

Flynn Leonie Elizabeth

States:

1. My full name is Leonie Elizabeth Flynn and I am currently the Assistant Secretary / Treasurer of the Health Services Union (HSU) Victoria Number 1. Branch.
2. On 31 July 2013 I submitted a letter to the General Manager of the Fair Work Commission (FWC) which set out a series of concerns I have in relation to the financial management and governance of the HSU. Since that time I have made a number of amendments to my letter of concern.
3. I have been asked to attend at the Fair Work Commission to clarify my concerns and I have been provided with the opportunity to express my view about this statement being provided to the HSU. This statement has been compiled as a result of me expanding and clarifying issues referred to in my letter to the General Manager submitted on 31 July 2013. I have attended at the FWC on Friday 23 August 2013, Tuesday 27 August 2013, Tuesday 3 September 2013 and Wednesday 4 September 2013 for the purposes of compiling this statement.
4. I am comfortable that the document being prepared today will contain my concerns and I understand that it will be provided to the HSU.

#### **Background Information**

5. In May 2010 the Victorian No. 1 Branch, the Victorian No. 3 Branch and the NSW Branch of the Health Services Union (HSU) amalgamated and became known as HSU East. Following a range of allegations made against various members of the Executive of HSU East, an administrator was appointed (Justice Michael Moore) and one of the recommendations he made was to de merge HSU East and that it should be returned to the former branches.
6. Because of the implementation of that recommendation, new elections were required to elect new office holders for each of the branches re-formed. The de-merger I have referred to occurred on 21 August 2012.
7. Michael Moore continued as the Administrator of each of the branches until mid November 2012 when Jim Simmonds took over as the administrator. Elections for office holders of Vic No. 1 Branch were subsequently conducted and the results declared on Friday 21 December, 2012.
8. I had run for the position of Assistant Secretary / Treasurer Vic. No. 1 Branch on a ticket with Marco Bolano. Ms Diana Asmar ran on a ticket for the position of Branch Secretary of Vic. No. 1 Branch with Daniel Govan who ran for the Assistant Secretary / Treasurer.
9. As a result of the election, Ms Diana Asmar was elected to the position of Branch Secretary and I was elected to the position of Assistant Secretary / Treasurer. Obviously Ms Asmar and I had been elected from opposing tickets.

10. On 21 December 2012, following the outcome of the election, Ms Asmar and I met with Jim Simmonds and the Chief Financial Officer (at the time) Stephen Miller for a handover. Jim expressed his desire that regardless of the outcome of the election, Diana and I should work together notwithstanding we had been elected from different tickets. Jim also recommended to Diana that because of my knowledge and experience in the aged care industry, that I should play a major role in that side of the union business. Diana and I shook hands and agreed that we would both work together for the benefit of the members.

11. Two other members of my ticket, Patrick O'Brien and Robert Morrey were elected as members of the Branch Committee of Management (BCOM) in the same election. The other members of the elected BCOM were all members of Diana Asmar's Ticket. Mr Morrey has since resigned from the BCOM and has been replaced with Nirjie Alime-Arslan who had previously run for election on Diana's ticket as a BCOM candidate and was subsequently appointed as a casual vacancy appointment.

12. Soon after the election, Stephen Miller's employment was terminated (I believe it was Thursday 3<sup>rd</sup> January, 2013). Ms Asmar assumed office as Branch Secretary and Kerry Georgiev was subsequently employed to replace Mr Miller. Ms Georgiev attended work in her role within one to two hours of her appointment at the HSU office located in Park Street, South Melbourne. Ms Asmar also appointed Kimberley Kitching as General Manager, which I believe occurred on the first day Ms Asmar assumed office. I first met both Kerry Georgiev and Ms Kimberly Kitching on Saturday 22 December, 2012 at the Park Street office of the HSU.

13. When I first met Kerry, she was in Diana's office going over financial reports that Stephen Miller had prepared.

#### **Concerns about the financial management of the HSU**

14. I am concerned that the financial management of the Union is not being conducted in accordance with the HSU Rules registered under the Fair Work (Registered Organisations) Act 2009 and may also breach the Fair Work (Registered Organisations) Act 2009.

15. My responsibility as Assistant Secretary / Treasurer is "*the designated Officer in charge of the financial conduct and reporting of the Union and an assistant to the Secretary in regard to the general conduct, administration and business of the Union.*" I am ultimately responsible and accountable for the financial management and operation of the Union (Vic No.1 Branch) under the Registered Rules of the Health Services Union (refer to Rule 60).

16. I believe Ms Diana Asmar (Branch Secretary), has obstructed me, as an elected official, from performing my required duties as Assistant Secretary / Treasurer. One of the reasons I am bringing this matter to the FWC is that under HSU Rule 83, (Branch Policies and Procedures & Governance Principles) I believe I am obliged to report procedures and behaviour that breach, or potentially breach the HSU Registered Rules and the Fair Work (Registered Organisations) Act 2009.

(i) Rule 58 sets out the duties which are and which are not to be performed by the Secretary. The issue is that the Secretary actually performs duties which (according to rule 58) are not to be performed by the Secretary; The Secretary is therefore breaching rule 58).

(ii) Rule 60 sets out the duties which the Assistant Secretary / Treasurer is required to perform. The issue is that the Secretary actually performs duties which (according to rule 60) the Assistant Secretary / Treasurer is required to perform and is preventing the Assistant Secretary / Treasurer from performing those duties. The Secretary is therefore Breaching rule 60).

17. I refer to the following Rule 58:

**Rule 58 - BRANCH SECRETARY**

*The Secretary shall be the chief executive officer of the branch and subject to these Rules, have charge of the general conduct, administration and business, of the branch. He/she shall be the investigating and organising officer of the branch and shall be the officer to sue and to be sued on behalf of the branch. The Secretary shall be ex-officio, a member of all committees and Sub-Committees of the branch.*

*The Branch Secretary shall -*

*(a) call and attend all meetings of the branch and Branch Committee unless excused and keep or cause to be kept minutes of the business transacted at such meetings;*

*(b) receive or cause to be received all moneys on behalf of the branch and issue receipts and pay all moneys received by him/her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;*

*(c) have charge of the financial books and statements of his/her Branch;*

*(d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee, produce all relevant books;*

*(e) keep an up-to-date register of branch members showing their names and their postal addresses so far as known and shall periodically notify the National Secretary of any changes in such list;*

*(f) conduct the business and correspondence on behalf of the branch;*

*(g) forward to the National Secretary within fourteen days of the Annual General Meeting of his/her branch a list of the full names and addresses of all office-holders in the branch;*

*(h) provide the National Returning Officer and the Branch Returning Officer with such assistance as is necessary to enable them to conduct any elections.*

*(i) inform the Branch President whenever he/she will be absent from duty or from a meeting;*

*(j) hand to his/her successor, on the latter's election, all moneys and property held by him/her on behalf of the Branch;*

*(k) subject to any direction of the Branch Committee appoint, engage, control and dismiss such clerical and other staff as may be necessary for the conduct of the affairs of the branch;*

*(l) prepare returns required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;*

*(m) have the right to attend or appoint a member of the branch to attend any meeting of members of the branch and to speak and vote on any matter before such meeting provided that a person appointed to attend any such meeting by the Secretary shall also have the right to speak and vote thereafter subject always to any directions given to him/her by the Secretary; and,*

*(n) carry out such other duties as the Branch Committee may from time to time assign to him/her or as may be conferred upon him/her by these rules or as may be required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;*

*Provided that in the case of the New South Wales Branch and the Victoria No. 1 Branch, the Branch Secretary shall not exercise the powers referred to in paragraphs (b), (c), (d) and (j) above. Provided further that the Branch Secretary of these Branches shall not exercise the power outlined in paragraph (l) above in respect of financial and accounting returns required by the Fair Work (Registered Organisations) Act 2009.*

18. Importantly, the rule does not delegate Ms Asmar the powers set out above in Rule 58 (b), (c),(d), (j) and (l). The breach of this rule is that Ms Asmar is performing the functions set out in rules b, c, d, j and l.

19. On Thursday 3 January 2013 I met Diana Asmar at her request at Molly's Coffee Shop in Clarendon Street, South Melbourne for about an hour. Diana reiterated to me her role as the Chief Executive Officer and in order to work together effectively, everything was to come across her desk to be authorised and signed off. Ms Asmar signed off two bills in front of me that morning although I do not know what they were.

20. I explained that I had to undertake my role under the HSU rules because I had been elected as the Assistant Secretary / Treasurer. I told Diana I had the ultimate financial responsibility within the HSU Vic. No. 1 Branch and must authorise all payments, EFT transfers etc.

21. Diana then threatened to have the rules changed through the BCOM for her to have financial control if I did not accommodate her directions. Diana told me she had no less than 70% support. I advised Diana not to threaten me. Diana said that 'we are not undermining you, there will be complete transparency. You can have a look at everything we do, it will only be for the interim. I have instructed Stephen Miller to bring everything to me first and I will authorise all the payments to be made.' We continued our conversation.

22. Later than night, I made notes of this meeting in my diary. (Annexure 1.)

23. I refer to Rule 60.

**Rule 60 - BRANCH ASSISTANT SECRETARY-TREASURER OF THE NEW SOUTH WALES BRANCH AND VICTORIA NO. 1 BRANCH**

*Notwithstanding Rule 59, the Branch Assistant Secretary-Treasurer of the New South Wales Branch and the Victoria No. 1 Branch shall:*

*(a) assist the Branch Secretary at all times in the execution of his/her duties;*

*(b) receive or cause to be received all moneys on behalf of the branch and issue receipts and pay all moneys received by him/her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;*

*(c) have charge of the financial books and statements of his/her Branch;*

*(d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee;*

*(e) hand to his/her successor, on the latter's election, all moneys and property held by him/her on behalf of the Branch;*

*(f) prepare financial and accounting returns required by the Fair Work (Registered Organisations) Act 2009;*

*(g) ensure that Branch Policies and Procedures are implemented in accordance with Rule 83;*

*(h) carry out such other duties of the Branch Committee as it may from time to time assign to him/her or as may be conferred upon him/her by these Rules or as may be required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;*

*(i) subject to the sub-rules (b) - (h) above, be subject to the direction of the Branch Secretary and act in his/her stead whenever appointed to do so by the Branch Committee.*

24. My duties in Rule 60 are set out above. My point is that the Branch Secretary actually performs duties that I am required to perform in accordance with Rule 60. Specifically, the Branch Secretary performs the following duties in Rule 60:

*(b) receive or cause to be received all moneys on behalf of the branch and issue receipts and pay all moneys received by him/her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;*

*(c) have charge of the financial books and statements of his/her Branch;*

*(f) prepare financial and accounting returns required by the Fair Work (Registered Organisations) Act 2009;*

*(h) carry out such other duties of the Branch Committee as it may from time to time assign to him/her or as may be conferred upon him/her by these Rules or as may be required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;*

25. My specific concern is that the rules require me to undertake certain duties and perform certain functions but the Branch Secretary is actually performing these duties and I am being prevented from performing them. The Branch Secretary is therefore breaching Rule 60.

#### **Discussions about being obstructed from undertaking my role**

26. Several discussions have taken place between Ms Asmar and myself over a number of months, especially around my concerns of being obstructed from undertaking the role that I was elected to do. I have referred to one of those discussions above.

27. 3.1 of the HSU Governance Principles state, *"The Union Rules set clear boundaries between the functions of the Audit and Compliance Committee, the Branch Committee and the day-to-day activities of the Secretary and the Assistant Secretary / Treasurer."*

28. On many occasions, the BCOM have directed the Branch Secretary to perform duties of the Assistant Secretary / Treasurer's position under the HSU Rules. I believe that 'predetermined motions' are typed or written for certain BCOM members 'to move' at some meetings. Ms Asmar authorises all payments and disbursements/financial transactions.

#### **Issue No. 2**

**(i) Rule 60 sets out the duties which are to be performed by me as the Secretary / Treasurer. The issue is that I am prevented from carrying out duties under Rule 60 which are actually performed by other people. This circumstances is a breach of Rule 60.**

29. I refer to Rule 60 which is set about above and more specifically, the following:

*(a) assist the Branch Secretary at all times in the execution of his/her duties; and*

*(d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee;*

**Evidence of how Rule 60. is being breached.**

30. Based on my experience and observations, Ms Kimberley Kitching and Mark Donohue (originally employed as Communications Officer, presently employed as Operations Manager) assist Ms Asmar at most and/or all times in the execution of her duties. Michael Shulman (Auditor – Stannard’s Accountants), prepares all financial statements, and then I read his prepared document out at the BCOM. I have no input into the report. I am unable to prepare a financial report as I do not have ready access to any financial documents and cannot remove any financial documents from the Finance Manager’s office without Ms Asmar’s approval in the first instance.
31. An email sent to Ms Asmar and the Finance Manager by Michael Shulman on 2 April 2013 read, “Dear Diana & Kerry, I enclosed suggested document to give to Leonie to do a brief report next Monday at COM. I will attend meeting (say 1.15?). Let me know your thoughts on the attached – if okay, please forward to her. Many thanks, Michael Schulman.” (Annexure 2).
32. I have provided a copy of an invoice issued by a company called ‘Where To Enjoy’ and an email exchange between a Ms Kerry Jones and Kimberley Kitching in relation to the provision of a member benefits card and booklet. This is evidence of the extent to which Kimberley Kitching performs a significant role in the financial affairs of the HSU which I am prevented from doing (Annexure 2).
33. Further email exchanges between Michael Shulman and I dated 9 January 2013 and 5 March 2013 refer to a financial action plan and other financial issues. (Annexure 3).
34. These emails demonstrate to me that Mr Shulman is under clear instructions from Ms Asmar that all financial documents must be approved or viewed by her in the first instance, prior to a copy or information being communicated or forwarded to me.
35. Further evidence of how Rule 60. is being breached includes a letter written to the General Manager of the (FWC) dated 29 April, 2013 in which Michael Shulman requested to meet with the General Manager (in conjunction with the Secretary) to discuss the contents of the letter. I understand that Kimberley Kitching and Kerry Georgiev attended the meeting that was arranged on 6 June, 2013 along with Ms Asmar and Michael Shulman.
36. I was not communicated with in relation to this meeting and was never invited to attend, even though it was arranged to clearly discuss my role and the policies and procedures around the financial practices of the union.
37. I understand that there was an “Action Plan” attached to the letter sent to the General Manager of the FWC which was referred to as Appendix 3. I was not involved or consulted with regarding this Action Plan. The Finance Manager (Kerry Georgiev) was heavily involved in the Action Plan, and yet Clause 1.2 of the Governance Principles clearly states *“The Assistant Secretary / Treasurer shall be responsible for compliance with financial procedures, controls and reporting. A Chief Financial Officer (CFO) will be employed to assist the Assistant Secretary / Treasurer in overseeing the management of financial procedures, controls and reporting.”*
38. Kerry Georgiev, the Finance Manager reports directly to the Secretary. No employee of the union reports directly to me. I am excluded from all financial “goings on”. I believe that the Branch Secretary is purposely ignorant of the HSU Rules, Governance Principles and Financial Policies and Procedures.

39. On 4 March, 2013 at about 10.30 am I met with Ms Georgiev in her office and requested that she provide the following reports to me for the BCOM meeting that afternoon:

- Balance Sheet as at 4 March 2013;
- Profit and Loss statement for the reporting period, with variance analysis against the approved budget for the period and last year to date;
- Year-to-date Profit and Loss statement, with variance analysis against the approved year-to-date budget and year-to-date last year;
- Cash flow report for the reported period and projections to the end of the current financial year;
- Ageing Accounts Payable and Receivable as at the reporting date;
- Payment List, detailing all cash disbursements for the reported period;
- Commentary on the financial reporting for the period, including ratio analysis;
- Monthly corporate credit card expense summary;
- Monthly travel report.

40. Ms Georgiev told me that we did not have any credit cards and that our union only commenced to exist from 21 August 2012 so we could not compare profit and loss statements to the previous year. She also said she would “print the rest off now.”

41. I said that was “fine”. She said she would bring them to my office shortly or words to that affect. I noted that Diana Asmar entered Ms Georgiev’s office on my departure. I then saw them both go into Ms Kitching’s (HSU General Manager, Compliance Officer and Executive Advisor) office and close the door. Approximately 45 – 50 minutes later, Ms Georgiev came to my office and explained that she could not print off the reports for me as Michael Shulman hadn’t finished the auditing process yet. I said, “That’s a bit strange, ¾ an hour ago you said it wasn’t a problem and that you would print them off.” She apologised and left my office.

42. Since that time, the above mentioned reports have never been provided to me, except for a brief commentary report prepared by Michael Shulman for monthly BCOM meetings.

43. Even though my elected position is a full-time paid office, Ms Asmar has ensured that my workload involves other duties than the ones that I should be doing. eg: Organisers work, I did this for about 2 months, however, during that time she then directed me not to attend any members’ meetings without herself being present. This was not the case with other Organisers. I was being treated differently to other Organisers who held regular members meetings without Ms Asmar’s attendance. I felt victimised and could not service members adequately under this direction).

44. Ms Asmar then directed me to assist with industrial matters (attending and representing members in disciplinary meetings). Currently I have an exhausting workload of negotiating upwards of 200 Aged Care Enterprise Bargaining Agreements. I believe that Ms Asmar is well aware that I do not have time to carry out the functions of Assistant Secretary / Treasurer whilst I am also undertaking enterprise agreement negotiations, especially as it has been assigned to just two persons.



45. According to Rule 60 (i) I am subject to the Secretary's direction and I am required to act in her stead when appointed to do so by the BCOM, **except importantly, the rule states clearly that the Secretary does not direct the Assistant Secretary / Treasurer inclusive of sub-rules (b) – (h).**

46. (B) to (h) relate to my financial responsibilities. I do not believe that members of the HSU Vic No 1. Branch are aware that I have been prevented from carrying out these responsibilities.

47. Ms Asmar directs others and obstructs me from carrying out these duties. She authorises all financial transactions and disbursement of branch funds.

### Issue No. 3

**(i) Breach of Rule 50, Rule 88. The Fact that the Secretary and President of the Branch are active participants of the Audit and Compliance Committee is a breach of Rule 50 and Rule 88.**

48. I refer to Rule 50 and Rule 88.

#### **Rule 50 – Branch Officers**

*(c) The Branch Officers shall be ex officio members of any sub-committee of the branch. Provided that in the case of the New South Wales Branch, the Victoria No.1 Branch and the Victoria No. 3 Branch the Branch Officers shall not be ex officio members of the Audit and Compliance Committee established pursuant to Rule 88.*

#### **Rule 88 – Audit and Compliance Committee**

*(a) Each Branch shall have a Audit and Compliance Committee comprising the branch assistant secretary/treasurer (in the case of the NSW and Victoria No. 1 Branches, Branch Secretary (in the case of Victoria No. 3 Branch ), the two branch trustees (in the case of the Victorian No. 3 Branch) and two ordinary members of the branch committees appointed by and from the branch committee. Provided that in the case of the NSW Branch there shall be four ordinary members appointed by and from the branch council. Provided further that in the case of Victoria No. 1 Branch there shall be four ordinary members appointed by and from the branch committee.*

**Evidence of how Rules 50. and 88 have been breached**



49. The fact that the Secretary and President of the branch are active participants of the Audit and Compliance Committee is a breach of Rule 50 and Rule 88. The General Manager (Ms Kitching) who is an employee of the union but not an elected office holder, has attended and taken a leadership role at two of the three Audit and Compliance Committee meetings so far conducted. At the meeting of 24 June 2013, I spoke to the breach of Rule 50 and Rule 88 without prejudice.

50. Ms Asmar then breached the HSU code of conduct and yelled hurtful remarks at me, intimidated me, made me feel "ganged up" on, criticised me and was abusive until I was reduced to tears and had to leave the meeting for about 10 minutes until I stopped sobbing hysterically. Ms Asmar yelled, "Leonie, move on. We're not listening to you. For God's sake, you're going around in circles. Where's your head space today? You are wrong. There are new rules from the Fair Work Commission that we have to abide by (flapping a few pages in the air).

51. I found out in a meeting later that day that these pages were recommendations only, (by Joanne Fenwick of the FWC). Ms Asmar continued to say things like 'So, get over it, we're not talking about it anymore, nobody is listening to you. Get over it.'" Ms Asmar then went on to say, "Some people are getting anxious and paranoid around the table". I believe she was referring to me at the time.

52. I was extremely embarrassed and humiliated and clearly distressed as the Finance Manager and Auditor were present, along with the President, General Manager and four BCOM members. Nobody said anything following the Secretary's outburst as if they were either condoning her behaviour toward me or not confident enough to support me in front of her. I believe that actually hurt the most. I now feel extremely nervous around the Secretary, more so than ever before. The HSU would never tolerate that type of bullying behaviour from an employer/employee toward a member of the union out in the field.

53. I queried Ms Asmar about why the FWC gave such recommendations. She stated that she requested the meeting of 6 June 2013 "on a whim". The woman from the FWC (Ms Joanne Fenwick) said that she could meet with Ms Asmar "in an hour's time" (or words to that effect). Ms Asmar said that she "grabbed Kerry and Kimberley as they were close by in the office." Michael Shulman said that he received a text of invitation and was able to attend the meeting also. I queried why I wasn't asked or texted to attend this meeting, since it seemed to pertain to my role and the Financial Policies and Procedures. Ms Asmar's response was, "We thought you would be busy!"

54. I went to the FWC on 26 June, 2013 to attempt to locate Ms Fenwick and I was able to do so. Ms Fenwick has since forwarded emails that show that the meeting was organised 2-3 weeks prior to 6 June.

55. As I refer to above, Ms Kitching is not a member of the BCOM or Audit and Compliance Committee under the HSU Rules. She has attended all meetings that have taken place except for April 8 BCOM and 3 June Audit and Compliance Committee meeting.

56. At a number of meetings, I raised the issue of Ms Kitching's attendance and active participation in HSU meetings. I have said above that Ms Kitching took a leadership role in most of these meetings.

57. Subsequent to me raising the issue about Ms Kitching, at the BCOM meeting of June 3 2013, Ms Asmar tricked and manipulated the BCOM by utilising Rule 28 (f) of the HSU Rules. In the meeting Ms Asmar stated that Ms Kitching was appointed "Executive Advisor" to "formalise her attendance." During the meeting Ms Asmar stated that this was to formalise Kimberly's attendance for people who have raised issues with her (Kimberly) being present at prior meetings. I was the only person who had raised issues about Ms Kitchings attendance. The main reason I had raised this issue, was because Ms Kitching was a dominant participant and in my view largely monopolised the meetings when it came to voting about various issues.

58. Rule 28 (f) however, is only applicable to Ms Kitching attending and/or observing the proceedings at meetings of National Executive. It is not applicable at State Branch level. I later confirmed this with the National President, Mr Chris Brown.

#### Issue No. 4

(i) Breach of Rule 61. The rule requires the Branch Assistant Secretary / Treasurer to undertake duties which the Branch Assistant Secretary / Treasurer has never undertaken. Those duties are undertaken by others which is a breach of Rule 61.

59. I refer to Rule 61.

#### **Rule 61 - BRANCH TRUSTEES**

*The Branch Trustees shall invest the funds of the branch and otherwise deal with the property and funds of the branch as they may from time to time be directed by the Branch Committee. Provided that the duties and functions of Branch Trustee in the New South Wales Branch and the Victoria No. 1 Branch shall be undertaken by the Branch Assistant Secretary-Treasurer as directed by the Branch Committee or as required by any Branch policy and procedure determined pursuant to Rule 83.*

60. As the Branch Assistant Secretary / Treasurer, I have never been directed by the Branch Committee to deal with the property and funds of the Branch.

61. The Branch Committee, has however, directed the Secretary, contrary to the HSU Rules, from time to time to deal with property and funds of the Branch. To my knowledge, Ms Asmar seeks assistance and/or advice from Kimberley Kitching (General Manager/Compliance Officer/Executive Advisor) and Kerry Georgiev, the Finance Manager.

62. May 2013, Ms Asmar requested permission from the BCOM to "pursue urgently three quotes for the work and to pursue the best option" for building maintenance. (Annexure 4 - BCOM minutes of 6 May.)

Issue No. 5

**(i) Breach of Rule 63. The Rule requires that all cheques and written authorisations for transfer and/or disbursement of branch funds shall be signed by the Branch Assistant Secretary / Treasurer. In the period since I assumed the office of the Assistant Secretary / Treasurer, almost all (99.5%) of the financial accountability functions of the branch have been carried out by Ms Asmar and Ms Kitching with the assistance of Ms Georgiev in breach of Rule 63.**

63. I refer to Rule 63.

**Rule 63 - BRANCH FUNDS AND PROPERTY**

*(c) All cheques drawn on the funds of a branch shall be signed by the Branch Secretary (or in his/her absence the Branch Assistant Secretary) together with any two (2) members of the Branch Committee. In the case of the New South Wales Branch and the Victoria No. 1 Branch all cheques and written authorisations for the transfer and/or disbursement of funds of the branch shall be signed by the Branch Assistant Secretary-Treasurer (or in his/her absence the Branch Secretary) together with any two (2) members of the Branch Committee. In the case of the Victoria No. 3 Branch all cheques and written authorisations for the transfer and/or disbursement of funds of the branch shall be signed by the Branch Secretary (or in his/her absence the Branch Assistant Secretary) together with any two (2) members of the Branch Committee.*

64. Rule 63 (c) of the Union rules requires that all cheques and written authorisations for transfer and/or disbursement of branch funds shall be signed by me as Branch Assistant Secretary / Treasurer. However, I have not signed any cheques for the Branch. I am not a signatory to the Branch cheque account.

65. I believe that the Secretary, Ms Asmar, Mr David Eden and Ms Rhonda Barclay are the signatories to this account. I am not aware of whether the Branch has issued any cheques.

66. Electronic payments are made by the Branch using password numbers obtained from the Commonwealth Bank using a "Commbiz" device. In January of 2013 there were discussions about my role in authorising financial transactions and Ms Georgiev requested me to complete a form which would enable me to be supplied with a "Commbiz" device. I was not issued with that device nor did I have any discussion with any person about collecting such a device.

67. On 5 August 2013 at a BCOM meeting I moved a motion the Assistant Secretary (me) be issued with one of these devices in accordance with the rules as a matter of urgency so I could carry

out my responsibilities under the rules. Ms Asmar amended my motion by adding the words 'upon seeking legal advice'.

68. Later that afternoon, I was supplied with a "Commbiz" device. I understand that these devices have previously been issued to Ms Asmar, Mr Eden and Ms Barclay, who I believe authorise all electronic payments made by the Branch following Ms Asmar's authorisation in the first instance.

69. Since I assumed office as the Assistant Secretary / Treasurer almost all (99.5%) of the financial accountability functions of the Branch have been carried out by Ms Asmar and Ms Kitching, with the assistance of Ms Georgiev. I have authorised the payment of the payroll on two or three occasions only. Otherwise I have not authorised the making of any payments by the Branch or received moneys on behalf of the Branch.

#### Issue No. 6

**(i) Breach of Rule 83. The rule requires that the Financial Policies and Procedures must be published on the union website however the Secretary has published her 'preferred' Financial Policy on the website which mislead members and is in breach of Rule 83.**

70. I refer to Rule 83.

*(c) Rule 83 Branch Police and Procedures must be published on the web site of the branch within 14 days of their adoption.*

71. As referred to above, Rule 83 requires that the Financial Policies and Procedures must be published on the union website but the Secretary had her 'preferred' Financial Policy published on the website which misleads the members and is in contravention of the union rules. (Annexure 5- Ms Asmar's Financial Policy and Procedures document).

#### **Rule 83. Branch Policies and Procedures**

*The Financial Policies and Procedures of the Victoria No. 1 Branch as adopted by the Administrator on 22 November 2012.*

72. I am aware that the Branch's Finance Policies and Procedures have recently been amended. On the morning of 8 April, 2013, before a BCOM meeting later that day, Ms Asmar gave me a marked up copy of the Branch Finance Policies and Procedures that she proposed to have the Branch Committee adopt.

73. No motion was put to that meeting to change the Finance Policies and Procedures. The minutes of the BCOM meeting held on 8 April, 2013 record that the Branch requested its National

Council delegates to seek a change to Rule 83 at National Council provided that the rule changes do nothing to diminish the scope of the Assistant Secretary / Treasurer's financial responsibilities in relation to the finances of the Branch. The motion also authorised Ms Asmar to review the Finance Policies and Procedures.

74. The Finance Policies and Procedures which are currently on the Branch's website have been amended in a number of respects to make the role of Assistant Secretary / Treasurer either subordinate to, or co-extensive with, the role of the Secretary in relation to the financial management and accountability of the Branch. The amended document on the website does not disclose that it is an amended version of the policy, but instead represents that it is (still) "Version 1.0". There is no statement on the Branch's website to inform members that the Branch Committee has amended the original document that had previously been promulgated by the Administrator, and I am unaware of any steps being taken by any person to bring this to the attention of members of the Branch.

75. The amendments to the policy are consistent with the changes which were tracked in the document shown to me by Ms Asmar on 8 April, 2013. The amended version of this policy also does not include the Audit and Compliance Charter which was Attachment A to the policy promulgated by the Administrator.

**BCOM Minutes of 8 April, 2013 as follows:**

Motion that,

1. *"BCOM giving noted the Secretary's report on the need to amend the rules relating to the role of the Secretary and the Assistant Secretary / Treasurer authorises the Branch Delegates to National Council to support rule changes which would:*

*(a). Consistent with the Secretary being the Chief Executive Officer of the Branch, provide that the Assistant Secretary / Treasurer in the performance of her duties, will be subject to direction to direction by the Branch Secretary provided that the rule changes do nothing to diminish the scope of the Assistant Secretary / Treasurer's functions in relation to the finances of the Branch;*

*(b). Change the name of the Audit and Compliance Committee to the Finance Committee and add to the membership of the Finance Committee of the Victoria No. 1 Branch the Branch President and the Branch Secretary.*

2. *BCOM authorises the Branch Secretary to review the Financial Policies and/or Procedures of the Branch in the light of any rule changes adopted by the National Council in relation to the respective powers of the Branch Secretary and the Assistant Secretary / Treasurer and bring these changes to the meeting of the Branch Committee for approval.*

3. *BCOM, having noted the requirement under the rules for the Branch elections in 2014, and the impact of that election within less than 2 years of the 2012 elections, supports in principle, an election in 2015 followed by elections in 2018 and thereafter every 4 years and requests the Secretary to obtain legal advice on the legality of that proposal.*

76. When Ms Asmar first discussed the above with me on the morning of 8 April 2013, she explained that the National Executive had already had discussion (around 1. & 2.) at a National Executive meeting and wanted to make these changes and that we should support it. She did not tell me that I would be subject to her direction within these changes. I believe I have been tricked and manipulated by Ms Asmar in relation to her initial draft policies and procedures document. The reason I believe this is because Ms Asmar told me that her policies and procedures do not diminish my role but when I read them, my role has been made subordinate or co - extensive in relation to financial management and accountability of the branch. I believe Ms Asmar is adamant on attaining financial control of the Victoria No. 1 Branch officially, for reasons which are unknown to me.

77. Ms Asmar has provided all officers of BCOM with a draft Financial Policies and Procedures document that she has amended, however it has not been adopted at a BCOM meeting, neither has there been any rule changes at a National level (I confirmed this with National President, Mr Chris Brown). This is the same draft that she has directed to be placed on the union website for members.

78. It is in clear breach of HSU Rule 83 which states that the adopted Financial Policies and Procedures must be published on the union website but she has her 'preferred' Financial Policy published on the website and it misleads the members. Refer to my diary entry of 8 April 2013. (Annexure 6).

79. When I first recorded my issues in relation to this matter, Ms Asmar's policies and procedures were on the HSU website. I understand that very recently to me making this statement Ms Asmar's version has been removed and the adopted policies have been uploaded. The adopted policies and procedures are those adopted on 22 November, 2012. (Annexure 7). I believe that the adopted policies and procedures were returned to the web site because I had formally complained the issue I have discussed under this heading with the National President Mr Chris Brown and also the Victoria No. 2 Branch Secretary Mr Lloyd Williams.

#### Issue No. 7

##### (i) Breach of Governance Policy.

##### **Governance Policy**

80. The Branch Governance policy, which is published on the Branch website as required by Rule 83, contains Governance Principles for the Branch. Governance Principle 1.2 states that the Assistant Secretary /Treasurer shall be responsible for compliance with financial procedures, controls and reporting, and that a Chief Financial Officer will be employed to assist the Assistant Secretary / Treasurer in overseeing the management of financial procedures, controls and reporting. However, the Finance Manager, Ms Georgiev, does not report to me. Refer to email of 27 June 2013. (Annexure 8).

81. Governance Principles 4.4 and 4.5 requires a range of information to be made available to members on the Branch's website. However, the Branch's website does not currently list any of the following headings or information, which is required by principles 4.4 and 4.5:

- Newsletters
- Annual financial reports
- Auditor's reports
- Reports of the Audit and Compliance Committee
- Minutes of union Committees
- Meeting attendance record of the Branch Committee on an annual basis
- Any donation or ex-gratia payment to a person or an association, charity, political organisation or a public or private body over the amount of \$100 per annum
- Any payment made by the Union to a related party of the Union or to a declared person or body of the Union
- Register of related-party transactions
- Gift register
- Minutes of important meetings such as Branch Committee and documents discussed at such meetings.

82. At the date of this statement, the BCOM has held nine meetings and the Audit and Compliance Committee has met three times.

83. On 24 June 2013, Ms Kitching provided me with a new Audit, Finance and Remuneration Committee Charter. This document is different to the Charter which was Attachment A to the Financial Policies and Procedures initially published by the Administrator. For example, the composition of the Committee is significantly different and in contravention of HSU Rule 88.

#### Issue No. 8

(i) Breach of union rules by the BCOM.

84. I refer to Rule 54.

#### **Rule 54 – POWERS AND DUTIES OF BRANCH COMMITTEE**

*A Branch Committee shall, subject to these rules and to the control of the branch members as hereinafter mentioned, have power –*

*(d) to generally watch the interests of the Union in the area in which the branch is established;*

*(e) to fix the remuneration and terms and conditions of employment of any officer or employee of the branch;*



*(f) to suspend or remove from office in accordance with these rules any officer of the branch;*

*(h) to investigate grievances and disputes submitted by its members;*

*(i) to take any action which in its opinion is in the interests of the branch, provided that such action does not conflict with the policies of the Union*

85. As I have earlier indicated, on many occasions, the Branch Committee of Management (BCOM) have directed the Branch Secretary to perform duties of the Assistant Secretary / Treasurer's position under the HSU Rules. I believe that 'predetermined motions' are typed or written for certain BCOM members 'to move' at some meetings. Ms Asmar authorises all payments and disbursements/financial transactions.

86. In the BCOM Minutes 4 February 2013 and 6 May 2013 (Annexure 4) there are numerous motions passed that the Branch Secretary should perform certain duties (i.e. investigate options regarding the car fleet, be authorised to apply for a debit card etc.) which under the rules are duties of the Assistant Secretary / Treasurer.

87. I have had discussions with a current member of the BCOM in relation to pre BCOM meetings. I have provided the identity of that person to the FWC. That BCOM member has confirmed that there were pre - meetings held prior to BCOM meetings at coffee shops close to the Park Street office which is where Diana Asmar, Kimberley Kitching and other BCOM members who had been part of Diana's election ticket attended.

#### Issue No. 9

##### (i) Undue influence on BCOM.

88. I understand that Ms Kitching apparently has another title called "Compliance Officer". This has not been a resolution of the BCOM to my knowledge. Ms Kitching's role as Compliance Officer is to ensure that Financial Policies and Procedures are adhered to, reviewed and amended 'as necessary'. I have not viewed a job description of this title.

89. I believe Ms Kitching is the 'author' of the majority of predetermined, scripted motions at BCOM meetings. Ms Kitching and Ms Asmar unduly influence and sway BCOM members when voting. Discussions are monopolised by these two people and often other discussions will be cut short, particularly when myself or another member, Patrick O'Brien wish to convey an opinion or view. One example of undue influence is as follows:-

90. At BCOM meeting of 24 June, 2013 Ms Asmar explained to the BCOM that we will soon have new rules as per the meeting with the FWC on 6 June, 2013. Ms Asmar stated, "We have to abide by the Fair Work recommendations. We have to maintain a good relationship with them." There were

approximately three pages that she held in the air. There were no copies of the recommendations so they were not viewed by any of the BCOM members. Member, Lance Smith, then picked up a piece of paper in front of him and proceeded to move this motion, *"In accordance with the recommendations of the Fair Work Commission, I move that the Assistant Secretary / Treasurer report to the Committee but could not be a member of the Committee and that the Branch Committee of Management go and research for an independent Chair of the Finance Committee."*

91. Gordon Driscoll seconded the motion. I questioned Lance in relation to knowing the wording of the recommendation, particularly as no member had received a hard copy to read and we had had back to back meetings between the Audit and Compliance Committee and BCOM meeting. I suggested that it was a predetermined, scripted motion – Lance did not respond.

92. I also stated that this recommendation was conflicting with the HSU rules and that Rule 88 would be knowingly breached by all those who voted in favour. Patrick O'Brien queried, *'how could you move a motion and make an informed decision when not having seen or read the document?'*. He suggested everybody be sent a copy and to discuss further at next meeting. This was declined as Ms Asmar stated that a motion had already been moved.

93. Out of the many recommendations (approximately thirty) this was the only recommendation that was discussed and voted upon. I stated, after the motion was carried, that I intended to seek out Ms Joanne Fenwick from the FWC and to meet with her to discuss the recommendations.

#### Issue No. 10

##### (i) Inappropriate re-forming of membership of Audit and Compliance Committee

94. I refer to Rule 88.

*(a) Each Branch shall have a Audit and Compliance Committee comprising the branch assistant secretary/treasurer (in the case of the NSW and Victoria No. 1 Branches, Branch Secretary (in the case of Victoria No. 3 Branch ), the two branch trustees (in the case of the Victorian No. 3 Branch) and two ordinary members of the branch committees appointed by and from the branch committee. Provided that in the case of the NSW Branch there shall be four ordinary members appointed by and from the branch council. Provided further that in the case of Victoria No. 1 Branch there shall be four ordinary members appointed by and from the branch committee.*

95. On Sunday, 23 December 2012 at the first HSU BCOM meeting an Audit and Compliance Committee was appointed by and from the BCOM unanimously as per Rule 88 of the HSU Rules. The Committee comprised of the Assistant Secretary / Treasurer and 4 BCOM members, namely Patrick O'Brien, Andrew Hargraeves, Susan Stone and Lance Smith.

96. The Audit and Compliance Committee was 'spilled' at a later meeting.

97. The Secretary advised me post the 23 December meeting that there were other individuals that had expressed interest to her, in being a member of the Audit and Compliance Committee. The Secretary told me that the Committee was “appointed in a rush” and that it would need to be “redone” as it “wasn’t done properly.” Gordon Driscoll, Susan Stone, Lance Smith and Julianne Mitchell were then appointed on 4 February 2013. I have read the Minutes of 4 February 2013 and I note that they record that ‘legal advice’ was obtained however there is no record about what the legal advice was.

98. I was not present at this BCOM meeting although I have provided part of the Minutes (Annexure 19) due to a Fair Work Commission matter where I was required to attend. Patrick O’Brien tabled a letter of complaint re: “unappointing” the appointed Committee members and a breach of the HSU Rule 88. (Annexure 19).

99. The first Audit and Compliance Committee meeting was held on Monday 3 June, 2013. I was very surprised when the Secretary and the President (David Eden) were present at the meeting. Ms Asmar insisted that there had been a rule change at National level and that the Secretary and President are now to be included on the Audit and Compliance Committee.

100. I advised that I was not aware or advised of any change and that their presence was in breach of the HSU Rules. Michael Shulman supported Ms Asmar. He said that it was normal procedure within organisations for the Secretary and President to be on the Finance Committee. Ms Asmar then moved a motion that the President Chair the meeting. I disputed this without prejudice, along with the presence of both Ms Asmar and Mr Eden to remain at the meeting.

#### Issue No. 11

##### (i) Concerns about the integrity of the HSU tendering process for legal services.

101. As I indicate above, on Monday 3 June 2013 at the Audit and Compliance Committee meeting I had disputed the presence of the Secretary Ms Asmar and the President Mr Eden as a breach of Rule 88. It was at this meeting that the Secretary Ms Asmar declared a conflict of interest in relation to a tender process for legal services before leaving the meeting.

102. After Ms Asmar had left the meeting, Mr Eden then spoke for about 8 – 10 minutes, recommending, and in my view, influencing, we retain and engage Holding Redlich as the HSU Legal Firm.

103. I believe that the reason Ms Asmar had moved a motion (while she was still present) that the President Mr Eden should chair the meeting was in order to influence the decision of other members of the Committee in favour of Holding Redlich.

104. Holding Redlich had represented Ms Asmar recently in relation to her candidacy eligibility in the union elections. The union had previously engaged Maurice Blackburn Lawyers prior to Ms Asmar’s elected office.

105. On 23 December 2012 at BCOM meeting, Ms Asmar recommended we engage Holding Redlich on a temporary basis. The motion was *“that the Branch Committee of Management notes and agrees that Holding Redlich will provide legal services at \$4,500 until a procurement process in accordance with the Policy of the Branch is undertaken.”*

106. Ms Asmar did not disclose any “conflict of interest” at that particular meeting, however, has done so ever since. I believe it is also worth noting that Ms Asmar would have been well aware that Holding Redlich would submit a tender for Legal Services on a permanent basis, therefore, should not have been one of the persons present when the tender box was apparently opened on Monday, 13 May 2013.

107. I am also concerned about another aspect of the legal tender process. The issue relates to why the President was privy to know of the two tenders prior to the meeting and not myself, as 3.4 of HSU Finance Policy and Procedures (Tendering and Procurement) states, *“Tenders will be evaluated by the Audit and Compliance Committee with recommendations provided by the Assistant Secretary/Treasurer.”* This is not possible when the Assistant Secretary / Treasurer is not made aware of the tenders.

108. To the best of my knowledge, procurement is undertaken by the Secretary, the General Manager of the union and the Finance Manager.

109. I have been advised by Robert McCubbin that he was not at the tender box when it was actually opened but that he subsequently observed three tenders from legal firms which were on Ms Asmar’s desk. He indicated that one was from Maurice Blackburn, one was from Holding Redlich but he couldn’t remember who the third one was from as he had never heard of them. I asked him if he was certain that there were three and he said yes. I asked him if the third one was Cornwall Stodart and he agreed that was correct.

110. I have two concerns about this.

111. The Minutes of BCOM 3 June 2013 under item 6. **Confidentiality**; stated that:

#### Tenders

*‘The Secretary noted that the tender box was opened at 3.50 p.m. on 13 May, Mark Donohue, Diana Asmar, and Robert McCubbin. There were a total of two tenders received. One from Cornwall Stodart and one from Holding Redlich’. (Annexure 9).*

112. My concerns are that I now know Robert McCubbin was not present when the box was opened and he has advised me that there were three tenders.

113. I rang Maurice Blackburn on 8 August 2013 to find out if they actually submitted a tender. I was advised by the receptionist that Maurice Blackburn had submitted a tender but had later withdrawn it.

(i) Use of my name in BCOM meetings

114. I have also noted that in some BCOM minutes that my name has been incorrectly recorded as 'moving the motion'. I now recognise that this has been done in some instances so that the minutes record me as the initiator of the motion. My name has been used as the initiator for example for the following motions;

- engaging Holding Redlich Law Firm;
- removing/dismissal of Nexia Australia Auditors and engaging Michael Shulman from Stannards Accountants & Advisors; and
- changing the name of HSU to the Health Workers Union.

115. In none of these examples was I the initiator of the motion although the Minutes reflect that I was.

116. An example of this can be found when comparing the BCOM Agenda for 23 December 2012 with the motion which was recorded in the later minutes of that meeting. The Minutes of that meeting record me as moving a motion to appoint Holding Redlich. At that time, I did not know who Holding Redlich were and I did not move a motion to appoint them as the relevant legal firm. I do believe I supported the motion but I did not move it. There is no reference in the Agenda to me being connected with this motion. It was Ms Asmar who actually moved the motion but the Minutes wrongly attribute that to me. The motion was predetermined. Ms Kitching usually prepares the BCOM agendas under Ms Asmar's direction.

117. The same inappropriate procedure was used in relation to the spilling of the Audit and Compliance Committee and then appointing new "preferred" members at another meeting. The purpose was to remove Patrick O'Brien from the Committee (as he did not run on the "Asmar" ticket during the Election Campaign). It is sometimes difficult to pick this issue up because usually the minutes from the previous month's BCOM meeting are not produced until the beginning of the next month's meeting. I now review who moves and seconds a motion in the minutes carefully and will speak out if it does not match my own records.

Issue No. 13

(i) Other employees completing Organisers' 'Right of Entry' Test. I believe Ms Kitching completed several tests for different Organisers. Ms Dee McIntosh completed Mr Tim Rowley's right of Entry test. I understand that another employee, who would prefer not to be named, refused to sit a right of entry test

for an Organiser when requested to by the Branch Secretary.

118. The reason I believe Ms Kitching completed several tests for different organisers is that in about February or March 2013, a colleague told me that she had heard Ms Asmar having a conversation with Kimberly Kitching during which Ms Asmar told Ms Kitching that the Right of Entry permit tests needed to be completed as a matter of urgency. My colleague told me that Ms Kitching then went and completed a number of Right of Entry Permit tests for organisers of the union. I do not wish to name the colleague who told me about this as both she and I am concerned her employment would be in jeopardy.

119. My colleague told me that Diana Asmar asked her to complete a Right of Entry test for another union organiser but my colleague had refused to do that because she believed it would be breaking the law and she would not do that.

120. I do know that Dee McIntosh completed Tim Rowley's Right of Entry Permit test because Tim Rowley told me that she did. I had a conversation with Tim about two months ago as I was aware that Tim had a Right of Entry Permit issued in April 2013. I mentioned that my Right of Entry permit was expiring in November 2013. I asked Tim if the test was difficult and I also asked him if he had received the test answers from anyone prior to the test. Tim laughed and said 'I didn't do mine.' I said 'Who did yours?' He said "Dee did mine'. Dee McIntosh is an organiser at the HSU.

121. The clear problem here is that Right of Entry Tests are supposed to be taken by the applicants and the outcome is that those people are not aware of the requirements for conducting work place visits.

122. While being at the FWC today, I contacted Jayne Govan who is the sister of Daniel Govan who I have previously mentioned ran as the Assistant Secretary Treasurer on the Diana Asmar ticket and who was later employed at the HSU as an organiser.

123. The following text conversation occurred today:

Leonie Flynn.

'Hi Jayne, who did your Right of Entry? Was it Kimberley?' I'm at FWC. Do you know whose permit tests she sat? Lones.

Jayne Govan

'She sat mine, Nick's, Dean, David Eden. Not sure about others. Lee I think. And yes, it was Kimberly. I think she did Rob's too.'

Leonie Flynn.

'Thanks Jayne. Do you know when? What about Diana's?'

Jayne Govan.

'She would of done Diana's. It was when we started. I'm going home I can look on my right of entry.'

Leonie Flynn.

'Will call you on lunch break and yes that would be great if you could check the date'.

Jayne Govan.

'12/03/2013 was application date re 2013/582 is permit number.

124. Jayne Govan was previously employed at the HSU as an organiser and she is clearly saying that Kimberly Kitching actually completed her (Jayne's) Right of Entry Permit test in March 2013. Jayne is also advising that Kimberley completed Right of Entry tests for Nick Katsis (currently an industrial officer at the HSU), Dean Sherriff (currently an industrial officer at the HSU), David Eden (President of the HSU Vic. No 1 Branch and also employed as an organiser). Jayne is saying that she thinks Kimberley Kitching completed Right of Entry tests for Lee Atkinson (currently employed as an organiser) and probably Rob McCubbin (former lead organiser for the HSU).

125. Jayne Govan was previously close friends with Diana Asmar to the extent that Diana was actually present when Jayne gave birth to her only child. Jayne's employment was terminated two weeks prior to her six month probation period on the basis of alleged competence issues.

#### Issue No. 14

(i) Union resources used for Ms Kimberley Kitching's preselection campaign flyers for the seats of Gellibrand and Lalor. Resources include Mr David Saunderson's (Campaigns Manager) work time to design the flyers at the rate of \$51.25 per hour, paper, printing, shredding of flyers (shredding post loss of Gellibrand only).

126. On Monday 15 April 2013 I went into the printing room at the HSU office and there was a young man 16 - 18 years of age present. This young man was the brother of Janine Ghantous who was doing work experience placement at the branch. The young man was shredding a pile of about 15cm thick of campaign flyers for Kimberley Kitching - Gellibrand preselection. (Annexure 10).

127. I believe that these campaign flyers, because of the circumstances of their shredding, were produced using HSU resources. It is my understanding that a Mr David Saunderson was employed by Diana Asmar on behalf of the HSU specifically to design and produce campaign flyers for Ms Kitching as well as to produce the HSU official quarterly journal. I am not aware of any BCOM approval for the use of any HSU resources to support any political campaign for Ms Kitching. I believe HSU resources were used to support political campaigns for Ms Kitching, without approval which in my view, is inappropriate.

128. Ms Kitching was subsequently unsuccessful for the Gellibrand pre selection.

129. On Wednesday 10 July 2013 I found a further campaign flyer for Ms Kitching for the Lalor preselection in my personal rubbish bin in my office at the HSU. David Saunderson had been employed as a Campaigns Manager and had been using my office for approximately 6 weeks with my permission. Nobody else uses my office.

130. When I was in my office on 10 July 2013, David had left on Friday 5 July 2013. The rubbish was overflowing and I went to remove the rubbish and noticed a large pile of individual pages of what would later become the 'Health Worker' journal. In the middle of this pile of pages, was a campaign flyer for Ms Kimberly Kitching for her Lalor preselection campaign (Annexure 10).

131. It is obvious to me that the Lalor pre selection campaign flyer and the Gellibrand pre selection campaign flyer are very similar and appear to me to have been produced using the same resources i.e. the same person producing it, the same printer, the same colours etc. I believe David Saunderson produced the two flyers using the same resources of the HSU and I am unaware of any BCOM authority for this to occur.

#### Issue No. 15

##### (i) Not all Union employment vacancies advertised on Union website.

132. The policy of the union is that all vacancies for positions will be advertised on the website.

133. My concern about this issue is that I am aware that the position for General Manager which was taken up by Kimberley Kitching was never advertised and she was directly appointed by Diana Asmar. I am aware that Ms Kitching's husband Andrew Landeryou operated a blog site called 'Vexnews' which was used to criticise and in my view defame Marco Bolano and I during our election campaign. It is my belief that Ms Kitching was appointed as the General Manager as a favour to Andrew Landeryou for criticising our ticket and supporting Ms Asmar during her campaign.

134. Ms Kitching has been appointed to a number of roles in addition to the General Manager including a compliance officer and Executive advisor (this role was given to Ms Kitching to formalise her attendance at BCOM meetings). None of these roles have been advertised and she has been directly appointed.

135. Mark Donohue was originally employed as a Communications Officer and is presently employed as Operations Manager. Neither of those roles were advertised on the website and he was directly appointed by Diana Asmar. I understand Mark Donohue had been Diana's campaign manager during her election campaign along with Luke Walladge.

136. Luke Walladge was employed from January to February 2013 as a strategic planner again as a direct appointment with no advertisement.

137. Hala Salem was employed by Diana Asmar as her personal assistant without advertisement. I am aware that Hala was Diana's Personal Assistant when Diana was the Mayor of the Darebin





Council. Hala's sister Hiba, is now employed as an organiser at the HSU and I do not believe that Hiba's appointment was through any recruitment or advertised process.

138. Lachlan Enshaw was employed by Diana Asmar as an organiser without advertisement at about the same time as Hiba Salem. Lachlan was previously a Councillor at the City of Moreland.

139. Sel Sanli is currently employed as an organiser at the HSU and was the previous Mayor of the Maribyrnong City Council and was previously employed at the head office of the Victoria Labor Party for a period of ten years. Sel was not employed through any recruitment or advertised process that I am aware of.

140. Moira Saunderson was employed as an organiser and is the sister of David Saunderson who was employed as campaign manager. David was an ex councillor from the City of Greater Geelong. Moira was employed after David but I am not aware of any recruitment or advertisement process for her employment.

141. I am aware the HSU employment policy requires the following:

'2.2 Normally persons, related to any official or any employee of the union will not be employed by the union.'

'2.4. If an applicant recommended by the selection panel is related or associated with an official or an employee of the union, the recommendation for employment must be approved by the Branch Committee in writing'. (Annexure 11.)

142. Cameron Granger is now employed as an organiser and was the ex Deputy Mayor of the City of Greater Geelong. Similar to the other people I have mentioned, I am not aware of any recruitment or advertisement process for Cameron's appointment.

143. Dean Sherriff is currently employed as an industrial officer and was previously from the Banyule Council. Dean also assisted Diana with her election campaign and like the others was appointed as far as I know without any recruitment or advertised process. I have downloaded from the internet a piece apparently written by Dean Sherriff which demonstrates his long term friendships with David and Diana Asmar, Kimberley Kitching and Andrew Landeryou. I think this relationship is evidence of the cronyism I am referring to. (Annexure 11.)

144. Nathan Murphy is employed as a Senior Industrial Officer and is previously an ALP member of State Parliament. His appointment was like the others as far as I know, not through any recruitment or advertised process.

145. Nick Katsis is currently employed as an Acting Lead Organiser/Industrial Officer although he was employed as an organiser. Nick was a previous Councillor on the Darebin Council with Diana Asmar and again, as far as I know was not employed through any recruitment or advertised process.

146. Rhonda Barclay has recently been employed as a Growth Organiser without any advertisement process. Rhonda Barclay is the Junior Vice President of the BCOM who ran for an office on Diana's election ticket.

147. All of these appointments are examples in my view of what I would term cronyism. In addition to my concerns about the lack of recruitment process, I am concerned about the skills and suitability of a number of these appointments and whether they are actually qualified to perform the jobs they have been appointed to. I am aware that very few people have been employed from what I would describe as the 'shop floor' who would have the skills to perform roles such as organisers.

148. My additional concern is that a number of the appointments I have referred to above have been reported in the media as having a range of convictions including those related to failing to disclose conflicts of interest and other matters.

149. I am concerned about the integrity of the HSU with the lack of process and the appointment of a range of people to positions.

#### Issue No. 16

**(i) Union vehicle abandoned in Long-term car park at Melbourne Airport on or around 4 February 2013. Keys to car taken and not returned. Employee concerned Luke Walladge (former Strategic Planner).**

150. I understand that Luke Walladge was assigned a union vehicle, a silver Hyundai. I am aware that when Luke left the HSU and returned to WA, he left the vehicle in the Melbourne Airport car park for a number of days from around 4 February 2013.

151. Kia (Annie) Lam was employed by the Administrator as an administration person who was terminated on Friday 1 March 2013. Prior to her leaving, she told me she had been instructed to look out in the mail for the keys to the Silver Hyundai. I exchanged emails with Annie on 7 March 2013 in relation to the Walladge vehicle issue (Annexure 12).

152. On Friday 1 March 2013 I spoke to a lock smith in the car park of the HSU who told me he was there to cut key for the little silver car (as he pointed to the Hyundai).

153. The issue with this is that expenses were incurred by the vehicle being parked at the airport, having to be towed back to the HSU and further expense incurred with the locksmith but no financial reporting was provided to the BCOM as far as I know. This is an example of how financial matters have been concealed to protect friends (in this case Luke Walladge).

154. I later asked Kimberly Kitching why Luke left the HSU and she told me it related to a serious illness of his mother in law although I read publicly available media reports which indicated that it related to a warrant of arrest. (Annexure 12).

Issue No. 17

**(i) Company vehicles being utilised by office staff on a permanent basis.**

155. On 4 March 2013 during a BCOM meeting, the issue of vehicles was discussed. During the meeting, it emerged that sixteen vehicles were to be purchased and I questioned that number of vehicles and who they would be issued to. I also raised the issue of why I had not been involved in the process and Diana indicated that it was Kerry's role. Diana said that there would be 12 vehicles for 12 organisers; the secretary would have one, the assistant secretary/treasurer, the lead organiser would each have one and there would be a pool car. I have notes of this meeting (Annexure 13).

156. I am aware that the Finance Manager Kerry Georgiev drives a HSU vehicle to and from work. Nathan Murphy (the senior industrial officer) has a vehicle allocated to him. Nick Katsis had a vehicle issued to him when he was an industrial officer although he has recently been appointed Acting Lead Organiser. Dean Sherriff is an industrial officer who has a vehicle issued to him and he used to be the Lead Organiser.

157. I have again spoken to Jayne Govan today at about 2.00 p.m. via mobile phone and clarified that Mark Donohue has been issued with a union vehicle although he catches a tram to work and leaves the union vehicle at his home. I don't have any evidence of it but Jayne has indicated Mark's wife uses the union car.

158. In addition I have clarified that Kimberley Kitching is also issued with a union vehicle and again I have no evidence but I have heard Jayne say today that her (Kimberley's) husband Andrew Landeryou uses the union vehicle.

159. My point about this is that union vehicles have been allocated to union office staff without any justification. In addition it is possible that non union people are using union vehicles.

160. On 6 May 2013 at a BCOM meeting, a further discussion occurred in relation to vehicles. The secretary and finance officer discussed the need for additional vehicles given the additional staff coming on board. The Minutes reflect that there would be five new organisers, so five additional vehicles are needed in addition to the 16 vehicles currently on lease. (Annexure 14).

161. My point is that HSU member's funds are being inappropriately used to provide vehicles to office staff who have been appointed by Ms Asmar. A number of the people who I have referred to above have been issued with vehicles which has not been approved by BCOM. The additional five vehicles referred to on 6 May 2013 would only be required because vehicles have been inappropriately allocated.

162. I am aware that a BCOM meeting was conducted at the HSU on 2 September 2013 and a list of staff members (Annexure 13) was tabled which included salary ranges and whether the individual staff had been allocated vehicles as part of their packages. This is the first time that such a list has been provided to the BCOM. There are contradictions between the information in this list and previous approvals by the BCOM. For example, there were originally 16 vehicles approved by the

BCOM to be leased and distributed (refer Annexure 13) however I note that in the document provided to the BCOM on 2 September 2013 that Kerry Georgiev, Mark Donohue, Kimberley Kitching, Nathan Murphy and Dean Sherriff have all been allocated cars and as I have indicated, I am concerned about this being a previously unapproved and inappropriate use of members funds. I am at a loss to understand how it is appropriate for office staff, including the finance manager to be issued with union vehicles.

#### **Issue No. 18**

**(i) Location of 43 telephones that were situated in Training room.**

163. In about the beginning of June 2013 I observed and counted 43 office telephones. It was only a few weeks ago when I saw some documents which indicated that these telephones were worth around \$450. each and so on that basis, 43 telephones would be worth a significant amount of money.

164. About a month after I had seen them, I noticed that the phones had gone and I asked Mark Donohue about them and he said 'They're gone, we don't need them anymore'. In the position where the phones had been when I had seen them, there was now miscellaneous office equipment and Mark indicated that if I wanted any of those things for my office, feel free to take them otherwise they will be going.

165. I am concerned about what has happened to the telephones which were obviously purchased using union funds. (I took a photograph of these phones when I saw them. Annexure 15).

166. I have recently had a discussion with a Ms Gail Gills who is a previous President of the Victoria No. 1 Branch of the HSU. Ms Gills told me that she attended the HSU when Diana Asmar was elected and Diana told her that there was going to be a huge member's auction for all of the equipment at the HSU which was no longer needed, including the 43 telephones and other equipment.

167. I am aware that no such auction was ever held but I remain concerned about what happened to the telephones.

#### **Issue No. 19**

**(i) Legal expenses incurred by Union excessive \$167,144.83 from 21/12/12 – July 2013. The Legal Firm is required to provide a monthly projection of the expected legal costs to the Union at the beginning of each calendar month.**

168. My concern here is that the BCOM only approved legal costs on 23 December 2012 for Holding Redlich in the sum of \$4500. until a procurement process was undertaken.

169. I am aware that very little legal work was undertaken to explain \$167,144.83 and I understand that the monthly projection of legal costs has not been provided at the beginning of each calendar month.

**Issue No. 20**

**(i)**           **Staff taking leave, however, I suspect it has not been deducted from their entitlement of accrued leave hours, specifically ADO's and/or Annual Leave.**

170. On 5 August 2013 I asked Kerry Georgiev whether sick leave and annual leave which I know has been taken by Kimberly Kitching had 'gone through the books'.

171. Kerry advised me that it had.

172. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I noted that both Kimberly Kitching and Diana Asmar had not taken any ADO's since they had commenced working for the HSU and that neither of them had utilised any annual leave.

173. I am aware that Kimberly Kitching had approximately one week off during her Gellibrand campaign and she has also had approximately two weeks off sick leave for a medical condition.

174. I made notes of my observations in relation to this leave issue (Annexure 16).

**Issue No. 21**

**(i)**           **Review of Cab Charges used and reason why.**

175. I have been advised by a colleague who from time to time uses cab charges. My colleague advised me at the beginning of June this year that at one stage she had submitted cab charge receipts and she had noticed Kimberley Kitching's name was on many other cab charge's references.

176. My concern is that if Kimberley has been allocated a union vehicle, how it is possible she could be responsible for what was described to me as a lot of cab charge references.

**Issue No. 22**

**(i) Payments to a "Robert Half" in the total amount of \$3,850.84**

177. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I noted a reference to two payments to 'Robert Half.' One was in the sum of \$3850.84 and the other was \$829.13.

178. My concern is that I have no idea who Robert Half is or what the payments might relate to.

**Issue No. 23**

**(i) Payment to "Cottonwood Motor Inn" in the amount of \$1,592.50**

179. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I noted a reference a payment of \$1,592.50 to the Cottonwood Motor Inn on 19 June 2013 and I am reasonably sure that Ms Diana Asmar was associated with this expenditure.

180. My concern is that this appears to be an extreme amount which should require pre approval.

**Issue No. 24**

**(i) Payment to Geelong Trades Hall (2 transactions/occasions) in the amount of \$2,294.00 inclusive**

181. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I noted a reference to two transactions/occasions of payments to Geelong Trades Hall.

182. I am concerned about the reason union funds were paid to Geelong Trades Hall.

**Issue No. 25**

**(i) Payment to FTS Pty Ltd in the amount of \$2,848.00**

183. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I noted a reference to FTS Pty Ltd in the amount of \$2,848.00.

184. I am concerned about the reason this payment was made.

**Issue No. 26**

**(i) Payment to Iron Mountain in the amount of \$333.08**

185. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I noted a reference to a payment to Iron Mountain in the amount of \$333.08.

186. I am concerned about the reason this payment was made.

**Issue No. 27**

**(i) I have not located full termination payments for staff terminated on Friday 4 January, 2013**

187. A number of staff were terminated on 4 January 2013. Two of them in particular, Lynne Wilson and Clive Hogg were to receive substantial termination payouts. It would have been somewhere around \$100,000 combined total for both.

188. There was some discussion about the HSU not having the money to pay out Lynne and Clive and when Lynne contacted the HSU she was advised she would be paid by mid February 2013. When I spoke to Lynne today, she indicated that she spoke to Kerry Georgiev about her payment and it was Kerry who told her she would not be paid until mid February although she was actually paid the next day after the conversation with Kerry.

189. Before Lynne and Clive were actually paid, I had actually spoken to Kerry Georgiev and Kerry had asked me to check with them whether it was ok for them to be paid the following week because there wasn't enough money in the account. I checked with Lynne and she said it was ok and she indicated that Clive would probably be ok as well although I didn't speak to Clive.

190. It was very soon after that when I spoke to Lynne and she was very surprised that the money had actually been paid.

191. On 30 July 2013 I was at Stannards accountants and I was examining a folder of reports for the end of financial year. I could not find any reference to the payment to either Lynne or Clive and I am concerned that these payments have somehow been hidden or come from another source outside the HSU.

**Issue No. 28**

**(i)** Salaries and other conditions of some employees not disclosed to BCOM. Staff are simply “introduced” to BCOM and then the Secretary recommends that they be appointed. BCOM has not set those wages/salaries.

192. My concern is that people like Kimberley Kitching, Mark Donohue, Kerry Georgiev, Luke Walladge and David Saunderson have their salaries determined by Diana Asmar and their salaries have never been discussed or set by BCOM.

193. This is not an appropriate or transparent way to conduct union business and I was never consulted in my role as Assistant Secretary / Treasurer to provide advice about whether we could afford the salaries being set by Diana Asmar.

194. Rule 54 (e) of the HSU Rules provides the BCOM with the power and duties to fix the remuneration and terms and conditions of employment of any officer or employee of the branch. The fact is that Ms Asmar was carrying this function entirely on her own. In addition to that, there was never any discussion in relation to Ms Kitching, Mark Donohue, Ms Georgiev or Luke Walladge being provided with a union vehicle.

**Issue No. 29**

**(i)** Tendering for Procurement of goods and services is not approved by the appropriate level of “Union Management”

195. Rule 83 provides that a sound framework for procurement for goods and services will be based on certain criteria. The rule requires for formal tenders in some circumstances which are required to be evaluated by the Audit and Compliance Committee with recommendations provided by the Assistant / Secretary Treasurer.

196. My point is that the Audit and Compliance Committee don’t evaluate formal tenders and the Assistant Secretary / Treasurer (me) has not provided recommendations nor have I been privy to the information in order to carry out the required role as specified in the rule.



197. I have referred in this statement to a number of motions that have been recorded in BCOM minutes as being moved by me which were not, including the procurement process for legal services.

**Issue No. 30**

**(i) The Assistant Secretary / Treasurer will ensure adequate insurance cover is maintained on Union assets. Obstructed by Branch Secretary.**

198. Under the finance policies and procedures (pursuant to rule 83) the Assistant Secretary / Treasurer will ensure adequate insurance cover is maintained on union assets.

199. My issue that Kimberly Kitching, Kerry Georgiev and Diana Asmar control the insurance arrangements and I have no role in that despite the rule I have referred to.

**Issue No. 31**

**(i) An agent will be appointed to manage the Union's property portfolio. This agent will deal directly with the Assistant Secretary / Treasurer and the Finance Manager. This does not occur with the first mentioned Officer.**

200. My point here is that as the Assistant Secretary / Treasurer, I have no role in managing the union's property portfolio.

**Issue No. 32**

**(i) Air travel and overnight stays report not presented at Audit and Compliance Committee meetings. To be provided by the Finance Manager.**

**Governance Policies - 1.1 states that *employees and Officers are prohibited from authorising expenditure that they have personally incurred* and that in the case of the Secretary any expenditure personally incurred must be approved by the**

BCOM. This includes authorisation for expenditure on travel, accommodation, Hospitality and gifts. I do not believe that this occurs on most occasions in the case of the Secretary receiving approval from the BCOM.

201. My concern here is that the Secretary approves her own travel and expenditure contrary to this requirement.

### Issue No. 33

#### (i) SMC Bank Account.

202. At the end of May 2013 I went to the HSU office to collect some documents. I went to the printing room of the HSU and while I was in there, I lifted the cover of the printer and observed a one page document headed Inaugural Minutes of a meeting related to an SMC bank account. I noticed a number of names recorded as being present at a meeting including Diana Asmar, Kimberley Kitching, Jayne Govan, Nathan Murphy and I believe David Eden. Also on the printer were other pages which appeared to be an application form for a bank account which had been signed by Kimberley Kitching.

203. I made a copy of these documents. (Annexure 17)

204. About a month ago, I was present with Rob McCubbin and Jayne Govan and I asked Jayne if she was still paying into a bank account related to SMC. I had assumed the account was an election fighting fund. I have previously heard Diana making comments about election fighting funds and talking about them in a negative way and that the old regime's used to use them. Although she had said that, I still assumed it may have been a fighting fund account.

205. In about February 2013 there was a staff meeting and I was sitting next to Rob McCubbin and Rob talked about having to start an election fund and Diana had specifically said something like we 'won't talk about that now'. I assumed that there would be some discussion about an election fund that would occur when I wasn't there and that I wouldn't be involved.

206. Jayne told me she didn't have any idea what I was talking about and I showed her the copy of the Minutes and application form.

207. Jayne told me that she had never attended such a meeting and on that basis, had not moved or seconded any of the motions recorded in the Minutes as being attributed to her. Jayne also said she had never paid into or was aware of such an account.

### Issue No. 34

(i) Concerns about the auditor

208. I am concerned about the process by which the auditor Michel Shulman from Stannards has become the HSU auditor and the role he actually undertakes. In particular, I am concerned about his independence to perform the auditor role.

209. On 15 July 2013 I attended the office of Michael Shulman to discuss my concerns about the financial reporting of the branch and my concerns about me signing off on financial documents on behalf of the branch when I have not examined or participated in the production of those documents. Because I have not been in any way involved in the process, I could not be satisfied about the accuracy or anything to do with those documents. I am aware of my financial accountabilities and my liabilities in reporting to the FWC on financial matters and I was extremely concerned about it.

210. We met for about an hour that day and I later made notes about the meeting. I specifically asked Michael Shulman how he came to be our auditor and who he was connected with. I asked him whether he had been associated with Diana in previous roles and he stated that he had not met Diana until she had been elected. We were having a conversation about how we (the HSU) found him and he said it was a connection with Kimberley Kitching.

211. When I left the meeting I remained concerned about Michael's independence because I believed he acted more like an employee than an independent auditor. Later, my husband and I started making inquiries with ASIC and as a result of our correspondence, ASIC provided us with some information about Michael's history with ASIC (Annexure 18).

212. My concerns include that the BCOM is supposed to appoint an auditor and that although no tender process went out for an auditor, Michael Shulman became the auditor and I now know that it related to his previous association with Kimberley Kitching.

213. I have provided the Minutes of a BCOM meeting dated 6 May 2013 (Annexure 18) and in those Minutes it states in the Assistant Secretary / Treasurer's report the following:

'The Assistant Secretary / Treasurer noted that it was proposed following a recent review of the external audit function that the branch change auditors from Nexia Australia to Stannards Accounts and Advisors.'

214. As I have previously indicated in Issue 12 above, there have been examples in which Minutes have recorded me moving motions which misrepresent what actually occurred. The reference directly above is a further example of where misrepresentation has occurred.

215. I am not aware of the exact circumstances but I recall Kimberly Kitching handing me a piece of paper with information written on it about changing the auditors. To the best of my recollection, although I may have read out what was written on the piece of paper Kimberley had handed to me, but I believe now that I was manipulated into doing so.

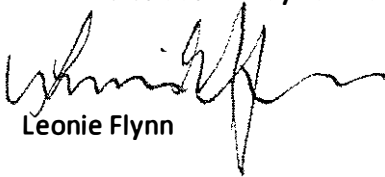
216. The Minutes noted that a review of the audit function occurred but I am unaware of what that review entailed nor was it discussed at the BCOM meeting and no report tabled about it.

217. I have had many conversations and email exchanges with Michael Shulman during which I have expressed my disappointment about lack of communication from him to me and that he would always communicate with Diana, Kerry and Kimberley. Following the meeting on 15 July 2013, Michael did start including me in copies of emails and communications.

218. On 30 July 2013 I returned to Stannards Accountants and spent about four hours reviewing the financial records and I have referred above to various issues I identified at that time.

#### **Conclusion**

219. I will conclude this statement by saying that I first wrote my letter to the General Manager of the FWC on 31 July 2013. I am aware that as a direct result of me formally raising a number of concerns and issues with the National President Mr Chris Brown, that some of the issues I have referred to above may have been addressed in whole or in part.



Leonie Flynn

4 September 2013