



3 November 2017

Mr S Palethorpe
Secretary
Senate Education and Employment Committee
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Parliament House
CANBERRA ACT 2600

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Protect Severance Scheme No. 2
Pty Ltd atf Protect Severance
Scheme No. 2 trading as Protect

Sent via email: eec.sen@aph.gov.au

Dear Mr Palethorpe

**QUESTIONS ON NOTICE TO REPRESENTATIVES OF PROTECT BY INQUIRY INTO THE FAIR WORK
LAWS AMENDMENT (PROPER USE OF WORKERS FUNDS_ BILL 2017**

Please refer to our responses to questions taken on notice below:

**Q: —[What is] the criteria that you use to assess that confidence that you're giving us around this
[insurance policy] being a good deal.**

A: Protect's role is one of an agency. The underlying insurance policy is negotiated between the ETU and the insurer, ATC Insurance Solutions (ATC). Our role encompasses receiving and processing payments and remitting those proceeds to the insurer, for an administration fee. Protect field staff visit employers and workers to inform them of the details of the policy, often while an EBA is being negotiated and also shortly after joining to ensure the administration, payment and claiming processes are understood. Therefore the criteria relating to the choice of the insurer is determined by the ETU.

Administration relating to insurance claims, including phone calls from members is handled directly by ATC, not by Protect staff.

Income protection for Protect was first introduced in 2007 and this was after the electrical union went out to the market to find the best cover for electrical workers and that any such income protection would be negotiated during the new enterprise agreements and if supported by the majority of workers covered by the agreement it would become a condition of employment under that agreement.

The product is branded as Protect. This allows for the same reference to be made in EBAs and in communications materials while providing some flexibility to change the insurer.

While we are not party to the insurance policy, nor the EBAs nominating it, as it is Protect-branded it is in our interests to ensure to the policy is the best available and that it suits the different needs of our membership in electrical, metals and maritime industries. A sub-standard or unfair policy has potential to impact our reputation.

In conducting our role in educating existing and potential members, we are regularly asked to demonstrate why 'our' policy is better than those provided by others, namely Incolink in Victoria and cover provided via various superannuation funds. Effectively, field staff are 'surveying' existing and potential customers on a daily basis to understand their needs and respond to questions. Key criteria used in explaining the policy include:

- Amount of the 'per week' claim payments for income protection
- Restrictions on claiming such as length of waiting period and whether sick leave needs to be exhausted first
- Ability to tailor solutions according to the industry (eg broken bones coverage has more relevance to metal workers than electrical workers).
- Exclusions and Limitations or absence thereof eg ability to claim for non work related injury.
- Breadth of injury protection cover; extent of injury cover
- Claims management / customer service capability

Since the introduction of the original cover, other aspects that are monitored in relation to the insurance provider's performance are:

- 1: The claims acceptance rate for claims - to make sure workers are getting access to income protection when needed.
- 2: Industry experience and knowledge
- 3: Response times on claims

Protect regularly contacts members to get feedback on the cover to make sure they are happy with the cover and the service they receive. We also receive regular feedback from staff in relation to the cover. We meet with both the sponsoring unions and the insurer on a regular basis to offer and give feedback to make sure the cover stays at a high level. We continue to do comparisons on the cover through Protect against other similar covers in other industries, including superannuation income protection cover

The Board also reviews and considers the cost of the administration relative to the fee income although the cost of Protect's administration would be largely indifferent between insurers.

Q: - What payments were made to the sponsors of Protect (NECA Vic and ETU Vic) over the last 5 year period

A: Senator McKenzie quoted figures from the report of the Royal Commission into Trade Union Corruption. We are not privy to the basis of the numbers quoted, but have provided details of payments made over the 5 years from the year ended 30 June 2012 to 30 June 2016.

Note that payments in relation to insurance commissions to the ETU are made by Protect on behalf of the insurer for which we receive a small administration fee. The figures provided have been subject to annual audit by our external auditors. Refer Attachment 1 and 2.

Additional Questions from Senator McKenzie, requested after the hearing.

What arrangements and/or policies does your organisation have regarding conflicts of interest?

- The attached "*Conflict of Interest Policy and Procedure*" has been in place since 2012. (refer Attachment 3)
- Each Board and Committee meeting has a standing agenda item for any declarations to be made.
- Any declarations are included in the minutes of each meeting.
- A register of declarations made over the previous 12 months is tabled at each Board and Committee meeting
- Minutes are annotated to show when directors absent themselves from a meeting in accordance with the policy.
- At the Board's annual planning retreat on 21 April 2016, an independent consultant provided the Board with a presentation entitled "Conflict of Interest and Privacy Policy Training."

In the past 5 years how many times has a director raised a conflict of interest, or has an issue of conflict of interest been dealt with in the minutes of board meetings?

- From October 2012, there were 22 unique declarations made, on average 4.4 per year.
- Including declarations that were repeated in several meetings, there were 41 declarations.
- This is from a base of 118 Board and Committee, meetings over this timeframe.

What is the consequence of a breach of your organisation's arrangements and/or policies regarding conflicts of interest? In the past 5 years has this ever occurred and if so on how many occasions

- Consequences are covered on the last page of the Policy document.
- There have not been breaches of this policy and therefore it has not been necessary to rely on the above consequences.

Please contact us if any further information is required.

Yours sincerely


Michael Conolly
CEO

Senate enquiry into FWA Amendment (Proper Use of Workers Funds) 2017

PAYMENTS FROM PROTECT FUND INCOME TO ETU VIC and NECA VIC

	30-Jun-12	30-Jun-13	30-Jun-14	30-Jun-15	30-Jun-16
Directors fees	- refer Note 3				
NECA	172,727	172,727	145,451	146,179	154,182
ETU	259,091	259,091	154,921	146,179	154,182
	431,818	431,818	300,372	292,358	308,364
Capitalised income distributions (not members funds)	- refer Note 4				
NECA				323,750	525,000
ETU				971,250	1,575,000
	-	-	-	1,295,000	2,100,000
Total payments from current and prior years investment income to Sponsors					
NECA	172,727	172,727	145,451	469,929	679,182
ETU	259,091	259,091	154,921	1,117,429	1,729,182
	431,818	431,818	300,372	1,587,358	2,408,364

Notes/Further comments:

- NECA refers to National Electrical Contractors Association Victorian Chapter
ETU refers to Electrical Trades Union - Victorian Branch
- Information provided is for 5 years from 1 July 2011 to 30 June 2016 and based on audited financial statements.
FY17 audit is yet to be finalised
- Directors fees are the same for NECA and ETU nominated Directors
ETU has 3 appointed Directors and NECA has 2 Directors
Figures exclude GST
All sponsor nominated directors fees are paid to their organisation rather than the individual except for Dean Mighell who received fees directly after he left the ETU from Aug 2013
Current industry fees are \$77,091 per annum per
- ETU & NECA - 75%/25% respectively entitlement to the capitalised income per trust deed
Note that this is not a distribution of members contributions but prior years income from investments after admin costs, tax and a after maintaining a 10% of members funds contingency in place to protect against investment fluctuations

QUESTION ON NOTICE FOR SENATOR BRIDGET MCKENZIE

Senate enquiry into FWA Amendment (Proper Use of Workers Funds) 2017

INCOME PROTECTION COMMISSIONS COLLECTED BY PROTECT FROM EMPLOYERS ON
BEHALF OF THE ETU AND ATC INSURANCE SOLUTIONS

	30-Jun-12	30-Jun-13	30-Jun-14	30-Jun-15	30-Jun-16
Commissions paid to ETU Victoria	3,338,869	3,353,973	3,277,830	3,044,865	2,549,878

Notes/Further comments:

Protect is merely a collection agent for a policy between ETU Victoria and ATC Insurance Solutions (current insurer).

The policy conditions and prices are negotiated by the ETU.

Protect collects a small administration fee of \$1.65 per week on some premiums for facilitating collection

Insurance cover can be extended by employers to cover all of their staff and Directors and not just those covered by an EBA.

Conflict of Interest Policy and Procedure

ElecNet (Aust) Pty Ltd (ACN: 080 344 458),
 Protect Services Pty Ltd (ACN: 151 240 198); and
 Protect Severance Scheme No. 2 Pty Ltd (ACN: 606 361 853) ('The Group')
 Commercial-in-Confidence
 December, 2012

Version	Proponent	Drafted By	Board Approval Date	Review Date
V1.0			16.01.2013	16.01.2015
V2.0			28.10.2015	28.10.2017

Introduction

The Group and its Boards, Directors and officers are obliged to meet both statutory and common law obligations with respect to avoiding conflicts of interest and disclosing and managing conflicts when they arise.

The Group comprises three companies – ElecNet (Aust.) Pty Ltd ("ElecNet"), the trustee of the Protect Severance Scheme ("Protect Scheme"), Protect Severance Scheme No. 2 Pty Ltd as trustee for Protect Severance Scheme No. 2 ("PSS2") and Protect Services Pty Ltd ("Protect Services"), a service and administration company providing services to the Protect Group and the Protect Scheme.

In accordance with the Constitutions, both ElecNet, PSS2 and Protect Services have Directors appointed by Sponsors (ETU and NECA) in the following proportions:

- 3 ETU
- 2 NECA
- 1 Independent

The same Directors serve on the Boards of ElecNet, PSS2 and Protect Services.

Conflicts of interest may arise between:

- a) ElecNet, PSS2 and Protect Services by the service relationship
- b) ElecNet, PSS2 and the Protect Scheme, its members, workers or beneficiaries
- c) ElecNet and/or PSS2 and/or Protect Services and a Sponsor
- d) Sponsor-appointed Directors and ElecNet and/or PSS2 and/or Protect Services
- e) Independent Director and ElecNet and/or PSS2 and/or Protect Services

- f) The Chief Executive Officer (“CEO”) and or officers of The Group and ElecNet and/or PSS2 and/or Protect Services.

General Law obligations

ElecNet and PSS2 as trustees are fiduciary and therefore obliged, under the general law, to always:

- a) act in the best interests of the members, workers and beneficiaries of the Protect Scheme;
- b) act impartially between the members and beneficiaries of the Protect Scheme in accordance with the Trust Deed; and
- c) act honestly and in good faith.

The Constitutions for ElecNet, PSS and Protect Services also set out requirements for Directors to disclose any conflicts of interest prior to the Boards making any decisions where a conflict may arise.

The Corporations Act also sets out requirements for Directors. All Directors owe a fiduciary obligation to the company – to act honestly, in good faith and to the best of his or her ability, in the interests of the company. Directors must not use their position, or information obtained by them in their position, for improper purposes or to cause detriment to the company. Sponsor-appointed Directors are not exempt from these duties and must exercise vigilance in identifying situations or matters that may give rise to a conflict of interest between the company and the Sponsor.

Purpose of policy

This policy sets out The Group’s policy and process for:

- identifying actual and potential conflicts of interest
- assessing and evaluating those conflicts; and
- deciding upon, and implementing, its response to those conflicts

The effective management of conflicts of interest is the responsibility of all Directors, the CEO and officers of The Group.

This policy addresses The Group’s procedures for addressing any actual and potential conflicts of interest that may arise for:

- ElecNet, PSS2 or Protect Services
- Directors (including the Chairman)

- ElecNet as trustee of the Protect Scheme and PSS2 as trustee of the Protect Severance Scheme No. 2
- CEO and Company Secretary; and
- officers.

In the case of a conflict involving the Protect Scheme and PSS2, the interests of members, workers and beneficiaries must always take precedence over those of the Trustee, the Chairman, Directors, the CEO and Company Secretary and officers.

This policy is intended to prevent:

- a) conflicts of interest from damaging the integrity and effectiveness of The Group; and
- b) any appearance or suggestion of the above.

Identifying Conflicts of Interest

A “Conflict of Interest” is taken to be a conflict between:

For ElecNet, PSS2 and Protect Services – the interests of one company over another (where the same individual directors are the decision makers for both entities)

- a) **For directors** - an individual director’s duties in relation to ElecNet, PSS2 or Protect Services, and his or her personal interests or duties to other parties (e.g. the appointing Sponsor or related parties);
- b) **For ElecNet and PSS2 as Trustee** - the interests of the Trustee and those of the members, workers and beneficiaries of the Protect Scheme; or
- c) **For the CEO and Company Secretary and officers** – the individual’s duties of good faith to The Group and his or her personal interests or the interests of related parties.

In some cases, conflicts may arise between different classes or types of Protect Scheme and PSS2 members, workers or beneficiaries. This policy requires that all members, workers and beneficiaries be treated equitably in accordance with the Trust Deed.

Examples of situations where conflicts of interest may arise include:

- Setting or changing investment strategies that may benefit certain financial products over others or certain service providers.
- Interests in contracts awarded by the Boards including contracts awarded by ElecNet and PSS2 to Protect Services and contracts that may be awarded to parties related to individual directors or to any Sponsor.
- Investment decisions, including the appointment of investment managers or other financial product providers.

- Acceptance of gifts, meals, entertainment and/or travel from service providers or potential service providers.
- Acceptance of commission payments¹ or other rebates from service providers such as insurers and investment managers.
- Financial reports for ElecNet, PPS2 or the Protect Scheme which may include information of interest to Sponsors.
- Information collected and held by ElecNet and/or PPS2 for the Protect Scheme in relation to members, workers and beneficiaries which may be of interest to Sponsors and service providers such as insurers.

Conflicts are not limited to financial matters. Care must be taken to protect confidential information.

The Boards, Directors, the CEO and Company Secretary and officers (together the “officeholders”) should exercise due care and diligence in identifying any potential or actual conflict of interests that may arise promptly.

Disclosure, recording and monitoring of conflicts

This policy requires any potential or actual conflict of interest identified to be disclosed by notification to the CEO and Company Secretary, who also acts as the Compliance Officer. Directors have a personal statutory duty to disclose conflicts of interest.

An officeholder must notify the Compliance Officer (or the Chairman if the office holder is the CEO) as soon as he or she becomes aware of any actual or potential conflict of interest. If there is doubt whether a conflict of interest exists, it should be disclosed.

Wherever possible, disclosure should be made in writing and as soon as possible after the conflict is recognised. Disclosure must include details of the nature and extent of conflict and the potential impact on the affairs of The Group or the Protect Scheme and PPS2.

If an officeholder believes that another officeholder or a company in The Group has or may have a conflict of interest which has not been notified, the officeholder must bring the matter to the attention of the Compliance Officer or, if the matter may involve the Compliance Officer, to the Chairman.

Disclosure should be made in writing as soon as possible after the conflict is recognised and prior to the next scheduled Board meeting. A conflicts of interest register is maintained by the Compliance Officer for The Group. The register will record details of all potential or actual conflicts of interest notified including a summary of the action taken to manage them. The

¹ Any commission payments received by The Group must be disclosed to relevant stakeholders. It is an offence under the Crimes Act 1958 (Vic) to receive or solicit a secret commission.

conflicts of interest register will be tabled at each scheduled Board meeting as a standing agenda item.

Each office holder must declare in a periodic declaration either that he or she has not had any conflicts of interest in the previous reporting period, or that all conflicts have been disclosed in line with these procedures. Directors are asked to declare if they have any conflicts of interest in relation to any matters on the agenda at the start of each Board meeting.

Managing Conflicts of Interest

Conflicts of interest notified to the Compliance Officer are assessed and a decision is made on how the conflict is to be managed.

For conflicts of interests involving:

- ElecNet, PPS2, Protect Services, the Boards or individual Directors – the CEO will propose a management plan for approval by the Board,
- the CEO – the Chairman will determine the management plan and advise the Board; and
- an officer or employee – the CEO will determine the management plan and whether it should be referred to the Board for endorsement.

The alternatives for managing conflicts are:

- controlling the conflict of interest (The Group may set guidelines in relation to materiality or personal authorisation to act),
- requiring disclosure of the conflict of interest (to the Boards, the Protect Scheme and PPS2 members or beneficiaries, or to Sponsors generally, as appropriate);
- avoiding the conflict of interest altogether by refraining from or not proceeding with the proposed activity; and
- if the conflict arises for an individual, allocating another person to provide the service or conduct the activity.

It is open to the Compliance Officer or the Boards to require legal advice to be obtained to assist in determining the most appropriate course of action to be taken in relation to a conflict.

If a conflict of interest has been notified or declared in relation to a Director, the Director is to absent him or herself from any consideration by the Boards of whether a conflict exists and the extent of the conflict and to abstain from voting on this issue. A Director must abstain from voting on any matters where there is a conflict of interest and must absent him or herself from the Boards discussions of the matter, unless the Boards determines that the conflict (or potential conflict) is not material and should not prevent the Director from voting or participating in discussions.

An office holder will not be deemed to have a conflict of interest solely because of being a member of the Protect Scheme or PPS2, making member contributions, receiving standard employer contributions as a member of the Protect Scheme or PPS2, or receiving standard, non-discretionary benefits as a member of the Protect Scheme or PPS2.

Acceptance of Gifts

Officeholders must not accept any significant gifts or financial benefits from third parties without prior consent of the Boards. Officeholders may accept reasonable offers of meals, travel, inexpensive gifts or entertainment from third parties (e.g. current or potential service providers) about matters relevant to ElecNet's role as trustee of the Protect Scheme and PPS2 as trustee for Protect Severance Scheme No. 2 without prior consent of the Boards. The Boards will set the allowable thresholds from time to time in accordance with general industry standards. These will be communicated to all affected persons.

Prior consent of the Boards will be required before accepting any such offers from a third party currently participating in a tender to provide services to the trustees or Schemes. If such offers made by a third party have a significant value, they must be advised to the Boards at, or preferably prior to, the next meeting.

Public Disclosure of Conflicts of Interest

Where public disclosure of a conflict of interest is required, this will be made, where possible, in the annual report to members.

If this is not practicable (for example, if the conflict arises with only a limited number of Scheme members or if the timing of these documents would result in an unreasonable delay in disclosure), the disclosure will be made in writing, where possible, to the individuals concerned.

Extracts of the conflicts of interest register may be made available to members where the Boards has approved the disclosure.

Breach of the Conflict of Interest Policy

If a conflict of interest is not resolved in accordance with this policy, it is a breach. Failure to disclose a personal conflict of interest is considered a serious disciplinary matter and corrective action will be determined by the Boards. A failure by the Boards to address a material conflict of interest may be reported to the sponsors and external auditor.