What the Royal Commission into Australia’s trade unions revealed

# Part Three: The trade unions as insurance brokers

**By Will Fulgenzi—SEP candidate for Wills**
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Since the late 1980s, a new corporate entity has emerged: the trade union insurance company.

As far as the bureaucrats who lead the trade unions are concerned, the pay-offs they receive from employers, in exchange for cutting workers’ conditions, are small change and inadequate compared to the tens of millions they can siphon off from workers’ entitlement monies, which employers are legally required to pay.

The “business model” for these insurance companies is as follows: Behind the workers’ backs, in secret back-room negotiations, the union and employers agree to funnel workers’ entitlement insurance premiums—which cover them or their families for redundancy, illness, injury or death—into funds controlled by the union, either solely or jointly with employer groups.

The union executives and their employer partners invest these funds on financial markets. In many cases, the total amount adds up to hundreds of millions of dollars. While the unions make tens of millions in profit from these investments each year, in at least once case cited in the Royal Commission—the BERT fund—the employees’ insurance payments have been left to depreciate with inflation.

But that is not where this matter ends. Having taken control of the workers’ entitlement money, the unions have a direct material stake in blocking access to it.

If a worker is injured, killed or made redundant, he or she, or their family, must file a claim with the insurance company specified in their employment contract. If the claim is rejected, the worker or their family, receives nothing. These payments are, quite literally, the only thing preventing the worker or their family, from falling into destitution. For the unions’ insurance funds, on the other hand, compensation payouts are “business expenses,” which they want, at all costs, to minimise. In other words, the trade unions now operate as giant insurance brokerage firms, one of the most parasitic and socially-criminal forms of profiteering.

How many workers are aware that their union controls their workers’ compensation payments and determines their claims? The answer is: very few. The Royal Commission report makes clear that these schemes are hidden from union members. And what the report reveals is undoubtedly just a tiny fraction of the true size and extent of these funds. It would require a veritable army of financial investigators many years to trace all the various threads in the nest of investment vehicles that the unions have established.

**The Electrical Trade Union’s “Protect” insurance scheme**

*Citations in this section refer to Chapter 5.3 of the Interim Report of the Royal Commission, which is available here.*

One of the most successful union insurance funds is the Protect Severance Scheme (PSS), which was set up on 19 February 1998, by the Electrical Trade Union (ETU) of Victoria, together with the major industry group, the National Electrical and Communications Association (NECA) (*point 13*). The Commission report states that ETU state secretary, Dean Mighell, whom the Australian pseudo-left organisations hailed as a great “left” and “militant” trade unionist, was “instrumental” in the establishment of the scheme (*point 13*).

While NECA and the ETU control the PSS, they also, together, negotiate the so-called “pattern agreement” for enterprise bargaining agreements throughout the industry. This includes clauses requiring employers to pay money into the PSS (*point 11*).

The trustee of the PSS is ElecNet, a company established by the ETU and NECA. Dean Mighell remains a director of ElecNet and, at the time of the Royal Commission, was the chair of its board. Mighell’s testimony to the Commission, September 5, 2014, is available here.

As of 2013, Protect’s assets totalled $245.8 million. In that year alone, the fund yielded a profit of $11.8 million from its investments and other operating activities (*point 16*). According to ElecNet’s trust deed, the scheme’s income can be used to pay administrative expenses, to make compensation payments to workers, or be withheld by the trust. The ETU is entitled to 75 percent of the money held by the trust (*point* 16).

That is not all, however. The union and NECA have founded yet another company, Protect Services Pty Ltd, which has exactly the same board of directors as ElecNet. Its constitution requires that three board members be selected by the ETU and two by NECA (*point* 18). Dean Mighell remains a director of Protect Services, despite having retired from the ETU in 2013.

The purpose of this company is to provide “administrative” services to the Protect Severance Scheme, for which it receives a fee of $3.30 per week, per employee covered by the scheme (*point* 17). In the financial year ending June 2013, these fees totalled $3.9 million. Again, the ETU is entitled to 75 percent and NECA 25 percent.

On top of these monies, ElecNet and Protect Services pay the ETU and NECA “directors’ fees,” which, for the ETU, totalled $300,000 in 2013 alone (*point* 19).

In addition, the “pattern” agreement between NECA and the ETU contains a clause requiring employers to pay “income protection insurance” to a policy nominated by the ETU (*point* 20). The Commission report notes: “What the clause does not disclose is that the Victorian ETU has separately entered into an exclusive ‘Supply Agreement’ with a company named ATC Insurance Solutions Pty Ltd” (*point* 23). Courtesy of the ETU, ATC Insurance Solutions received $14 million per year in premiums and charges because of this clause (*point* 23).

In exchange for channelling workers' entitlement money to ATC Insurance, ATC provides the ETU with a so-called "management fee," equivalent to around 20 percent of the cost of its insurance product. In 2013 alone, the ETU received $3.7 million from this set-up. The "supply agreement" between the ETU and ATC Insurance "provides that the very existence of the Supply Agreement, and its terms, and any information relating to it, is confidential subject to limited exceptions" (*point* 28).

As for Dean Mighell, upon his retirement from the ETU in March 2013, he was hailed as a working-class hero by the pseudo-left organisations that gravitate around the trade unions. The former leader of the misnamed Socialist Party, Steven Jolly, for example, wrote that Mighell had been "the most successful union leader in recent times," who had "built up the strength of the ETU using traditional class struggle methods."

In the meantime, Mighell had already established his own consultancy firm, "Dean Mighell & Associates." Within two months of retiring, Mighell—who as ETU state secretary had personally signed the agreement with ATC Insurance—signed a one-year contract to provide "consultation" to that very same company. He was paid $100,000 immediately, followed by twelve monthly payments of $15,000 until April 2014, and an end-of-contract "bonus" of $165,000; a cool $445,000 for the year (*point* 29).

Christopher Anderson, CEO of ATC Insurance, testified to the Commission that Mighell's highly-valued "consultancy" role was to "open up doors for [ATC] in other unions and introduce [ATC] to other officials at other trade unions to really promote our income protection program" (*point* 30).

The report makes clear that ETU members are kept in the dark about the fact that their union makes millions of dollars every year from their entitlements. It states that "no meaningful, or no adequate, disclosure of the fact and quantum of commissions earned by the ETU has been made by the Victorian ETU to employees or employers..." (*point* 43).

**The CFMEU's Coverforce Insurance scheme**

*Citations in this section refer to Chapter 7.6 of the Royal Commission interim report, available here.*

Coverforce is an insurance company that was established in 1994. As an insurance broker, it receives amounts that employers deduct from their workers' pay, bundles the money into giant financial packages, and approaches an underwriter to provide insurance. In 2002, the New South Wales state branch of the Construction, Forestry, Mining and Energy Union (CFMEU) reached an agreement with Coverforce, by which Coverforce would pay the CFMEU a dollar amount for each employee covered by Coverforce's U-Plus insurance scheme (*point* 18).

The Royal Commission report states: "Since 2003, the CFMEU NSW has included an income protection insurance clause in its standard enterprise agreement, the effect of which is to provide a very substantial financial benefit to the union. From 2003 to 2009, the financial benefit to the union was over $230,000 per annum. From 2010 to June 2013, the financial benefit to the union was over $680,000 per annum. From July 2013 to May 2015, the financial benefit to the union was approximately $810,000 per annum."

The union agreed to insert into its agreements with employers clauses requiring them to either use the U-Plus insurance schemes, or an insurance policy with "terms, conditions and benefits which are equal [to] or better than the U-Plus product."

In exchange, from 2003 to 2009, Coverforce paid the union $1 per month for every worker signed up to its policies (*point* 19). In 2009, the union's fee increased to $2 per month, per worker, for the first 15,000 workers signed up, and $5 for each worker above that (*point* 34).

The union apparatus, however, became dissatisfied with its position as a mere middleman in the insurance business. As a result, in June 2013, the CFMEU established a new insurance company, jointly with Coverforce, also called U-Plus. The union owns 5,000 shares in the company and Coverforce owns 5,001 (*point* 11). The board includes chief business development officer Andrew Ferguson (a long-serving past CFMEU secretary), Brian Parker (the current secretary), Rita Mallia (president), as well as Stephen Costigan and Jose Barrios, members of the Committee of Management of the CFMEU in New South Wales. The union and Coverforce now simply split, half-half, the profits from U-Plus (*point* 43).

As with the ETU's insurance scheme, workers have no idea about any of this. The Commission report states: "The CFMEU NSW does not routinely, if at all, disclose that financial benefit to employees on whose behalf it acts in enterprise negotiations. The inclusion of the standard clause has created an environment in which there are inherent conflicts of interest between union officials and the workers they represent and a substantial systemic risk of breaches of fiduciary duty" (*point* 3).

A glance at U-Plus's website makes clear that the company has been set up to conceal the fact that it is half owned by the union. The "About us" section states: "Coverforce is one of Australia's largest privately-owned insurance brokers. Our trusted advisors deliver smart business insurance and risk management solutions to a wide variety of Australian businesses across a diverse range of industries including; general manufacturing, construction, retail as well as working with associations and industry groups."

In the section containing biographical details of U-Plus' management team, it provides the following description of long-time CFMEU secretary Andrew Ferguson: "Andrew commenced with Coverforce in November 2011 and brings with him over 30 years construction industry experience at an executive level."

**The BERT funds of the CFMEU (Queensland)**

*Citations in this section refer to Chapter 5.2 of the Interim Report of the Royal Commission, which is available here.*

Far more lucrative, however, is the fund controlled by the CFMEU's Queensland state branch. In 1989, several trade unions in Queensland, covering workers in the construction industry, jointly established BERT Pty Ltd with a local industry group. BERT is now jointly controlled by the CFMEU (four seats on the board), the Communication, Electrical and Plumbing Union (CEPU) (one seat), and the industry group, the Queensland Major Contractors' Association (QMCA) (four seats) (*point* 13).

BERT is the trustee of two employee redundancy funds, called the BERT Fund and BERT Fund No. 2. As the report states: "The income generated from the investment of these funds does not go to the employees, but is instead held by BERT and spent at the direction of the BERT shareholders, including the CFMEU" (*point* 1). As far as the workers are concerned, the report notes, "the value of each member's redundancy account is left to erode over time with the effects of inflation" (*point* 178).

The CFMEU's enterprise bargaining agreements with employers require the latter to make monthly payments to BERT's second fund ( *point* 22). As at June 2013, BERT Fund No. 2 held $14 million in cash and another $88 million in assets (*point* 25). The other fund held some $30 million in assets. BERT Fund No. 2 made a profit of $6.372 million in 2013 alone.

These profits are "distributed" to the unions and employer association, although they are immediately "loaned back" to BERT, and remain on its books in a separate account whose purpose is to hold the money of the unions and QMCA (*point* 27). As at June 2013, BERT owed the unions and QMCA $26.7 million (*point* 28).

The report notes, "It may be inferred from the limited disclosure applying to BERT that participating employees are kept in the dark about the fact that they do not earn any interest on the redundancy moneys held with BERT in trust for them." (*Point* 8)

In 1989, numerous unions and an employer group, the Master Builders Association of Victoria established a public company, Incolink (Volume IV, Chapter 11, *point* 4). Incolink operates redundancy, sick leave and income protection schemes for workers in the construction industry. The unions that are parties to these funds include the CEPU, AWU, Australian Manufacturing Workers Union, AWU and CFMEU. As at June 30, 2015, Incolink managed more than $714 million in assets, of which workers' entitlements made up $577 million (ibid, *point* 3). Its board includes Earl Setches, national secretary of the CEPU; Bill Oliver, past state secretary of the CFMEU in Victoria; Elias Spernovasilis, assistant secretary of the CFMEU of Victoria, Brian Boyd, past secretary of the Victorian Trades Hall Council; and Tommy Watson, former assistant secretary of the Victorian CFMEU (ibid, *point* 4).

**Superannuation funds**

In addition to insurance companies, the trade unions control hundreds of billions of dollars in assets as managers of Australia's superannuation funds.

In 1992, the former Keating Labor government established a national compulsory superannuation scheme. Under the system, employers are obligated to contribute a minimum percentage (currently set at 9.25 percent) of a worker's income toward a superannuation fund, which workers can claim upon retirement.

The purpose of the scheme is to minimise government responsibility for funding aged pensions, and to place it increasingly on the backs of workers themselves. Since the introduction of superannuation, successive Liberal and Labor governments have systematically attacked aged pension entitlements, creating an ever-escalating social crisis for many retirees. A recent report by the OECD, entitled "Pensions at a glance 2015," revealed that 36 percent of pensioners now live below the poverty line.

The superannuation scheme was a key component of the "Accords" reached by the Hawke-Keating Labor government with business and the trade unions in the 1980s and early 1990s. These were part of Labor's "restructuring" of Australian capitalism, aimed at boosting "international competitiveness" through the suppression of wages and the destruction of hundreds of thousands of jobs in "uncompetitive" manufacturing industries.

The trade unions fully supported the Keating government's agenda because they stood to benefit handsomely from it. Union bureaucrats were brought in to manage what became gigantic investment funds, providing the union apparatus with millions of dollars in "fees" each year. Today they control 50 percent of seats on the boards of so-called "Industry Super Funds," alongside major industry groups.

These Super Funds have become multi-billion dollar investment vehicles, capable of competing on global financial markets with major hedge funds. "Super" assets in Australia now total nearly $2 trillion, roughly a quarter of the entire Australian financial sector. As of 2013, Industry Super Funds, jointly controlled by the unions, held roughly one fifth of these assets, or more than $300 billion.

Last year the superannuation funds charged their members $17 billion in fees. While figures are hard to come by, it would be reasonable to assume that at least some of this staggering amount finds its way to the trade union apparatus.

*To be continued*

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*Authorised by James Cogan, Shop 6, 212 South Terrace, Bankstown Plaza, Bankstown, NSW 2200.*