

## **Election Tribunal - Appeal Decision**

### **Appeal Submission**

1. On 29 October 2019, the Tribunal received an appeal regarding the provisional declaration of the MONSU election result for the position of Vice President.
2. The basis for the appeal was that candidate elect for Vice President, Mr Nidzam Shah Hussain ("Mr Hussain"), was not eligible to stand pursuant to r.12 of the MONSU Election Regulations ("the Regulations") and clause 34 of the MONSU Constitution ("the Constitution").

3. The Regulations at r.12 states:

*All students shall be eligible to stand in an election, subject to clauses 34 and 35 of the Constitution and this regulation 12.*

4. The Constitution at cl. 34 states:

*All members wishing to stand in elections must do so on the basis that they can complete a full term if they are elected, which equates to two full semesters.*

### **Returning Officer Submission**

Submissions from the Returning Officer are summarised as follows:

1. Monash University Enrolment Services ("Enrolment Services") confirmed to the Returning Officer that Mr Hussain will be enrolled for this summer semester and will have completed his studies before the beginning of Semester 1.
2. Each nomination form includes the statement:

"If you are standing as a candidate, you acknowledge that you intend to study at Monash University for the entirety of 2020".

Signing this nomination form as a candidate, when the student does not intend to study at Monash for the entirety of 2020, is providing a false statement to the Returning Officer which itself is considered a search breach of the prohibited conduct section of the Regulations.

3. There has been a defect in the conduct of the election of the Vice President that has materially affected the result. In finding this, the Electoral Tribunal may order a new poll or election. Ordering a new poll, would cause a new poll to occur with all remaining eligible candidates. As there would only be one remaining eligible candidate for Vice-President, Daniel Stonehouse, this would cause the remaining candidate to be elected unopposed to the position of Vice-President. This would also mirror the result if the candidate's ineligibility had been determined following the close of nominations and is the appropriate outcome.

### **Mr Hussain**

1. Immediately upon receiving the appeal on 29 October 2019, Mr Hussain was provided a copy of the full submissions summarised above and afforded the opportunity to provide a submission in response. Mr Hussain agreed to provide a submission to the Tribunal no later than 1 November 2019. The tribunal received submissions from Mr Hussain on 2 November 2019 summarised as follows:

1. there is an administrative error that has seen one of the two remaining units assigned to Summer Term instead of Semester One; and
2. in 2020, Mr Hussain will be undertaking one unit in Semester 1, and one unit in semester 2, and as such, the requirements of clause 34.2 of the MONSU Constitution will be complied with.

### **Enrolment Services**

The Returning Officer made further enquiries with the Enrolment Services and received confirmation that:

1. at the time of nomination, Mr Hussain had enrolled to undertake the 1 unit remaining in his degree the summer semester; and
2. on 30 October 2019 Mr Hussain changed his enrolment on from having 1 unit remaining to be undertaken in the summer semester to having 2 units remaining, by reducing his load for the second half of 2019 and adding a unit in the second half of 2020.

### **Decision**

1. The tribunal determined there was a *prima facie* case and proceeded with the appeal in accordance with r.40 of the Regulations.
2. The constitution is clear that at the time on nominations “*a member wishing to stand in elections must do so on the basis that they can complete a full term if they are elected, which equates to two full semesters.*”
3. At the time of nominations, Mr Hussain was enrolled to complete his degree in the summer semester and hence not eligible to stand as candidate in the election pursuant to r.21.1 of the Regulations and cl 34 of the Constitution.
4. The fact that Mr Hussain changed his enrolment after the election does not support the submission that an administrative error had occurred at the time of nominations.
5. As a consequence of Mr Hussain’s ineligibility to stand, there has been a defect in the conduct of the election for the Vice President position that has materially affected the result.
6. In finding in favour of the appeal, the one remaining eligible candidate for Vice-President, Mr. Stonehouse, is elected unopposed to the position of Vice-President.
7. The Returning Officer is to declare the election and make the necessary notification of the results.

### **Decision of the Election Tribunal**

4 November 2019