

Probity 2016 Disputes Report

Produced by Team Probity 2016



Acknowledgements

This report was produced by Team Probity in accordance with their requirements under the Australian National University Student Association's (ANUSA) election regulations. It contains the issues that arose during the election and a summary of how they were dealt with.

Team Probity 2016

The Probity Team consisted of;

Joel Baker

Eben Leifer

Zac Rayson

Michael Turvey

Sharon Wong

Returning Officer

The returning officer for the 2016 election;

Roxanne Missingham

General Secretary

The ANUSA General Secretary for 2016;

Samuel Duncan

President

The ANUSA president for 2016;

Ben Gill

Acknowledgements

Team Probity 2016
Returning Officer
General Secretary
President

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Changes;

- **Change** the regulations specifying, that in the case of non-candidates, 'that the student must be acting with the specific motivation to aid a candidate and/or ticket, and/or that the candidate or ticket must be directly requesting this aid.'
- **Alter** the regulations specifying that music can be played only by probity officers and they have at their discretion the power to accept requests from Candidate and tickets.
- **Specify** within the regulations that the said regulation apply regardless of business hours and **Change** the wording to make explicit that failure to comply in a timely manner may be considered an electoral offence.
- **Change** provisions surrounding monetary punishment to apply only to offences involving expenditure
- **Change** the provision to allow for posts made by non-candidates but directed at a candidate, ticket and/or major issue of the election to be covered by as electoral publications.
- **Change** the regulations to make explicit the intent of the aforementioned regulations to apply to non-candidates who bully, harass or victimise a candidate/ticket.
- **Amend** the regulations or constitution to the extent that any inconsistency between the two is resolved.
- **Change** the colour of the Exclusion Zone map to be more accessible
- **Change** Final Day Financials report; currently this is impractical for candidates who spend money on the last day.

Clarification;

- **Clarify Punishments;** which can be applied to non candidates in the event of a breach of the regulations.
- **Clarify** exclusion zones: including ANUSA offices, and regulations around whether candidates can wear material in classes within the exclusion zone as this was practically difficult for many candidates.
- **Clarify** provisions surrounding withdrawal of a ticket, whether tickets can voluntarily choose to be removed from the ballot, who makes that call, and whether members of the ticket can become independents afterwards.
- **Clarify** the extent to which facebook posts can be taken as electoral publications and what definition 'used by a candidate' should be given.
- **Clarify** what ANUSA equipment Candidates can use, including BKSS chairs and tables (accessibility becomes a concern if no chairs are provided)
- **Clarify** whether posters in exclusion zones are allowed
- **Clarify** whether and how candidates are allowed to provide publicly available food for students.

- **Clarify** when, exactly, electoral regulations come into effect, and when they expire.

Election Week Recommendations

- **Hold BBQs** most if not every day during election week- does wonders for engagement and lifts the spirits of all campaigners and the quality of the election

Introduction

The 2016 election period created a major stepping stone in establishing a precedent on what ANUSA elections would represent. Following the adoption of recommendations made by the regulations working group earlier in the academic year, the Probity team were entrusted with an essentially blank slate. From which they had the opportunity to define in what spirit elections would be conducted.

The lack of precedent created both opportunities and issues when investigating and enforcing electoral offences. Further the move to online voting dramatically changed the nature of the role and the manner in which offences were approached. The election period which was open non-stop from the opening to the close of polls, twenty-four hours a day, created an atmosphere where the probity officers would potentially have to investigate an alleged offence during the early hours of the morning inside a hall, college or Unilodge where entering may infringe upon the legal tort of trespass.

However despite these challenges the vast majority of the election went by without major incident. Barring the final day's problems the vast bulk of any offences were minute in nature and cause little incident for enforcement.

The actions on the final day created the most issue for team probity and raised numerous issues regarding the ability of the regulations to confer punishment upon members of the associations who were not office-bearers. Further a lack of clearly defined process for investigations and subsequent enforcement brings to light questions of the rule of law and procedural fairness.

Team Probity 2016 took a view whereby investigations would be handled by probity who would make an initial recommendation to the returning officer, such a decision would be final until challenged in the disputes committee whereby those dismayed by the decision might have the opportunity to argue their case. Issues arose from such an interpretation and are addressed in this report's recommendations.

As aforementioned with a lack of precedent there was initial confusion of procedures and electoral offences. What had previously been allowed in preceding elections was subsequent to the reformed regulations now considered an offence and some campaigns who had failed to acquaint themselves with the revised rules ran afoul of them. Probity took a relatively lax stance when dealing with such breaches in order to maintain the spirit of fair, safe elections.

It must be emphasised to campaigners however that the regulations act like a code and not as a common law system. Barring any reform recommended and adopted by ANUSA, the actions of the previous year do not have a bearing on those subsequent. It remains a matter for the Probity, Returning Officer and presiding General Secretary to determine the interpretation each offence to be given and the broadness of its application.

Lastly problems persisted regarding the extent to which the regulations apply to non-candidates and those not involved in campaign teams. Given that those not running nor supporting candidates can have such a large impact upon the election period it is necessary to make some reference to them in the regulations. However how to do so and to what extent they are culpable remains an issue. It will become important to examine this for future election in order to maintain an fair, harassment-free election.

Ultimately this election period remained clear of large disputes of the 2015 election period and was characterised by clean, honest campaigning by both major tickets and independents running. The move to online voting requires a thorough examination to determine any issues around it and some minor reform of the regulation is needed. Despite this the election proved the updated regulations to be a good step forward and highlighted where improvements might be made. Therefore Team Probity considers this election to have be a successful venture by ANUSA.

Summary of report's layout

This report is laid out as shown below for each issue dealt with by probity that required and investigation and decision. Please note that the issues are not in an order, chronological or otherwise.

Item

The title of the problem.

Issue

What occurred, a short summary of the issue at hand.

Documentation

Evidence collected, in the forms of screenshots, photos and conversations.

Action

A brief of what was recommended by probity or any punishment provided

Resolution

The outcome of the case in question.

Recommendations

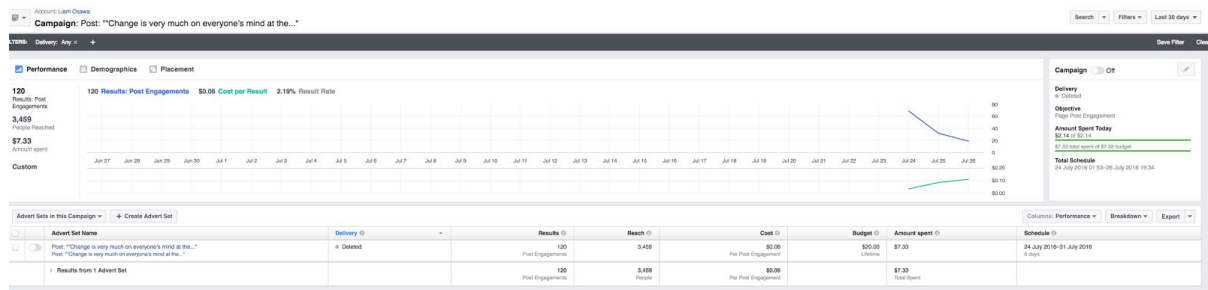
A summary of the recommendations for further reform brought up by the case.

Woroni Amplify Article

Issue

Woroni published an article which cast a positive light on the Amplify ticket, then promoted that article through a sponsored post on Facebook, to the value of \$7.32. Probity received a complaint from an anonymous source concerning the promotion, the complainer felt it may constitute an electoral publication, and the sponsorship might constitute electoral expenditure.

Documentation



The screenshot shows a Facebook post from the page 'Woroni', published by Liam Osawa on 24 July. The post contains a quote and a call to action.

“Change is very much on everyone’s mind at the moment. The general feeling at ANU is that most students are quite sick of the traditional way that tickets are being run... so we’re trying to change the status quo a little bit”

With three weeks remaining before the 2016 ANU Students’ Association (ANUSA) elections, the first ticket, [Amplify ANUSA](#), has officially launched. Woroni sat down for an interview with some of the candidates. Read the full story below.

So it begins: [Amplify ANUSA](#) calls for General Representative nominations

Action

The interpretations in question are

1. Whether the publication of the article constitutes an electoral publication, i.e. whether under section 2.8 the article constitutes “material used by a candidate or ticket in campaigning for election”, and
2. Whether the expenditure of sponsorship funds is included as campaign expenditure for the Amplify ticket, which it could be given 2.11.7 “any person who campaigns for or on behalf of a candidate and/or registered ticket is considered to be a member of a campaign team.

Probity determined that given the ambiguity, and lack of precedent, determination would need to be made by the Returning Officer before any policy could be communicated to Woroni. However given the timing of the incident on the weekend and potential lack of response from the returning officer given this, and the time sensitivity of the matter, Probity decided to send an email to Woroni explaining that it was possible the publication and expenditure could be classified as electoral, and provided an option for how this situation could be avoided, that being to publish articles on every other ticket with the same amount of sponsorship, therefore negating any utility to the candidates and tickets, and therefore not activating section 2.8.

Resolution

Woroni elected to do as Probity recommended, and published sponsored articles concerning other tickets. However, it should be noted that Woroni did not publish similar articles about independent candidates, and failed to ever release the article on Make ANU Great Again.

Recommendations

This incident clearly highlights an issue with the election regulations. While we are bound to enforce the regulations as they stand, Probity were concerned by the potential problems incurred by applying electoral regulations intended for non-campaigners helping campaign to a media organisation, for which they were clearly not designed. The policy as it stands creates potential for undue power over student communications provided to the Returning Officer, and requires problematic decisions, such as how positive a news article must be before it qualifies as an electoral publication. Probity recommends that some change be implemented to the regulations to specify that the student must be acting with the specific motivation to aid a candidate or ticket, and/or that the candidate or ticket must be directly requesting this aid.

The second issue with this dispute is that of penalties. The only penalties that can apply to non-candidates are fines and revocation of membership. Woroni were highly compliant with the Probity Officers’ recommendations, but had they chosen to refuse, as is their right to do, a situation would have occurred in which there was no clear penalty. If non-students are to be subject to electoral penalties, the regulations should make very clear the manner in which they can be penalised. If they cannot be reasonably penalised, the regulations should make clear that they are not subject to electoral penalties.

- **Implement Changes;** to the regulations specifying that non candidates be acting with ‘that the student must be acting with the specific motivation to aid a

candidate and/or ticket, and/or that the candidate or ticket must be directly requesting this aid.'

- **Clarify Punishments;** which can be applied to non candidates in the event of a breach of the regulations.

Music in Union Court

Issue

Campaigners were unhappy with the repeated playing of the "STUPOL" playlist, despite it being excellent.

Documentation

Verbal complaints received from:

Amplify ANUSA

Connect ANUSA

Howard Mclean (Independent)

Passers-by

Playlist in Question:

<https://open.spotify.com/user/1231793637/playlist/7xvtf3iy1h4zPfiMcn8fiO>

Action

Eben Leifer (Probity Officer) suggested a number of tracks including 'Union songs' and 'Solidarity forever.' The decision was made to allow candidates to queue songs

Resolution

Candidates were satisfied with the ability to request music.

Recommendation

- **Implement Change** to the regulations specifying that music can be played only by probity officers and they have at their discretion the power to accept requests from Candidate and tickets.

Shark Cage Stalkerspace Content

Issue

Between the period of the 9th and the 14th of August members and supporters of the ticket Shark Cage Diving in Lake Burley Griffin for ANUSA (henceforth Shark Cage) posted and commented content on the forum ANU Stalkerspace which was reported by several

students. Probity investigated whether this content was in breach of section 3.1.8 and 3.1.10

August 9th: On a comment thread discussing tickets, members of Shark Cage became agitated that their presidential candidate, Joshua Dundas, wasn't included in the online debate due to previous unrelated actions on Stalkerspace. Multiple members of the ticket engaged in a coordinated series of insults directed at one of the Stalkerspace administrators.

August 11th: Non-candidate Thomas Foster uploads a live video to Stalkerspace in which he defends Joshua Dundas and refers to the administrator in question a "cunt". Joshua Dundas is in this video and hears the comment, and does not take any action to recuse himself or contest the description.

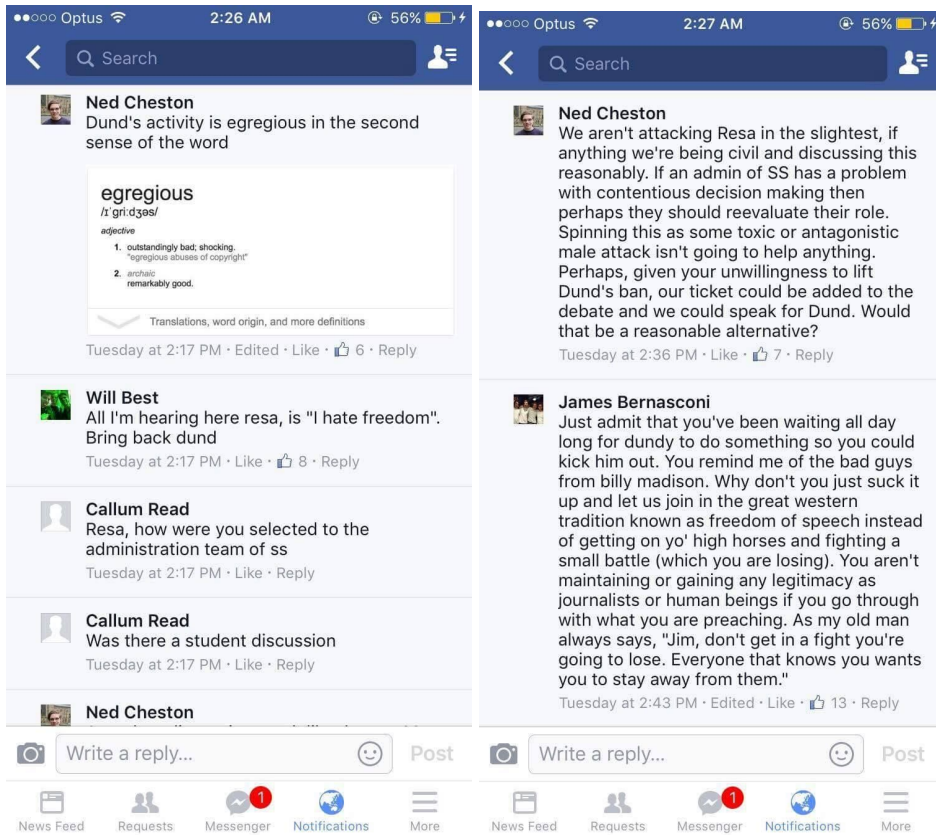
A non-candidate, Daniel Shlager, claiming to be a representative of Shark Cage Diving uploaded a photo of himself with three other people with the caption "You are a disgusting power-hungering human #sharkcagedivibg [sic]"

Joshua Dundas sent a personal message to the admin in question saying "You are a disgusting power hungry human"

Joshua Dundas makes post on Stalkerspace referring to Stalkerspace directed at the group administrators, including "go fuck yourselves you censored bunch of bastards".

Documentation

Comments on Stalkerspace by Shark Cage candidates (Ned Cheston, James Berasconi) and supporters.



Video by Thomas Foster. Note: The video was deleted by the Stalkerspace admins before Probity could obtain a copy, however Probity received multiple accounts from different observers detailing what had occurred in the video.



Post on Stalkerspace by Shlager.



Post on Stalkerspace by Dundas



Message to group Administrator



Action

After the events of the 11th Proby immediately made a recommendation to the Returning Officer via email that this behaviour constituted a direct violation of provision 3.1.8, i.e. intention to harass or intimidate, and 3.1.10, encouraging others to breach electoral regulations, and 3.1.11, behaviour against the spirit of the regulations.

Proby also concluded that given these various breaches were being at various times made, encouraged, or allowed by multiple members, including the conveners, of the Shark Cage ticket, that this offence applied to the ticket rather than the individual candidates, and recommended the Returning Officer make the same conclusion.

Proby recommended to the returning officer that a permanent ban on online campaigning be applied to the Shark Cage ticket as a result of this breach. The Returning Officer decided to apply the penalty Proby recommended.

Proby and the Returning Officer offered individual candidates the opportunity to continue to contest in effect as independents if they complied with all the financial reporting requirements in the electoral regulations. No candidates were successful in meeting the requirements.

Resolution

Proby communicated this verdict to Joshua Dundas, who communicated the verdict to the Shark Cage candidates and supporters. All were compliant with this verdict and did

not argue or contest. No further attempts to engage in any online campaigning were made by the Shark Cage ticket.

Recommendations

The Election Regulations worked very well and were clear on this issue. Probity only regrets that candidates for election would disrespect the electoral process by engaging in this behaviour, and we encourage the continued promotion of clean, decent behaviour in ANUSA elections.

- No Recommended changes.

Amplify Post concerning Connect policy

Issue

On the 18th of August, the ticket Amplify ANUSA published a post on their Facebook page stating that the ticket Connect ANUSA had a policy “diverting money from a handful of merit-based scholarships to equity-based scholarships”.

Karan Dhamija submitted a complaint stating that this was not the position of the ticket, and that this post therefore constituted a breach of section 3.1.2 (information likely to mislead a voter).

Amplify ANUSA candidate and convener Jessy Wu conveyed to Probity her belief that Connect had described this policy in their interview with Woroni.

The Woroni article in question included the phrase “Connect is proposing to pressure the ANU to improve equity scholarships, rather than merit-based awards”

Documentation

Post by Amplify

We have a big <<<<fight>>>> coming up. The HEPP is responsible for increasing the participation rate of low SES students in higher education by 33% since its introduction in 2010. In the last budget, the Coalition announced plans to cut it by \$152 million.

I believe we can defeat these unfair cuts - but only if we make this <<<<fight>>>> our priority.

"Connect ANUSA's low SES policy includes diverting money from a handful of merit-based scholarships to equity-based scholarships, making household items such as lawnmowers and steam cleaners available for short-term hire, and better advertising ANUSA's food aid programs. While Connect's focus on low SES students is commendable, we think they are missing the forest for the trees.

The reality is that there is a limited pool of money available for equity scholarships and small-scale aid programs. We think it is a misguided to concentrate our energy on these projects when HEPP, the cornerstone of increasing accessibility for low SES students in the long term, is at stake."



Article by Woroni

<http://www.woroni.com.au/news/12878/>

Action

Probity concluded that the article was in fact a misrepresentation, given Connect did not state they would attempt to divert money from merit scholarships, but rather stated they would not actively advocate for more merit-based scholarships.

Probity conveyed this conclusion to the Returning Officer who agreed with the conclusion and determined that given the lack of intention to mislead by Amplify, Amplify could simply amend the statement to read "potentially divert", and this would be sufficient change to not constitute an electoral offence, using the power granted to her by section 3.2.3 (f).

An Amplify Convener received communication from Probity at 10:44 AM that Probity had recommended the change be made to the Returning Officer. Amplify received a second communication at 6:48 PM confirming that the Returning Officer required the change to be made. A further communication was made at 10:20 PM after no change was made. The Amplify Convener responded at 11:15 stating they would make the change in the morning, given notice was provided "outside of business hours". Probity internally

concluded that if this action was not taken by 10AM the following day, Probity would recommend to the Returning Officer that a penalty be applied for non-compliance.

Resolution

Amendment was made to the post the following morning at 9:19 AM

Recommendations

That it be made clear to all candidates in future elections that electoral regulations, and the responsibilities of and penalties for candidates included, apply at all times, that business hours are not a concept anywhere given in the Electoral Regulations, and that further penalties may be imposed if requirements are not met in a timely manner.

- Specify within the regulations that the said regulation apply regardless of business hours and change the wording to make explicit that failure to comply in a timely manner may be considered an electoral offence.

Online Harassment by Arthur Bi

Issue

On the final day of elections prior but on shortly before the close of polls, ANU student but non-candidate Arthur Bi posted a lengthy status on the 'Anu Stalkerspace.' The post contained material which could be easily construed as racist and ableist. Mr Bi used the status to attack Vice Presidential Candidate Eleanor Kay, whom Arthur claimed was selling out Australia's Judeo-Christian Values in order to engage in 'interfaith dialogue' with Muslims. Other attacks in his post were directed at those suffering mental illness.

Regardless of the racist and ableist comments, Arthur's post targets and harassed a candidate with the aim of discouraging students from voting for her. Following the close of polls and the probity officer's decision in this case it was discovered that Arthur had further engaged in harassment online outside of Stalkerspace and in the 'focus' facebook group. However as such actions fell outside the powers of probity, given the end of election week, this report will not address them and no further action was taken.

Documentation

Arthur Bi's Post



Arthur Bi ▶ ANU Stalkerspace

5 mins ·

If you haven't voted, please don't vote for **Eleanor Kay** or Amplify. She and Amplify stand for spending the SSAF money (which should be rightfully yours) on programs that only serve the interests of the few, whilst the silent majority of people simply are too busy with their lives and couldn't bother to get involved with these programs.

People in their 20s fought war to defend our freedom in the 40s and fought war in Vietnam against the evil of Communism, they didn't have time to complain about having a mental problem. Kids nowadays are too precious living in their PC safe space. If you have a mental problem, just bugger off work harder and it will wear off over time, don't waste other people's time.

These programs should be abolished, and ANUSA should dissolve itself and compulsory students union must end today!

Whilst many of us languish in unemployment and part-time jobs, she sold us out by pocketing money for herself from simply being a Gen Rep, a comfortable life isn't it?

And also she sold out to Muslims in the name of inter-faith dialogue and diversity, whilst this country is at threat of an Islamic invasion. Now we need a candidate who is proud of our Judeo-Christian based heritage and willing to defend it, not some lefty who would easily sell out to Muslims for the sake of diversity.

Don't vote for her.

James Connolly's post (In response)



James Connolly

25 mins · Politics · Thoughts

Hi Stalkerspace,

I'd like to put voting aside for a moment. A post was just made and thankfully taken down personally targeting Amplify's VP candidate **Eleanor Kay** for "selling out" by promoting inter-faith dialogue despite apparent threats from other faiths posed to Australia. I completely reject the post in question. There are two hours of campaigning left and I think the discourse has been positive but this is incredibly disappointing. Everyone needs to treat each other with respect. The fact is that Amplify has Muslims, Jews and Christians on its ticket and I'm proud of that. Inter-faith dialogue is important because it promotes social cohesion and respect. I'd ask that for those who saw the post in question to keep that in mind. I couldn't be prouder to have someone as caring as Eleanor running for VP. Someone who believes that all faiths should be respected.

Action

Following the swift removal of Arthur's post by the 'ANU Stalkerspace' administrators the probity team convened virtually and discussed appropriate actions and punishments. All present officers agreed that there had been a breach of various regulations.

Further it was recommended that the post be treated as an electoral publication under
which was accepted by the returning officer and thus considered to
breach section (See below)

In keeping with the spirit of the regulations, which the probity team defined as maintaining an open, fair, safe and friendly election, Section 2.8.1 was given a broad interpretation. Used was interpreted to include unintentional appropriation of posts which gave publicity and positive media to candidates. As candidates used the post to galvanise support for themselves, in the form of opposition to the stated views, Arthur's post was recommended to be an electoral publication.

The probity officers agreed to make a preliminary recommendation to the Returning officer, Roxanne Missingham (Roxanne), that the Arthur be excluded from the association subject to a further investigation and consultation. The recommendation was accepted by Roxanne who using her powers under the regulations excluded Arthur from the association. No further investigation was convened by her.

On the following tuesday, 30/08/2016, it became clear to the probity team that no notification had been given to Arthur regarding his exclusion from the association nor had any further investigation or consultation begun. By this point information regarding Arthur's exclusion from the association was becoming known to the student body at large, and so it was agreed between the probity officers that Arthur should be informed and an email was sent by Eben Leifer (Probity Officer) to Arthur notifying him of the decision. Eleanor Kay was also informed of the email sent to Mr Bi. The email sent detailed the breaches found and the returning officer's decision to exclude Arthur but no claim nor representations that the probity officers had made the decision nor had the power to exclude him from the organisation.

Resolution

Following legal advice and issues regarding the constitution the punishment was revoked. Issues remain regarding the application of the regulations to 'non-office bearers and non-candidate.' Such inconsistencies between the regulations and the constitution creates real problems for the enforcement of electoral punishment. It was decided in concert with members of ANUSA exec that Arthur had suffered 'trail by social media' in the form of immense backlash from the 'Stalkerspace' members and ANU community at large. Thus no further punishment was pursued.

Recommendations

- **Clarify** the extent to which facebook posts can be taken as electoral publications and what definition 'used by a candidate' should be given.
- **Change** the provision to allow for posts made by non-candidates but directed at a candidate, ticket and/or major issue of the election to be covered by this section.
- **Change** the regulations to make explicit the intent of the aforementioned regulations to apply to non-candidates who bully, harass or victimise a candidate/ticket.
- **Amend** the regulations or constitution to the extent that any inconsistency between the two is resolved.
- **Adopt** a policy by which it is made clear to the student body at large that harassment of bullying of candidates or members of a campaign team will result in punishment regardless of whether the person themselves is running or part of a campaign team. Clarify this is not the result of view expressed by of attacks on a person.

Zambrero's Chats

Issue

Candidate Cassidy Whitefield engaged in a non-campaign related discussion with a friend outside Zambrero's, within the exclusion zone, while wearing her campaign T-Shirt. The staff of Zambrero's notified her that it could be considered campaigning. Cassidy contacted Probity and informed Probity of the situation, claiming she forgot to cover her shirt. Zambrero's made no contact.

Documentation

Action

Probity warned the candidate not to repeat this mistake. Probity did not deem it necessary to refer this issue to the Returning Officer.

Resolution

No further complaints concerning T-Shirts in exclusion zones were received.

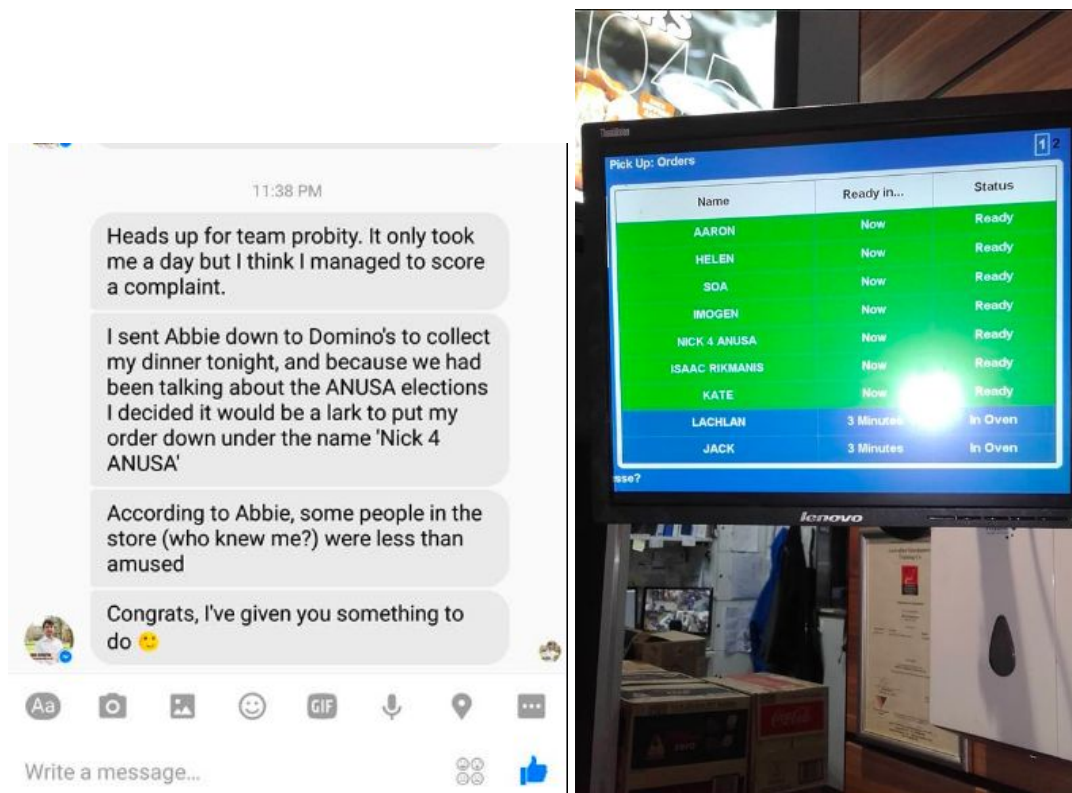
Nick's Pizza Adventure

Issue

On the 22nd of August, CECS rep candidate Nick Sifniotis ordered a pizza from the Lena Karmel branch of Domino's Pizza. Sifniotis ordered the pizza under the name "Nick for ANUSA", which subsequently appeared on the Domino's order collection screen. Little did Sifniotis know that Probity Officer Sharon Wong is a dedicated patron of Dominos, and immediately noticed the advertisement. Sifniotis independently alerted Probity to the incident. No formal complaint was received.

Documentation

Nick Sifniotis Facebook communication and photo of advertisement.



Action

Probity concluded that as there was no regulation against a company intentionally displaying an electoral publication for the candidate. We considered requiring Sifniotis to include the purchase of the pizza as campaign expenditure, but decided not to follow up as the issue did not impact the conduct of the election

Resolution

Probity investigated and determined Nick enjoyed his pizza, and did not repeat this incident.

Amplify Posters Torn Down

Issue

Probity received an email from Mish Khan describing the tearing down of several Amplify posters around the Baldessin Precinct Building.

Documentation

No photo evidence was provided, Probity investigated the scene and found some paper remnants

Action

There was no way to determine who had pulled down the posters. Probity advised candidates to immediately tell us if there were any more incidents.

Resolution

No further occurrences.