

8 October 2020

Jarrold Allen  
Returning Officer  
Monash Student Association

Mr Corey Everitt  
Student Fightback – Climate Action Tickets

**By email**

Dear Mr Allen and Mr Everitt

**Appeal in relation to the BigPulse’s online voting technology**

This letter deals with Mr Everitt’s appeal against the decision of the Returning Officer to conduct an online ballot in the MSA annual elections using the BigPulse online voting technology.

**Factual Background**

1. The MSA contracted BigPulse to conduct an online ballot for the MSA annual elections. The online ballot opened on 5 October 2020 and closes later today.
2. The Returning Officer worked with BigPulse to ensure that the design of the online ballots complied with the MSA Constitution and Election Regulations.
3. At about 5pm on Friday 2 October 2020, representatives of each of the tickets contesting the election were given access to the voting system to allow them to test the system.
4. On Monday 5 October 2020 at 5.56pm, Mr Everitt, on behalf of the Group, requested an urgent determination of an appeal against the decision of the Returning Officer to conduct an online ballot in a manner contrary to the Electoral Regulations and Constitution. The request was in writing and was addressed to the Returning Officer. The request included the following, “... we suggest that the conduct of the ballot contrary to the Regulations is a serious breach of the Constitution. We submit that this must be remedied by a suspension of voting until the ballot cannot be conducted in accordance with the Regulations.”
5. Mr Everitt asserts that the electronic ballot breached the Election Regulations by:
  - (a) requiring voters to vote for candidates for all positions even if the ticket they wished to support did not have a candidate for all positions; and
  - (b) not allowing voters to validly cast a vote for their ticket using the ‘front page’ option due to the Group not running a full ticket, despite qualifying for front page voting.

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6. The Returning Officer acknowledged in an email to the Complainant on Tuesday 6 October 2020 at 9:49am that “the voting platform used does not allow invalid votes to be cast and there is no ability to include abstention votes in the preferential voting system” and “the front page voting option was not technically possible to create in the voting platform”.

## **DECISION**

### **Election Regulations**

In considering this matter I have had regard to the following regulations:

#### **“6. Responsibilities of Returning Officer**

##### *6.1. The Returning Officer*

*6.1.1. is responsible for the conduct of the election;*

*6.1.2. may decide all matters not provided for in the Constitution or these regulations; and*

*6.1.3. is subject only to the Electoral Tribunal.*

*6.2. Any decision of the Returning Officer may be appealed to the Electoral Tribunal in accordance with regulation 47.*

...

#### **31. Ballot**

*31.1. The ballot must provide an option for students to validly cast a vote for tickets via a ‘front page’ and an option for students to vote for candidates directly and individually.*

*31.2. A ticket qualifies for the front page voting where it has completed a valid registration and has nominated at least 15 unique candidates as part of that ticket.*

...

#### **33. Method of Voting**

...

*33.6.2. If no candidate from the ticket has nominated for a particular position and:*

*33.6.2.1. If the ticket has submitted a statement of preferences under regulation 22.1, they will be taken to have placed the number 1 against the first candidate mentioned in the statement of preferences and consecutive higher numbers against the names of any other candidates mentioned in the statement of preferences in order.*

*33.6.2.2. If the ticket has not submitted a statement of preferences under regulation 22.1, their vote will be exhausted.*

...

#### **46. Appeals against the Decision of the Returning Officer**

*46.1. A student may appeal against a decision of the Returning Officer by writing to the Returning Officer within 24 hours after the original decision who will then refer the matter to the Electoral Tribunal.*

46.2. If the Electoral Tribunal considers that the Returning Officer's decision should be reviewed, they must as a matter of urgency:

46.2.1. Give the student appealing an opportunity to present their case; and

46.2.2. Give the returning officer an opportunity to respond.

46.3. The Electoral Tribunal may call upon submissions from any other interested person.

46.4. The Electoral Tribunal must then rule on the matter. The Election Tribunal must then rule on the matter and prepare a decision in writing for each matter it considers.

46.5. The Election Tribunal must make the decision available to the Returning Officer and the appellant as soon as is practicable.

...

46.7. The Electoral Tribunal may make declaratory rulings under this regulation.

...

46.10. In this regulation "decision" includes omission and failure to act.

#### **48. Appeals Against Results of Elections**

48.1. A student may appeal against the result of an election by writing to the Returning Officer within three academic days or one week, whichever is the lesser, of the declaration of the election.

48.2. A student may only appeal against the result of an election on the ground that there has been a defect in the conduct of the election which has materially affected the result.

...

48.4. The Electoral Tribunal may only hear an appeal if they are satisfied there is a *prima facie* case." [emphasis added]

The first question I need to consider is whether or not the appeal was, for the purposes of regulation 46.1, received "within 24 hours after the original decision". On the material available to me, it is not clear when the decision was made to use the BigPulse online voting technology with the knowledge that the use of the technology was subject to the limitations identified in the appeal. It is, however, clear that this decision was made some time before 5pm on 2 October 2020. It is also apparent that Mr Everitt was not aware of the decision, at least, until around 5pm on 2 October 2020. If I were to interpret Rule 46.1 as allowing me to consider an appeal lodged within 24 hours of the affected party becoming aware of the decision, the appeal period would have concluded at 5pm on 3 October 2020. Given the appeal was lodged late on 5 October 2020, the appeal was not received within the relevant time and given that I have no capacity to extend time, I rule that I do not have a valid appeal in front of me.

Had the Election Regulations permitted an appeal received at 5.56pm on 5 October 2020, after the ballot had opened, I would then have needed to determine whether to undertake the review or allow the ballot to continue. While determining this question is moot, I wish to indicate that I would have been disposed to allow the ballot to continue on the basis that, once the election had been concluded, there was a mechanism to enable the outcome to be challenged in accordance with regulation 48

provided that there had been “a defect in the conduct of the election which ha[d] materially affected the result”.

Yours sincerely

*David Shaw*

**David Shaw**