

WITNESS STATEMENT OF DIANA ASMAR

I, **DIANA ASMAR**, Secretary, of 208 -212 Park Street, South Melbourne in the State of Victoria, Union Official, **will state in evidence** as follows:

1. I am the Branch Secretary of the Victorian No 1 Branch (Vic No 1 Branch) of the Health Services Union (**HSU**). I have held this position since my election in December 2012.
2. I make this statement in response to allegations made against me in statements which have been provided to the Royal Commission into Trade Union Governance and Corruption (**the Royal Commission**) by the following persons Leonie Elizabeth Flynn, Robert John McCubbin, Patrick O'Brien, Robert Philip Morrey, Barbara Denise Gregor, Peggy Lee and Jayne Faye Govan.

Background

3. Between about 1994 and July 2004, I worked in a number of positions in hospitals. Between 1993 and 1997, I undertook part time studies at RMIT in the Associate Diploma of Applied Science, Medical Laboratory course. I specialised in the field of phlebotomy. When I worked at the Northern Hospital in 1998, I became a member of the Vic No 1 Branch. Between 1998 and 2004, I was a HSU delegate, Health and Safety Rep and Chair of the HSU Delegates Group at the Royal Melbourne Hospital. I undertook trade union training courses sponsored by both the Trades Hall Council and the ACTU.
4. In July 2004, I was employed by the Vic No 1 Branch as an Organiser. As an Organiser, I retained my membership of the HSU. Over the period of my employment, I recruited about 4,000 members. At the time, the Vic No 1 Branch had fewer than 20,000 members. My success at recruiting exceeded that of most of the other HSU officials and Organisers.
5. In 2007, I left the employment of the HSU and kept looking for work in the health industry.
6. I retained my membership of the HSU.

7. Between 2009 and 2012 I had some casual employment in the health industry. I continued to seek employment in the health industry. I was employed from September 2007 to December 2008 by the Transport Workers' Union. I was active in local government from 1998 until 2012.
8. In 2009, there were elections within the Vic No 1 Branch. I led a ticket in these elections. My team was defeated by a team led by Marco Bolano.
9. In 2012, I nominated for the position of Branch Secretary as part of a team contesting the elections. On 12 October 2012, I received a letter from the AEC Returning Officer informing me that my nomination had been rejected on the grounds that I had not been a financial member for 12 months.
10. Following the decision of the AEC Returning Officer, I applied to the Federal Court for an Election Inquiry and sought orders validating my membership so that I could contest the position of Branch Secretary. My application was successful. The decision of the Court is reported at [2012] FCA 1242.
11. By reason of my application to the Court, the elections in the Vic No1 Branch were delayed. The ballot closed about 20 December 2012.
12. The 2012 elections were contested by three teams, namely:
 - My team which was known as the "Diana Asmar's Together we are One Team";
 - A team led by Marco Bolano which was known either as the "Stand up with Marco Bolano Team" or the "Marco Bolano's New HSU Team"; and
 - A team led by Ricky Lovell and Stewart Miller.
13. The outcome of the election was declared on 21 December 2012. My team secured 19 out of the 24 positions. Leonie Flynn, who was on the Marco Bolano ticket, secured the Assistant Secretary/Treasurer position and other members of the Bolano ticket secured two positions on the Branch Committee (Mr. Rob Morrey and Mr. Pat O'Brien) and two positions as delegates to the National Council. Of the 24 positions, only are two full time positions, namely, the Branch Secretary and the Branch Assistant Secretary/Treasurer positions.

14. Rob Morrey and Pat O'Brien were also on the Bolano ticket. They were successful in being elected to the BCOM.

Taking Office

15. Before taking office on 21 December 2012, I knew the Vic No 1 Branch faced big problems. Members and potential members had become disenchanted with the HSU. There had been instability in the leadership of the Vic No. 1 Branch resulting in bitterly contested elections, Court challenges and very negative publicity. I knew some members were disenchanted about not being consulted about the amalgamation of the three Branches to form the East Branch and the negative publicity about allegations of corruption within the HSU and the fact that members never saw the Union.
16. The interests of members had been compromised with the result that enterprise agreements had not been renewed, union structures within workplaces were not in place and members' grievances were not being attended to and phone calls were never returned.
17. During my campaign, I visited workplaces all over Victoria. I telephone canvassed 1000's of members throughout the State. The feedback confirmed my concerns about the difficulties that I would face on being elected.
18. I anticipated that, on taking office, there may be problems with existing employees of the Branch who owed their employment to the previous elected leadership. A number of these employees had actively supported the team led by Mr. Bolano. Before taking office, I had no understanding of the financial position of the Vic No 1 Branch or what systems were in place to conduct the business of the Branch. I understood that, as Branch Secretary, I would have responsibility immediately upon the declarations of the election.
19. On entering the office on 21 December 2012, I met the Assistant Administrator (Mr. Jim Simmonds) who had been in charge of the Branch since the Vic No 1 Branch had been reconstituted.
20. Over the Christmas/New Year period, I began to take stock of the issues facing the Branch.

Finances

21. When the three Branches were merged, the property under the control of the three Branches came under the control of the Committee of Management of the East Branch, or under the control of the Committee of Management of HSU East, the body registered under New South Wales industrial legislation as the counterpart body of the East Branch.
22. As part of the merger, the day to day management of the property and finances of the Branch was transferred to Sydney. On the reestablishment of the three Branches, the Administrator allocated the property and liabilities between the three Branches and the New South Wales registered body. The basis on which this was done was not clear to me.
23. The principal asset of the Vic No 1 Branch, the building used as its office at Park Street South Melbourne, was subject to a mortgage with the Commonwealth Bank. The facility with the Commonwealth Bank, given the circumstances of the HSU, was on disadvantageous terms. It needed to be renewed within 12 months. In addition, the Branch had been required to pay about \$240,000 to the State Revenue Office in stamp duty on the transfer of the property to the Vic No 1 Branch. (This payment, which had not been anticipated by the Administrator, affected the Branch's liquidity. Recently, the State Revenue Office has agreed that stamp duty was not payable and refunded the money.)
24. I made it a priority to engage a properly qualified person to report to the Branch on the state of the affairs. I immediately engaged auditors to assist (Mr. Michael Shulman of Stannard's Accountants and Advisers). Also in January 2013, I hired a bookkeeper/Finance Officer, Ms. Kerry Georgiev. We had no financial documents of any kind. All the accounts and financial information were held by the New South Wales Branch or the Administrator. I did not have the financial information on which to operate the Branch on a day-to-day basis. To find out about the Branch bank accounts, I needed to speak to someone in the bank in Sydney.
25. The challenges were daunting.
26. Internal Branch systems were either non-existent or in disarray. Unfortunately some work done by the administrator following the disamalgamation of the branches, left the Branch

with ongoing obligations for expensive, unnecessary work. There was also work which was incomplete or not done in a way which suited the Branch priorities. Records as to membership and filing were dysfunctional or non-existent. Records, including financial records, were inaccurate, incomplete or missing. Because of the staff changes, there were few staff who were familiar with the systems which were in place. The Finance Manager appointed by the administrator (Mr. Steven Miller) was not capable of performing the role and needed to be replaced. That is, the financial information he provided to me as Branch Secretary was neither timely nor accurate.

27. To put the finances back on track, we have recently sold the Park Street property which exceeded our requirements. It had no disability access or adequate public transport connections. It was used by two branches and as a national office at the time of the start of our administration.
28. The interests of the members were best served by the sale. In selling the property, we acted in line with advice from the auditors and National Executive. The sale of the building has put the finances of the Branch on a much sounder financial footing. We no longer have any debt. The Branch has bought another property. The purchase has been approved by BCOM and National Executive. The property is much more suitable and it has a disability access. We sold the old building for more than \$7 million. The new premises cost slightly more than \$1 million all of which is properly accounted for.

Membership

29. In the 2012 elections, the AEC sent ballot papers to more than 10,000 members of the Vic No1 Branch. During my election campaign, it was reported to me that much of the election material we were sending to members at addresses supplied by the AEC was being "return[ed] to sender". The return to sender rate reflected the unreliability of the AEC electoral roll and the state of the Branch membership records.
30. During the period of the East Branch, membership records were held in the Sydney office of the East Branch. As part of the disamalgamation, it was necessary to create a new Vic No 1 Branch electoral roll.

31. When I took over, we discovered that the membership records were a mess and that there was an urgent need to process membership applications, changes in addresses and membership status and resignations.
32. We could not begin to rebuild the Branch without accurate data. Apart from issues relating to the membership records, the membership stood at around 11,000. I believe that about 2,600 members resigned in 2012 and that the Branch had previously had about 20,000 members. Accordingly, there was an obvious need for the new leadership to get out to workplaces and start representing members and recruiting new members.
33. Since I became Branch Secretary the Branch has recruited about 3000 new members. The Branch has provided more services to members: as an example, it has been announced that the Branch will provide free ambulance cover to members and their families for the first time.
34. Every member has been personally contacted to ensure the accuracy of Branch records.

Servicing of Members

35. After I was elected it became apparent that there were about 400 workplaces which either had no enterprise agreements or had agreements which had expired.
36. Since I became Secretary, the Branch has concluded negotiations for more than 300 enterprise agreements.

Branch Employees

37. Branch employees fall into three categories: Organisers, industrial officers and administrative staff. When I was elected, the Branch had 9-12 persons employed as organizers most of whom had been employed under the previous elected leadership of Mr. Bolano and Ms. Flynn. The remainder had been employed by the Assistant Administrator. The Branch had one employee whose role it was to provide specialised industrial advice to the Organisers: Mr. Leszczynski has been employed by the Assistant Administrator. Apart from the Finance Manager appointed by the Assistant Administrator, there were a number of other Branch employees. Given the need to get the Branch up and running, it was an immediate priority to identify those employees who would work for the members' interests

under the new administration. Ms. Flynn and I raised this choice with them. Many chose to resign.

38. When I started, the Branch did not have sufficient employees to service its members.
39. I have dismissed some employees from employment because I have assessed that they were not competent in performing their duties. Some employees were on probation. I made an assessment that it was not appropriate to make their employment permanent and ongoing.

Ms. Jayne Govan

40. Ms. Govan was appointed by the BCOM. She failed to follow procedures, attend to the needs of members, provide reports, or attend to her duties in a satisfactory manner. She refused to follow my reasonable directions. Accordingly, I decided to dismiss her on 12 July 2013. She was then a probationary employee.

Mr. Rob McCubbin

41. When Mr. McCubbin resigned on 10 July 2013 the circumstances were as follows. A group of us were visiting country workplaces. We were staying overnight in Shepparton. After I had gone to bed, Mr. McCubbin rang me two times late in the night. He was angry, upset and abusive to me. Mr. Donohue had sent an email asking organisers to sit down with him and get the diaries done. Mr. McCubbin told me that Mr. Donohue was taking over his job even though he had previously agreed to this procedure. In the second call, Mr. McCubbin told me he had resigned. He said he had had enough. He later wanted to be reinstated indicating he would otherwise go back on TAC.

Ms. Kerry Georgiev

42. I knew the Georgiev family. Ms. Georgiev approached me in December 2012 to look for full-time work. She had the appropriate skills. She was appointed in January 2013 on a temporary basis. Later, her position was advertised, she applied for the position and was interviewed. BCOM appointed her. She was a diligent and constructive employee. However, when I discovered that she had engaged as an interim cleaning contractor a company that employed her husband on a casual basis without my knowledge or approval, I raised it with her and told her that I considered that it was inappropriate that such a thing

could have happened. I accepted that her explanation that her actions were ill-judged. She apologized. She also tendered her resignation. I have a copy of her resignation letter.

Kimberley Kitching

43. I recruited Kimberley Kitching initially on a temporary basis because she had relevant legal experience which was relevant to managing the Branch. The BCOM approved her ongoing appointment as General Manager. I believed her legal background would help the Union. She is a diligent employee.

Office Equipment, Systems and Cars

44. In order to service the membership, which is spread across hundreds of workplaces throughout Victoria, it is necessary to have a fully functioning office with financial systems, record systems and communications systems in place. Organisers need mobile phones, laptop computers and cars. I immediately arranged for an audit of these assets and facilities.
45. Our IT system and phone system was not working. We had to buy new IT equipment etc. It took substantial time to get the IT system and the phone system up and running effectively.
46. The Branch purchased a new fleet of vehicles after obtaining 3 different quotes which were organized by the Finance Officer. They were to replace unroadworthy vehicles. The BCOM approved.

Service Providers

47. The Branch needs external service providers. The Branch requires legal services, accounting services, cleaning services, insurance broking services and car fleet services.
48. With the exception of a few contracts the administrator left for us which he had negotiated, there were no records as to contracts with these service providers and many others.
49. On taking office, I had an immediate need for legal advice to deal with matters such as employment of staff in cases which had been taken by the Branch on behalf of members.

Later, there was a formal tender process as I was determined to do things correctly and avoid any suggestion of corruption

50. Some services were not required. Such as plant hires and an arborist. I terminated contracts which were not value for money for the members. I terminated the IT service provider.
51. Procedures put in place by the Assistant Administrator required a tender process for the provision of services. Those tender processes have been followed.

Leonie Flynn

52. Before her election as Assistant Secretary/Treasurer, Ms. Flynn had been employed by the Vic No 1 Branch as an organiser. Her employment predated the merger of the three Branches and dated back to March 2010. In 2009, Ms. Flynn had been elected on the Marco Bolano's ticket as the Vice President of the Vic No 1 Branch.
53. In 2012 she was elected as Assistant Secretary/Treasurer. Under the rules as Assistant Secretary/Treasurer she had particular responsibilities for Finance.
54. Ms. Flynn did not have any qualifications or experience in managing financial matters. I encouraged her to undertake finance training. Despite encouragement, she did not undertake finance training. She told me the training was too advanced for her.
55. As the new Secretary I intended to work with her and assist her in the performance of her responsibilities.
56. I never took any step to stop her accessing financial documents. I intended the finances of the Branch to be transparent.
57. It was arranged for Ms. Flynn to have a "commbiz" token and to be one of the four officials able to authorise expenditure from Branch accounts. Over months, she took no step to collect her token.
58. In the first half of 2013 Ms. Flynn was very often not in the office. In my observations she showed no interest in the financial operations of the Branch. She was free at all times to

Speak with Ms. Georgiev. She was free at all times to speak to Mr. Michael Shulman the auditor. I know she did speak to Mr. Shulman on numerous occasions. I have seen e-mails where she was in e-mail communication with Mr. Shulman. This was appropriate.

Statement of Leonie Flynn dated 4 September 2013

59. The statement made by Ms. Flynn was sent to me by Chris Enright, who is the Director, Regulatory Compliance Branch, Fair Work Commission, in September 2013.
60. Some of the matters contained in Ms. Flynn's statement were also raised by her in the context of Federal Court proceeding VID 380 of 2012. These matters were conveyed to the Union in a letter from the Australian Government Solicitor dated 31 July 2013 (**Attachment 1**).
61. The matters raised by Ms. Flynn in her statement are dealt with as follows.
62. First, in a response prepared by Slater & Gordon dated 1 October 2013 addressed to the Australian Government Solicitor (**Attachment 2**).
63. Second, in a letter dated 26 November 2013 from the Branch's solicitors, Holding Redlich, to Mr. Enright (**Attachment 3**).
64. The responses provided by Slater & Gordon and Holding Redlich were based on my instructions. The facts referred to in both letters are true and correct to the best of my knowledge and belief.
65. I do not intend, in this statement, to restate the responses provided by Slater & Gordon and Holding Redlich to each of the points raised by Ms. Flynn.

Bullying

66. I deny that I ever bullied Leonie Flynn. I intended at all time to assist her to do her job. She came from a different political ticket. On day one, I said to her – we come from different political sides but we need to work together for the members. I said the members have chosen who they wanted. I said this was us. I said we needed to work together.
67. In 2013, we attended meetings with members together.

68. I also wish to state my position on the following key issues:
- (a) The financial position of the Branch;
 - (b) Ms. Flynn's role as Assistant Secretary/Treasurer;
 - (c) The allegations made about the engagement of employees;
 - (d) The allegations made about the processes adopted by the Branch for tendering for goods and services.

Financial Management of the Branch

69. To improve financial management of the branch, Ms. Flynn and I worked together to appoint an auditor, Mr. Shulman of Stannards. Ms. Flynn approved in writing Mr. Shulman's appointment on the basis of that quote.
70. Mr. Shulman has provided ongoing services to the Branch. Stannards was appointed on an ongoing basis following a tender process. Mr. Shulman's primary role was to supervise the work done by the Finance Manager and to ensure that the reports provided to the Branch Committee of Management reflected the true financial position of the Branch.
71. I intended that Mr. Shulman should work closely with Leonie Flynn so she had access to expert advice.

Allegations relating to the Appointment of Staff

72. In January and February 2013, the Branch had an urgent need to find staff to perform organising and other roles.
73. Some staff were appointed on an urgent and temporary basis following a resolution of BCOM, on 23 December 2012. It was 2 days before Christmas.
74. On an ongoing basis, all employees are employed in line with the Employment Policy.
75. The employment policy requires position descriptions to be compiled and positions to be advertised on the Branch website. Ms. Flynn was actively involved in creating PD's. Examples of position descriptions and job advertisements are **Attachment 4**.

76. Written applications are received from candidates. Candidates are interviewed by interview panels. I was on the interview panel for a number of the positions. Following the interviews, applicants who were considered suitable, were asked to attend a BCOM meeting where they were introduced to BCOM members. BCOM could and did ask question of prospective employees before they voted. BCOM then voted to employ the people in question. The Branch entered into new contracts of employment when ongoing appointments were made. All the employees, who started on a temporary basis, and were later employed on an ongoing basis, were required to apply for and be interviewed for ongoing employment.

Staff salaries

77. Staff salaries are approved by BCOM. Most staff are employed under the relevant award conditions. To set staff salaries the Administrator had asked a consultant to do an Australian wide survey. I used the Administrator's work. Employee salaries have been substantially reduced from the previous administration.

Allegations of cronyism

78. I deny allegations of cronyism. Appointments are made on merit. I knew a number of employees of the Branch before they applied for jobs at the Branch. I do not think it is exceptional that potential employees are identified from within professional networks. Those Branch employees who have come from my professional network have been put through the same recruitment processes that other employees have been put through.

Tendering for Goods and Services

Legal Services

79. We tendered for legal services. The Administrator had a Tender Policy. The tender was conducted in accordance with the Tender Policy. A legal tender document was prepared. Tenders were invited on the Branch website and in newspaper advertisements.

80. When tenders closed, the Branch had received 2 tenders from Holding Redlich and Cornwall Stodart. No other tenders were received.

81. Holding Redlich was the cheaper tenderer. They were also experienced industrial lawyers and were able to service members with personal injuries. The BCOM and Audit and

Compliance Committee approved the appointment of Holding Redlich as the Branch's lawyers.

82. There have been substantial legal fees. The Branch has had to pay for those services. I have no reason to believe that fees are inappropriate. Legal services have been retained to comply with procedures and to protect the rights of all individuals. Often, BCOM (not me) has requested the legal advice.

ROE Tests

83. I did my own ROE test. Each organiser was required to do his or her own ROE test.
84. I did not instruct Kimberley Kitching to do a ROE test on behalf of any other person.
85. An ongoing investigation is happening as to relevant computer records. The FWC is conducting an inquiry. When allegations were made against me that I had not done my own ROE test I made a statutory declaration. My statutory declaration is true and correct. It is **Attachment 5** to my statement.

Peggy Lee

86. After I took office, Ms. Lee told me she was politically neutral. I accepted what she said. Later, I saw a document that recorded that she was rostered to work on Mr. Bolano's 2012 election campaign. I wrote to Ms. Lee and asked for a response. She responded and I accepted her response. Shortly after that, she resigned.
87. After Ms. Lee resigned and returned her work computer, it was discovered that she had had, during her employment, an ongoing Facebook conversation with Ms. Lorraine Di Pietro. Ms. Di Pietro is a former HSU employee. The conversation shows, in fact, Ms. Lee was politically involved. In the conversation, she said she had taken steps to undermine the employment of Mr. Daniel Govan. She also appeared to want to destabilise the current Branch leadership with a view to reinstating the previous team. She wrote: *"just things that will stuff up the whole union"*.

Dated: August 2014

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DIANA ASMAR