

## Election Tribunal Appeal Decision (27 October 2020)

### Jurisdiction

1. The appeal is in relation to the Returning Office ("RO") ruling of 5pm, 20 October 2020, 'RULING – Campaigning by 'Ignite' group' ("the ruling").
2. At 10:56am on Thursday 22 October 2020, the RO received an email from the appellant which contained the following request for clarification:

*"I am assuming the ban for Riley also extends to any-one campaigning on her behalf, and then should it not stand that during this time period, no-one from Ignite or anywhere should be able to campaign for her either?"*

3. At 7:43pm on Thursday 22 October 2020, the RO responded to the above clarification with the following statement:

*To clarify, the additional 4 days is a ban against Riley only and not anyone campaigning on her behalf. As such the other candidates can continue to campaign by encouraging students to join MONSU and to vote for the Ignite candidates including Riley. If you disagree with this ruling you are able to submit an appeal against my decision to the Electoral Tribunal, however appeals must occur within 24 hours of a ruling being made. While it has been over 24 hours since I made the ruling, if you believe my ruling was unclear and you are only now aware of what the ruling involves because of this clarification you may be able to request the 24 hour period begin when I sent this clarification. I believe it would be unlikely that the Electoral Tribunal would grant you an exemption to this requirement, however they may.*

4. The Election Regulations state:

*34.1. A student may appeal against a decision of the Returning Officer by writing to the Returning Officer within:*

- 34.1.1. 4 hours of the decision if it was made during a polling period; and*
- 34.1.2. 24 hours for all other decisions.*

5. The RO raised a jurisdictional objection that the appeal was received more than 24 hours after the ruling was made.
6. Due to the RO's email above at 7:43pm on the 22 October 2020, the tribunal considers this email to come within r.34.1.2. As the appeal was filed within 24 hours from that time, the tribunal agreed to convene and consider the appeal pursuant to r.34.1.2.

### Appeal

1. The appeal is seeking to overturn the Returning Officer's ruling on 20 October 2020 banning Riley Fenn from campaigning for a total of 9 days, from 6pm Tuesday 20 October until 6pm Thursday 29 October, and instead, seeking to disqualify Riley Fenn and any involved in her campaign from the election.
2. The appellant submitted that there was inconsistency in his administration of the bans, and contended that whilst Riley Fenn is banned, no other individual should be able to campaign on her behalf.
3. Any publicity or efforts made by individuals of 'Ignite' or otherwise, attempting to influence votes for Riley Fenn, either in specificity or as part of the collective 'Ignite', would circumvent

the sanction imposed upon Riley Fenn to mitigate the consequences of her severe breach of governing documents.

4. By association, any content promoted by 'Ignite' during the period of her ban, given her overtly public affiliation with them as demonstrated by the fact that all of their public posts have (or likely will) be authorised by Riley Fenn, should also be banned. This is due to the fact that the entire 'Ignite' Facebook Page is authorised by her. Thus, any material shared on that page is related to Riley Fenn and is of material benefit to her campaign. Ultimately, this undermines the ban itself.
5. By failing to comply with all key documents of MONSU Caulfield, Riley Fenn infringed upon the process of the election to an extent such as to warrant the application of further sanctions and/or penalties.
6. The election tribunal consider elevating this matter to apply any or all of the following sanctions to Riley Fenn, and any involved in her campaign:
  - 31.12.5. Disqualify the person reported from campaigning or standing or campaigning and standing in:
    - 31.12.5.1. That election; or
    - 31.12.5.2. That election and a specified number of future elections; or
    - 31.12.5.3. All elections.

#### **RO submission**

1. The ruling has been adequately complied with by both Riley Fenn and candidates running under the "Ignite" banner and that the appeal does not bring additional evidence to light that necessitates further sanctions.
2. Students who are participating in the election have the ability to support candidates of their choice irrespective of that candidate being subject to a ban from campaigning themselves.
3. Allowing students to express support for Riley Fenn during her ban does not represent an inconsistency in administration of the bans.
4. If the appeal is upheld, the ability of students to campaign and fully participate in the election process would be significantly compromised.
5. The RO considered the penalty that was applied to Riley Fenn was appropriate given the severity of the breaches and that this matter has been adequately dealt with and does not require additional consideration.
6. As this appeal does not challenge the ruling made by the RO and only the penalty applied, it is not necessary for the Election Tribunal to recommend additional sanctions in regard to this matter.
7. The RO provided a ruling and outlined an appropriate penalty for the behaviour.
8. The RO fully fulfilled my obligations as in relation to this matter and consider the issue completely resolved.

## Tribunal Findings

1. The appellant is seeking to have the ban imposed on Riley Fenn, “*and any involved in her campaign*” by the RO in his ruling of 20 October 2020 (the ruling) overturned, and instead disqualify Riley Fenn, and any involved in her campaign, from campaigning or standing or campaigning and standing in the election.
2. As provided in the tribunal decision of 23 October 2020, the level at which sanctions may be passed by the RO is made in consideration of the following regulations:
  - 31.13.1. the severity of the breach;
  - 31.13.2. whether or not the person was dishonest in the course of their breach of the regulations; and
  - 31.13.3. the likely number of votes influenced or affected as a result of the person breach of the regulations.
3. Pursuant to the following regulations, the Returning Officer must apply sanctions for such breaches.
  - 31.13.1.1. in judging the severity of the breach if a serious breach has occurred the Returning Officer shall apply at least one of regulation 32.12.3 - 32.12.5 to the person that committed the breach. For the avoidance of doubt a breach of regulations 32.4 or 32.5.1 – 32.5.5 shall be automatically considered to be a serious breach.
  - 31.12.3. suspend the person from campaigning for a period of time;
  - 31.12.4. disqualify the person from voting in that election; or
  - 31.12.5. disqualify the person reported from campaigning or standing or campaigning and standing in:
    - 31.12.5.1. that election; or
    - 31.12.5.2. that election and a specified number of future elections; or
    - 31.12.5.3. all elections.
4. In the RO ruling, consideration of the conduct is evidenced by the examination of content in the posts, and the statements of Riley Fenn being taken into account in finding the breaches of the Election Regulations and the RO’s application of the sanctions was based on the following.
  - a. *As post 2 was made to directly benefit the Ignite candidates and with the knowledge of at least some of the candidates, it is appropriate that sanctions be placed on all of the Ignite candidates and any students campaigning on their behalf. Post 1 was made by the same person as post 2 and as such will be treated to have also been made to benefit the Ignite candidates.*
  - b. *Accordingly, in response to the breach of Regulation 19.5 in the publication of post 2, I am banning the Ignite candidates and any students campaigning on their behalf from campaigning for 3 days. This is equivalent to the period campaigning was occurring before it was allowed to occur in accordance with Regulation 19.5.*
  - c. *Further, in response to all other breaches of the Regulations in the publication of posts 1 and 2, including the creation of a WeChat group, I am banning the Ignite candidates and any students campaigning on their behalf from campaigning for an additional 2 days. Further, I am directing that the posts be removed from Australia51.com, the WeChat group cease to be used for any campaign purposes and any Ignite candidates leave the group.*
  - d. *These shall not be concurrent, with a combined ban from campaigning for 5 days from 6pm Tuesday 20 October until 6pm Sunday 25 October.*

- e. *Finally, for breaching Regulations 31.2, 31.3 and 31.5.1 by providing false, dishonest, and deceptive information to the Returning Officer, Riley Fell shall be banned from campaigning for an additional 4 days. Accordingly, Riley shall be banned from campaigning for a total of 9 days, from 6pm Tuesday 20 October until 6pm Thursday 29 October.*

### **Tribunal Decision**

1. In deciding on sanctions, the RO considered all matters raised in the appellant's submission including the seriousness of the breaches and the impact on the election.
2. The RO made a comparison with the other beaches found to have occurred.
3. The RO provided a logical and balanced basis for deciding on the severity of the sanctions.
4. The RO complied with the relevant provisions of the Election Regulations.
5. There are no additional facts submitted in this appeal that were not presented to the RO at the time of the ruling.
6. The previous appeal, seeking to overturn the ruling and remove the sanctions, was dismissed by this tribunal in its decision published on 23 October 2020, it on the same basis that this appeal is also dismissed.

### **Election Tribunal**

**27 October 2020**