impact in the workplace. Workplace factors such as the terms of the collective, social norms and benefits of membership were the reported key drivers for why people joined the union, rather than an ideological commitment to collectivism. Both employer and union participants reported that a small minority core on both sides of the spectrum who are ideologically committed to, or opposed to, trade unionism. It was reported by one union participant that those employees resistant to being associated with the union on ideological grounds sometimes pragmatically set their resistance aside if suitable – describing National Party members joining because it made financial sense to do so. For an employer representative with a workplace with near full union membership, those ideologically opposed would frequently join to avoid ostracism. It was noted by some union and employer participants that ideology was less significant for workers on minimum wage; for those wanting to join the union for ideological grounds, it simply may not be affordable.

Pass-On Mitigation

As discussed above, those that did not complete the form indicating the intention to join the union, were nudged towards being in contact with the union. The outcome of the nudge, the passing on of information to the union, was perceived as negative, but frequently not of great significance. It is clear from the form completion data, the employee surveys and the qualitative data that a high proportion of new employees are defaulting to having their information passed on to the union. The employer survey data finds low levels of discomfort with this. This section will focus on the qualitative findings of why employees may not be experiencing significant discomfort from this. Their thoughts on how this discomfort may be mitigated by antecedent preferences are of considerable value.

The Information is Low Risk

Most of the employee participants felt that the information pass-on is not good, but the information passed on has low impact on them. Because the information is only their name and whether they completed the form (and by association that they work at AUT), many

reported that this did not particularly concern them. Some had made this information public themselves via social media (notably LinkedIn), and so it was easily discoverable by anyone who cared to look.

Attitudes toward Unions – the Nudge Recipient

A key finding of this research is the significance of the nudged employee's attitude towards the union. Employee participant data is focused on because it is considered more relevant and reliable than union and employer perceptions of unions.

All the employee participants had a high degree of trust in the union. Few employees wanted to join the union, but most expressed a positive attitude towards the union, to varying degrees. Many specified that the trust was qualified and not blind trust; that it had been earned, and needed to be preserved.

Employee discomfort with information being passed on is frequently reduced because they have trust in the integrity of trade unions in general. The employees identified the following perceived characteristics of unions that merited trust and confidence in their integrity.

- *Legitimate purpose:* The purpose of the unions to promote, protect and advocate for workers in the workplace is important, valid and meritorious. The employees (even those identifying as right-wing) supported the purpose of the unions, and therefore had less concern about being put in contact with a group whose purpose is to help them and other employees.
- *Legacy:* The longevity of the trade union movement within New Zealand was seen as a positive, and whilst there were some negative perceptions of the union's historic industrial action, the long history of trade unions were perceived to be reassuring and give confidence in their legitimacy.
- *Part of government:* As discussed above there was a perception by some of the legitimacy of the trade unions because they were misunderstood to be government or quasi-government institutions. This made many employees confident that their information would not be misused.
- *Independence:* In contrast to trust through government, the independence of the union movement was important. This came in three forms; independence from government

and political parties, independence from employers and management, and other social institutions.

- *Support:* Even if they are not members and do not join, employees still value the union as a potential source of future support. Many did not believe that unions were right for them but did not rule out future membership. All agreed that they perform a useful role in the workplace, and that it may be necessary for them to join the union in the future should their situation change.
- *Unionism as movement:* No employee expressed any familiarity with the specific trade union their information was onto. All spoke to the broad principles of trade unionism, not to any specific trust in the union their information was passed on. This may vary if the employee has an understanding or experience of the particular union.

For employees who did not complete the form and likely were nudged towards being in contact with the union, the nudge outcome of personal information being passed on to the union was not a positive outcome. But as above, and demonstrated in the survey results, these negatives were mitigated by positive perceptions of trade unions.

Attitudes towards the Government – the Nudger

In addition to investigating employee attitudes towards the unions, a key focus of this research was seeking to understand the role of trust in the institution implementing the nudge, in this case, the New Zealand Government. As identified in the survey data, trust in the New Zealand Government is high. Trust in the New Zealand state had been earned, was deserved, but not given lightly. Most employee participants reported they trust the New Zealand government to varying degrees, and such trust is needed to be earned and maintained, and not lightly given.

Recent government performance played a key role in employees' trust. The employee interviews were all conducted in the middle of the extended New Zealand lockdown in the second half of 2021, so during questions on trust in the state, employees frequently drew upon their trust in the New Zealand Government's handling of the Covid-19 pandemic, and vaccine rollout. Participants were largely positive in their perception of the Government's management of the crisis to date and trusted its capacity to further manage the next stages of the crisis. This trust in pandemic handling likely transferred into trust in the government, and

this influenced employee confidence in the nudge, although this connection was not identified by participants.

Trust in Other States

An unanticipated finding of the employee participant research is the comparisons employees made with other states. Many participants were migrants (ranging from short-term to permanent migrants) and volunteered their perceptions of other states for comparative purposes. All of these employee participants identified that they had higher levels of trust in the New Zealand Government than in their home country, and would be more confident with the New Zealand Government requiring their information to be passed on. From these comparative experiences, it is possible to identify some key factors that would lead employees to have greater confidence in the state nudging them towards the union.

- *Democracy*: Employee participants identified that New Zealand's greater transparency of the state and capacity of the citizenship to hold it to account, increased their confidence in any nudges by the state toward any social institutions such as unions. They would be less comfortable with such a nudge if the state's intent were not transparent, and could not be held to account.
- *Corruption*: Some employees identified greater confidence in New Zealand's lower levels of state corruption as why they have more comfort with the state requiring the names to be passed to the union. They reported they would be less comfortable with the passing on of their information in their comparison country due to perceived higher levels of corruption.
- *Separation of institutions*: Participants were more comfortable with such state nudges in New Zealand, due to perceived separation between the nudging political institutions and the recipient trade unions. Participants were less comfortable where there is either a close relationship between trade unions and political institutions or where there are close connections between personnel in the institutions; for example, one participant felt that due to the small population of their home country, too many social and family connections would exist for there to be a sufficient separation of interests.

How Do They Decide to Join the Union?

As part of this research is investigating how employees decide to join the union, useful findings emerged on how employees made the decision. This is useful for future research into how union decisions are made. When asked about how the decision to join the union is made, participants described methods of deciding that could be identified as type 1 and type 2.

It is important to clarify how this question relates to the research focus on the s62a form; what connects and what does not. Firstly as discussed above, the form does not specifically require employees to decide to join the union, but merely to indicate their intentions. Secondly that the nudge does not nudge employees into joining the union, but only to be contactable by the union. However it should be recognised that the question posed to the employee 'do you intend to join the union' is very close to the question of whether they join the union, so employees are unlikely to recognise the distinction, let alone consider the questions to be distinct. The research participants did not make this distinction; all referred to the question of joining the union, and not the sub-question asked in the form, of whether they intend to join the union. As a consequence, this research provides insight and understanding of both employees' intentions to join the union, and their decision to join the union or not.

System 2 (Cognitive) Decisions

Although many did not answer the question (by not completing the form), some did cognitively tackle the question. As discussed above, the form prompts people to consider the question of union membership, and several employee participants started looking into union membership and its potential benefits. Three employee participants commenced this process after receiving the form; investigating and gathering information that they did not presently have on the pros and cons; the benefits, the costs, the risks of membership and the risks of non-membership. They then weighed the pro and cons of the options and decided accordingly.

Employer and union participants reported similar processes of employee decision-making. Some take it away to decide, giving an impression they will give the decision time and consideration.

System 1 (Intuitive) Decisions

Many employee participants appeared to make their decisions intuitively. Seven employee participants made their union membership decisions via methods that could be described as cognitive heuristics. Several employers and union participants also reported that people frequently don't appear to put much time or consideration into the decision. They reported the frequent use of heuristics, maintaining their personal status quo, or even (as one union participant speculated) deciding at random.

Employees frequently look to others' decisions for guidance on their decisions. Of the employee participants that reported receiving the form and considering the question of union membership, many reported seeking guidance from friends and family on what they have done. Employers and union participants also reported similar phenomena of employees replicating the decisions of friends and family; for example, one union official noted the significance of workplace mentors' influence on younger employees' decisions. This is consistent with the heuristic *social proof*, where individuals unsure of a decision will look to follow the decisions of others (Cialdini, 2001).

A similar but distinct phenomenon is employees following the norms of the workplace. Many of the employer and union participants identified that workplace, and industry norms played a key role in employee union decisions, frequently when the majority of the workforce are union members, and new employees are influenced into joining the union. Both employer and union participants reported that frequently this is facilitated by the site delegate meeting with the employee; this is particularly influential for new employees considering the decision for the first time (discussed below). They reported that compliance with this norm is often more significant than ideological factors

Cognitive Biases. So if decisions are made intuitively, and heuristics are being utilised, is there evidence of cognitive biases influencing those decisions? Are employees potentially making poor decisions, (i.e. decisions not in their own interests, as judged by themselves) through biases in the heuristics used or bias in the choice architecture?

Status Quo Bias. There was evidence of the status quo bias occurring in employee decisions. As discussed prior, the status quo bias occurs when the decision-maker has an invalid preference for one option because it is their present and familiar circumstance. In

union decisions, the status quo is non-membership. Some employee participants reported being unfamiliar with union membership, so opted not to join due to unfamiliarity with the question. As one employee described their uncertainty:

“I think I wasn't sure. What's the union thing about? So being a very, basically, first time employed by the university, I wasn't sure about the whole union, what is this whole thing about? So basically, I chose no.”

(Employee participant)

This was the perception of many employers and union participants as well. One union participant believed that frequently people would be unsure of the question, would start to investigate or seek opinions, but ultimately fail to decide, resulting in the status quo of non-membership. As discussed above, this is potentially more prevalent where employees have lesser familiarity with New Zealand workplace norms and behaviours, due to migration to New Zealand. This is an area for further research.

Framing Effect. As discussed above, there is a potential framing effect occurring where employers seek to bias the choice architecture. A framing effect is where the decision is influenced by how it is framed to the decision-maker, in this case where the employer presents the form to the employee. Whether by making their preference known to the employee, or presenting the forms in a biased form, a framing effect may be occurring in some workplaces. More research is required in this area before clear conclusions can be reached.

When Do Employees Make Cognitive and Intuitive Decisions?

A clear trend reported by both employer and union participants is that many employees initially make decisions cognitively, then intuitively. After an initial consideration of whether to join the union, many simply repeat the decision they made previously, and do not cognitively reconsider the decision again. Employees who have had to decide whether or not to join the union, frequently repeat the decision without reconsideration thereby maintaining their status quo. As two employer participants noted regarding the form: when employees receive the form, they already know their position, and this frequently is a repetition of prior decisions. Employees tend to make their initial decision on union membership cognitively, and subsequent decisions intuitively.

One employer noted an exception to this; where the terms and conditions of the Collective Agreement differed from the Individual Employment Agreement. Frequently in New Zealand unionised workplaces there is very little difference between the terms and conditions for those members of a union, and those not. One employer noted that when substantive variance does occur between the collective agreement and those on individual agreements, it prompts a range of more cognitive decisions, as employees weigh up the pros and cons of each set of terms and conditions. When there is little variance, more intuitive methods are used.

Not Joined but could be Persuaded

An interesting final set of observations of the employee participants' membership decisions is how many were not members, but could be persuaded. After each interview in the interview summary record, it was recorded whether the employee could become a member of the union; as none of the participants were members.

Of the fifteen participants, two could be easily recruited as they believed they were members because they had mistakenly believed that ticking the form meant they were members. Five were clearly not interested in joining the union. Eight were either open to considering the decision or gave the impression that they had defaulted into non-membership because they were uncertain of the situation. These data are of interest when taken into consideration with the above finding that the unions are not contacting those who are not completing the forms.

Summary

This chapter presents the findings of the qualitative data of this research. It presents all of the key findings from the data collected across the research participant population, blending both key informant and employee data into a singular dataset. The data made significant explanatory contributions to the quantitative data; assisting us to understand the reasons for the behaviour identified in the quantitative data. The importance and implications of these findings are explored in Chapter 8, the discussion chapter.

Chapter 8: Discussion

This Chapter will focus on the implications and learnings from the empirical research. In Chapters 6 and 7 the data gathered from the quantitative and qualitative methods was laid out, and now these datasets will be blended together to provide answers to the research questions.

Through the framework of the research questions, the key learnings of this research will be identified by; first identifying the existing understanding of a topic (or lack thereof), isolating the key knowledge gained from the research, then proposing what new understandings we may have, or may further seek.

Research Question A: What Is the Impact of the S62 Process of the ERA in the New Zealand Workplaces?

This section discusses the key findings across the qualitative and quantitative data, to inductively build an understanding of the key impacts of the s62a form and process in the New Zealand workplace.

Half the Forms are Being Passed on by Default

The form completion data identifies that, across the organisations involved in these three industries, less than half (47.8%) of employees are completing the form, and for 52.8% of employees the employer is passing on their details to the union by default. Of the employees surveyed, 93.9% were passed on by default, and only 2.4% were passed on to the union by choice.

One reason is this unremarkable innocuous government form that belies its significance. The number of survey participants reported not receiving the form is likely significantly over-reported given the automation of the onboarding process. Many interviewees reported not noticing or remembering the form, and its significance to their union membership status went unnoticed. Where attention was drawn to the form, it was reported by all (employers, unions and employees) as confusing. Almost all employee participants were not aware of what has happened, that their names had been passed on to the union.

It is clear that the default pass-on, this analogous nudge, of the s62a process is frequently occurring. It is clear that it is a nudge that occurs 'in the dark'; and the ethical implications identified in Chapter 3 of 'dark nudging', and nudging individuals without their conscious knowledge is occurring. Such cautions are constrained to the means of the nudge (innocuous government form) and not the nudge itself (the default pass on). The implication of this finding is that we should proceed with caution when nudging via the method of innocuous government forms.

It Has a Small but Significant Impact on Union Membership

Chapter two discussed the declining numbers of union membership both in New Zealand and internationally. Because this decline in membership has gone hand in hand with a decline in real wages, significant literature has focused both of why this decline occurred, and what could be done for union revitalisation. Chapter four discussed how nudge theory has the potential to be a tool for union revitalisation, and how the default pass-on of the s62a form could provide insight into how nudges could work in employment relations policy.

This default nudge of putting people into contact with the union has not achieved major gains in union membership; within the three industries studied, it has not directly substantially increased the number of people joining the union. But the survey data suggests it does make a small impact on union membership, but small impacts should not be disregarded.

Of those surveyed, only 19% were union members, approximately the same as the national percentage of 17.3%. But 8.1% of respondents reported joined the union as a consequence of being contacted by the union, which is a small but significant improvement. While nudging people to be in contact with the union is not a revolutionary shift, it is a small and significant gain towards union revitalisation.

It Facilitates Recruitment

As discussed in Chapter 2, unions have different strategies for membership. Some are more proactive in recruiting members, and some are more reactive, reflective of their organising or servicing philosophy. All three unions in this study identified as organising

unions, although with significant variance in their devotion to activism, and proactive recruitment.

All three unions were contacting new employees who indicated an intention to join the union, although with differing degrees of thoroughness. One union dedicated an administration resource to recruiting those people who ticked they intended to join the union, whereas the other two unions only utilised it as a supplementary tool for onsite recruitment by delegates. Recruiting from the forms centrally (i.e. by a head office recruiter) appears to be a significantly more effective method, rather than distributing to local delegates, as this appears to have poor follow-up and conversion rates.

As discussed above, 8.1% joined as a result of the s62a process, but it is unknown how many would have joined anyway; we have no control group to compare with, and it is possible that they would have joined in without this form nudging them into contact with the union. It is also possible that the union may have contacted them regardless; as noted by the union interviewees, the forms are used supplementary to other recruitment strategies, typically local delegates.

Employees Who are Unfamiliar with New Zealand are More Cautious, but not More Resistant

Emerging from the qualitative data was employees' limited familiarity with unions in New Zealand, which creates a hesitancy to join due to a lack of knowledge of unions and what they do. Despite many employees being supportive of unions in principle, most were unfamiliar with unions in practice in the New Zealand workplace, and many were apprehensive of any potential conflict with the employer, that might emerge from joining the union.

This was more pronounced amongst migrants and reiterated by union participants who reported a greater hesitancy amongst migrant populations to join the union. However, once a threshold of familiarity and critical mass of others joining has been reached, migrant groups can be positive and 'staunch' members.

The Unions Are Missing the Opportunities of the Pass-ons

No union was fully utilising the recruitment opportunities presented by those who did not complete or return the form. The unions were only pursuing those that completed the form stating that they intended to join the union. No union was pursuing the pass-ons; those who did not return a completed form, or those that ticked they did not intend to join the union but failed to stop the form being passed on. For the latter, there was clear consensus amongst the union representatives that these were not worth following up because they were both unlikely to result in a membership, and inappropriate to pursue against the individual's will.

For new employees who failed to indicate their interest by completing the form, there was a range of reasons across the union participants for why the unions were not actively pursuing these opportunities:

- These were unlikely to be the 'right sort of members', and the union was looking for the keen and motivated to join the union, rather than those only vaguely interested or in need of persuasion; employees should not need to be persuaded of the merits and purpose of unionism
- A perception of diminished returns of time invested in this group, relative to those that intended to join the union. The broad perception was that these non-completed forms were not 'hot leads' that were easily converted into membership, but more analogous to either 'warm' or 'cold leads', that will likely require time or effort, that may or may not result in membership
- A reticence to be 'pushy', and a concern about what impression the union may make with employees where they are being approached where the employee had not chosen to advise their interest
- Constraints on contacting these non-completions; as the employer is only required to advise the union of the name of the employee, and whether they have completed the form or not, this information cannot be utilised for any digital communication and can only be pursued onsite by a union delegate or organiser
- Inconsistent provision of information from the employer; as discussed above, all unions expressed frustration over the inconsistent and irregular provision of forms and related data by employers.

There appears to be a lack of recognition by the unions of the opportunities presented. As discussed in chapter 2, there was no clear signal from the Labour-Alliance coalition Government of the intent of the pass-on provision, and no explicit direction that the purpose

of the pass on was to facilitate union membership. The unions in this research did not come to the research with the perception that the intent of the form and the pass on process was to facilitate the recruitment of the undecided. There was a vague awareness amongst those that participated that there is an unrealised opportunity; many of those that agreed to participate were interested in understanding what the form was and how it worked, based on a self-reflection that they didn't quite understand how the process worked and how it could be better utilised.

But there are missed recruitment opportunities amongst those whose details were passed on by default. Amongst the surveyed, 18.3% of those whose name was passed on by default were interested in joining the union, but they are not currently members. The names of 93.9% of surveyed respondents were passed on the union default, and only 10.8% reported that the union had contacted them.

But there is some truth to the union assumptions that non-members will be less interested in being contacted by the union than those intending to join. Table 49 demonstrates a clear significant difference in comfort with being contacted between the union members and non-members; all union members were comfortable with the union contacting, and the only respondents uncomfortable with being contacted were non-members (see Table 23). Of the 30.0% of respondents who were uncomfortable with being contacted by the union, none of them wished to join the union.

The attitudes of the employees are discussed further below, but at this stage we need to address the unions' perception of 'passed-on' employees, and question the validity of their perceptions. There was a perception amongst the union participants that unions shouldn't be pushy; that employee wishes should be respected and not pressured. But within this is an assumption of rationality; that the employee's non-completion of the form is rational choice. This is discussed further below, but this assumption should be questioned; union assumptions that a non-completed choice is synonymous with choosing not to join the union are not correct assumption. Failure to decide to join the union is not the same as deciding to not join the union. As discussed further below, employees amongst this large cohort of default pass-ons are often undecided, supportive of unions, and open-minded to the option of joining the union.

These findings also inform us that nudge policies need to be communicated to beneficiaries so they can be correctly integrated into their strategies. The unions have not made the necessary shifts in their recruitment philosophy and practices to utilise the ‘half-opportunities’ the s62a process is providing them.

It Creates Conflict between Employers and Unions

The relationships between employers and unions in New Zealand are frequently strained. Chapter 2 outlines the historical tensions between employers and unions, the unitary preferences of employers, and the intent (but failure) of the ERA to foster cooperative workplace relationships. Vague promises and hopes of meaningful partnerships between unions and employers died on the vine in the 2000s, and since then relationships have frequently been characterised as strained cooperation, and philosophical opposition to each other.

This s62a form and process adds further strain to these relationships. What is universally seen (by employers, employees and union) as a minor government compliance task is placed upon the employer, who has both the least gain from its completion, and the most to gain from its non-completion. The employer’s obligation to disseminate, collect, and pass on the forms is not motivated by any self-interest other than fear of complaint by the union, does not create a high priority for the employer.

All employers reported it as a compliance obligation handled by the lowest level of administration in their department, and it frequently falls into abeyance when the department is over-burdened or under-resourced. These failures were frequent, and were reported as a common issue across all industries, and failures are only redressed when unions take umbrage. According to the union participants, the state has no apparent interest in ensuring employer compliance, so it falls upon the unions to chase the employer up where they fall behind.

Enforcement of this compliance task falls to the union, who reported frequent frustration with employers’ errors in this space. The unions’ representatives were prepared to do this, but some preferred not having to take on this role of chasing employers. This introduced source of tension both creates grounds for, and exacerbates, distrust between employers and unions. From the union perspective, frequent failures to provide them with membership ‘leads’ are frequently interpreted as intentional. All union participants

interpreted non-compliance as by design to some extent; some accepted the employers' assurances it was a merely errors (but only on some occurrences but not all), and some perceiving all instances as being intentional failures. All employer participants were clear that failures in the s62a process were the unintentional result of a complex but mundane administrative task. All parties perceived it as a frustrating process that frequently led to conflict, and inhibited cooperation and trust.

This informs us that processes that are a) shared between employers and unions and b) perceived as unimportant, will create conflict between employers and unions. In the surveyed industries at least, and very likely in all other NZ industries, tensions between employers and unions are exacerbated by requiring the employer to perform administrative tasks for the union. This is not advancing the ERA objective of building productive workplace relationships.

It Prompts Consideration

There is evidence that presenting a form seeking an individual's intention, this will prompt the individual to reflect upon what their intention may be. Without the form, employees may have been less aware of the option to join the union, although their terms and conditions would be covered by the union's collective agreement, hence they would become aware via this coverage. But it does bring the decision to the new employee's attention, and prompt them to consider the option of union membership.

The qualitative research identifies that this form does prompt people to consider whether they should join the union. The quantitative data does not support this, although it cannot be clearly identified whether the form prompted consideration, nor is there a control in the methodology to provide a comparison of what would happen without the form. For the people who reported not receiving the form (26%), despite it being very likely that they did receive it, suggests it was not a decision prompt for them.

It is important to note that the decision prompt itself is potentially a nudge. Of the range of nudges identified in Chapter 3, a form seeking to elicit a decision may be considered either a 'throttling mindless activity', 'public commitment' or 'just-in-time prompt' nudge. But while close, the fit is not quite there; the commitment of the s62a form isn't particularly public, 30 days to complete isn't sufficiently just in time, nor is it throttling the mindless

activity and forcing an employee to make a decision on their membership status. Such prompts have the potential to nudge decisions, although requiring some significant revision.

It Can Promote Inaction

An unintended outcome of the form is that it can create the misunderstanding that employees are members by completing the form. Many participants (employers, unions and employees) identified that the form can mislead employees into thinking that it is a membership form and that by completing the form they have joined the union. The impact of this can be that the form can promote non-membership, as employees interested in joining the union may have their motivation to seek to join the union alleviated (incorrectly) by the form. By completing the form and assuming they have done all that needs to be, instead of seeking out the union, employees may be not joining when, but for the form, they otherwise would have joined the union.

Employees Are Largely Comfortable with the S62a Process, Although Not All

A key question of this research is what impact this s62a process has on employees, whether the process has positive or negative outcomes, and what this can inform us of nudge theory's potential application to ER policy. Chapter 3 discussed nudge theory both in principle and in practice, and what potential benefits and negative consequences could result from its application in employment relations policy. One important consideration was the potential of negative impacts of nudges, which in this research was framed as comfort; to what extent was the employee comfortable or uncomfortable with both the mechanism this proxy nudge (name passed on to the union) and the outcome (union contacting them).

The findings are clear that most people are comfortable with the pass-on, and the union contacting them. The survey data demonstrated that most people (75.0%) either were comfortable or indifferent to the pass on; and only 25.0% expressed discomfort with the pass on. For the outcome of the union contacting them, 73.1% were comfortable or indifferent to the union contacting them, and only 30.0% were uncomfortable. While encouraging, this discomfort of 25% and 30.0% should not be set aside, and such disquiet must be considered as a constraint on all potential applications of nudges in employment relations.

This comfort did differ between union members (either current or intending) and non-members (neither current nor intending). Union members were significantly more comfortable than non-members with being contacted (see table 49), although there was no significant difference between members and non-members regarding the pass on.

Nudging Non-members

This section follows on from above, but focuses specifically on the impacts of the process on non-members. The question of whether we can and should nudge non-members towards membership is a key focus of this thesis, therefore it merits in-depth focus.

The 'Silent Ambivalents'

Within this group there appears to be a large cluster of indecision and indifference to the question of union membership, the 'silent ambivalents', similar to the inertia elements identified in the literature. A play on the term 'the silent majority', whereby a political view claims the support of an inactive majority, the 'silent ambivalents' is term to express a majority of employees both inactive and non-committal to the question of whether they should be a union member. While some are for, and some are against union membership, many in the middle are ambivalent to the question and the decision.

There was high proportion of non-engagement with the question the form posed. Considering the form is at heart a question: 'do you intend to join the union?'; many people simply did not answer the question by not completing the form. 52.2% of employees in the participating organisations did not return the form. Of those surveyed, only 21.9% returned the form, and many did not even recall the question (i.e. did recall the form, or denied received it- although likely many did). 93.9% of people let their details pass on by default.

Those who are not members of the union are substantially less certain about why they are not members of the union. Considering the reasons for joining or not joining the union, there is a significantly higher frequency of 'don't know' responses amongst non-members (see figure 52). There is also less agreement to the reasons for not joining the union by non-members (see figure 51), by non-members than members. This suggests that there may be other reasons why they don't join the union, and/or a lack of conviction or certainty in their decisions.

But these non-members are supportive of unions. There was minimal difference between union members and non-members when questioned about the role and importance on unions (see figures 53-56). On the core questions of the role of unions in protecting workers and winning fair increases, non-members held very similar views to members, so for this population at least, non-membership does not appear to be driven by anti-union attitudes.

Most non-members were comfortable with the pass on and being contacted by the union. Amongst non-members (neither members nor intending to join), 71.4% expressed no discomfort with the union having their name, and 60.0% expressed no discomfort with the union contacting them (see figures 24 and 27). This is a sizeable proportion of employees not intending to join the union, but not opposed to the pass-on or union contact. This was reflected in the qualitative research as well. Most employee participants were not members of the union, but comfortable with the prospect of their details being passed on, and the union potentially contacting them. Some union participants were of the opinion that employees didn't mind talking to the union and were happy to have a conversation, or decline the conversation with offence. Most non-member employees appear unfazed by the prospect of having a 'thanks, but no thanks' conversation with a union official.

This 'silent ambivalence' suggests the status quo bias is in play. As discussed in Chapter 4, status quo bias is the preference for the present, default situation, where the outcome may be frequently arrived upon due to failure to decide, and the default outcome being the resulting outcome. In employment, non-membership is the default outcome, the status quo. The qualitative data identified a high prevalence of non-decision amongst non-members, due to a lack of understanding of unions in the workplace, and a hesitancy to take a position that may be perceived as conflictual with the employer.

The survey data suggests that a sizeable percentage, maybe as high as 50%, appear to be non-members by default. The high support for unions in principle, the high frequency of 'I don't know' responses, and the low agreement on reasons for not joining the union, suggesting that for many non-members their present situation (i.e. not being members), is because they haven't joined, not because they have chosen to not be part of the union. That, for many, their outcomes are due to a lack of action, rather than being the active choice of not joining the union.

Are these employee 'nudgeable'? Chapter 3 discussed what makes a nudge, and the underlying assumptions in indifference, that individuals who lack stable and well-defined preferences, and are in a state of ambiguity, or indecision, can be nudged towards the preferred outcome. This research suggests that they are 'nudgeable'. What this tells us is that nudging employees towards the union is likely to be successful.

The Uncomfortable Nudges

We cannot disregard that some employees were uncomfortable with being nudged, with their names being passed on the union, and their being nudged into contact with the union by the state. 25.0% of survey respondents (28.6% for non-members) were uncomfortable with the nudge itself (their name being passed on), and 26.9% (40.0% for non-members) were uncomfortable with the nudge outcome (the union contacting them).

But there were few 'rhymes or reasons' consistent with existing research that could give us insight into why this group is uncomfortable. There were no relationships between discomfort with the nudge, and reasons not to join the union. There were some weak relationships between reasons for not joining and discomfort with union contact, with those not joining because fees are too high more likely to be comfortable with the union contacting them, and those who do not see the more union as achieving anything they value less comfortable with the union contacting them.

The qualitative data provided insight into the nature of this disquiet. The data identified a general discomfort of data sharing (the provision of information to third parties without agreement) rather than concerns with either the state, or the unions. Participants frequently reported a generalised concern with the passing on of information that could be mitigated, or exacerbated by the reliability of the recipient and the motivation of the nudger. One participant described it as feeling 'iffy' and could not elaborate further; the passing on of her name caused her to experience a generalised sense of unease. Such sentiments cannot be discarded, but provide us with no guidance to remedy them.

Many participants reported that their discomfort was diminished by their present trust in the NZ Government and state, and positive perceptions of the integrity of unions in New Zealand. Many were able to draw upon personal comparisons with other countries, where

they would be less comfortable with such a nudge because of lesser confidence in the integrity of the state and the trade union movement.

Research Question B: Do Antecedent Preferences Affect the S62a Process?

In the literature reviewed, a key question emerged when the applicability of nudge theory to employment relations was considered: would pre-existing attitudes and beliefs about unions, states, and the government affect how the nudge acted upon the individual? To investigate this, the survey and the interviews investigated attitudes to these factors to see what influence they had on this proxy nudge.

Attitudes to Unions

In Chapter 4 existing academic theories and frameworks for why people join unions, and how differing needs or interests influence this decision were discussed. Also Chapter 4 discussed nudge theory, and how pre-existing attitudes play a role in the success of a nudge, and its impact on people being nudged. Intertwining these two sets of ideas, this research sought to explore whether a nudge has greater impact upon people who hold certain pre-existing attitudes, impact that could be either positive or negative.

The hypotheses that pre-existing attitudes towards union would play a role in comfort with being nudged largely did not emerge. Of those who had not chosen to join the union, they were not significantly less comfortable with the nudge (having their name passed on). They were significantly less comfortable with the nudge outcome (contact with the union), although this is probably more attributed to those wanted to join the union having higher comfort with being contacted; people who want to join are likely to be significantly more comfortable with being contacted. There was a wider spread of comfort/discomfort amongst the non-union members (SD 1.24) with a very middling average (3.1 on 5 a point scale).

For union members, there are clear but unexpected relationships between comfort with the nudge and reasons for joining the union. From the survey data, it is clear that those inclined towards union membership (either current members or intending to join) are more likely to be comfortable with the nudge process (their name being passed on and the union contacting them) when they are joining the union because they believe in unions and that people should join for collectivist reasons. However there is a significant *negative* relationship

between comfort with their name being passed on, and social reasons for joining the union (my friends and colleagues, and family), as well as getting better treatment at work. The results, that people who join for social reactance and one utility benefit reason are less likely to be comfortable with the nudge are very interesting and merits further investigation.

For non-members, there were very few relationships between comfort with the nudge, and reasons why they did not join the union. There were no significant relationships between reasons why didn't join the union, and their comfort with their name being passed-on, and only weak positive correlations between comfort with the union contacting them, and not joining for utility reasons; those that did not join because they did not perceive sufficient benefits of joining the union were more comfortable with the union contacting them.

On the whole, non-members do not appear to have significant pre-existing attitudes about union membership that would influence the nudge. The qualitative data further explained and expanded upon this, with most of the employee interviewees not being members or inclined to join the union, but almost all were supportive of unions, albeit in a vague and generalised way. Almost all employees, both surveyed and interviewed, were supportive of unions, irrespective of their membership status. Responses to questions on the union's role (questions 33-36) were almost all positive and did not vary between members and non-members. Interviewees were all supportive of unions in principle, although few intended to join. There were no significant correlations between nudge comfort and opinions on unions; primarily because of the near-unanimous support for unions, among both members and non-members.

Attitudes to the Nudger

An important potential influence on nudge success and impact is the individual's perception of the nudging institution. As discussed in Chapter 4, this is a recognised but underdeveloped element of nudge theory, primarily to the politically non-contentious nudge outcomes. But when considering nudges in the more politically strained arena of employment relations, such elements may play a more significant role, and merit research. Employee attitudes towards the nudging institution (the state) was investigated at three levels; a) their general trust in the NZ state, b) their trust in the government of the day that introduced the

s62a process, and c) their political alignment. Specifically that reactance to the nudge can occur where there are concerns regarding the nudger, and their motives.

The survey did not find any relationship between trust in the New Zealand state and comfort with the nudge. Should any relationship exist, it was likely hindered by the very high level of reported trust in the NZ state by the respondents, which was perhaps further increased by the Covid-19 pandemic, when support for the government was very high.

This is reflected in the employees interviews, all of whom expressed that they trusted the NZ state. While there was some variance, from a cautious trust to very strong, none expressed doubts about the reliability and integrity of the state to act solely in the interests of their citizens. A number reflected that they would be less trusting of other states that they had lived under (i.e. the state they have migrated from) utilising nudges, and would be less comfortable with a nudge if implemented by that government. All reported less comfort with a nudge if imposed by a state they had less trust in. The key factors that play key parts of this trust include democracy, corruption, and separation of social institutions. While the evidence suggests that trust in the state could be a determining factor in the comfort of a nudge, and an opportunity for further research, in NZ at this time it was not a factor in employees' comfort with this nudge.

Another important question was perception of how trustworthy was the government that introduced the nudge, the Labour/NZ First coalition Government. No relationship was found in the survey data between how people voted in the 2020 election and their comfort with the nudge. Similar to the trust in the state in general, there was no relationship with the survey data between comfort with the nudge, and trust in that government. The same factors as above likely apply again; the high level of trust in the government diminishes the differentiation with the data, and the data was collected during a period of high support for the government. No relationship was found in the survey data between how people voted in the 2020 election and their comfort with the nudge.

No participants had any concerns with the Labour Party nudging employees to join the union, and did not perceive the unions as strongly aligned or allied to the Labour Party. Across the employee participant group a clear theme emerged that union membership is not perceived as particularly political. It is not clear whether an increase in perceived connection between unions and government, between nudger and nudge recipient, would increase nudge

discomfort – we only have one end of the scale. The employee interviewees reported a strong connection between trust in the nudge, and trust in the nudger. As most were unaware of the nudge (that their details were being passed on), most reported that their relative comfort was reflective in the confidence that the government had their best interests in mind.

What does this tell us about how to nudge in ER? Firstly that nudges may be better suited to an environment of low politicisation of unions, although, as discussed, we only have one end of the spectrum on this question. Secondly that successful nudges are dependent on trust in government; the lower the trust, the more reactance. Further research is required to fully investigate this, including whether the magnitude of the nudge (i.e. a more significant imposition upon liberty) is also a factor.

Other Findings

In this section the inductive findings of the research are discussed, where the combination of data across three industries and three methods can be interwoven to provide a better understanding from this exploratory research.

Bounded Rationality in Union Decisions

Our understanding of how employees decide to join the union is under-developed. Chapter 2 outlined the decline in the number of employees deciding to join the union, and Chapter 4 discussed the academic focus on why people join, or decide not to join, the union. Most significant to this research is the gap in consideration of when and how employees do not make rational, cognitive decisions, either utilizing utilising intuitive heuristics, or simply making decisions by failing to make a decision at all; of defaulting into non-membership due to failure to make a decision. Embedded in the research focus is the question of the prevalence of bounded rationality. If nudge theory seeks to rectify poor decisions due to misapplication of bounded rationality, what evidence emerges that union decisions are made with bounded rationality?

Firstly there is the prevalence of situational reactance drivers in union membership decisions. These questions of why people join the union (my friends and colleagues are members, my family have always been members) or not (people in my job don't join unions, unions do not cooperate) imply a more intuitive than the more rational factors of utility

benefits (although joining the union due to social pressures can be a purely rational decision). This requires considerably more research and investigation. But employees reporting that situational and social pressures influenced their decision to join not join the union gives us cause to consider that membership decisions may be made with bounded rationality, and thus could be legitimately nudged.

Secondly, there is the prevalence of the 'silent ambivalents'. As discussed above, the prevalence of 'I don't know' responses to questions on their reasons for not the join the union, the number of employees who are not members but did not complete the form with 'I don't do not intend to join the union' and several employee interviewees who had unclear reasons for why they were not members, indicates that cognitive thinking has not been applied to the question, and instead intuitive shortcuts are more likely to have occurred.

Thirdly, heuristic methods of decision making were frequently described by the interviewees. A number of employee interviewees utilised heuristics in their decisions, either by asking friends, or following the decisions of senior colleagues. Union participants reported that the significance of key mentors in the workplace, and how their attitudes to union membership play a key role in membership decisions. The presence of heuristics in union membership decisions means that decision errors may occur, and therefore we could, and should nudge, to ensure employees are making the best decisions, as judged by themselves.

Employer Biased Architecture

A significant foundation to the defence of nudge's interference of liberty is that it's happening anyway. As discussed in Chapter 3, critics of nudge theory argue that any influencing of free decisions is a constraint of liberty, which should not be the province of any free and democratic government. (Sunstein, 2015) The defence of this is that it is happening regardless, that neutral choice architectures are rare events, and that not to nudge is to leave the influence to other forces that likely do not have the individual's best interests at heart. With this assumption that all choices are subject to some form of bias, what evidence is there of existing biases in membership decisions?

Firstly, it is important to note that many of the employees in these industries received and completed their documents online. All of the employee interviewees received their documents online, and there was no evidence of employer pressure on their decisions. The

unions reported that employees frequently perceived pressure by the employer when required to complete, or return their documents face-to-face. Unions across two industries reported that employees perceive union antipathy and would be hesitant to join the union in the face of this. One employer reported a very mild form of de-emphasising union membership, by placing the forms towards the back of the induction pack.

There is some evidence that biased architecture occurs in the workplace, sufficient that assumptions of its absence should be questioned. As discussed in Chapter 4, academic focus on union membership has predominantly focused on reasons, as well as access to unions, and capacity to be represented. This research informs us that union membership decisions may be subject to biased choice architecture, and suggests that nudging is legitimate, if not necessary, for counteracting bias that may otherwise be occurring.

Fear of State Manipulation and Mitigation Factors

But fair and legitimate nudges by fair and democratic governments should not be assumed. As discussed above, the acceptance of the nudge is predicated on the trust in the state, and many employee participants identified other states of whom they would be less accepting of nudges. When considering nudge theory in the employment relations, it may be necessary to balance the legitimacy of the influence of the employer, with the legitimacy of the influence of the state.

So what mitigated this fear of state nudges and potential manipulation? All the data, both qualitative and quantitative demonstrate that employee concerns are low. What factors act to constraint these concerns or drive them down? Three factors were derived from the data of how discomfort with state nudges was mitigated. These conclusions are derived primarily from the employee interviewees, where identified trends from the quantitative data could be investigated more comprehensively.

First, the nudge is low impact. The nudged outcome (potentially talking to the union) is a minor imposition on individual freedom, and does not result in a new situation for the employee, such as would be the case in more significant nudge outcomes, such as actually joining the union. The information shared is also minor; the information passed on is only the employee's name, and that they work for the organisation.

Second, there is high trust in the nudge recipient. Unions were perceived positively, and this contributed to nudge comfort, and diminished employee concerns. The purpose and intent of the unions (to support and advance worker interests) was a key aspect of this trust, as well as perceived independence and focus on core outcomes.

Thirdly, trust in the nudger is an important factor. As discussed above, trust in the NZ state to act in the interests of the nudgee was important to employee comfort with the nudge. Where the nudge could envisage such a nudge from another, less trustful nudger, they expressed greater discomfort with the nudge.

Summary

In this section the key findings of the discussion are condensed and it then relates how they advance our understanding of the potential of nudge theory in employment relations. In each part existing understanding is discussed, and how this thesis advances our knowledge.

Nudges Have the Potential to Promote Collectivism

The following key points were identified in the literature review:

- So far, attempts to promote unionism have not worked as expected
- The government introduced the s62a process to promote unionism, and productive relationships between employers and unions
- Default nudges increase the promoted outcomes (in this case being in contact with the union).

This research found:

- It had a small but significant positive impact on union membership
- It promotes union contact outcomes and facilitates union recruitment processes
- However that unions are missing opportunities to recruit new members, because they are not pursuing those who did not indicate they wish to join the union, but within this population, there were many employees who are interested in joining the union, or at least are open to the discussion.
- That this s62a process is not an effective nudge because:

- Sometimes, only nudging employees into contact can be working against the larger, intended outcome of union membership, because people think they have now become members.
- It is creating conflict between employers and unions.

Should We Nudge or Not Nudge?

The following key points were identified in the literature review:

- Nudges can be perceived as ethically questionable and as state manipulation.
- Employees may be uncomfortable being nudged if they have pre-existing attitudes towards the unions (i.e. if they don't believe or agree with unionism), the political parties that are nudging them (i.e. the Labour Party or NZ First), or the New Zealand state.

Regarding comfort, the findings of this research are:

- Most did not find it uncomfortable, including both those who intend to join the union, and a large proportion of those who do not intend to join the union,
- However a significant proportion of non-members did find it uncomfortable.
- It was established that they were not uncomfortable because of their pre-existing attitudes to the state, the labour government or unions.
- One reason for discomfort was it breached their privacy.
- Their high trust in the present New Zealand government, the NZ state and the NZ union movement reduced their discomfort.
- Less trust in the implementing government, the state in general, of the union movement would likely mean less comfort with nudges.

Are Union Membership Decisions Made with Bounded Rationality?

The following key points were identified in the literature review:

- Some decisions may be made via bounded rationality through the utilisation of heuristics, and sometimes those decisions lead to poorer outcomes, as judged by the individuals themselves.
- Such decisions could be justifiably nudged.

This research found:

- Employees do sometimes make boundedly rational decisions, by utilising heuristics.
- Some employees may be making poor decisions about union membership (as judged by themselves), and therefore could justifiably be nudged, but this needs more research.

Chapter 9: Conclusions

This thesis was an exploration of an application of a new theory in a new field. Nudge theory is a new model for public policy that has been explored and applied in a wide range of public policy objectives (healthy eating, recycling, paying taxes) but has remained largely unexplored as a method for promoting public policy objectives in employment decisions. In New Zealand, the most significant decision that public policy seeks to influence is the decision to join the collective; for workers to join the union and join the collective. The introduction in 2018 of a default nudge presents an opportunity to explore an employment relations nudge in a real-world application. Although not a nudge by design, this process that puts employees into contact with the union by default if they fail to act is sufficiently analogous for us to explore how nudges may work in application in employment relations.

From the literature key areas of focus could be identified. Fourteen years of debate and application of nudge theory were reviewed from the perspective of employment relations to anticipate the significant areas of opportunity and risk that an approach based on nudge theory may present. From the literature two key research questions were established; what impact did the s62 process have in New Zealand workplaces, and how did pre-existing attitudes (antecedent preferences) affect this process?

This research was exploratory and therefore took a wide perspective on what was investigated, and an open mind to what might be found. Because it was exploratory, it found more questions than it provides answers. In this concluding chapter, the Author will discuss what new findings and new questions emerged from this exploration that both provide us with new understandings but also establish new avenues for investigation.

Does The S62a Have a Meaningful Impact in the Workplace?

It is having an impact on union numbers, albeit minor. 8.1% of the survey population joined the union after the union contacted them. Although this may have happened without the s62a form, these small but significant gains in union membership are important when trying to revitalise union membership from a low of 17.3%. The unions report using the forms for recruitment, but it is clear from this research that the recruitment opportunities these forms present are not being fully utilised; that within the non-completed forms 18.3% intend to join but have not acted on this.

It's doing unintended harm to workplace relations. The process that the form creates, whereby the employer must manage and provide to the unions, who then must approach and recruit the potential member, is complex, requires cooperation and prone to failure. This failure creates tension between parties who already prone to oppositional attitudes, and thereby acts as a force to exacerbate conflict in union-employer relations and diminish good faith, cooperation, and partnership.

Should We Nudge?

The most significant question is whether we should nudge employment relations decisions. As discussed in Chapter 4, union revitalisation is an important policy objective worldwide as well as in New Zealand, but to date existing policy tools have, for the most, been insufficient to meet these objectives. Is nudge theory an appropriate and effective new tool? Should we nudge people who are not members of the union towards joining the union?

In short, yes but with caution and care. This research identifies that within the non-member population there is a significant proportion who are ambivalent to the question of union membership and have likely defaulted into non-membership simply because that is the default. For these 'ambivalents' it would appear their decision to not join the union is made tentatively and without great rigour; and that any assumptions that their decisions rationally made and held with conviction should be questioned. As discussed in the literature, nudges work best when people are open-minded to the nudged outcome, and comfortable to act against the nudge. These findings suggest that nudges is both appropriate and suitable to this population.

The ethical acceptability of nudge is in part due to the type of nudge and social good it seeks to promote. In Chapter 3 it was identified that some nudges are more ethically questionable than others; those that are a less transparent or seek to influence our intuitive system 1 thinking (i.e. a dark nudge). The social good that the nudge seeks to achieve also plays an important role; the more reliably it can be assumed that an individual would agree that the nudge is in their interest, the more justifiable such an opaque and/or manipulative such a 'dark nudge' is. Where it cannot reliably be assumed that the individual would agree with the sought outcome, the less justifiable such 'dark nudges' are, and more the options of types of nudges (as outlined in Chapter 3) should be constrained.

These findings provide the following guidance on ethical nudging in employment relations decisions:

- It cannot be lightly assumed that employees would agree with the promoted outcome. It should not be reliably assumed that all nudgees would agree with the promoted social good; that is in their best interests to join the union. 73% of survey respondents do not wish to join the union (see Table 31), so it cannot be assumed that nudges would agree that being in contact with the union is in their best interest, as judged by themselves.
- A significant portion of employees found this nudge uncomfortable. Within the survey population, 26% felt uncomfortable with their name being passed-on, and 26.9% uncomfortable with the union contacting them. This nudge's method (default) and outcome (contact with the union) means it is a 'light' nudge relative to other potential nudges; nudges that either promote a more significant outcome (such as union membership) or use less acceptable means (such fear or deceive nudges). That such a light nudge elicits discomfort suggests that stronger nudges would elicit more discomfort, and be less ethically acceptable.

The ethical debates on nudge theory highlight to us that to nudge is to risk an over-extension of the state's entitlement to impinge upon its citizen's liberty. There are many within this population for whom the guidance of a nudge would be suitable (i.e. in their best interests as judged by themselves) but many who may experience negative consequences from too heavy-handed a nudge.

This perception of negative consequences is held by both unions and employers, although it would appear that unions are overestimating them. Many unions held a perception that some employees would experience discomfort with unsolicited contact by the union, by the policy held by all unions of not contacting those who did not complete the form is overly cautious. Within these non-completions, 18.3% intend to join the union, but have not, which is further exacerbated by the misperception the s62a form fosters by giving the impression that they have joined the union.

It is also clear that heuristics are sometimes used in union membership decisions, and as such a poor decision may be being made, and therefore nudges may shift employees towards better decisions, as judged by themselves. This was identified in the qualitative data,

and it implies that union membership decisions are not always made via a fully rational process. This merits further research.

Is This a Good Nudge?

The s62a process, which nudges employees into contact with the union by default, is a reasonable nudge that promotes employees towards joining the union, but it's poor in its application. As discussed above, it is important the opportunity is seized, that the union utilise the opportunity that a nudge towards union contact presents, and integrates this into their recruitment strategy. This does not lay the blame for the limitations of the nudge at the union's door, because a) the nudge was not communicated to the unions sufficiently for them to recognize the opportunities it presents, and b) the unions share the common assumptions that membership decisions are rationally made, and pursuing those who have not decided to join the union would be intrusive.

A Better Nudge?

An alternative nudge was identified in the research. A key constraint of this nudge is that it does not nudge the union membership choice, but instead nudges the union contact choice. Its extended administrative requirements (for the employer to collect the form, pass on the form, the union to contact the employee, and the employee to decide and return a completed membership form) provide many opportunities for any party to 'drop the ball' and the process to cease.

The alternative nudge identified was a mandatory choice form. A prior process utilised in one workplace where new employees were required to decide on commencement of employment to join the union or not, was described by the union as being much more successful in achieving union membership. Although not immediately self-evident as a nudge, such a form would be a 'throttling mindless activity' nudge, where the status quo bias is overcome by requiring a decision and avoiding new employees from defaulting into non-membership simply because that is the default outcome of non-decision. This is also a solution to many of the issues identified in NZ by (Harcourt et al., 2019), but with a more politically expedient solution.

Key foundations of ER Nudges

A key area of investigation in this research is whether employees' existing attitudes influenced how the nudge affected them. Whether their attitudes towards unions, the reasons for joining or not joining the union, the state, or the political party that implemented the nudge influenced how employees reacted to being nudged.

In this NZ context, these factors proved to have little bearing on how employees reacted to the nudge. Of those surveyed, most people were comfortable with nudge (75%), and the nudge outcome (73.1%), although these were lower amongst non-members (71.4% and 60% respectively). This research did not find that this discomfort was related to attitudes to unions, the state or the Labour Party, but instead was a general discomfort with the nature of the nudge, the information sharing without consent.

The qualitative research indicated that these factors (attitudes towards the unions, the state and the political party) are not irrelevant to the impact of nudges, but were mitigated by trust and perceptions of integrity. The present New Zealand context, the high trust in the NZ state, the Labour Party and the NZ union movement mitigates concerns that nudges may otherwise elicit. These findings suggest that nudges can be appropriate to ER decisions, but rely upon a foundation of trust in the nudger and the nudge beneficiary.

What Can this Research Tell Us about Future Public Policy?

There are many different types of nudges that could be applied in ER. (Caraban et al., 2019) state there are 23 types of nudges, and many important employment decisions that policy makers may seek to improve upon through nudges. The Author's research in this thesis can provide the following guidance:

There is evidence that nudges may work in employment decisions for the betterment of the nudges, but care and caution is necessary. System 1 thinking occurs in employment relations decisions, and bounded rational decisions are made. Nudges can be applied so that employment actors can make better decisions. Nudges can be an effective 'third way' tool for promoting unionism within infringing of personal liberty.

The acceptance of the nudge is dependent on foundations of trust in the nudger (the state) and the nudge recipient (the unions). Confidence in the integrity of the purpose of the nudge is critical for the nudge to be accepted, and not rejected or reacted against.

Simple nudges are better than more complex nudges. Over-complexity can lead to unexpected negative outcomes that can work against the intent of the nudge, or other policy objectives.

Areas of Future Research

As discussed above, this is exploratory research with just as much capacity to provide new questions as it does answers. So, what further questions result from this research?

A mandatory choice nudge may be more effective for promoting union membership. As discussed above, this may be a better nudge, which targets stifling the status quo bias through a required action to make the decision. This potential nudge may be a more effective option for promoting membership decisions and stifling the non-membership default.

Employer may be biasing choice architecture. Thaler and Sunstein (Thaler & Sunstein, 2008a) argue that all decisions environments are biased, that it should not be assumed that neutral choice architectures would otherwise exist. There is evidence that employers present new employees with a biased choice environment that promotes non-membership over membership. This requires further investigation, because if employers are frequently bias the decision against union membership, it's almost necessary to nudge.

Nudges may be less effective or acceptable in lower trust political environments. A key finding discussed above was the nudge discomfort was mitigated by the present high trust environment in New Zealand. Comparative investigations across a range of political and employment relations environment would provide a wider range of environment to better understand the role of trust in employment relations nudges.

Summary

The question of how to revitalise unionism is an important one for employment relations academics and policymakers. New approaches are needed that fit within the soft regulatory mindset that is the present political *zeitgeist*. This thesis explored whether nudge

theory has any potential as a regulatory tool for promoting union membership to employees. It found that there is potential for nudges to be effective at promoting union membership without significant imposition upon the freedom of association of the employee.

There were some negative impacts from this nudge. Having their name passed on to a third party caused discomfort to some employees, no discomfort to other, and was a useful prompt for those intending to join the union but had not. The design of this nudge increased conflict between employers and unions. Nudges must be carefully considered and designed to minimise the unintended negative impacts and maximise the intended positive impacts.

A number of areas for further research are recommended. It is suggested that further research could be undertaken into what other forms of nudges (other than default) may be effective, how nudges could be better designed, and the type and frequency of heuristics in employment relations decisions, including whether to join a union or not.

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Appendix A: Intention to join the union



Form for new employees to indicate if they intend to join a union

This form is **optional** to complete. If you do not fill it in and return it to your employer within 30 days of starting your new job, your employer is required to tell the relevant union(s) your name and that you didn't return the form. If you do complete and return the form within 30 days of starting your new job, your employer will pass the form and your name on to the union(s) that cover your work unless you object by ticking the relevant box on the form.

Your full name

Your employer and workplace
(employer may complete)

Union(s) with agreements that cover your role (employer may list unions with agreements that cover the employee's role)

Do you intend to join a union? (choose one)

Yes, I intend to join a union.

Email (optional):

Phone (optional):

Role (optional):

The union I intend to join is:

Tick this box if you do not want this form passed on to any other unions that cover your work.

No, I do not intend to join a union.

Tick this box if you do not want this form passed on to the unions that cover your work.

Your signature

Date

About this form

Why have I got this form?

If you've got this form that means you have just started a job with a new employer and there is at least one collective agreement that covers your new job.

A 'collective agreement' is an agreement that a union has negotiated for its members and agreed with your employer. You are covered by the terms and conditions of the collective agreement for your first 30 days of employment.

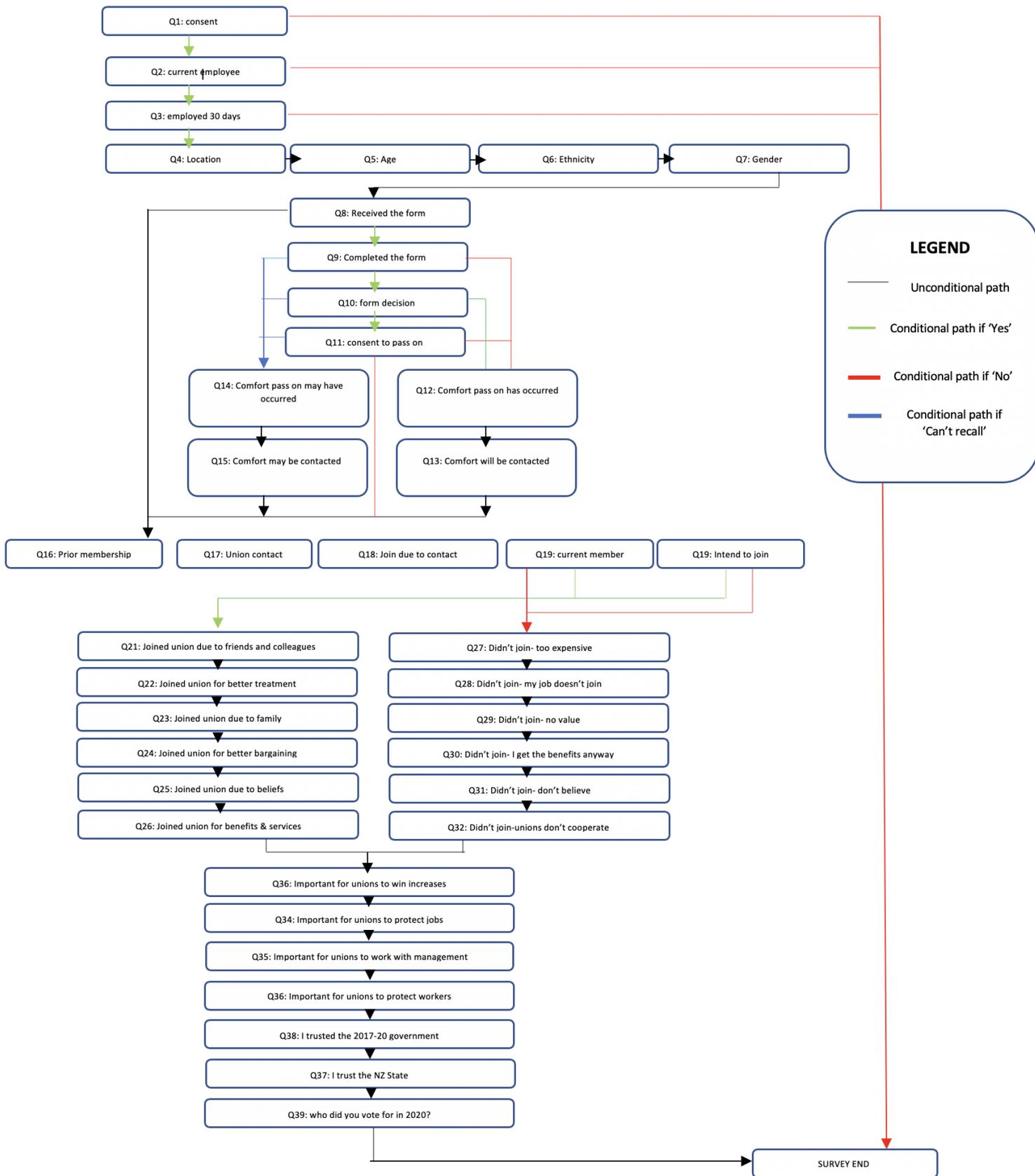
What if I intend to join a union?

You are free to join a union. Filling in the form does not mean you have joined a union. The union has rules for signing people up. You can get in touch with the union directly to join. If you are not sure how to do this you can talk to a union representative at your work or visit the NZ Council of Trade Unions website: www.union.org.nz

Your rights under the Privacy Act

You have the right to see a copy of any personal information held about you. If there are mistakes, you can ask for them to be fixed or you can give a list of corrections about what you think is wrong.

Appendix B: Survey Flow Chart



Appendix C: Organisation Information Sheet

AUT

TE WĀNANGA ARONUI
O TĀMAKI MAKĀU RAU

Participant Information Sheet

Date Information Sheet Produced:

15 July 2021

Project Title: A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through nudge theory.

An Invitation:

My name is Damian Treanor and I am a PhD student with Auckland University of Technology. I am also an ER practitioner with 18 years' industry experience, and extensive knowledge of current industry practices. I would like to invite your organisation to participate in my research.

What is the purpose of this research?

In 2018, amendments to the Employment Relations Act included a new requirement that all new employees be provided with a form to signal their intention to join a union if there was a collective agreement in force. If the employee did not complete the form, the default is that the union(s) receive their name. This default is novel in New Zealand law, as it potentially nudges people in their employment decisions. The purpose of this research is to understand the impacts of this law New Zealand workplace practices.

How was this organisation identified and invited to participate in this research?

An industry review of publicly available information has identified this organisation as affected by this legislation.

How does the organisation agree to participate in this research?

Participation in this research is voluntary, and the organisation is entitled to withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data that is identifiable as belonging to you removed, or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research?

The organisation is requested to provide the following information only:

- Total number of 'form for new employees to indicate if they intend to join a union' received in the prior 12 months (total only, e.g. 52).
- Total number of 'form for new employees to indicate if they intend to join a union' received completed (total only, e.g. 32).
- Total number of 'form for new employees to indicate if they intend to join a union' received incomplete (total only, e.g. 20).

Will the research be confidential and non-identifiable? How will my privacy be protected?

Participation in research will be completely confidential. Participation will be kept completely confidential and not identified to anyone external to myself, or the research supervisor.

What is the burden of participating in this research?

The burden of participation is the time and resources required to collect the above data.

What opportunity do I have to consider this invitation?

Please take the time you feel appropriate to consider. I will follow up after one fortnight to discuss.

Will I receive feedback on the results of this research?

After completion of the research, I am happy to provide a copy of any resulting publications. *Publications resulting from this research will be accessible at <https://workresearch.aut.ac.nz/document-library/project-reports> on completion.*

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Dr Erling Rasmussen, erling.rasmussen@aut.ac.nz, ph (09 921 9999 ext 5906). Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, ethics@aut.ac.nz, (+649) 921 9999 ext 6038.

What will happen with the information I provide?

All data will be kept securely at AUT (on an external drive not connected to any network), and only be available to myself, and the project supervisor (Dr Erling Rasmussen). This data may be utilised in future research, but only by Dr Rasmussen or myself. Information will be secured disposed of after six years.

Whom do I contact for further information about this research?

Please keep this Information Sheet and a copy of the Consent Form for your future reference. You are also able to contact the research team as follows:

Researcher Contact details: Damian Treanor, dtreanor@aut.ac.nz

Supervisor Contact details: Dr Erling Rasmussen, erling.rasmussen@aut.ac.nz, ph (00649 921 9999 xt 6038).

Yours Truly

A handwritten signature in black ink, consisting of a stylized initial 'D' followed by a long horizontal line.

Damian Treanor

Appendix D: AUT survey

Participant Information Sheet

13 April 2021

Project Title: A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through Nudge Theory

My name is Damian Treanor and I am a doctoral candidate with the Auckland University of Technology.

What is the purpose of this research? In 2018, amendments to the Employment Relations Act included a new requirement that all new employees be provided with a form to signal their intention to join a union if there was a collective agreement in force. If the employee did not complete the form, the default is that the union(s) receive their name. This default is novel in New Zealand law, as it potentially nudges people in their employment decisions. The purpose of this research is to understand the effect of this law on new employees, including its impact on the people nudged.

How were you identified and invited to participate in this research?

A range of industries are being included in this research, including education. As an employee in the education sector effected by this law, you are invited to participate. Your employer is not sponsoring this research, and will not have access to your responses.

How do I agree to participate in this research?

Your participation in this research is voluntary (it is your choice) and whether or not you choose to participate will neither advantage nor disadvantage you. To agree to participate, you only need to tick the box below.

What will happen in this research?

All that is asked is for you to complete this survey. It takes approximately 5-8 minutes. Deferring answers (i.e. prefer not to answer, don't know, can't recall) are available throughout the survey.

Will the research be confidential and non-identifiable? How will my privacy be protected?

Participation in this research is anonymous and confidential. You will not be asked to provide any directly identifiable information in this survey (e.g. name or email address). To avoid any identification through

your answers (e.g. if you are the only male respondent at your store) no population of less than five will be reported.

What opportunity do I have to consider this invitation?

You're welcome to take as long as you like to consider participating. Please note that you can withdraw from the survey at any point, but because the data is anonymous once your responses have been submitted, your data cannot be identified or withdrawn.

Will I receive feedback on the results of this research?

Because of the anonymity of participation, I am unable to reach out to all participants with the results. Publications resulting from this research will be accessible at <https://workresearch.aut.ac.nz/document-library/project-reports> on completion.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the project supervisor, Dr Erling Rasmussen, at erling.rasmussen@aut.ac.nz or ph (09) 921 9999 ext 5906. Concerns regards the conduct of the research should be notified to the Executive Secretary of AUTEK, ethics@aut.ac.nz, (+649) 921 9999 ext 6038.

Who do I contact for further information about this research?

Please contact myself (dtreanor@aut.ac.nz) or the Project Supervisor (erling.rasmussen@aut.ac.nz).

What will happen with the information I provide?

All data will be kept securely, and only available to myself or the project supervisor (Dr Erling Rasmussen) for the purpose of this project (to understand the effect of this law on new employees, including its impact on the people nudged). The information may be utilised for comparative purposes in future related research projects, but only by Dr Rasmussen or myself.

Yours Truly,

Damian Treanor

- I consent, let's begin the survey (1)
- I do not consent, I do not wish to participate (2)

Q2 Are you an AUT employee, employed as Teaching Assistant or Research Assistant?

- Yes (1)
- No (2)

Skip To: End of Survey If Are you an AUT employee, employed as Teaching Assistant or Research Assistant? = No

Q3 To avoid influencing your decisions, this survey cannot be completed within 30 days of commencing employment. Have you been employed by AUT for 30 days or more?

- Yes (1)
- No (2)

Skip To: End of Survey If To avoid influencing your decisions, this survey cannot be completed within 30 days of commencing... = No

Q4 Which area of New Zealand do you work in?

- Northland (1)
- North Shore or West Auckland (2)
- Auckland Central (3)
- South or East Auckland (4)
- Bay of Plenty (5)
- Waikato (6)

- Lakes/Rotorua (7)
 - Gisborne (8)
 - Hawkes Bay (9)
 - Taranaki (10)
 - Whanganui (11)
 - Manawatu (12)
 - Wairarapa (13)
 - Hutt Valley (14)
 - Wellington (15)
 - Nelson or Marlborough (16)
 - The West Coast (17)
 - Canterbury (18)
 - South Canterbury (19)
 - Southland (20)
 - Prefer not to answer (22)
 - Other (21) _____
-

Q5 What age are you?

- 25 years or younger (1)
- 26-35 (2)

- 36-45 (3)
 - 46-55 (4)
 - 56 years or older (5)
 - Prefer not to answer (6)
-

Q6 Which ethnic group (of the Stats NZ level 1 ethnicity categories) do you belong to?. You may choose more than one answer.

- European (1)
 - Maori (2)
 - Pacific peoples (3)
 - Middle Eastern/Latin American/African (4)
 - Prefer not to answer (10)
 - Other: (11) _____
-

Q7 How would you describe your gender?

- Male (1)
- Female (2)
- Gender Diverse (4)
- Prefer not to answer (5)

End of Block: RMO Survey

Start of Block: 'Intention to join the union' form

Q8 Did you receive the "Form for new employees to indicate if they intend to join the union"? (to view the form, click [here](#))

- Yes (1)
- No (2)
- I can't recall (3)

Skip To: End of Block If Did you receive the "Form for new employees to indicate if they intend to join the union"? (to v... = No

Skip To: Q14 If Did you receive the "Form for new employees to indicate if they intend to join the union"? (to v... = I can't recall

Q9 Did you complete and return the "Form for new employees indicate if they intend to join the union?" (to view the form, click [here](#))

- Yes (1)
- No (2)
- I can't recall (3)

Skip To: Q12 If Did you complete and return the "Form for new employees indicate if they intend to join the union... = No

Skip To: Q14 If Did you complete and return the "Form for new employees indicate if they intend to join the union... = I can't recall

Q10 For the question "do you intend to join the union", which did you choose? (to view the form, click [here](#))

- Yes, I intend to join the union (1)
- No, I do not intend to join the union (2)
- I can't recall (3)

Skip To: Q11 If For the question "do you intend to join the union", which did you choose? (to view the form, clic... = I can't recall

Q11 Did you tick either box that you do not want your information passed on? either: "tick this box if you do not want this form passed on to any other union that covers your work" or "tick this box if you do not want this form passed on to the unions that cover your work".
(To view the form click [here](#))

- Yes (1)
- No (2)
- I can't recall (3)

Skip To: End of Block If Did you tick either box that you do not want your information passed on? either: "tick this box... = Yes
Skip To: Q14 If Did you tick either box that you do not want your information passed on? either: "tick this box... = I can't recall
Skip To: Q12 If Did you tick either box that you do not want your information passed on? either: "tick this box... = No

Q12 Please respond this statement: I am comfortable that my employer was required to pass on my name to the union.

- Strongly agree (1)
 - Somewhat agree (2)
 - Neither agree nor disagree (3)
 - Somewhat disagree (4)
 - Strongly disagree (5)
-

Q13 Please respond to this statement: I am comfortable that the union will contact me.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Somewhat agree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Strongly agree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Neither agree nor disagree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Somewhat disagree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Strongly disagree*

Q14 Please respond this statement: I am comfortable that my employer may have been required to pass on my name to the union.

- Strongly agree (1)
 - Somewhat agree (2)
 - Neither agree nor disagree (3)
 - Somewhat disagree (4)
 - Strongly disagree (5)
-

Q15 Please respond this statement: I am comfortable that the union may contact me.

- Strongly agree (1)

- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

End of Block: 'Intention to join the union' form

Start of Block: Union membership

Q16 Have you ever been a member of a trade union other than at AUT?

- Yes (1)
 - No (2)
 - Can't recall or prefer not to answer (4)
-

Q17 Did the Union contact you?

- Yes (1)
 - No (2)
 - Can't recall (3)
 - Prefer not to answer (4)
-

Q18 Did you join the Union as a result of that contact?

- Yes (1)
- No (2)
- Prefer not to answer (3)

I was already a member (4)

Q19 Are you a member of the Union?

Yes (1)

No (2)

Prefer not to answer (3)

Skip To: Q21 If Are you a member of the Union? = Yes

Q20 Do you intend to join the Union?

Yes (1)

No (2)

Skip To: Q27 If Do you intend to join the Union? = No

Q21 How important was the following factor in your decision to join the union: My friends and colleagues were already union members.

Very important (1)

Quite important (2)

Not very important (3)

Not important at all (4)

Don't know (5)

Q22 How important was the following factor in your decision to join the union: You get better treatment if you have a problem at work.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q23 How important was the following factor in your decision to join the union: The people in my family have always been union members.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q24 How important was the following factor in your decision to join the union: The more people that join a trade union the more effective it is in advancing pay and conditions.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Q25 How important was the following factor in your decision to join the union: I would join the union in any workplace because I believe unions.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Q26 How important was the following factor in your decision to join the union: The unions offers additional benefits and services.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Very important

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Quite important

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Not very important

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Not important at all

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Don't know

Q27 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: Membership fees are too high / too expensive.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q28 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: People in my job don't join unions.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q29 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: Unions do not achieve anything I value.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)

Don't know (5)

Q30 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: There is no point joining because I get all the benefits anyway.

Very important (1)

Quite important (2)

Not very important (3)

Not important at all (4)

Don't know (5)

Q31 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: I don't believe in unions.

Very important (1)

Quite important (2)

Not very important (3)

Not important at all (4)

Don't know (5)

Q32 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: unions do not cooperate for the good of the workplace.

Very important (1)

Quite important (2)

- Not very important (3)
- Not important at all (4)
- Don't know (5)

End of Block: Union membership

Start of Block: Personal opinions

Q33 How important is it for unions to deal with the following: Winning fair pay increases.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q34 How important is it for unions to deal with the following: Protecting existing jobs.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q35 How important is it for unions to deal with the following: working with management to improve quality or productivity.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q36 How important is it for unions to deal with the following: protecting workers against unfair treatment.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q37 How strongly to you agree or disagree with the following statement: I had confidence in the 2017-2020 Labour-led coalition government.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)
- Prefer not to answer (6)

Q38 How strongly to you agree or disagree with the following statement: In general, I trust the NZ state to act in the best interests of New Zealanders.

- Strongly agree (1)
 - Somewhat agree (2)
 - Neither agree nor disagree (3)
 - Somewhat disagree (4)
 - Strongly disagree (5)
 - Prefer not to answer (6)
-

Q39 Who did you vote for in the 2020 election?

- Labour (1)
- National (2)
- ACT (3)
- The Greens (4)
- NZ First (5)
- other (6) _____
- Didn't vote, can't recall, or would prefer not to say (7)

End of Block: Personal opinions

Appendix E: RMO Survey

Participant Information Sheet

23 November 2020

Project Title: A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through Nudge Theory

My name is Damian Treanor and I am a doctoral candidate with the Auckland University of Technology. I am also a HR practitioner with 18 years' industry experience, including employment relations and health sector experience.

What is the purpose of this research?

In 2018, amendments to the Employment Relations Act included a new requirement that all new employees be provided with a form to signal their intention to join a union if there was a collective agreement in force. If the employee did not complete the form, the default is that the union(s) receive their name. This default is novel in New Zealand law, as it potentially nudges people in their employment decisions. The purpose of this research is to understand the effect of this law on new employees, including its impact on the people nudged.

How were you identified and invited to participate in this research?

An industry review was undertaken and Registered Medical Officers (RMOs) were identified as one of the larger populations of new employees under a single collective agreement. As a RMO employed by a New Zealand District Health Board, you are invited to participate in this research.

How do I agree to participate in this research?

Your participation in this research is voluntary (it is your choice) and whether or not you choose to participate will neither advantage nor disadvantage you. To agree to participate, you only need to tick the box below.

What will happen in this research?

All that is asked is for you to complete this survey. It takes approximately 5-8 minutes.

Will the research be confidential and non-identifiable? How will my privacy be protected?

Participation in this research is anonymous and confidential. You will not be asked to provide any directly identifiable information in this survey (e.g. name or email address). To avoid any identification through your answers (e.g. if you are the only male respondent in your DHB) no population of less than five will be reported.

What opportunity do I have to consider this invitation?

You're welcome to take as long as you like to consider participating. Please note that you can withdraw from the survey at any point, but because the data is anonymous once your responses have been submitted, your data cannot be identified or withdrawn.

Will I receive feedback on the results of this research?

Because of the anonymity of participation, I am unable to reach out to all participants with the results. Publications resulting from this research will be accessible at <https://workresearch.aut.ac.nz/document-library/project-reports> on completion.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the project supervisor, Dr Erling Rasmussen, at erling.rasmussen@aut.ac.nz or ph (09) 921 9999 ext 5906. Concerns regards the conduct of the research should be notified to the Executive Secretary of AUTEK, ethics@aut.ac.nz, (+649) 921 9999 ext 6038.

Who do I contact for further information about this research?

Please contact myself (dtreanor@aut.ac.nz) or the Project Supervisor (erling.rasmussen@aut.ac.nz).

What will happen with the information I provide?

All data will be kept securely, and only available to myself or the project supervisor (Dr Erling Rasmussen) for the purpose of this project (to understand the effect of this law on new employees, including its impact on the people nudged). The information may be utilised for comparative purposes in future related research projects, but only by Dr Rasmussen or myself.

Yours Truly,

Damian Treanor

- I consent, let's begin the survey (1)
- I do not consent, I do not wish to participate (2)

*Skip To: End of Survey If Participant Information Sheet 23 November 2020 Project Title: A Nudging ERA?
The Employment R... = I do not consent, I do not wish to participate*

Q2 Are you a Resident Medical Officer (RMO) employed at a New Zealand District Health Board?

- Yes (1)
- No (2)

*Skip To: End of Survey If Are you a Resident Medical Officer (RMO) employed at a New Zealand District
Health Board? = No*

Q3 To avoid influencing your decisions, this survey cannot be completed within 40 of commencing employment. Have you been employed at your DHB for 40 days or more?

- Yes (1)
- No (2)

*Skip To: End of Survey If To avoid influencing your decisions, this survey cannot be completed within 40 of
commencing empl... = No*

Q4 Which DHB are you currently working for?

- Northland DHB (1)
- Waitemata DHB (2)
- Auckland DHB (3)
- Counties Manukau Health (4)

- Bay of Plenty DHB (5)
 - Waikato DHB (6)
 - Lakes DHB (7)
 - Tairāwhiti (8)
 - Hawkes Bay DHB (9)
 - Taranaki DHB (10)
 - Whanganui DHB (11)
 - MidCentral DHB (12)
 - Wairarapa DHB (13)
 - Hutt Valley DHB (14)
 - Capital and Coast DHB (15)
 - Nelson Marlborough DHB (16)
 - West Coast DHB (17)
 - Canterbury DHB (18)
 - South Canterbury DHB (19)
 - Southern DHB (20)
 - Prefer not to answer (22)
 - Other (21) _____
-

Q5 What age are you?

- 16-25 (1)
 - 26-35 (2)
 - 36-45 (3)
 - 46-55 (4)
 - 56+ (5)
 - Prefer not to answer (6)
-

Q6 Which ethnic group (of the Stats NZ level 1 ethnicity categories) do you belong to?. You may choose more than one answer.

- European (1)
 - Maori (2)
 - Pacific peoples (3)
 - Middle Eastern/Latin American/African (4)
 - Prefer not to answer (10)
 - Other: (11) _____
-

Q7 How would you describe your gender?

- Male (1)
- Female (2)
- Gender Diverse (4)
- Prefer not to answer (5)

Start of Block: 'Intention to join the union' form

Q8 Did you receive the "Form for new employees to indicate if they intend to join the union"? (to view the form, click [here](#))

- Yes (1)
- No (2)
- I can't recall (3)

Skip To: End of Block If Did you receive the "Form for new employees to indicate if they intend to join the union"? (to v... = No

Skip To: Q14 If Did you receive the "Form for new employees to indicate if they intend to join the union"? (to v... = I can't recall

Q9 Did you complete and return the "Form for new employees indicate if they intend to join the union?" (to view the form, click [here](#))

- Yes (1)
- No (2)
- I can't recall (3)

Skip To: Q12 If Did you complete and return the "Form for new employees indicate if they intend to join the union... = No

Skip To: Q14 If Did you complete and return the "Form for new employees indicate if they intend to join the union... = I can't recall

Q10 For the question "do you intend to join the union", which did you choose? (to view the form, click [here](#))

- Yes, I intend to join the union (1)

No, I do not intend to join the union (2)

I can't recall (3)

Skip To: Q11 If For the question "do you intend to join the union", which did you choose? (to view the form, clic... = I can't recall

Q11 Did you tick either box that you do not want your information passed on? either:
"tick this box if you do not want this form passed on to any other union that covers your work" or
"tick this box if you do not want this form passed on to the unions that cover your work".
(To view the form click [here](#))

Yes (1)

No (2)

I can't recall (3)

*Skip To: End of Block If Did you tick either box that you do not want your information passed on?
either: "tick this box... = Yes*

*Skip To: Q14 If Did you tick either box that you do not want your information passed on? either: "tick this
box... = I can't recall*

*Skip To: Q12 If Did you tick either box that you do not want your information passed on? either: "tick this
box... = No*

Q12 Please respond this statement: I am comfortable that my employer was required to pass on my name to the union I specified.

Strongly agree (1)

Somewhat agree (2)

Neither agree nor disagree (3)

Somewhat disagree (4)

Strongly disagree (5)

Q13 Please respond to this statement: I am comfortable that the union will contact me.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Somewhat agree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Strongly agree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Neither agree nor disagree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Somewhat disagree*

*Skip To: End of Block If Please respond to this statement: I am comfortable that the union will contact me. =
Strongly disagree*

Q14 Please respond this statement: I am comfortable that my employer may have been required to pass on my name to the unions.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

Q15 Please respond this statement: I am comfortable that the unions may contact me.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)
- Somewhat disagree (4)
- Strongly disagree (5)

End of Block: 'Intention to join the union' form

Start of Block: Union membership

Q16 Have you ever been a member of a trade union other than the Specialist Trainees of New Zealand (STONZ) or the Resident Doctors Association (RDA)?

- Yes (1)
 - No (2)
 - Can't recall or prefer not to answer (4)
-

Q17 Did either union (STONZ or RDA) contact you?

- Yes (1)
 - No (2)
 - Can't recall (3)
 - Prefer not to answer (4)
-

Q18 Did you join the union as a result of that contact?

- Yes (1)
 - No (2)
 - Prefer not to answer (3)
 - I was already a member (4)
-

Q19 Are you a member of either STONZ or the RDA?

- Yes (1)
- No (2)
- Prefer not to answer (3)

Skip To: Q21 If Are you a member of either STONZ or the RDA? = Yes

Q20 Do you intend to join either STONZ or the RDA?

- Yes (1)
- No (2)

Skip To: Q27 If Do you intend to join either STONZ or the RDA? = No

Q21 How important was the following factor in your decision to join the union: My friends and colleagues were already union members.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)

Don't know (5)

Q22 How important was the following factor in your decision to join the union: You get better treatment if you have a problem at work.

Very important (1)

Quite important (2)

Not very important (3)

Not important at all (4)

Don't know (5)

Q23 How important was the following factor in your decision to join the union: The people in my family have always been union members.

Very important (1)

Quite important (2)

Not very important (3)

Not important at all (4)

Don't know (5)

Q24 How important was the following factor in your decision to join the union: The more people that join a trade union the more effective it is in advancing pay and conditions.

Very important (1)

Quite important (2)

- Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q25 How important was the following factor in your decision to join the union: I would join the union in any workplace because I believe unions.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q26 How important was the following factor in your decision to join the union: The unions offers additional benefits and services.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Very important

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Quite important

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Not very important

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Not important at all

Skip To: End of Block If How important was the following factor in your decision to join the union: The unions offers addi... = Don't know

Q27 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: Membership fees are too high / too expensive.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Q28 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: People in my job don't join unions.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Q29 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: Unions do not achieve anything I value.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q30 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: There is no point joining because I get all the benefits anyway.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q31 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: I don't believe in unions.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q32 Of the common reasons people don't join unions, how important was the following factor in your decision not to join the union: unions do not cooperate for the good of the workplace.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

End of Block: Union membership

Start of Block: Personal opinions

Q33 How important is it for unions to deal with the following: Winning fair pay increases.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q34 How important is it for unions to deal with the following: Protecting existing jobs.

- Very important (1)
- Quite important (2)
- Not very important (3)
- Not important at all (4)
- Don't know (5)

Q35 How important is it for unions to deal with the following: working with management to improve quality or productivity.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q36 How important is it for unions to deal with the following: protecting workers against unfair treatment.

- Very important (1)
 - Quite important (2)
 - Not very important (3)
 - Not important at all (4)
 - Don't know (5)
-

Q37 How strongly to you agree or disagree with the following statement: I had confidence in the 2017-2020 Labour-led coalition government.

- Strongly agree (1)
- Somewhat agree (2)
- Neither agree nor disagree (3)

- Somewhat disagree (4)
 - Strongly disagree (5)
 - Prefer not to answer (6)
-

Q38 How strongly to you agree or disagree with the following statement: In general, I trust the NZ state to act in the best interests of New Zealanders.

- Strongly agree (1)
 - Somewhat agree (2)
 - Neither agree nor disagree (3)
 - Somewhat disagree (4)
 - Strongly disagree (5)
 - Prefer not to answer (6)
-

Q39 Who did you vote for in the 2020 election?

- Labour (1)
- National (2)
- ACT (3)
- The Greens (4)
- NZ First (5)
- other (6) _____
- Didn't vote, can't recall, or would prefer not to say (7)

End of Block: Personal opinions



Appendix F: Key Informant Interview Consent Form



TE WĀNANGA ARONUI
O TĀMAKI MAKĀU RAU

Consent Form

Project title: **A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through Nudge Theory**

Project Supervisor: Dr Erling Rasmussen

Researcher: Damian Treanor

- I have read and understood the information provided about this research project in the Information Sheet dated 26 May 2021.
- I have had an opportunity to ask questions and to have them answered.
- I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without being disadvantaged in any way.
- I understand that if I withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I wish to receive a summary of the research findings (please tick one): Yes No
- I consent to the data being used in future research (please tick one): Yes No

Participant's signature:

Participant's name:

Participant's Contact Details (if appropriate):

.....
.....
.....

.....

Date:

Approved by the Auckland University of Technology Ethics Committee on 28th May 2021, AUTEK Reference number 20/392

Note: The Participant should retain a copy of this form.

Appendix G: Employee Interview Consent Form



TE WĀNANGA ARONUI
O TĀMAKI MAKĀU RAU

Consent Form

Project title: **A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through Nudge Theory**

Project Supervisor: Dr Erling Rasmussen

Researcher: Damian Treanor

- I have read and understood the information provided about this research project in the Information Sheet dated 15 July 2021.
- I have had an opportunity to ask questions and to have them answered.
- I understand that notes will be taken during the interviews and that they will also be audio-taped and transcribed.
- I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without being disadvantaged in any way.
- I understand that if I withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.
- I agree to take part in this research.
- I wish to receive a summary of the research findings (please tick one): Yes No
- I consent to the data being used in future research (please tick one): Yes No

Participant's signature:

Participant's name:

Participant's Contact Details (if appropriate):

.....
.....
.....
.....

Date:

Approved by the Auckland University of Technology Ethics Committee on 27 July 2021, AUTEK Reference number 20/392

Note: The Participant should retain a copy of this form.



Participant Information Sheet

Date Information Sheet Produced:

15 July 2021

Project Title: A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through nudge theory.

An Invitation:

My name is Damian Treanor and I am a PhD student with Auckland University of Technology. I am also an ER practitioner with 18 years' industry experience, and extensive knowledge of current industry practices. I would like to invite you to participate in my research.

What is the purpose of this research?

In 2018, amendments to the Employment Relations Act included a new requirement that all new employees be provided with a form to signal their intention to join a union if there was a collective agreement in force. If the employee did not complete the form, the default is that the union(s) receive their name. This default is novel in New Zealand law, as it potentially nudges people in their employment decisions. The purpose of this research is to understand the impacts of this law New Zealand workplace practices.

How were you identified and invited to participate in this research?

You have been identified by your responding to the advertisement seeking TAs and RAs employed at AUT. As an employee who has received the form, your knowledge and experience will provide important information into how this legislation impacts workplace practices and outcomes.

How do I agree to participate in this research?

Your participation in this research is voluntary (it is your choice) and whether or not you choose to participate will neither advantage nor disadvantage you. You are able to withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data that is identifiable as belonging to you removed, or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research?

Research information will be gathered through a semi-structured interview between you and myself, lasting 1 – 2 hours, at a time and venue (including online, such as via Zoom) convenient to you. You will be under no obligation to answer any questions that you would prefer not to. You will be asked to complete a consent form; if the interview is online you can either scan a signed copy, or copy the content of the consent into an email with a sentence confirming your agreement.

The topics discussed will include your impressions of the ‘intention to join the union’ form, and its impact on your union membership decisions. I am happy to provide you with a copy of the interview questions prior if you wish.

Will the research be confidential and non-identifiable? How will my privacy be protected?

Participation in research will be completely confidential. Your participation will be kept completely confidential, and not identified to anyone external to myself, or the research supervisor.

What is the burden of participating in this research?

It is anticipated that the only cost of participation will 20-30 minutes of your time.

What opportunity do I have to consider this invitation?

Please take the time you feel appropriate to consider. I will follow up after one fortnight to discuss, with the potential interview to take place at your convenience thereafter.

Will I receive feedback on the results of this research?

After completion of the research, I am happy to provide a copy of any resulting publications. *Publications resulting from this research will be accessible at <https://workresearch.aut.ac.nz/document-library/project-reports> on completion.*

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Dr Erling Rasmussen, erling.rasmussen@aut.ac.nz, ph (09 921 9999 ext 5906). Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTECH, ethics@aut.ac.nz, (+649) 921 9999 ext 6038.

What will happen with the information I provide?

During the interview I will take notes, and will make an audio recording (if you are comfortable with this). All information (recordings and transcripts) will be kept securely at AUT (on an external drive not connected to any network), and only be available to myself, and the project supervisor (Dr Erling Rasmussen). You will also have

the opportunity to review the recordings and transcripts if you wish. This data may be utilised in future research, but only by Dr Rasmussen or myself. Information will be secured disposed of after six years.

Whom do I contact for further information about this research?

Please keep this Information Sheet and a copy of the Consent Form for your future reference. You are also able to contact the research team as follows:

Researcher Contact details: Damian Treanor, dtreanor@aut.ac.nz

Supervisor Contact details: Dr Erling Rasmussen, erling.rasmussen@aut.ac.nz, ph (00649 921 9999 xt 6038).

Yours Truly

A handwritten signature in black ink, appearing to be 'D. Treanor', with a long horizontal line extending to the right.

Damian Treanor

Appendix I: Key Informant Interview Participant Information Sheet



Participant Information Sheet

Date Information Sheet Produced:

26 May 2021

Project Title: A Nudging ERA? The Employment Relations Act's promotion of collectivism viewed through nudge theory.

An Invitation:

My name is Damian Treanor and I am a PhD student with Auckland University of Technology. I am also an ER practitioner with 18 years' industry experience, and extensive knowledge of current industry practices. I would like to invite you to participate in my research.

What is the purpose of this research?

In 2018, amendments to the Employment Relations Act included a new requirement that all new employees be provided with a form to signal their intention to join a union if there was a collective agreement in force. If the employee did not complete the form, the default is that the union(s) receive their name. This default is novel in New Zealand law, as it potentially nudges people in their employment decisions. The purpose of this research is to understand the impacts of this law New Zealand workplace practices.

How were you identified and invited to participate in this research?

You have been identified by your responding to the advertisement seeking TAs and RAs employed at AUT. As an employee who has received the form, your knowledge and experience will provide important information into how this legislation impacts workplace practices and outcomes.

How do I agree to participate in this research?

Your participation in this research is voluntary (it is your choice) and whether or not you choose to participate will neither advantage nor disadvantage you. You are able to withdraw from the study at any time. If you choose to withdraw from the study, then you will be offered the choice between having any data that is identifiable as belonging to you removed, or allowing it to continue to be used. However, once the findings have been produced, removal of your data may not be possible.

What will happen in this research?

Research information will be gathered through a semi-structured interview between you and myself, lasting 1 – 2 hours, at a time and venue (including online, such as via Zoom) convenient to you. You will be under no obligation to answer any questions that you would prefer not to. You will be asked to complete a consent form; if the interview is online you can either scan a signed copy, or copy the content of the consent into an email with a sentence confirming your agreement.

The topics discussed will include your impressions of the ‘intention to join the union’ form, and its impact on your union membership decisions. I am happy to provide you with a copy of the interview questions prior if you wish.

Will the research be confidential and non-identifiable? How will my privacy be protected?

Participation in research will be completely confidential. Your participation will be kept completely confidential, and not identified to anyone external to myself, or the research supervisor.

What is the burden of participating in this research?

It is anticipated that the only cost of participation will 20-30 minutes of your time.

What opportunity do I have to consider this invitation?

Please take the time you feel appropriate to consider. I will follow up after one fortnight to discuss, with the potential interview to take place at your convenience thereafter.

Will I receive feedback on the results of this research?

After completion of the research, I am happy to provide a copy of any resulting publications. *Publications resulting from this research will be accessible at <https://workresearch.aut.ac.nz/document-library/project-reports> on completion.*

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Dr Erling Rasmussen, erling.rasmussen@aut.ac.nz, ph (09 921 9999 ext 5906). Concerns regarding the conduct of the research should be notified to the Executive Secretary of AUTEK, ethics@aut.ac.nz, (+649) 921 9999 ext 6038.

What will happen with the information I provide?

During the interview I will take notes, and will make an audio recording (if you are comfortable with this). All information (recordings and transcripts) will be kept securely at AUT (on an external drive not connected to any network), and only be available to myself, and the project supervisor (Dr Erling Rasmussen). You will also have

the opportunity to review the recordings and transcripts if you wish. This data may be utilised in future research, but only by Dr Rasmussen or myself. Information will be secured disposed of after six years.

Whom do I contact for further information about this research?

Please keep this Information Sheet and a copy of the Consent Form for your future reference. You are also able to contact the research team as follows:

Researcher Contact details: Damian Treanor, dtreanor@aut.ac.nz

Supervisor Contact details: Dr Erling Rasmussen, erling.rasmussen@aut.ac.nz, ph (00649 921 9999 xt 6038).

Yours Truly

A handwritten signature in black ink, appearing to be 'D. Treanor', with a long horizontal line extending to the right.

Damian Treanor

Appendix J: Organisation Consent Form



Consent Form

Project title: **A Nudging ERA? The Employment Relations Act’s promotion of collectivism viewed through Nudge Theory**

Project Supervisor: Dr Erling Rasmussen

Researcher: Damian Treanor

- I have read and understood the information provided about this research project in the Information Sheet dated 15 July 2021.
- I have had an opportunity to ask questions and to have them answered.
- I understand that taking part in this study is voluntary, and participation may be withdrawn from the study at any time without being disadvantaged in any way.
- I understand that if the organisation wishes to withdraw from the study then I will be offered the choice between having any data that is identifiable as belonging to me removed or allowing it to continue to be used. However, once the findings have been produced, removal of my data may not be possible.
- I agree for my organisation to take part in this research.
- I confirm I am authorised to provide consent for this organisation to participate in this research
- I wish to receive a summary of the research findings (please tick one): Yes No
- I consent to the data being used in future research (please tick one): Yes No

Organisation :

Representative’s signature:.....

Representative’s name:.....

Representative’s Contact Details (if appropriate):

.....
.....
.....
.....

Date:

Approved by the Auckland University of Technology Ethics Committee on 27 July 2021, AUTEK Reference number 20/392

Note: The Participant should retain a copy of this form.