


Lee Pik ki (Peggy)

States:

1. My name is Peggy Lee and I am currently employed in a role and by an employer known to the Fair Work Commission.
2. I was previously employed as an Industrial Agreements Officer with the Victoria No 1 Branch (the Branch) of the Health Services Union (HSU).
3. I would like to commence this statement by putting some things into context. Firstly, I consider myself to be an honest person and consequently the facts and events that I will set out in this statement will be absolutely truthful to the best of my memory and ability.
4. I make this statement understanding that nothing I say in it can be used in any proceedings against me. I also understand however, that there would be very serious implications for me if I were to include something in this statement that I knew to be false or that I did not know to be true. I understand I do not have to make this statement but I am aware that if the Fair Work Commission (FWC) was to have exercised compulsory powers under the *Fair Work Act 2009* to require information from me, then that would have resulted in the same outcome. The reason I point this out is that I will be including in this statement that because of the pressure I felt I was under while at the Branch, I actually completed Right of Entry Tests for other people knowing that it was wrong to do so.
5. I would also point out that while I am willing to make this statement, I was approached by the FWC and requested to provide information and make this statement and not the other way around.
6. When I initially found out that the FWC wanted to speak to me about this matter, I was in Hong Kong on holidays. When I was eventually contacted by the FWC I made it clear that while I was willing to tell the truth, I did not want to make a statement because I was concerned about the repercussions of doing so if the HSU was to become aware I had made a statement.

PL 

7. I continue to be anxious and concerned about making this statement because I will be explaining things that other people from the Branch have done and I am concerned about the repercussions from that. I have a new job and have moved on from the HSU and so it is stressful for me to be providing this information and making this statement.

8. One of the main reasons that I am willing to make this statement is that I have thought about it and I understand it is the right thing to do even if it is stressful for me. I have already verbally told the FWC about the things that occurred with Right of Entry tests at the HSU and so this is a way of formally putting what I have said in writing. I will be relying on my memory for some the details in this statement as well as the dates recorded in emails and tests.

Background

9. I was originally employed at the HSU in 2009 as an Administration Assistant.

10. I was at the HSU in 2012 prior to the elections which occurred to re-constitute the Branch. Although I assisted in the election campaign for a ticket run by Marco Bolano in my own time in 2012, I did not perform any of that assistance during work time.

11. After the elections of 2012, Diana Asmar was elected as the Secretary and Leonie Flynn was elected as the Assistant Secretary Treasurer.

12. At the end of December 2012 and in January 2013, a lot of the staff who had been at the HSU for some time were leaving the Branch.

13. Although I am not sure about, I think it was because that I was not considered to be part of the previous leadership and that I had knowledge about the operations of the Union that I was able to continue in my role as an Industrial Assistant.

January 2013

14. From January 2013 I continued in my role as the Industrial Assistant.

15. Very early in 2013, Diana asked me to arrange for the obtaining of Right of Entry (ROE) permits for organisers. The reason Diana asked me to take on this role was partly because I was the Industrial Assistant, I had previously kept the folder for Right of Entry Permits and I was one of a few people who knew how to deal with Right of Entry Permits.

16. Based on my previous experience I explained to Diana that applicants were required to complete the ACTU ROE course and then lodge an application with the Fair Work Commission (FWC) for approval. It has been explained to me that Ms Asmar has suggested that I told her that the previous leadership had allowed organisers taking right of entry tests to have a list of answers for the test. I can say that as far as I know, organisers did not have answers to the ROE tests and I did not tell Diana that they did.

17. Diana told me that I was to be the person responsible for the administrative process involved in collating forms and information and processing ROE applications. I was the contact person for contact between the Branch and the ACTU, including follow up inquiries, ensuring that Branch applicants and the Secretary signed the appropriate forms and general administration of the process.

18. After Diana had instructed me to be responsible for the ROE process, I commenced having a range of conversations with the organisers about the ROE processes and commenced obtaining and collating the forms required for Diana and the organisers to enrol in the ACTU course.

Diana Asmar's ROE application

19. Diana Asmar was the first person to enrol in the ACTU ROE course for 2013. I was responsible for forwarding the application forms to the ACTU.

20. I recall very early in 2013 that Diana asked me what had happened to her application because she needed her ROE Permit urgently to attend an employers site. I recall telling Diana that she needed to do the actual ACTU test so that I could process the correct forms to the FWC and Diana seemed to understand that.

21. I recall that it was soon after that conversation I received Diana's Certificate of Completion and I recall processing it as an 'urgent' request to the FWC. Within a couple of days of me sending the ROE documents to the FWC by email, Diana's ROE permit was issued and returned.

22. I am not able to say whether Diana completed her own ROE test as I was only involved in the administration of the forms.

23. I recall that after Diana had received her ROE permit, we were at an Industrial meeting and it was obvious that Diana was very pleased about having her permit and she was making the point that she was the first person at the Branch to have a ROE permit issued. I recall at the meeting Diana was saying something about organisers needing to get their permits as soon as possible.

Organisers ROE Tests

24. As I have indicated above, I had a range of conversations with the various organisers and advised them during those conversations that an application firstly had to be made to the ACTU to enrol in the ROE course and that the organisers would then receive an email from the ACTU which would contain their log in details and passwords. I explained to the various organisers that they would then have time to access the course on line and complete the required test in their own time.

PL 4 ef

25. I actually advised the organisers that with the information provided by the ACTU in the course, the test was very easy and I assured each of them they would be able to do it. I advised the organisers that after they had done their on-line tests, they would receive their Certificate of Completion which they could forward to me so I could continue with the next step in the process.


26. After I had advised the organisers about all of the steps involved in enrolling in the ACTU course, completing the tests and forwarding me the Certificates of Completion, I recall collating and submitting to the ACTU various application forms. I recall forwarding some emails to the Finance person Kerry Georgiev so she could expect the invoices for payment of the courses.

27. Once a number of organisers like Jayne Govan, Steve Mitchell, Dean Sherriff and others had been enrolled in the ACTU course, as far as I was concerned, it was a matter of me waiting for their Certificates of Completion to be forwarded to me so I could continue with the next steps in the process.

28. I recall that a couple of weeks went by and I was asked by Diana what had happened to the ROE applications. I told Diana that I was waiting for and had not received any of the test results or in other words, the Certificates of Completion so I could continue with the process.

29. It was after that conversation that I became aware that Diana asked the organisers to forward the emails they had received from the ACTU containing their course access passwords to Kimberley Kitching. Because the organisers then started forwarding their ACTU emails with course access passwords to Kimberley, that meant that the people who could access an organiser's ACTU course and tests were:

- The individual organiser;
- Diana Asmar because the ACTU copied Diana into their return emails; and
- Kimberley Kitching because Diana had told the organisers to forward the ACTU emails to Kimberley.

PL 5 

30. As far as I know, other people could not access an organiser's ACTU course and on-line test without the password. Diana had not issued an instruction to the organisers to forward their ACTU emails containing their passwords to me so I didn't have access to them.

31. There were two occasions that I needed to get a copy of organisers Certificates of Completion. At one point I needed David Eden's Certificate of Completion to complete the administration of his application and in order to get a copy I emailed Kimberley Kitching asking her for a copy. I will refer to the email I sent Kimberley and the reply I received later in my statement. There was a further occasion when I needed to get a copy of Darryn Rowe's Certificate of Completion and I emailed the ACTU asking for his password so I could access the system to get a copy.

32. There were only two instances that I recall where I was required to email the ACTU to get copies of the emails which had been sent to organisers containing their ACTU passwords. As I say above, one of these was for David Eden and the other was for Darryn Rowe. I will explain these in further detail later in my statement.

33. As far as I know then, apart from the individual organiser, it was only Diana and Kimberley who could access all of the organisers ACTU ROE accounts.

34. I recall that it was around the time that Diana told the organisers to forward their ACTU emails to Kimberley that Diana kept asking me about the ROE tests. Diana later started to get very angry that the tests hadn't been done. I recall her telling me that the organisers needed the ROE permits and I recall Diana mentioning the names of Dean Sherrieff, Rob McCubbin and Nick Katsis as being people who needed permits. I told Diana that the organisers hadn't done their tests.

35. I also recall on one occasion having a conversation with Diana while we were in a corridor of the branch. During a conversation about ROE permits, Diana directly said to me 'Could you do the tests?' Diana was asking me to do the actual ROE tests for organisers which was something I knew was wrong and my response to her was 'No.'

PL ⁶ Rf

36. I recall that Rob McCubbin was nearby to us at the time and Rob said something about the organisers not having to do the tests themselves and I also replied directly to Rob by saying 'No.' By saying 'No' to Rob, I was making it clear that as far as I was concerned, the organisers would have to do their own tests and after that I just walked away.

37. After that I was about to go on leave and I recall that before I did I forwarded all of the ROE application forms to Kimberley Kitching. My emails forwarding the ROE applications to Kimberley will be in the HSU system somewhere. I was hoping that all of the permits would have been completed by the time I got back from my leave.

38. I started my leave on 13 February 2013 and flew to Hong Kong on that day. I visited my family in Hong Kong and I returned to Australia on 6 March 2013.

39. While I was holidays in Hong Kong between 13 February 2013 and 6 March 2013, I can say as a matter of certainty that I did not access the ACTU on line system or have anything to do with ROE permits.

40. I returned to work at the Branch in early March 2013.

41. When I did return to work, I recall having a conversation with a colleague Alex Leszczynski who advised me that he had heard that I was going to be sacked and replaced in my role. That caused me a lot of stress.

Bundle of Applications, Permits and test results.

42. A few days after I returned from my leave, the receptionist Jeanine handed me a bundle of ROE applications, Certificates of Achievement and ROE test results setting out the applicants scores and she said that she had no idea what to do with the forms. I am not sure if I remember all of them, but I remember some of the people the forms were for including Dean Sherriff, Nick Katsis, Rob McCubbin and Jayne Govan.

PL ⁷ PJ

43. Jeanine didn't seem to have knowledge or understanding of the ROE requirements or processes and she asked me if I could take the forms and do whatever needed to be done with them. I remember Jeanine was holding the forms and she was saying 'they asked me to do this, and I have no idea what to do with them'. I just said 'put them on my desk and I will deal with them'.

Conversation with Kimberley Kitching

44. I remember being very disappointed about having to deal with this bundle of permits, because I was hoping that this whole permit issue would have been resolved by the time I got back from leave. I recall later taking the bundle of applications, Certificates and test results into Kimberley Kitching's office and I recall discussing the permit issue with Kimberley.

45. During the conversation, Kimberley started telling me how she had completed ROE tests for the organisers. I think it was during this conversation that Kimberley told me she had failed the first ROE test and didn't get more than about 70% or something like that. As the conversation went on, Kimberley got very excited as she told me how she became very familiar with the sections of the Act that were about ROE tests and she was excited to have achieved 100% in some of the tests she had completed. I am certain about Kimberley telling me these things but I am not 100% certain that she told me all of these things in the same conversation. This is because we had more than one conversation in which Kimberley talked about her doing ROE tests for organisers.

46. It was clear that Kimberley was talking about having done the ROE tests for the organisers whose forms were in the bundle of documents Jeanine had handed to me and which I took into Kimberley's office. These organisers included Dean Sherriff, Nick Katsis, Rob McCubbin and Jayne Govan because as I said earlier, these were some of the people who I recall the forms were for.

47. After I left Kimberley's office, I remember that a colleague Alex Leszczynski happened to be looking at the ROE forms on my desk and noted that Dean Sherriff's form was on top of the pile. Alex had an issue with Dean's ROE application and went

PL ⁸ *[signature]*

and spoke to Kimberley about it. The issue had something to do with some type of conviction Dean was supposed to have had which I don't think was declared in his application. Alex went into Kimberley's office and spoke to Kimberley about the issue but didn't seem to get anywhere.

48. It was around this period that I started to really feel the pressure from Diana wanting me to do the ROE entry tests for organisers. I was hoping that David Eden and Darryn Rowe may have done their own ROE tests while I was on leave although I became aware they hadn't been completed.

49. I recall at one point I was collating the ROE forms for Darryn and David and I noticed their Certificates of Completion weren't attached. I remember sending an email to Kimberley Kitching dated 12 March 2013 in which I asked Kimberley to send me David Eden's certificate of completion. Kimberley responded by telling me she was on a leave day and also telling me to ask David for his log-on details for the ACTU course which would allow me to print out the certificate if he had already done his test. A copy of the email I sent to Kimberley on 12 March 2013 is attached to this statement as Annexure 1.

50. I continued to process the application forms for the organisers to be issued with ROE permits by the FWC. I sent an email to a number of organisers on 15 March 2013 confirming that I had lodged their permit applications with the FWC. The organisers I had sent the email to were the people whose forms I had received from Jeanine which I had taken to Kimberley Kitching. Those organisers included:

- Jayne Govan;
- Sacha Trajcevski;
- Dean Sherriff;
- Lee Atkinson; and
- Steven Mitchell.

51. I copied both Kimberley Kitching and Diana Asmar into that email. I am not sure why I didn't include Rob McCubbin in that email but I do recall that I couldn't

9
PL *df*

get Nick Katsis to sign his form for a few days so I forwarded his application a few days later. A copy of the email I sent to the people listed above is also attached to this statement at Annexure 2.

52. I remember that it was still an issue that David Eden and Darryn Rowe had not done their ROE tests and I recall again going to Kimberley's office and telling her about it. I remember Kimberley ignored me as I stood at her doorway explaining to her that the tests hadn't been done. Kimberley was normally nice to me but I recall at that time she seemed to ignore me and I was disappointed with that.

53. David Eden and Darryn Rowe were country organisers and seemed to spend a lot of time doing things together. They seemed to share the same email account at times and there were times when if I couldn't get in contact with David Eden, I would email Darryn Rowe and David would find out through Darryn that I was wanting to contact him.

54. Because they were country organisers, Darryn and David were not in the Branch office all the time so when they were in the office, I got them to sign the F42 Application for Permit forms although they did not date them. The reason I got them both to sign the forms before they had done the tests was so that I could have signed forms ready to process once their tests had been done and I could access a copy of their Certificates of Completion.

55. Both Darryn Rowe and David Eden's F42 Applications for Permit are also attached to this statement. I recognise my handwriting as writing the date of 21 March 2013 above Darryn Rowe's signature in the declaration. Diana Asmar has also signed the F42 Application for Permit of Darryn Rowe although Diana actually dated the form herself. The Form F42 for Darren Rowe is marked as Annexure 3. I also recognise my handwriting as writing the date of 26 March 2013 above David Eden's signature on his Form F42 and Diana dated the form 26 March 2013. Form F42 for David Eden is marked as Annexure 4.

10
PL RJ

Darryn Rowe's ACTU test

56. It became very clear that Diana and by this time also Kimberley both expected that I would do the tests for David Eden and Darryn Rowe. I knew this because they seemed to be asking me every couple of days about the tests and I kept delaying because I knew it would have been wrong for me to do the tests for other people and I didn't want to do them.

57. I continued to be aware that Darren Rowe and David Eden hadn't done their tests. I am not sure exactly when but I recall that I accessed Darryn's course details and it was clear he hadn't done his test.

58. I have seen an email which I sent to the ACTU Organising Centre at 4.09 p.m on 19 March 2013 about Tim Rowley's ACTU application. When Zoe Watkins (Reception & Course Administrator for the ACTU) responded to my email about Tim Rowley, she included that she had looked in their system and could not find *'a David Eden at all'*. In her return email, Zoe asked when David had registered for the course and she also indicated that as far as she knew, Darryn Rowe had not yet completed his Federal Right of Entry test. The email I sent to the ACTU Organising Centre at 4.09 p.m. on 19 March 2013 with the conversation I refer to above is also attached to this statement as Annexure 5.

59. I have seen the ACTU records which show that Darryn's ACTU course was accessed on 18 March 2013 and 19 March 2013 from an IP address which I assume belongs to the South Melbourne office address of the Branch. The ACTU records I have seen are also attached to this statement as Annexure 6.

60. I can't specifically remember when, but I do remember accessing Darryn's course details to check the ACTU account as to whether Darryn had done his own ROE test and my access would have confirmed that Darren had not. This was a time of significant stress for me because Diana had been angry that the tests had not been done and Kimberley had been constantly asking me about them.

PL ¹¹ *af*

61. I was under further stress because Alex Leszczynski was a person who had provided me with some support and he had resigned from the Branch by this stage. The other person who I had considered to be a support person, Hazel had also gone or was in the process of leaving the Branch at around this time.

62. Even more significantly I was working at the HSU on a sponsored visa and I felt that I was under immense pressure to keep my job at the Branch because there was a risk that if I didn't keep my job, I might have had to leave Australia. Because of how angry Diana had been and the pressure I felt from Kimberley, I felt that if I did not complete the ROE tests for Darren Rowe and David Eden that I might be fired and my visa would immediately be at risk.

63. I knew it was wrong for me to do it but I decided I had to do the ROE tests for Darryn Rowe and David Eden.

64. It is difficult for me describe how stressful that period was and while I can't now recall exactly when I accessed both Darryn Rowe and David Eden's ACTU accounts, I can say as a matter of certainty I completed the ROE tests for both of them. I have been shown ACTU records (Annexure 6) which indicate that Darryn Rowe's ACTU test was commenced after 9.07 p.m. on 20 March 2013 using the IP address of [REDACTED].

65. I can confirm that the IP address [REDACTED] is my home computer IP address. On 19 December 2013 I received advice from the FWC that if I brought up the Google site and typed in 'What is my IP' then Google provides the IP address of the account which is asking the question. When I did this, I received confirmatory advice that [REDACTED] was my IP address.

66. I can confirm that the reason the ACTU data provides that my IP address was the IP address used to complete Darren Rowe's ROE test is because I completed that test from my home address in the evening of 20 March 2013 after accessing Darren Rowe's ACTU account.

67. Thinking back about it now, I remember being disappointed that not only had I have done something wrong by completing Darryn's ROE test, I also had to do it in my own time on my own computer.

68. As I have said above, I already had a form F42 Application for Permit signed by Darryn Rowe and the next day, being 21 March 2013, I collated the forms and documents required to submit Darren's application to the FWC. I got Diana to sign the form and she dated it 21 March 2013.

69. I submitted the required forms by email to the FWC, including Darren's Certificate of Completion.

70. At 9.21 a.m. on the same day, I sent an email with the Form F42 with the Certificate of Completion attached to the FWC. A copy of that email is attached to this statement as Annexure 7.

71. Darryn's ROE permit was forwarded a few weeks later.

David Eden's ACTU test

72. As I have said earlier, I can say that as a matter of certainty, I also completed David Eden's ROE test.

73. There was a problem with David Eden's enrolment with the ACTU course and I have referred above to an email which I sent to the ACTU Organising Centre at 4.09 p.m on 19 March 2013 about Tim Rowley's ACTU application (Annexure 5). When Zoe Watkins (Reception & Course Administrator for the ACTU) responded to my email about Tim Rowley, she included that she had looked in their system and could not find 'a David Eden at all'. In her return email, Zoe asked when David had registered. I have been shown the ACTU data which indicates that David Eden was enrolled for the ACTU course on 22 March 2013.

74. This problem with the ACTU not having a record of David Eden's earlier enrolment explains why I did not complete both Darryn Rowe's and David Eden's

PL ¹³ RF

ROE test at the same time. When I did Darryn Rowe's ROE test on 20 March 2013, the ACTU didn't have a record of David Eden being enrolled at that time. I was able to obtain both Darryn Rowe's and David Eden's passwords from the ACTU.

75. To explain this further, I had originally sent an email to David Eden on 16 January 2013 attaching a ROE course application form with some advice about doing the course. I sent a follow up email to David Eden on 19 March 2013 at 5.09 p.m. attaching the previous email from 16 January 2013. I typed in the words 'Hi David?' with the intention that David would read the original email from 16 January 2013 which was below my words 'Hi David?' and respond. I sent this email to David in the hope that David might have done the ROE test himself. The email I sent on 16 January 2013 with the follow up email on 19 March 2013 are attached to this statement as Annexure 8.

76. I have been shown the ACTU records which provide that David Eden's ACTU account was accessed commencing at 8.51 a.m. on 26 March 2013. I can say that I was the person accessing David Eden's ACTU course while I was at the HSU South Melbourne Branch office using the password provided in the email forwarded to me from the ACTU.

77. I have earlier explained that I did not want to do the test either for Darryn Rowe or David Eden but I felt I had to for the reasons I have explained.

78. After I had completed the ROE test for David Eden which commenced at 8.51 a.m. on 26 March 2013, I collated the required forms.

79. David had previously signed the form F42 and so it was again a matter of me printing out his Certificate of Completion and writing in the date of 26/3/2013 above his signature. I also arranged for Diana to sign and date her part of the application on 21 March 2013.

80. At 10.39 a.m. on 26 March 2013 I sent an email to the FWC attaching the form F42 with signed declarations by both Diana Asmar and David Eden and

containing David Eden's Certificate of Completion. The email I sent to the FWC is attached to this statement as Annexure 9.

81. I can say as a matter of certainty that the ROE tests for Darryn Rowe and David Eden are the only two ROE tests I have completed for people at the Branch.

82. After I had completed the ROE tests referred to above I felt so bad about doing them that I wasn't going to do any more. I recall being in an office with Mark Donohue and Diana Asmar during which Mark was insisting to Diana that organisers should be doing their own ROE tests. It seemed to me that Mark was aware that other organisers had not been doing their own ROE tests because he was insisting that the new organisers should do their own tests.

83. I do know that some of the other organisers actually did their own ROE tests and I continued to participate in the administration process by collating the documents, getting them signed and forwarding them to the FWC.

My Resignation

84. I can't recall exactly when but I do recall talking to the Assistant Secretary – Treasurer Leonie Flym about some of the things that had gone on with ROE tests including that organisers had not been doing their own ROE tests. I also mentioned to Leonie that although I was telling her about the ROE tests, I did not want Diana or anyone else to find out I had told her about them because I knew that I would be targeted because of it.

85. I found out later that Leonie had made a formal complaint about things she considered had been done to her and Leonie had included my name in the letter as having told her about ROE permits.

86. I received an email from Diana Asmar on 8 August 2013 containing allegations about me being involved in the election campaign during work time which were not true.

87. I responded to Diana with the truth and that was that I had not been involved in any of the election politics nor been involved in any campaigning during work time and Diana provided me with an email accepting my explanation.

88. As if I had not been under enough stress by doing the ROE permits, this was even worse because although I had not been involved in any of the politics around the elections in the way that Diana had alleged, they (Diana and Kimberley) had found out I had told Leonie about the ROE permits and felt sure I would now be targeted.

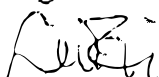
89. I felt under so much stress that I felt physically ill and I visited a doctor about my stress and anxiety. This was because it was clear to me that I would be targeted for telling Leonie about organisers not doing their own ROE permits and Leonie had included that in her complaint to the FWC. I attended a doctor and in fact because I had become ill though the stress, I had to take 6 weeks off work.


90. Leonie later told me that she had re-submitted her letter of complaint to the FWC by removing my name but by then it was too late because Diana and Kimberley had already found out about Leonie's original letter of complaint with my name in it.


91. I had not been involved in any of the politics before Diana became the Secretary and I didn't want to get involved in them so I decided I could not stay at the Branch. There was obviously a breakdown in trust between Diana and I could not work at the Branch where the Secretary didn't trust me so I resigned. My resignation was effective from September 2013.

92. I did not tell Leonie about being targeted or about the real reason I resigned until after I had been contacted by the FWC. The reason for that was because I knew Leonie was having a difficult time with the issues going on at the Branch and I didn't want her to feel worse knowing that I had resigned because she had put my name in her letter of complaint and I was targeted because of that.

Signed


Peggy Lee

BEFORE ME 
Rebekah Jayne French
An Australian Legal Practitioner
(within the meaning of the Legal Profession Act 2004)
Level 22, 114 William St. Melbourne Vic 3000

16
PL 

17
PL *df*