

O'Brien Patrick

States:

1. My name is Patrick O'Brien and I have been requested to attend at the Fair Work Commission (FWC) to make a statement in relation to issues that are being investigated by the FWC in relation to the Health Services Union (HSU) Victoria No. 1 Branch.

### **Background**

2. I have been involved as a union representative in one way or another for more than 25 years including with the previously named Health Employees Federation which became the Health Services Union. I have previously served as a Junior Vice President of the HSU Victoria No. 1 Branch after I had run on Marco Bolano's ticket and when the amalgamation of HSU branches occurred. I served on the Branch Committee of HSU East.

3. I have previously participated on the National Council of the HSU representing the Victorian Branch and I have represented the Union on the Goulbourn Valley Trades & Labor Council.

4. In 2012 I ran for election as a Branch Committee of Management (BCOM) member on Marco Bolano's ticket and I was elected to the BCOM. Two other members of Marco Bolano's ticket were elected including Leonie Flynn as the Assistant Secretary - Treasurer and Rob Morrey as another member of the BCOM.

5. I had never met Diana Asmar before the elections and she wasn't known to me but Diana Asmar was successful in being elected as the Secretary of the Branch with others who had run on her ticket.

### **Branch Committee of Management**

6. Because I am from regional Victoria, the main reason I come to Melbourne is to attend the BCOM meetings and I have participated in all of the BCOM meetings since the election in 2012. I consider myself to be an independent person sitting on the BCOM purely to act in the interests of the HSU members.

7. I can say that I have never been entirely confident about the way the BCOM has operated and I will try to explain what I mean.

8. I always felt that there must have been pre-meetings going on before the actual BCOM. As I indicate above, I am from regional Victoria and it is obviously necessary for me to travel to Melbourne for the BCOM meetings and often when I attended the room where the meetings were held, the room would be nearly empty until just before the meeting was to start and then a group of people would all turn up at once and almost immediately start making motions and want to vote on certain issues. This would take me by surprise and I would be either thinking or saying things like hang on, we've just started as I would wonder how anyone had all the information or were across the motion being put to a vote without any discussion at the meeting. This was not a one off thing and would happen regularly and so it



must have been that there were pre - meetings going on about the motions which were to be put to the BCOM.

9. The consequence of this was that often motions would be quickly passed without any or much discussion by the required majority who were prepared to vote for them.

10. I have always had a further concern about the conduct of BCOM meetings and the way things seemed to be either left to the last minute and things were rushed as a consequence. For example, on a number of occasions I have raised the issue of the BCOM Agenda's and / or Minutes not being provided until just before or at the time of the BCOM meetings which provided very little and sometimes no opportunity to read or consider them. We were rarely given the time to consider whether the Minutes were accurate or contained enough information about what had been previously discussed as it was often so rushed.

11. The situation for me was that I didn't have any pre determined ideas about things and I was open to listening to and understanding motions that were put or ideas that were being discussed. I actually thought Diana had some good ideas about how to run the Branch and I was very much open to voting for an idea or a motion if I thought it had merit.

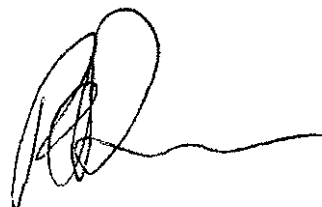
12. I considered myself to be independent of any ticket and I was on the BCOM to represent and act in the interests of the members and I know that Leonie Flynn and Rob Morrey did too. As I say above, I was prepared to vote for things which were in the interests of the members regardless of whose idea or motion it was.

13. I was concerned that there were some people on the BCOM who were conflicted by their employment with the HSU. David Eden for example was the President of the Branch and chaired the BCOM but he was also an employee of the Union and Diana was his employer. Based on my very extensive experience within the union movement, I can say that David could hardly vote against Diana as his employer in any of the BCOM meetings and that was always going to be a conflict for him.

14. Rhonda Barclay also had a conflict because she was on a return to work program as an employee while also being on the BCOM. Similar to David, Rhonda could not be expected to vote against her employer Diana in any BCOM meetings.

15. I understand that there is a requirement for the Branch to conduct quarterly meetings of all members so that they vote on and pass the decisions made by the BCOM but there have been no general branch meetings since the elections in 2012 and I am concerned about that.

16. I have concerns about the ability of the BCOM to make informed decisions and more particularly the ability of a number of members of the BCOM to make those decisions based on due diligence. I am concerned that there a number of people on the BCOM who don't really understand their roles and I am certain there is a lack of understanding by members of the BCOM about what the rules of the Union actually are.



17. I know that there has been discussion about members of the BCOM receiving training so that they understand their role and responsibilities but that training has never been delivered.

18. There was a distinct lack of financial reporting to the BCOM up until the last three meetings which when the BCOM has started to receive financial reports.

#### **Audit Committee**

19. I attended the first BCOM meeting of the HSU Victoria No. 1 Branch on 23 December 2012 and I brought a copy of the Minutes of that meeting to the FWC. When the first meeting was held, I noticed that Kimberley Kitching participated and was very active right from the beginning which I thought was unusual for two reasons. Firstly I thought it was unusual she had already been employed as a General Manager by the time we were having our first meeting on 23 December 2012 which was straight after the elections and secondly that she would be so active and influential considering she wasn't a member of the BCOM.

20. I actually abstained from voting on a number of issues at the first meeting because there hadn't been any information provided to us that we could have properly considered and voted on.

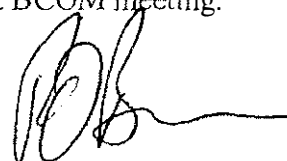
21. There was a discussion however about the composition of an Audit Committee which was to be appointed in accordance with Rule 88. It was clear to me that Diana had already selected people who were to be on the Audit Committee and the following people were nominated:

- Gordon Driscoll
- Andrew Hargraves
- Susan Stone &
- Lance Smith.

22. I made it clear that being on the Audit Committee was an important role and that people who were on the Committee would need to take care about finance issues on behalf of the Union. Andrew Hargraves decided that he did not want to be on the Audit Committee and so a vote was taken and I was voted onto the Audit Committee.

23. Subsequent to that meeting, I became aware that there were efforts being made to remove me from the Audit Committee. On 13 January 2013 I wrote to the Secretary Diana Asmar setting out my concerns about what I understood to be a proposal to 'unappoint the Committee and appoint a new one'. I have attached a copy of letter dated 13 January 2013 to this statement (**Annexure 1**).

24. At the next meeting, the issue was discussed and is referred to in the January BCOM Minutes under the Assistant Secretary - Treasurer's Report. A motion was moved by Rhonda Barclay, seconded by Caroline Fischer and carried with me dissenting that my letter would go to the Union's solicitors with their response to be tabled at the next BCOM meeting.



25. At the following BCOM meeting on 4 February 2013 and again under the Assistant Secretary - Treasurers Report heading (although Leonie Flynn was not in attendance) the legal advice earlier referred to was read out by Diana but we didn't get a copy of it. We were told by Diana that the legal advice was that she was not doing anything wrong by the appointment of a new Audit Committee. There was another vote and the following people were voted on to the Audit Committee.

- Gordon Driscoll
- Susan Stone
- Lance Smith and
- Julie-Anne Mitchell.

26. Interestingly and according to the Minutes of that meeting, the newly appointed member Julie-Anne Mitchell actually moved the motion to appoint the Committee to which she was being appointed. I dissented from the motion which was carried.

27. I recall some discussion from Julie-Anne Mitchell in which she said that the reason she had not nominated for the Audit Committee at the first meeting was because she had attended by telephone and hadn't properly heard the discussion or perhaps wasn't clear about the discussion. I am relying on memory about those comments from Julie-Anne because there is no mention in the Minutes of the BCOM of 23 December 2012 that Julie-Anne participated by telephone.

28. In any event, I was certainly not in a financial position to go and obtain my own legal advice to challenge what we were being told by Diana and so while I dissented from the motion, that was as much as I could do.

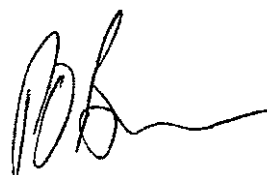
#### **Appointments to BCOM**

29. I am not certain of it but I understand that the rules require that for a period of 12 months after the elections and following the resignation of a BCOM member, there has to be another election to fill the BCOM vacancy. My understanding is that following Rob Morrey's resignation, Diana appointed Nurjie Alimi-Raslan to the BCOM and more recently Diana appointed Cherie Jacks to replace Gordon Driscoll. That decision has become even more important because Cherie Jacks is now Chair of the Audit Committee.

30. I am concerned that these appointments to the BCOM may not have been made in accordance with the rules.

#### **Excessively Influential People on the BCOM**

31. I have been asked if I have a view about whether there are any particular people on the BCOM who are unduly or excessively influential on the BCOM. My view is that Kimberley Kitching is unduly and excessively influential on the BCOM which is even more of an issue because she is only there as an advisor and not as a member.



32. Kimberley Kitching was not only having an excessive influence on the BCOM meetings, she was the person having control of writing the Minutes from the meetings although in recent meetings, a company has been employed to take the Minutes.

33. It has always been difficult to receive any direct answers or responses to issues which are raised at the BCOM. Diana for example, would use diversionary tactics to avoid responding to difficult issues. For example, if a difficult issue or question was raised at a BCOM, Diana would start talking about the previous terrible corruption issues with the HSU and about how bad things were and she would use that discussion to avoid talking about the issue which was being raised. In a similar way, Kimberley Kitching would very often take charge of any topic that was being discussed and refer to her legal background but when asked for a response to a particular issue, she would say things like 'we need to get legal advice' or would defer the discussion to a later time which would never come.

#### **Assistant Secretary - Treasurer**

34. I have been asked whether I am aware of the Assistant Secretary - Treasurer Leonie Flynn being prevented from undertaking her role and responsibilities but I am not able to say that I witnessed her being prevented from specifically carrying out any particular role or responsibility.

35. Of course I did witness things occurring during the BCOM meetings and various heated exchanges between Leonie Flynn and Diana and Kimberley. In addition and on several occasions, I spoke to Leonie after the BCOM meetings and she continued to make it clear to me that she believed she was being prevented from carrying out her duties.

#### **Employment of HSU staff**

36. I am aware that an issue has been raised with the FWC about the employment of a range of HSU staff. As a member of the BCOM, up until I think it was about three BCOM meetings ago we were never asked to consider any potential appointments or approve the terms or conditions of staff being employed. We did not receive any information about any staff terms and conditions at the BCOM nor any advice about any potential conflicts of interest.

37. I have said above that I was surprised that Kimberley Kitching was appointed by Diana as the General Manager immediately after the election and commenced attending at the first BCOM meeting.

38. The following appears in the Minutes of the first BCOM Meeting on 23 December 2012.

Item 4.

*Motion - that the Branch Committee of Management notes and approves the temporary employment of necessary staff effective as of the date of handover from the*



*Administrator to the Secretary (21 December 2012) until an employment process in accordance with the Policy of the Branch is completed.*

39. The only thing that the BCOM were aware of in relation to this Agenda item was that people would be put on 3 - 6 month contracts until proper employment processes were sorted out.

40. I have brought with me to the FWC copies of the BCOM Minutes of 4 February 2013 and attached to the Minutes is a document headed:

'Agenda Item #' Employment of Staff.

All I can say about that document is that it was attached to the Minutes and there was minimal discussion about it at the BCOM.

41. In relation to paragraph 3 (d) of that document, I am not aware of any occasion in which the BCOM were provided with information about any recommended candidates for employment who were relatives or associates of any HSU officer or employee.

#### **Legal Services Tender**

42. In the Minutes of the first meeting of the BCOM on 23 December 2012 there is a reference under Item 3 Level Services to the following:

*Motion – 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.*

43. Maurice Blackburn has been the legal firm acting for the HSU up to that point and my view was that there was a conflict of interest in this issue because Diana Asmar had been represented by Holding Redlich during the election and appointing them to be the legal firm before a tender process was not appropriate.

44. I expressed the view that whoever was going to be the legal firm should have regional offices to cater for regional members and I considered that because of the conflict of interest in Diana being represented by Holding Redlich, that the appropriate thing to do would have been to continue with Maurice Blackburn until the tender process had been resolved and then appoint the successful tenderer.

45. I don't have any further information about the actual tender process but there ended up being two tenders submitted and during the BCOM discussion Diana declared a potential conflict so David Eden spoke to the tender and Holding Redlich were appointed as the successful tenderer.

46. I don't have any further information which seems to me to be relevant to the current investigation.

Patrick O'Brien



14/11/14<sup>6</sup>

Dear Ms. Asmar,

**Re: Election of New Audit & Compliance Committee**

I was disturbed to read the Assistant Secretary's note with the Agenda for the Branch Committee of Management meeting on Monday 14 January 2013, regarding the Audit & Compliance Committee. I particularly refer to the proposal to unappoint the Committee and appoint a new one.

I will be absolutely frank in expressing my dismay at this proposal and strenuously query the Committee's authority to do so under the Rules. Also, in my view your purpose is to particularly remove me from the Audit & Compliance Committee as I did not support you in the recent elections.

I intend to diligently and robustly perform my role on the Audit & Compliance Committee and your intent to spill the Committee is concerning. I fear that you are adverse to scrutiny and transparency in regard to the union's finances.

The reasoning behind the proposal outlined in the Assistant Secretary's note is nonsensical, a person or persons changing their mind about being on the Audit & Compliance Committee, is not a valid reason under the Rules to spill the Committee.

I contacted the Assistant Secretary regarding this matter and was advised that the Committee may have not been appointed in accordance with the Rules, although she was unable to articulate how. This is simply incorrect.

Rule 88 provides that the Branch Committee appoints the Audit & Compliance Committee from the Branch Committee. This occurred on 23 December 2012 and there were no objections. Rule 88 is silent on the alteration of the Audit & Compliance Committee once appointed. The members of the Audit & Compliance Committee including myself, now hold those positions as an Office under the Rules.

I refer you to Rule 87(b) which clearly refers to a person responsible for duties relating to the financial management of the Branch, as holding an office.

I also draw your attention to Part E Rule 82(i) – Definitions. This prescribes that the meaning of "office" under the Rules has the same meaning as defined by Section 9B of the Fair Work (Registered Organisations) Act 2009, please see below:

**9 Meaning of office**

(1) In this Act, **office**, in relation to an organisation or a branch of an organisation means:

- (a) an office of president, vice president, secretary or assistant secretary of the organisation or branch; or
- (b) the office of a voting member of a collective body of the organisation or branch, being a collective body that has power in relation to any of the following functions:
  - (i) the management of the affairs of the organisation or branch;
  - (ii) the determination of policy for the organisation or branch;
  - (iii) the making, alteration or rescission of rules of the organisation or branch;

*(iv) the enforcement of rules of the organisation or branch, or the performance of functions in relation to the enforcement of such rules: or...*

Rule 88(b) clearly states one of the functions of the Audit & Compliance Committee which clearly involve the management of the affairs of the branch, as prescribed in Section 9(b)(i) of the Fair Work (Registered Organisations) Act 2009.

Therefore, I cannot be removed from my office on the Audit & Compliance Committee on a whim. I would have to be removed from my office in accordance with Rule 64, which is not applicable or if I resigned which I do not intend doing.

I am notifying you that any attempt to spill the Audit & Compliance Committee on Monday would be a serious breach of the Rules and I would seek immediate legal remedy and also advise members of my concerns.

I suggest that if other Committee members have belatedly decided they want to be on the Audit & Compliance Committee, then someone will need to resign from the Committee to accommodate them. I have no intention of doing so.

I expect an urgent response to this letter prior to tomorrow's meeting and expect that the proposal to spill the Audit & Compliance Committee be immediately withdrawn.

Yours faithfully,



PAT O'BRIEN 3/1/2013