

Ruling (1) of Returning Officer

In response to a number of complaints about an email sent by Ansh Verma containing text authorised by Jake McGuinness:

1. The email encouraged students to vote for a slate of candidates associated with a group called “CHANGE”. The earliest copy received in any complaint was sent at 3.26pm on Tuesday; it had been registered with the Returning Officer [Reg 4.4(a)] at 3.03pm. The email was authorised (by Jake McGuinness) in the form required by the Regulations. The Returning Officer (RO) understands it went to a number of course-specific distribution lists such that it was sent to all, or almost all, students at the University.
2. A number of complaints were received from students and other candidates. The RO will deal with all complaints as one.
3. Regulation 4.2(b)(xiii)(B) prohibits publicity in breach of “University legislation or policies [...]”. La Trobe University (LTU) have a Current Students Communication Policy¹ and a Authorising Email Broadcasts To Students Procedure². The Policy requires “Students will: a. Adhere to this Policy, Procedures and Guidelines at all times” (clause 13). The Procedure talks about an “Approving Authority”; for a course-based list, the Approving Authority is the “Head of School or delegate”. The RO understands that such authority was neither sought nor received.
4. The RO has contacted the University’s regarding this matter. They confirmed that the use of the email system in this way is a breach of LTU policy.
5. The RO therefore regards this as a breach of Reg 4.2(b)(xiii)(B). The breach is especially serious because (a) of the large number of students involved, (b) of the absence of an “unsubscribe” or “opt-out” facility on the email, (c) of the significant unfair advantage obtained (because other candidates cannot effectively respond with the same reach), (d) material relevant to Bundoora only was directly sent to students on other campuses, (e) consent was not obtained from students receiving the email; and (f) the extent to which the email has created a perception that the La Trobe Student Association (LTSA) provided a candidate with an email list.
6. The RO regards as mitigating factors the relative obscurity of the policy, and the lack of technical access control measures for the mailing lists. However, students in general are required to follow University policies, and candidates in an election are expected to familiarise themselves thoroughly with the environment in which they operate. An email to all students is a sufficiently extraordinary action that the authoriser should have taken the time to review relevant policies and procedures. Similarly, the fact that an action is not prohibited by a technical measure does not mean it does not violate a University policy (or the Electoral Regulations).
7. Therefore:

¹ <https://policies.latrobe.edu.au/document/view.php?id=212&version=1>

² <https://policies.latrobe.edu.au/document/view.php?id=309&version=1>

1. Ansh Verma (sender) and Jake McGuinness (authoriser) are banned from campaigning for the remainder of the election.
2. All candidates numbered on the How To Vote are banned from campaigning from 4pm Wednesday 14th April until 11:59pm Thursday 15th April. (Candidates on the How To Vote who are not part of the slate—i.e., do not hand out material purporting to be from Change, and did not give permission to be included on the How To Vote—may write to the RO to be exempted from this ban).
3. The RO will separately authorise communication by official LTSA channels, and on the election website, explaining to students that the email list was not obtained from LTSA.
4. The RO will refer the authoriser and sender to the University to determine if any action is warranted under University rules.
8. The email also contained the words “Approved by the Returning Officer”. The Regulations do not require approval, nor would the Returning Officer approve or endorse candidate material. (The requirement in the Regulations is “registration” with the RO, although that does not need to be written on publicity.)
9. The authoriser submitted that the “approved” wording was required in other elections, and so it was simply re-used. The RO does not accept this, as the authoriser was specifically asked to remove or adjust the wording in relation to this publicity, and has been asked to adjust similar wording in relation to other publicity earlier in the week. The wording implies that the RO endorses the message and approved of its method of distribution, neither of which are true. This is prohibited conduct, through amongst other things being likely to mislead voters [Reg 3.31(a)(ii)], impugn the impartiality of the RO [Reg 3.31(b)(iv)], and bringing the reputation of LTSA into disrepute [Reg 3.31(b)(v)] by implying LTSA provided the mailing list.
10. In relation to the sender and authoriser, the only additional penalty available to the RO is disqualification. The RO is unconvinced that penalty is warranted. Therefore the RO will adopt the approach of applying penalties to the candidates who most benefited from the publicity. The first-referenced candidates, Joel Blanch and Mayankraj Saxena, are both banned from campaigning until the close of the election.

Goldie Pergl

LTSA Returning Officer

14 April 2021