

# Submission

to

Senate Employment, Workplace Relations and Education  
References Committee

## Building and Construction Industry Inquiry

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# The Building & Construction Industry Improvement Bill 2003



Senate Reference Committee – Melbourne 19-21 May 2004

## WITNESS STATEMENT OF DEAN MIGHELL

- 1, **DEAN JONATHAN MIGHELL** of 516-520 Swanston Street, Carlton South in the State of Victoria states as follows:

### Introduction

1. I am the Secretary of the Southern States Branch ("the Branch" or "the ETU1) of the Electrical Division ("the Division") of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ("the CEPU). I am also the National Vice President of the Division. I have held my position of Secretary of the Branch since September of 1995 and have been the Vice President of the Division since August 2002. I make this statement in my capacity as the Secretary of the Branch.
2. I give evidence voluntarily before this Senate Enquiry because I see it as a great opportunity to highlight the unjust manner in which the Cole Royal Commission was conducted and resultant finding which are flawed, unfair and un-workable. My experience during the Cole Royal Commission convinced me that the establishment of the Commission was a political exercise designed to facilitate yet a further attack by the Howard government on the wages and conditions of union members and the capacity of unions to effectively represent their members.

## **ETU – Southern States Branch**

3. The CEPU is an organisation registered under the *Workplace Relations Act 1996* (the Act). The CEPU was formed as a result of the amalgamation of a number of unions including the Electrical Trade Union of Australia which is a direct predecessor of the Division. The term ETU is still commonly used to refer to the Division and branches within the Division.
4. Under the Rules of the CEPU (the Rules) the members of the Division in each State constitute the Divisional Branch for that State. Thus ETU members in Victoria and Tasmania are members of the Branch.
5. Divisional Branches are governed by a Divisional Branch Conference a Divisional State Council ("State Council") and a Divisional Branch Executive. The Branch Conference has the power to recommend rule changes and to formulate Divisional Branch policy. Subject to the powers reserved to the Divisional Branch Conference, the State Council is vested with the power to govern the Branch. State Council meets regularly. Between meetings of State Council the management of the Branch is dealt with by the Branch Executive comprised of the Branch Secretary, the Branch President and seven members of State Council.
6. Members of Branch Conference and State Council of the Branch are each elected by the members of the Branch and serve four year terms. Members of the Executive are elected from State Council other than the Secretary and President who are directly elected by the members. These elections are conducted in accordance with the Rules under the supervision of the Australian Electoral Commission.

7. The ETU has eligibility to enrol and represent workers in electrical, communication and related occupations. ETU members work in the Electrical and Communications Contracting Industry. That industry provides electrical and communication contracting services to the full range of industry sectors including the Building and Construction Industry.
8. In my view the Branch is managed well and runs efficiently. Since my leadership group took over the running of the Branch in September of 1995 there have been significant increases in the services provided by the Branch to its members. These include but are not limited to a dedicated full-time Occupational Health and Safety Officer; a dedicated full-time Workers' Compensation and Rehabilitation Support Officer; a full time Officer dedicated to Apprentices, the provision of full ambulance cover to members and their families; the provision of funeral benefits to members; and the employment of a full-time industrial/legal officer.
9. Representation given to members is of a high standard. The Branch has 15 full-time organisers as well as a full-time secretary and assistant secretary. A number of administrative employees are also employed. The major service provided to members is the negotiation of terms and conditions of employment through the making of certified agreements. Much of the union's resources are put to that task and to the task of maintaining those agreements and ensuring that they are observed. In this regard in the Electrical and Communications Contracting Industry alone the Branch negotiated with employers and continues to maintain approximately 900 current certified agreements.
10. Another very important area in the ETU's provision of services is our efforts to address occupational health and safety. The leadership of the ETU is completely committed to ensuring that the occupational health and safety concerns of our

membership are properly and expediently dealt with. There can be no greater role for a trade union than to protect the health and welfare of its membership. Accordingly, the Branch spends a huge amount of time and resources dealing with health and safety issues. Working with electricity presents unique and varied hazards which unfortunately at times turn into accidents where workers are seriously injured or killed. Additionally, working on a construction site involves a myriad of potential hazards particularly when occupational health and safety matters are not given priority. Unfortunately there are many employers, including in the Building and Construction Industry, who do not take their obligations about health and safety seriously. These employers, amongst other failings, invest little in training of their management and their workforce.

11. I believe the ETU has done more than any other organisation to improve electrical safety in the Victorian Building and Construction Industry. We have established Occupational Health and Safety training for construction wiring on building sites in accordance with Australian Standards, where this unique and necessary training never before existed. This was done with the support of the Office of the Chief Electrical Inspector and WorkCover, now Worksafe. The training provided has greatly improved electrical installation safety standards on Victorian construction sites. On a daily basis the ETU works co-operatively with other unions in the industry, employers and employees to try and improve health and safety for workers. My colleagues and I have personally witnessed far too many workers seriously injured or killed in the Victorian Building and Construction Industry and accordingly we remain totally committed to improving health and safety issues.
12. To my knowledge no electrical and communication contractors who employ members of the union and provide services to the Building and Construction Industry do so exclusively to that industry. The extent of involvement of electrical and

communication contractors in the Building and Construction Industry is diverse. For some, work in the Building and Construction industry may constitute 50% of their operations. However the businesses of the vast majority of electrical and communication contractors would have only a minor involvement in providing electrical and communication services to the Building and Construction Industry. These businesses are in the main involved in installation and maintenance work in established buildings, factories and other premises.

13. In Victoria there are approximately 7,500 registered electrical and communication contractors. These range from large companies to self employed individuals.
14. The ETU has been successful in recruiting members in most areas of its potential coverage. A difficult area for the ETU to organise is the domestic and small installation sector of the electrical and communications contracting industry ('the domestic sector'). That sector is dominated by small, sometimes self-employed electrical and communication contractors and sub-contractors who provide services to domestic dwellings both new and existing. The domestic sector is largely unregulated by industrial awards or agreements and terms and conditions of employment are far inferior to those of the rest of the Electrical and Communications Contracting Industry. The sector suffers from abysmal health and safety practices. It is rife with non-payment and late payment of the wages or fees charged by employees or self-employed electrical and communication contractors. Phoenix companies are also a major concern. I later deal with the security of payments problem.
15. The exploitation faced by employees and self-employed contractors in the domestic sector is, in my view, a direct result of the fact that these workers are not collectivised and accordingly wield little or no bargaining power. The union is currently working on

a program to provide more effective representation in this sector. We have successfully lobbied the Victorian Government to introduce Security of Payment Legislation to protect self employed and small contractors.

16. In my experience, the ETU has good relations with the majority of employers we deal with in the Electrical and Communications Contracting Industry. A significant number of those employers are members of the only employer association in the industry in Victoria - the National Electrical and Communications Association - Victorian Chapter ("NECA"). To my knowledge NECA claims about 1,200 members who are electrical and communication contractors. NECA purports to be the voice of electrical and communication contractors and to a large extent it is a legitimate voice. Its membership is disappointing but nevertheless significant. In many respects the ETU can claim a greater legitimacy in the role of representing registered electrical and communication contractors. Some 3,000 of our members are registered electrical and communication contractors.
  
17. On most matters of industry importance such as trade issues, licensing, occupational health and safety and apprenticeships, the ETU has experienced a traditionally good working relationship with NECA. The relationship has largely been one of mutual respect and co-operation. Both parties work together to advance the interests of our industry. Most industrial relations issues are resolved between NECA and the ETU without industrial disputation. This relationship has soured somewhat in recent years due to the constant breaches of enterprise agreements by some of NECA's members and NECA's apparent unwillingness to insist that its members observe their industrial obligations in the same way NECA expects the ETU to insist that its members do so.

## **Electrical Contracting Industry Disputes Board**

18. The ETU is not a party to the VBIA and the Victorian Building Industry Disputes Board which is established by that agreement but rather, has established our own Disputes Board in conjunction with NECA. There is a disputes procedure in ETU negotiated EBAs which confirms and establishes the role a Communications Industry Disputes Board. This Board is convened by NECA and the ETU. It is chaired by Bob Merriman, a former AIRC Commissioner. It is only rarely convened which reflects the minimal disputation in the industry. It is quick and cost effective. Its decisions are always observed by all parties.

## **Collective Bargaining**

19. Prior to engaging in a round of bargaining with employers, the ETU calls mass meetings of its members who work in the electrical and communication contracting industry. Through these meetings members are consulted and issues for enterprise agreements are thoroughly debated with the members ensuring that all workers in the industry have the ability to have input into the enterprise agreement process. As well as formal meetings, organisers are instructed to meet with employees and collect their views about forthcoming negotiations. This informal process usually starts 12 months before negotiations begin. In this process, the ETU finds that the needs and concerns of our members are largely common, despite the fact that the ETU's members are employed across thousands of individual enterprises.

In the latest round of bargaining in the Electrical and Communications Contracting Industry, the ETU wrote to every registered electrical contractor in the State of



Victoria (in excess of 7,000) establishing a bargaining period in accordance with the Act. Every employer was invited to negotiate an enterprise agreement with the ETU and was also informed that the ETU and NECA were involved in negotiating the terms of an agreement acceptable to both organisations. There were no employers that indicated that they wished to negotiate a separate agreement and all wished to either be a party to the outcome of the NECA/ETU negotiations or simply did not respond. Some employers sought briefings with us and individual negotiations on matters not covered by the Enterprise Agreement.

20. Prior to entering upon negotiations with the ETU, it is my understanding that NECA seeks the views of their membership and, as we do, conducts negotiations with the ETU on the basis of the needs and concerns communicated to NECA by its membership.

21. As a result of many negotiations both with NECA and also with individual employers, it is clear to me that the needs and concerns of employers in the Electrical and Communications Contracting Industry in relation to the terms and conditions of employment of their employees are by and large common. This is not surprising. Whilst the size of electrical and communication contracting businesses may vary, all electrical and communication contractors work in the same or similar environment and are effected by the same or similar business imperatives. Where difference exists they usually occur at the margins. The ETU is more than happy to accommodate the peculiar needs of any individual employer so long as those needs are reasonable and the interests of the ETU's membership are also taken into account. The ETU has made it well known to employers and to NECA that it is willing to include in enterprise agreements matters peculiar to the needs of the employer concerned. In the ETU's experience however that opportunity is rarely taken up. Of the approximate 1200 employers with certified agreements in the last round of

bargaining, I am aware of only two employers who sought to have enterprise specific: claims negotiated in their agreements. On both occasions the ETU agreed to incorporate the employers' claims.

22. That occurred despite the fact that in the last round of bargaining the ETU has made 785 of the approximate 1200 certified agreements directly with the employer concerned whilst only 400 certified agreements were made through the collective negotiation which took place between the ETU and NECA.
23. The ETU conducts negotiations for certified agreements in good faith taking into account the needs of our members together with the legitimate concerns and expectations of employers. Those negotiations take place in the context of collective bargaining which, in my experience, provides employees in collectivised workplaces the capacity to address the vast inequality in bargaining strength which normally exists between an employer and an individual employee. That inequality of bargaining strength is responsible for the exploitation of employees in the domestic sector of the industry, to which I have already referred.
24. Outside of the domestic sector and as a result of the fact that most employees are unionised, negotiations for enterprise agreements are conducted on the basis that there is a greater equality of bargaining power as between employers and employees. Bargaining therefore proceeds in circumstances where both sides have mutual respect for the capacity of the other to support their claims through the taking of protected industrial action and in the case of employers by other means including for example a threat to reduce the number of employees employed unless particular concessions are made.

25. In my experience, negotiations for certified agreements in the Electrical and Communication Contracting Industry are not dominated by one side or the other. Compromises are made by both sides. The ETU never gets all it wants and neither does NECA or individual employers, Accordingly, the agreement reached will impose obligations upon and provide entitlements to both the employees and their employer. Current enterprise agreements contain a wide range of provisions which address flexibility, productivity and efficiency.
  
26. Every agreement negotiated with an employer is then subjected to the vote of the employees working in that enterprise. It is a requirement of the Act that each worker is provided with access to the proposed certified agreement and is given 14 days to consider the agreement prior to voting upon it. A majority of employees must vote in support of the agreement before it can be certified. From my experience of meetings I have conducted and from reports of organisers, my understanding is that the agreements have overwhelming support and mostly are approved unanimously.
  
27. It is my practice to insist that prior to the conduct of any vote the ETU's organiser or Enterprise Agreement Officer, conduct a meeting with the employees (both members and non-members) of the company concerned. I believe this is imperative for a number of reasons including that a full opportunity is given for employees to discuss with the ETU the proposed agreement. In this way the ETU provides employees with a full opportunity to participate in the process and ensure that their needs and concerns are addressed in the best way possible. Additionally, the proposed agreement is explained so that workers fully understand the obligations, responsibilities and entitlements of all concerned. In every instance, before signing off on a enterprise agreement, I require the relevant union official to complete a proforma sheet verifying that such a meeting has occurred and that the majority of workers voted in favour of the agreement proposed.

28. The negotiation process utilised in the Electrical and Communications Contracting Industry has a range of advantages and is well suited to the needs of the industry. It has proved to be an effective way of establishing common and consistent and very worthwhile industry standards across the commercial sector of the industry. A number of examples can be pointed to by reference to the terms of the current round of enterprise agreements. For instance, and by reference to the current Industry Pattern Agreement, clause 9 reflects a standard provision for training of employees and clause 14 deals with apprentices and trainees. It is crucial that industry wide standards be established and improved in relation to training and apprenticeships. There is a shortage of skilled employees and significant shortage of apprentices in the Electrical Contracting Industry. There is an urgent need for more training to improve the skills and productivity of the workforce. These problems are well demonstrated by a study commissioned by the ETU and NECA called "Apprentice and Ongoing Training Needs in the Electrical and Associated Industries". The study was conducted by the Workplace Studies Centre and Victoria University Access Training and Employment Centre. The study verified the existence of a shortage of skills in the Victorian Electrical and Associated Industries. A major contributor to the shortage has been the decline in apprenticeship training. A trend which is peculiar to Victoria and largely caused by the privatisation of public sector employment. The lack of a training culture was in the self-employed and labour hire sectors of the industry was found to be a significant contributor to the skills shortage. The benefit of group training schemes such as those supported by the ETU was acknowledged. A copy of the report is **Annexure 1**.
29. Training carries with it costs that an employer must bear. In a highly competitive industry such as the Electrical and Communications Contracting Industry a short

sighted approach to training and to apprenticeships is encouraged unless a standard is set which employers must comply with. In that way employers compete on a level playing field without compromising the need for training and the industry's need to ensure its survival by encouraging apprentices. The same point can be made in relation to occupational health and safety, the encouragement of women in the industry, the provision of superannuation, severance pay and a wide range of other entitlements or obligations which should be governed by a standard common to the whole of the industry.

30. Electrical and communications contractors should legitimately compete with each other for work. They should do so on the basis of their capacity to manage, the skills and training of their employees, the efficiency with which they organise their businesses, innovation and a wide- range of other factors. Electrical and communication contractors should not be encouraged to compete on the back of their responsibility to provide occupational health and safety, training, apprenticeships and decent terms and conditions of employment for their employees. In the ETU's experience employers who compete on the basis of undercutting legitimate industry standards are a destructive force in the industry.

In the context of a highly competitive industry, their presence only serves to undermine the commitment of decent employers to the provision of fair and equitable industry standards. Our experience is that electrical and communication contractors who embrace good management practices including respect for their employees and for industry standards run successful and profitable businesses.

31. In the ETU's experience, the vast majority of employers in the Victorian Electrical and Communication Contracting Industry recognise the benefit of industry standards and accordingly prefer and support the process utilised in the industry for the negotiation

of certified agreements. I have spoken to hundreds of different employers both big and small. No one has ever indicated to me their opposition to our bargaining process. Overwhelmingly they support it as does NECA. A number of members of NECA's governing Council in Victoria have personally made their support known to me. Philip Green, the CEO of NECA has informed me of a recent survey of NECA members which showed that NECA members overwhelmingly preferred a paid rates award to regulate terms and conditions of employment. Their second preference was for "pattern bargaining", with little or no support for enterprise only bargaining.

32. The other major advantages of the bargaining process utilised in our industry is that it serves to minimise the need for and frequency with which protected industrial action might be taken. A co-ordinated and collective approach to the negotiations of enterprise agreements provides a mechanism by which the tri-annual enterprise bargaining rounds are dealt with and completed quickly and efficiently. This serves to bring certainty and stability to the industry with minimal industrial disruption. A piecemeal employer by employer approach to industrial negotiations is nothing less than a recipe for industrial chaos. To my knowledge no legitimate industry voice has ever suggested that the industry would be better served by that approach.

33. It should be recognised as well that apart from the potential cost of industrial action, industrial negotiations can be a costly burden upon both employers and the ETU. An industry or sector wide approach to bargaining provides a cost effective way for both employers and the ETU to engage in negotiations. The ETU simply does not have the resources to enable it to negotiate clause by clause with each employer willing to engage in negotiations. The vast majority of employers do not have the in-house expertise and do not want to expend substantial resources on lawyers or industrial consultants for the purpose of negotiations. That expertise is provided by NECA. In many cases directly because they are members of NECA and thus are represented in

the negotiations between NECA and the ETU. In other cases this occurs indirectly because employers who are not members of NECA are aware that the proposed certified agreement put to them by the ETU has been the subject of negotiations with NECA and thus the legitimate interests of employers have been addressed.

34. Before enterprise bargaining became a feature of industrial relations in the Electrical and Communications Contracting Industry, terms and conditions of employment of employees in the unionised sector of the industry were set by the Australian Industrial Relations Commission and its predecessors. This was done through what were known as paid rates awards. Paid rates awards set the actual terms and conditions of employment as opposed to minimum rates awards. In relation to paid rates awards industrial parties were required to give a commitment that no over award terms or conditions of employment would be negotiated and that the terms set by the award would be maintained as the actual rates and conditions. That process meant that the terms and conditions of employment of employees were common across all of the employers in the industry who were subject to award regulation. To my knowledge that process had the support of industry parties. Accordingly, common core terms and conditions of employment across the unionised sector of the industry has historically been a feature of it.
35. In Australia, the term "pattern bargaining" seems to be used as a term to identify a process where a union or unions and a multiple of employers enter into the same or similar certified agreement. Where successful, pattern bargaining may result in a de-facto multiemployer or industry sector or industry agreement. There is nothing fundamentally wrong with that approach to collective bargaining. It is entirely in keeping with what is the international norm and what is required by international labour standards. To explain, I need to first refer to the structure and operations of the International Labour Organisation ("the ILO").

36. The ILO was established as part of the Versailles peace settlement following the First World War. The ILO is a specialised agency of the United Nations given responsibility for ensuring the observance of **human rights for workers and** otherwise developing and maintaining labour standards. The ILO operates on the basis of a tripartite structure. Representatives of workers and employers enjoy equal status with those of governments. Australia is a long standing member of the ILO.
37. Labour standards are created through the ILO's adoption of Conventions and Recommendations. There are ILO Conventions and Recommendations on a range of issues including freedom of association and the right to collective bargaining. Before a Convention or Recommendation is adopted it undergoes rigorous scrutiny over an extended period including detailed consultation with governments, employer representatives, worker representatives and independent experts. When a State voluntarily ratifies a Convention it incurs a binding international obligation to abide by the Convention. Australia has ratified a number of Conventions including:
- Convention No. 87 Freedom of Association and Protection of the Right to Organise Convention (1948); and
  - Convention No. 98 The Right to Organise and Collective Bargaining Convention (1949).
38. These Conventions are described by the ILO as two of the five 110 Conventions that enshrine the core ILO principles relating to the protection of fundamental human rights.



39. The ILO's Committee of Experts on the Application of Conventions and Recommendations VCEACRI has on a number of occasions and in a number of respects concluded that Australia's *Workplace Relations Act* fails to comply with ILO Conventions. A number of those conclusions are relevant to issues which I apprehend are of interest to this Senate Enquiry.
40. In particular, the ILO's Committee of Experts has been critical of the preference given in the Act to workplace or enterprise level bargaining and the restrictions placed upon multi-employer or industry bargaining including by the fact that protected action cannot be taken in respect of negotiations for multiple-business agreements.
41. This matter was the subject of criticism from the Committee of Experts in the Committee's 1998 Observations on the Act and its non-conformity with the Right to Organise and Collective Bargaining Convention (see paras 5 and 6 of Annexure 2). The Committee of Experts emphasised that the Right to Organise and Collective Bargaining Convention contemplates voluntary collective bargaining where the choice of the bargaining level is made by the negotiating parties themselves "*because they are in the best position to decide the most appropriate bargaining level*".
42. In a later decision, the Committee of Experts reviewed the Act in the light of the Freedom of Association and Protection of the Right to Organise Convention. The Committee again noted that protected industrial action only applied in relation to the making of single employer certified agreements. The Committee concluded that *the Act effectively denies the right to strike in the case of a negotiation of multi-employer, industry-wide or national-level agreements, which excessively inhibits the right of workers and their organisations to promote and protect their economic and social interests*-. (See Annexure 3- p2.2).

43. On each occasion the Committee of Experts *called on* the Australian government to change the legislation to comply with ILO Conventions. A further call to the government to amend the Act *"to ensure that collective bargaining will not only be allowed, but encouraged, at the level determined by the bargaining parties"* was made in a decision of the Committee of Experts published in 2000 (See Annexure 4 -p2.3). This issue and in particular the denial of the right to strike in relation to the negotiation of multi-employer, industry-wide or national-level agreements was the subject of criticism in a further decision in dealing with the Freedom of Association and Protection of the Right to Organise Convention published by the Committee of Experts in 2001 (See Annexure 5 pl.2). The Howard government has ignored the 110's calls for the Act to be amended and thus refused to comply with Australia's international obligations. If this Senate Enquiry is in search of unlawful or inappropriate conduct it need look no further than the Howard government. '

To my understanding most of the world's developed nations have ratified and observe the Freedom of Association and Right to Organise Convention and the Right to Organise and Collective Bargain Convention and do not seek to inhibit the capacity of industrial parties to choose for themselves the level of bargaining that they regard as appropriate. The ILO's website shows that of 175 countries, 139 have ratified the Freedom of Association and Protection of the Right to Organise Convention and 151 have ratified the Right to Organise and Collective Bargaining Convention. Almost all countries in Europe and the Americas have ratified both Conventions. It seems to me that Australia is clearly out of step and those in Australia who are critical of "pattern bargaining" seek to establish in Australia a system out of conformity with a collective bargaining model which has the international acceptance of employers, unions and governments. Presumably it does so because it is equitable, effective, efficient and in the public interest.

44. There are a number of other criticisms made by the ILO Committee of Experts touching upon matters which the Senate Enquiry may be interested in. The Committee is critical of the prohibitions placed by the Act and also by the Trade Practices Act on sympathy strikes or secondary boycotts. (See Annexure 3 - p2.3 and 3.2; **Annexure 5 - pl.7 and 2.8**). The 110's position by reference to the Freedom of Association and Protection of the Rights to Organise Convention is that "*a general prohibition a sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is lawful*".
45. On the question of strike pay, the Committee of Experts is also critical of s.187AA and s.187AB of the Act which prohibit strike pay being raised as a matter for negotiations (See Annexure 2 p3.8; Annexure 3 - p2.2; Annexure 4 - 2.6 and Annexure 5 p11.7 and 2.3). Both of the Conventions I have identified have been interpreted to require a system of voluntary collective bargaining where the parties are free to raise any matter for negotiation. As the Committee of Experts stated "*providing in legislation that workers cannot take action in support of a claim for (strike pay), is not compatible with the principles of freedom of association*".

### **Recruiting members in the Building and Construction Industry**

46. The ETU does not have a "no ticket, no start" policy for building and construction sites or indeed at all. My leadership team has a very strong view that the ETU membership should be made up of volunteers not unwilling conscripts. The effectiveness of a union depends on recruiting members with a commitment to the union and to its objectives. For instance the ETU does not advocate payroll deductions and does not seek a clause providing for payroll deductions in certified

agreements because we want our members to make a conscious decision to pay their union dues and consider or reconsider in their own minds the benefits of union membership.

47. My own experience and that of the ETU is that once an opportunity is given to the union to explain to employees the benefits of membership of the ETU, the vast majority of employees join the union and a high proportion of members take an active ongoing interest in the affairs of the union. Most employees join the union willingly and enthusiastically.
  
48. In my experience there are two main impediments to the recruitment of union members by the ETU. The first is the attitude of the employer. Where the employer is hostile to its employees becoming members of the ETU and that hostility is known to the employees, some and sometimes many or most of the employees of that employer will be reluctant to join. In my experience their reluctance is based upon their fear that they will be discriminated against should they join the union. If employers could be trusted to remain neutral on the issue of union membership the ETU would be more than content. Unfortunately that has not been the ETU's experience with many employers. On the other hand I want to acknowledge that many employers seek co-operative relations with their employees and recognise the benefits of union representation for their employees and accordingly encourage union membership.
  
49. To address the problem of employers discouraging union membership, the ETU has insisted upon the inclusion in its certified agreement of a clause which encourages union membership. In the current Industry pattern Agreement the clause is numbered 13 "Union Representation". This Clause is comprehensive and attempts to deal with the discrimination that has plagued our industry for decades. Importantly it

encourages employees to have a say in their workplace and their Union ensuring the highest degree of scrutiny is placed on all decisions taken by all parties. I feel strongly that this democratic involvement makes for better workplaces, employees and Unions. In practice, my observation is that the clause has made little change to the approach taken by employers receptive to union membership by their employees. In relation to employers who may tend to be hostile to union membership, the clause in practice tends to have a neutralising effect. It is not the ETU's experience that such employers do anything to encourage membership but at least they tend not to discourage it.

50. The other impediment to membership recruitment is the prevalence of the "free-loader". This is the employee who readily accepts all the benefits of hard won union negotiated agreements but is not prepared to contribute to the cost. In my experience these workers do not have fundamental objections to joining a trade union, rather they simply want to avoid paying membership dues. Their activity serves to undermine the contributions made by decent working people who readily contribute to an organisation that greatly improves their working lives. The existence of "free-loaders" is a matter of significant agitation amongst those workers who do make a contribution in return for the benefits they receive.
51. To address this issue, in the last round of bargaining, the ETU sought the inclusion of a clause providing for a bargaining agency fee. This is clause 14.3 in the Kavanagh Electrics agreement. Bargaining agency fees are a common feature of collective bargaining overseas.
52. This Clause 14.3 provided for the payment of a bargaining agents fee by all employees. For most if not all employees the fee is less than 1 % of the income generated under the enterprise agreement negotiated by the union and agreed upon

by a majority of the employees subject to it.. The fee was intended as a contribution towards both the negotiation of the enterprise agreement and also to resource the ongoing obligations of the ETU under the agreement to provide services to all employees. From the ETU's perspective, the clause had the impact of ensuring that all employees who benefit from the services provided by the ETU contribute to the resources expended in the provision of those services. That contribution is made without any obligation upon the employee to become a member of the ETU. As I have said, this clause was carefully explained to employees and approved by a majority of employees in each enterprise in which it applies. Existing employees knew full well about this arrangement because of the consultative process and the EBA includes a specific requirement that any new employees would be informed about the fee at the time of their engagement.

53. Clause 14.3 was the subject of a challenge brought by the Employment Advocate. The challenge was made under s.298Z of the Act. As I understand it it was claimed by the Employment Advocate that the clause was an "objectionable provision" because it contravened the freedom of association provisions in Part XA of the Act. The ETU successfully resisted that challenge and the appeal which followed. Since that time the Federal Government has passed laws that prohibit such arrangements and the ETU see this as nothing more than a limitation on our rights as a Union to legitimately charge for genuine and meaningful services that it provides. No other organisation has this outrageous restraint of trade placed on it. We hope that future Government redress this and our Union will campaign for its lawful introduction.

### **Criminal Activity and Payment of Union Officials by Employers**

54. To my knowledge, the Cole Royal Commission found no criminal activity in the ranks of the Union movement. The Union had not engaged in hiring people with known criminal backgrounds to do industrial relations duties. The same can not be said for employers yet the Cole Royal Commission simply overlooked it. It is clear that despite the expenditure of approximately \$65 million of taxpayers money, no evidence could be brought against myself or any other Victorian Union Official of any Union. Quite simply, we don't support criminal activity, we don't support violence and intimidation and we totally condemn corruption and intimidation.
55. There is absolutely no justifiable reason that I can think of as to why union officials should receive any payment, whether in cash or in kind, from employers. In my view any such activity would likely be corrupt. There is no corruption by the payment of union officials by employers. There is no corruption in the Victorian Building Industry involving union officials at all. Again, the Cole Royal Commission could find no such behaviour in our industry.
56. If any officer, or member of the ETU was found to engage in any conduct that involved corruption they would have more to fear from the ETU than they would from the Royal Commission and if proven, I would expect that such persons would be immediately expelled from the union.
57. Corrupt activity within the ETU would only serve to undermine the integrity of the ETU and the work that it has done on behalf of its members for the last 100 years.
58. To my knowledge the ETU does not have a policy expressly dealing with payment of union officials by employers. The notion is so abhorrent that it hardly needs expression in a policy. The ETU does however have a strongly held policy position that the only income received by officers of the ETU in relation to their industrial

activities is the income derived from the salary paid by the union. Accordingly, no officer of the ETU is permitted to receive any personal remuneration from any Boards or other bodies on which they may sit where they represent the interests of the members. Any remuneration of that kind is paid directly to the ETU.

59. The ETU maintains the highest principles in its operations and dealings and its full-time officers are, to the best of my knowledge, committed to acting with the strategic discipline that is expected of them. They all know full well that this union will not tolerate corruption.

#### **Site Delegates/Shop Stewards/Health and Safety Representatives**

60. Shop stewards and occupational health and safety representatives are dealt with in Rule 23 of the Rules of the union. Under that rule a shop steward or an occupational health and safety representative can be appointed by the Branch or where four or more members of the ETU are employed election can occur by a ballot of the financial members of the ETU in that workplace. The Rules also provide the Branch with the power to remove a shop steward or an occupational health and safety representative from his or her position at any time by resolution of the Branch Executive.
61. The powers and duties of shop stewards and occupational health and safety representatives are also dealt with in the Rules and specifically by Rule 23.3. Both positions are positions to be held by members for the purpose of representation of the ETU and its members at a particular work site.



62. The Occupational *Health and Safety Act* 1985 (Victoria) also provides for the election of a health and safety representative by employees at a work site. That position is not a union position although it is possible and probably common that members of the ETU are elected into such a position from time to time.
63. It has been the ETU's experience that members who have taken on the important and necessary role of shop steward or health and safety representatives have often found that this has had an adverse impact upon their employment and prospects of future unemployment. Many workers have experienced long-term employment of 6 months or more. I personally know members with young families who could not get employment in their trade for 12 months after representing their Union and fellow workers on a building site as a Steward. Some have been driven out of the industry.
64. This is partly because at times the role of shop steward involves the employee in disagreement, dispute or confrontation with his or her employer. In my experience, management sometimes finds it difficult to adjust and allow for the fact that the relationship between employer and employee acting as a shop steward is not the subservient relationship management is accustomed to. The Shop Steward is the representative of the Union in his or her workplace, as such represents the interests and issues that effect their fellow workers. Quite often these issues will be related to safety, pay, superannuation, redundancy, harassment and any range of employment related matters. There is also a tendency to shoot the messenger when members have taken a view or involved themselves in conduct which the employer disagrees with. Additionally, in the experience of the ETU some employers simply hold discriminatory views against union members and particularly active members such as shop stewards and health and safety representatives. They hope that by ensuring that they have no Shop Stewards or active Union members that they will not have to deal with many employee issues and claims. It is my experience that many of our

members will only speak up via a Shop Steward as they feel that they do not wish to take matters up directly with their employer. This may be for fear of discrimination or because they may lack the confidence, knowledge or negotiating skills to resolve their issues.

65. There is in my view well founded suspicion of the existence of a "blacklist". However proof of discrimination is hard to get. For these reasons, it has been the ETU's experience that from time to time employees who have been active shop stewards find it difficult to maintain their employment or later find employment with other employers. This form of discrimination has existed for many years and continues to this day.
66. The Cole Royal Commission had an ideal opportunity to investigate the existence and practice of black listing unionists and discriminating against them in employment because of their union activities. My statement to the Cole Royal Commission dealt with this issue. Further, it was a point of contention in a number of disputes being investigated for other reasons by the Cole Commission. For example, the crux of the problem with phase 3 of the National Gallery of Victoria (NGV) refurbishment project was the refusal by Baulderstone-Hornibrook and its electrical subcontractor MF Davine to employ a known union activist as shop steward on the site. The NGV matter provided the perfect opportunity to investigate the issue because the union was trying to place an activist and the employer was refusing to do so. However, rather than investigate the claim of the existence of a black list and how it might operate to discriminate against union activists as a major issue in the building and construction industry, Cole simply ignored the issue.
67. To address this problem the ETU will from time to time try and find employment for such members with employers who need additional labour and do not discriminate against former shop stewards. Such a person may or may not become a shop

steward at that workplace. In recognition of this serious industry problem, the ETU and the National Electrical Contractors Association (NECA) have recently concluded an Industry Pattern Agreement for our Industry in Victoria, which includes specific measures to resolve such issues prior to work starting and in a manner that avoids industrial conflict where ever possible (see Appendix 1 "Shop Stewards and Pre-Project Consultation"). Further, NECA and the Union recognised the critical importance of genuine and proper Union rights and representation in the Industry Pattern Agreement by including a specific clause of "Union representation" (see Appendix 2 "Union Representation"). These specific measures apply in the Industry Pattern Agreement of which approximately 800 have been certified with the Australian Industrial Relations Commission so far. It is expected that the number certified shall be approximately 1200 given the success and broad acceptance previous Industry Pattern Agreements in Victoria.

71. We train our shop stewards and health and safety representatives by delivering structured courses that give them the skills to properly represent the Union and their fellow workers. This ensures there is available to the members a properly trained representative who understands the complexity of the work, the site agreements where applicable, the award, enterprise agreement arrangements, the safety issues and procedures and who can best represent the interests of the members and the ETU.

## **REFORMS**

72. There are a number of areas where reform is necessary in the Electrical and Communication Contracting Industry. In my experience, necessary reform is best able to be achieved through a process of consultation, negotiation and agreement of

all relevant stakeholders. If the Federal Government is to facilitate reform it should do so by recommending a process for reform which requires consultation, negotiation and agreement.

73. A very good recent example of the reform which can be achieved through co-operation and agreement by industry parties is the way in which the security of payments problem is currently being addressed.
  
74. Security of payments has been a major problem in the Electrical and Communication Contracting Industry. It has been the unfortunate experience of many contractors, particularly small contractors, that head contractors fail to make payments owed. Commonly a small electrical and communications contractor may spend \$20,000 in materials and labour on a job together with perhaps three months of their own time and walk away from the job with no payment whatsoever. It has been common for builders or head contractors to sign up sub-contractors on agreements which provide that the builder or head contractor only pays when it itself is paid by the client. Sometimes the builder is never paid, sometimes the builder is paid but nevertheless refuses to pay the sub-contractor. Phoenix companies are used to avoid payment and accountability.
  
75. In September 2000, the Victorian government established a task force to examine the security of payments issue. That task force included within its membership a range of industry parties including trade unions. I was a member of the task force. The final report and recommendations of the task force were delivered in February of 2001 (see **Annexure 6**). The response of the Victorian government has recently been published (see **Annexure 7**).

76. A more detailed account of the nature of the problem and the process by which it has been dealt with is set out in the documents that I have attached. As a result of the consultative and cooperative process utilised, sensible recommendations for legislative and other changes have been made and are being implemented. As a result an issue which seemed to be insurmountable has been tackled successfully. The process utilised is in my view a model process for dealing with necessary reform.
77. I have already dealt with the importance which the ETU places on occupational health and safety. In the ETUs view there is an urgent need for a better resourced inspectorate for both Work Safe and the Office of Chief Electrical Inspector. More and more frequent random inspections need to be conducted. . Additionally a more efficient and better resourced prosecution process needs to be implemented. In this respect the ETU would seek the composition of a task force where our ideas and the ideas of other industry stakeholders can be discussed and through co-operation effectively implemented.
78. Lastly, I would draw attention to the prevalence of the Electrical and Communication Contracting Industry of bogus contractors. By that I mean persons who in truth have all the fundamental characteristics of an employee but who have adopted the pretence of being a contractor. Often this is done to avoid taxation. It can also be a mechanism utilised by employers to avoid industrial obligation such as awards or enterprise agreements. An article in an industry publication known as "Electrical Contractor/Engineer Connection" has recently canvassed the problem (see Annexure 8). The article appears in a publication with which NECA is closely associated. Master Builders Association Area Manager David McMath is extensively quoted including his comments with which I agree, that the industry will be more professional and viable and skilled when we can "get rid of unfair competition from dodgy operators who don't pay taxes, insurance, superannuation, WorkCover and site safety costs".

## **Cole Royal Commission an Unfair Political Stunt**

79. The Cole Commission had wide ranging powers, including exhaustive power to delve in depth into the lives of individual union officials such as myself. It was not however, subject to the usual evidentiary requirements of normal courts nor was it required to extend the courtesies of natural justice and procedural fairness to participants such as myself. Unlike employer representatives, I was given no notice of matters that were to be raised with me and natural justice was denied. On the other hand employers had weeks to prepare and brief Counsel on matters pertinent to them.
80. It is now a matter for the record that despite spending days in the witness box in the Royal Commission and being subject to much research and investigation, cross-examination and interrogation, that no wrong doing was attributed to myself or any Officer of my Union. The process of the Cole Royal Commission is a blight on Australia's political process and refused to deal with more serious matters that could have protected workers rights and health and safety and created a better industry.
81. Simply put, the Building and Construction Industry is not lawless and it conducts itself in an efficient manner that recognises employer and employee rights. This industry is one that has built thousands of buildings and structures that serve as a monument to hard work, skill, endeavour and employers, unions and employees are proud of their achievements.

82. We don't need watchdogs in this industry. The fact that in Victoria, all Unions in the Construction Industry are able to reach agreement with their respective employer organisations and subsequently certify thousands of Industry Agreements, is testimony to how well we do. To have achieved this outstanding record without a days lost time is undeniable and a model in Union/employer relations.
83. The Cole Royal Commission found no criminal or corrupt activity by unions in this industry and must be viewed as the political stunt that it was. The taxpayers of Australia have seen many millions of dollars wasted on yet another illconcieved witch-hunt similar to the "Child Overboard" and "Weapons of Mass Destruction" campaigns by the Howard Federal Government.
84. The findings of the Cole Royal Commission can and must not be relied upon. The evidence produced by Cole's army of lawyers was not gained through a fair and considered process and it is clear that it was always going to be a Union-bashing exercise. This Senate Enquiry has very limited time to consider the real issues in this Industry and should truly satisfy itself of all of the facts, examine the many great aspects the Industry and recognise that Industrial Relations is not criminal or corrupt simply because it delivers uniform and much needed benefits to the workers within it.