

Ruling (1) of the Returning Officer

1. Last year we received a number of complaints relating to the sending of emails and text messages in bulk to student email accounts and phone numbers. A particular issue is whether consent has been obtained from students who are recipients of the message. The University administration has also expressed concerns to us about the privacy implications of mass emailing of students who did not give their consent.
2. The Electoral Regulations prohibit the use of UMSU resources (other than those generally available to students) for campaign purposes. If it is credibly established that an email list was obtained from UMSU, this will be treated as a particularly severe violation of the rules.
3. From the time of this ruling, under Electoral Regulation 26.1 and 26.5 the Returning Officer rules that bulk electronic messages can be sent **only to lists where explicit consent has been obtained from each recipient**. Electronic messages include emails, SMS messages, and direct messaging features (however described) on social media, except in relation to clubs' membership lists (see below).
4. The Returning Officer regards an "unsubscribe" feature as a critical element of consent and therefore a required element of such material. All material intended to be sent as bulk messaging that does not have an unsubscribe feature is hereby unregistered. The Australian Communications and Media Authority's guidance on unsubscribe features¹ will be our starting position in judging this.
5. Campaigners, and the tickets and candidates who benefit from material, must be able to demonstrate, on request, to the Returning Officer that they have written consent from the recipients.
6. Non-bulk electronic messages (i.e. messages sent on an individual basis to campaigners' friends) are not covered by this ruling, although remain covered by the Regulations generally. However, we caution that if messages are substantially copy and pasted, even if done by hand, there is a good chance that will cross the line into bulk messages.
7. Nothing in this ruling affects obligations a campaigner has under University policy (or the law). If the University regards sending bulk emails as a policy violation, then compliance with this ruling will not affect that.
8. The Returning Officer draws campaigners' attention to the *Rules for Student Email*² and the *Provision and Acceptable Use of IT Policy*³. Enforcement of this policy, and therefore questions regarding it, are a matter for the University.
9. **A partial exception is made in the case of clubs.** Clubs may endorse individual candidates or tickets. This includes promoting that on social media or via email using the appropriate UMSU facilities. However, such endorsements require a decision be passed with proper notice through the Executive or Committee of the Club, rather than being made by a single office bearer.
10. Clubs must provide the Returning Officer with a copy of the relevant minutes before an endorsement is promoted, whether through emails or on social media.
11. Clubs may not send more than two emails to their membership list relating to their endorsement before or during the voting period.

¹ <https://www.acma.gov.au/avoid-sending-spam#unsubscribe>

² <https://ask.unimelb.edu.au/faq/4522/rules-for-student-email/>

³ <https://policy.unimelb.edu.au/MPF1314/>

12. Organisations with substantial student membership that are not affiliated clubs of UMSU may send messages on the same basis as affiliated clubs, *provided* they satisfy the Returning Officer beforehand that the decision making process for endorsement was primarily made by student members of the organisation, rather than non-students.

Stephen Luntz
Returning Officer
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