

## Notice of Disputed Election – Reg. 21 – LTSU Election Regulations

Dear James,

We write to dispute the election for the position of Education Vice-President (**EVP**) in the 2018 La Trobe Student Union Inc. (**LTSU**) Election. Polling for the Election ran from 17 September to 21 September 2018. The parties disputing this election are Lani Sprague, Stand Up! Ticket Registrant and Andrew Sanders Stand Up! Education Vice-President Candidate.

This Notice is brought pursuant to Regulation 21 of the LTSU Election Regulations.

### FACTS RELIED UPON

1. You, as Returning Officer (**RO**) opened nominations for the position of EVP along with all other positions to be elected in the 2018 LTSU Elections via a Notice of Election on 17 August 2018.
2. The opening of nominations was done in accordance with reg. 6 of the Election Regulations
3. Relevant to this matter, the Notice of Election set out:

**Nominations close at 5.00pm on Friday 31 August 2018.**

All deadlines are strict and cannot be extended. Candidates are strongly urged to lodge their forms well before deadline. All forms should be delivered personally to the Returning Officer or an election official or left with the Student Union office for the Returning Officer.

And

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### \*RESTRICTIONS ON ELECTION

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Any student member may nominate for the La Trobe University Student Union Inc. Student Council and Office bearing positions, and all students can vote in the elections.

4. During the period that nominations were open as per the Notice, you received 2 nominations for the position of EVP. One was from Andrew Sanders and the other was from Ahamed Saheel Mohamed Najeeb.
5. The nomination of Ahamed Saheel Mohamed Najeeb was invalid as the nominee was not a student member within the meaning of the Constitution.
6. You followed the process as set out in reg. 7.7 of the Regulations in checking that candidates were eligible to nominate. That Regulation sets out:

**7.7 The RO must check the University records to ensure that all candidates are eligible to nominate.**

7. You were satisfied that the nominee was not a student member and therefore rejected their nomination as you must do per reg. 7.6 of the Regulations. The Regulation sets out:

**7.6 The RO must reject any nomination that does not comply with the Constitution and these regulations.**

8. You notified the nominee who was ineligible and provided the reason.
9. You then re-checked the University Records to satisfy yourself that the nominee was ineligible. The re-check confirmed that the nominee was ineligible.
10. At the close of nominations there was 1 valid nomination for EVP.
11. As per reg. 7.10 of the Regulations, you must declare that candidate elected as EVP. That Regulation sets out:

**7.10 If the number of candidates for a position does not exceed the number to be elected, the RO must declare those candidates elected.**

12. It is not clear whether you officially declared Andrew Sanders elected as required following the close of nominations.
13. Your rejection of the nomination was correctly carried out in accordance with the Regulations and the Constitution.
14. Parties affected by the rejection of the nomination then contacted the Election Tribunal to “appeal” your decision. It is unclear which Regulation the “appeal” was made pursuant to. The Election Tribunal can only hear appeals against decisions of the RO made pursuant to Regulation 20 which pertains to Prohibited Conduct. This is clearly set out in Regulation 22.3:

**22.3 Any affected party may appeal the decision of the RO under regulation 20 to the Election Tribunal by notice in writing lodged with the Election Tribunal within 5 academic days.**

15. Reg. 20 relates to Prohibited Conduct. It does not relate to the decision you have made as set out above. The type of decision that can be appealed to the Election Tribunal is a decision of the RO to, for example, disqualify/suspend a candidate for **prohibited conduct**. The decision to reject a nomination because it did not comply with the Constitution is not a decision made pursuant to Regulation 20.
16. No other Regulation sets out a power to appeal a decision of the RO made under any Regulation other than Reg. 20 to the Election Tribunal.
17. Notwithstanding the above, the Election Tribunal wrote to you and the General Manager of the LTSU and advised that you should re-open nominations.
18. The Election Tribunal had no standing or power to do so. Even if an “appeal” was validly made, the Election Tribunal did not conduct a hearing as it is bound to do by Regulation 22.4, following the process set out in Regulations 21.2 – 21.5.
19. You re-opened Nominations for EVP on 11 September 2018. This was less than a week before polling opened. It was certainly fewer than 10 clear academic days before the first day of polling as is required by Regulation 7.11:

**7.11 Nominations must close at 5.00 pm at least 10 clear academic days before the first day of voting.**

20. The re-opening of Nominations was not valid. It was also unnecessary, as you had received a valid nomination from Andrew Sanders during the validly constituted nomination period.
21. Polling closed at 2:00pm on Friday 21 September.
22. You declared Samih Alanazi elected as EVP on 27 September 2018.

## OTHER RELEVANT MATERIAL

23. Following the Election Tribunal's "ruling", we corresponded with the Election Tribunal in order to form a clear understanding of what was happening.
24. Upon reviewing correspondence from the Election Tribunal, it is clear that the Tribunal either was not in receipt of all of the facts, or had not read the Constitution and Regulations.
25. In an email to Lani Sprague on 17 September 2018, the Election Tribunal set out:

*"Dear Lani*

*Thanks for your email and I sincerely apologise for my delay. I have just now sent an email to Elissa Khoury in the following terms:*

*I apologise for the delay producing this advice. On top of being a busy Head of School, I had some issues on the home front to contend with this morning, and was off-campus at a meeting until about half an hour ago.*

*As you know I was contacted in my capacity as the Student Election Tribunal.*

*I was asked to consider the eligibility of the Vice-President for election.*

*I was advised that the (sole and successful) Vice-Presidential candidate was an international student, who signed a declaration that he was eligible to run for election at the time of nomination.*

*There was no need for the returning officer to doubt that the Vice-Presidential candidate was eligible.*

*It transpired that the candidate was experiencing visa issues, and may not have been eligible.*

*My opinion was sought, and I decided that the LTSU should call for nominations for the Vice-President's position.*

*Best wishes,*

*Patrick*

*Professor Patrick Keyzer PhD FAAL*

*Head of School and Chair of Law and Public Policy*

*La Trobe Law School"*

26. The Election Tribunal does not have standing to "consider the eligibility of the Vice-President". That is solely the job of the RO.
27. The Election Tribunal was clearly provided, unwittingly or otherwise, information to the effect that the ineligible candidate was the "sole and successful" candidate for EVP. That is clearly not the case.
28. The Election Tribunal is wrong to suggest that "there was no need for the returning officer to doubt that the Vice-Presidential candidate was eligible." The RO *must* check the eligibility of all nominations as per Regulation 7.7 set out above.
29. The Election Tribunal then sought to clarify the position by publishing a "Final Decision of the Election Tribunal" dated 20 September 2018. This dispute is not the forum to dissect that decision, however the following should be noted.
30. Paragraph 8 has no bearing on that nominee's eligibility. It is of no consequence if a nominee "believes" they are eligible to be a candidate in the election.

31. Paragraph 13 is of no relevance in this matter. The Election Tribunal can *only* hear appeals against the decisions of the RO pursuant to Regulation 20. Common law and Latinate principles do not apply in this matter.
32. Paragraph 15 is of no relevance in this matter as this was not a decision the Election Tribunal was able to make.
33. What is stated in paragraph 21 is incorrect. The Election Tribunal is not entitled to receive an appeal pursuant to decision of the RO other than a decision under Reg 20. Even if it were able to, no “properly constituted appeal” took place as per the procedure set out in Regs. 21.2 – 21.5.
34. For the Election Tribunal to suggest that it is not bound by the Regulations and the Constitution as is set out in paragraph 22 is incorrect.

## **GROUND OF OBJECTION**

### **Ground 1 – Valid Election had already occurred**

- A. The election for EVP that the RO has just declared was not conducted in accordance with the Regulations, particularly Reg. 7 relating to Nominations.
- B. Andrew Sanders had already been validly elected at the close of Nominations on Friday 31 August 2018.
- C. There having been a validly elected EVP, there was no need for polling and voting to take place for that position during the voting period 17 – 21 September 2018.

### **Ground 2 – Improper intervention of Election Tribunal**

- A. Nominations were “re-opened” for EVP because of a ruling of the Election Tribunal.
- B. The Election Tribunal had no standing or power to make that ruling. It was not made after a properly constituted appeal, nor was it made following an appeal of a decision of the RO pursuant to Reg. 20.
- C. The Election Tribunal is bound by the Constitution and Regulations. It cannot go off on a frolic of its own
- D. The ruling of the Election Tribunal should not have been followed and the validly elected EVP on 31 August 2018 should have been declared elected.

## **REMEDY SOUGHT**

- A. The Declaration of the election of EVP made on 27 September 2018 is revoked.
- B. The “re-opening” of nominations for EVP on 11 September 2018 is considered invalid and of no effect.
- C. The nomination period for EVP is taken to have closed at 5:00pm on 31 August 2018.
- D. Andrew Sanders is declared elected as EVP.

## **CONCLUSION**

35. It should be noted that the decision of the RO in this dispute is final and cannot be appealed to the Election Tribunal.
36. The Constitution and the Regulations of the LTSU, an incorporated association, are serious legal documents akin to subordinate legislation. It is imperative that the RO, the General Manager, the Election Tribunal and all participants in the LTSU Elections have read the Regulations and Constitution and are aware of their meaning.

Regards,  
Lani Sprague and Andrew Sanders