

ACT Greens Arbitration and Conciliation Committee Policy and Procedures

DEFINITIONS

- The **ACC** is the ACT Greens Arbitration and Conciliation Committee.
 - The **SMG** is the ACT Greens Support and Mediation Group.
 - The **MC** is the ACT Greens Management Committee.
 - The **Forum** is the ACT Greens Forum.
 - An **SGM** is an ACT Greens Special General Meeting.
 - The **Convenors** are the ACT Greens Co-Convenors, or the ACT Greens Convenor and Deputy Convenor.
 - The **Constitution** is the ACT Greens Constitution.
 - The **Bylaws** are the ACT Greens Bylaws.
 - The **Code of Conduct** is the ACT Greens Code of Conduct.
 - The **ACTG** is the ACT Greens.
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- A **matter** is a complaint or grievance or dispute brought to the ACC for investigation and determination.
 - A **complainant** is a person who is a disputant or who brings a complaint to the ACC.
 - A **respondent** is a person who is the subject of a complaint.
 - A **witness** is a person who provides testimony in support of a matter, who may also be a complainant.
 - A **party** is a person who is a complainant, a respondent or a witness.
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- The **participants** are persons who are members, or appointed advisors, mediators or investigators, of the ACC, and members of the SMG and the MC, who become involved in a matter and who are not parties to the matter.

INTRODUCTION

The ACTG is committed to fostering and enabling good governance and a harmonious and professional working environment within which we are able to contribute to a better world. When grievances arise, the SMG is available to assist with their resolution in a timely and compassionate manner. Please refer to the ACT Greens Grievance Policy and Procedures document for a comprehensive guide to the services offered by the SMG.

Grievances that cannot be resolved through engagement with the SMG are brought to the ACC for investigation and determination.

PURPOSE AND POWERS

The ACC is a three person investigative tribunal (elected at the ACTG Annual General Meeting) obeying principles of procedural fairness to make a determination about a matter based on the balance of evidence.

Its duties are described in section 17 of the Constitution.

It has no powers to compel the presentation of evidence but withholding evidence by one party may advantage another party and so the ACC encourages full disclosure by all parties where possible.

It has no executive powers to apply sanctions but it makes recommendations to the MC to do so. The ACC's decisions are made by consensus where possible and otherwise, by majority with a dissenting determination.

PROCEDURAL FAIRNESS

The ACC will conduct its business striving to adhere to principles of procedural fairness including:

- appropriate hearing of the issues:
 - providing sufficient opportunities for each party to present evidence;
 - providing sufficient opportunities for all the parties to respond to collected evidence, where appropriate;
- managing any evidence securely;
- avoiding actual or perceived conflicts of interest or bias by ACC members;
- maintaining a balance between respect for privacy and the need for effective investigation;
- determining matters based on the balance of evidence in a timely manner.

CONFLICTS OF INTEREST

- A conflict of interest is a set of circumstances that creates a risk that judgement by a member of the ACC or the MC regarding a matter under consideration will be unduly influenced by a private interest.
- An ACC member must recuse themselves from an investigation when that member declares a conflict of interest and report this to the MC who will appoint a temporary replacement ACC member.
- An MC member must recuse themselves from all processes associated with the matter when that member declares a conflict of interest.
- In addition, at the start of an investigation, if a party challenges a member of the ACC or the MC regarding conflict of interest, the ACC must immediately report this to the MC for adjudication. The MC may appoint a temporary replacement ACC member or dismiss the complaint.

WORKING ARRANGEMENTS

- Recognising the sensitivity of the information being handled by the ACC, all participants must abide by the confidentiality declaration at the end of this document.
- While the ACC will endeavour to have all three members present for meetings, the quorum for ACC meetings is two members and the absent member will be promptly and fully informed of proceedings.
- The ACC will strive to make all its decisions by consensus but when this fails, dissenting members may deliver separate reports to the MC.
- Only the ACC can decide who else may attend ACC meetings and hearings.
- Hearings may be conducted with less than 3 ACC members but the absent members must be promptly and fully informed of proceedings.
- Each hearing must be held in a suitable private room at a mutually agreed time and location at the ACC's expense.
- Sub-committees of the ACC may be formed for particular tasks if necessary.
- A budget will be agreed by the MC for expenses of the ACC and SMG.

MATTERS THAT MAY BE BROUGHT TO THE ACC

1. *A grievance or dispute brought to the SMG which cannot be resolved.*

The SMG will advise the parties in dispute that the SMG is unwilling or will no longer be assisting in the resolution of the matter and that the parties may take their dispute to the ACC for consideration. Where the parties are willing, the SMG will provide to the ACC a summary of the issues and advise that the parties wish to submit their dispute to the ACC for determination.

Where the dispute involves allegations of serious illegal or criminal activities, the SMG will promptly refer the matters directly to the ACC without recourse to the parties.

2. *A complaint raised about a member of the ACTG, or by a member about a non-member.*

Such cases may be raised by a member of the ACTG or by someone outside the ACTG including allegations of serious illegal or criminal activities, or activities

condemned or forbidden by the Australian Greens Charter, the Constitution, By-laws or Code of Conduct.

NOTE:

A complaint about a decision of the Forum or MC is not brought to the ACC: it is investigated and determined at an SGM (Constitution, section 22) which may be called by a petition signed by at least 20 members of the ACTG, or (in the case of complaint about the Forum) a resolution of the MC, or (in the case of a complaint about the MC) a resolution of the Forum.

HOW TO BRING A MATTER TO THE ACC

Any of the three ACC members may be contacted individually, or a matter may be raised with any ACTG official who will refer it to the ACC. Once the ACC is advised of a matter, the ACC will be deemed to be investigating the matter, and will provide this document to each of parties (where appropriate) and seek submissions from the parties (where appropriate).

In matters where the MC is the complainant, one member of the MC must be designated as the complainant to limit conflict of interest.

The ACC email address is acc@act.greens.org.au accessed by all 3 ACC members.

INVESTIGATIONS

An ACC investigation will involve private hearings at which the parties can make submissions. The hearings may be one-on-one where requested and advocates may be permitted to attend at the ACC's discretion. The ACC may also make its own investigations, or it may appoint an independent investigator.

All information about the matter will be secured by the ACC. All the parties will have access to the information about the matter except when the ACC deems it is inappropriate for reasons of relevance, privacy or safety. The confidentiality of all information about the matter will be respected except when that information is essential to a determination or includes allegations of serious illegal or criminal activity.

When necessary, the ACC may recommend that the MC facilitate the provision of professional counselling or other support services to a party.

When the ACC becomes aware of a relevant allegation of serious illegal or criminal activity, the ACC will immediately halt the investigation and declare the matter a Serious Matter.

SERIOUS MATTERS

The following procedures should be followed when a Serious Matter is declared. Alterations to these procedures may be appropriate in some circumstances at the discretion of the ACC.

1. Where a party is a complainant or a witness:
 - a. the ACC advises the party to seek legal advice before they make any further statements or take any further actions about the matter;
 - b. the ACC advises the party to consider taking the matter to the police;
 - c. the party nominates their Primary Contact in this matter who then becomes the single contact person for the party in all their communications in the matter with ACTG staff and elected officials;
 - d. the ACC recommends that the MC immediately facilitate the provision of relevant professional counselling or other support services for the party, if the party agrees;
 - e. after having the opportunity to obtain legal advice and in consultation with their Primary Contact, the party prepares a formal statement for the ACC.
2. The ACC informs the Convenors of the declaration.
3. Where a party is the respondent:
 - a. until the complainant(s) decides whether to take the matter to the police, or while it would potentially jeopardise police investigations, the ACC refrains from informing the party of the allegation;
 - b. otherwise:
 - i. the ACC consults with the Convenors and police, if necessary, about the risks of distress, violence, flight, etc. and makes necessary preparations;
 - ii. the ACC informs the party of the allegation;
 - iii. the ACC advises the party to seek legal advice before they make any further statements or take any further actions about the matter;
 - iv. where applicable, the ACC advises that the complainant(s) is taking, or has taken, the matter to the police; and
 - v. the party nominates their Primary Contact in this matter who then becomes the single contact person for the party in all their communications in the matter with ACTG staff and elected officials;
 - c. the ACC may recommend to the MC that sanctions be applied against the party, (if the party is a member or employee of the ACTG), or an appropriate comment will be recorded in the volunteers database (if the party is a volunteer).
4. Unless otherwise determined by the ACC, each Primary Contact:
 - a. is a member of the SMG or the ACC or the MC; and
 - b. is replaced with a new nominee by the party if their Primary Contact cannot continue in the role; and
 - c. must exercise great care in all their communications with the party to avoid:
 - i. providing partisan, strategic or legal advice; or

- ii. disclosing confidential information about the matter without authorisation from the ACC; and
 - d. must advise the party to exercise care in all their communications with members of the ACTG.
5. The ACC collects the statements of the complainants and witnesses, prepares a summary of the matter and supplies these documents to the MC to provide to police.
 6. No later than 48 hours after the declaration of a Serious Matter, the ACC provides a report of the matter to the MC including details about the allegations, actions taken, the Primary Contacts nominations and any preliminary recommendations for the MC such as regarding insurance and legal matters. The MC must then brief ACTG elected parliamentary representatives as soon as possible and report to the next Forum.
 7. The MC must promptly report any correspondence with police to the ACC and the relevant Primary Contact(s).
 8. The ACC provides a report on the matter to the MC at least every month and after receiving each report, the MC must then brief ACTG elected parliamentary representatives as soon as possible and report to the next Forum.

All information about a Serious Matter is confidential to the parties, their Primary Contacts, the ACC and the MC so as to:

- maintain the privacy of the parties
- safeguard evidence required for police investigations or legal proceedings
- avoid conflicts of interest
- ensure the safety of all involved people

Necessary and appropriate confidential communications may occur between each party and their Primary Contact, and between the Primary Contacts, the ACC and the MC, as appropriate, but other communications about the matter must be discreet and the parties de-identified whenever possible. While it is understandable that associates and friends of the parties who are ACTG members will want to communicate with the parties to offer support and advice, it is recommended that great care and discretion is exercised. It is recommended that the MC ensure access for ACTG members to legal advice in these issues, if requested.

The ACC will determine when a Serious Matter is concluded which may be based on one or more of the following events:

- conclusion of police investigations or legal proceedings,
- conclusion of MC proceedings,
- declaration of satisfactory resolution of the matter by the complainant(s).

At the conclusion of a Serious Matter the ACC will provide a final report of the matter to the MC and, considering the wishes of the parties, the ACC will determine whether it is safe and appropriate for the confidentiality requirements to be relaxed and to what extent.

DETERMINATIONS AND APPEALS

Excluding Serious Matters, the ACC will determine a matter in a timely manner and recommend appropriate action including any of the following:

1. that the MC take disciplinary action against the member,
2. that the MC counsel the member about the behaviour the subject of the complaint and, if the member is on the staff, refer the matter to the member's supervisor,
3. advise the parties to pursue mediation or counselling,
4. dismiss the matter.

In all cases, the parties and the MC will receive written explanation of the ACC determination including relevant and appropriate evidence.

There is no mechanism for direct appeal against an ACC determination unless there is substantive new evidence. However a complaint against a member of the ACC or the MC involved in the matter may be lodged with the ACC due to allegations of:

- a failure to adhere to the Constitution, Bylaws, Code of Conduct or this document
- a conflict of interest.

The rules of conflict of interest apply in such situations and the member of the ACC or MC who is the respondent will be temporarily replaced.

Where the ACC recommends disciplinary action against an ACTG member (which may include censure, suspension or expulsion), the ACC must provide 14 days written notice of the meeting of the MC at which the recommendation will be considered including the reasons, evidence and the right of appeal. Details of the appeal process are contained in section 12 of the Constitution. Complaints or appeals against the ACC may be instigated through motions passed at an SGM.

ADDITIONAL REPORTING

The committee will report to the MC quarterly regarding the activities of the ACC and SMG, within the bounds of confidentiality requirements, and will also publish a summary of its activities on the ACTG members' web portal.

From time to time, the ACC may also make recommendations to the MC for changes to the Constitution, Bylaws, this document and other instruments to improve the prevention and management of grievances within the ACTG.

EVALUATION

The performance of the ACC will be evaluated by the MC at least once per year with attention to an assessment of the ACC's compliance with, and the need for changes to, the Constitution, Bylaws and this document.

CONFIDENTIALITY DECLARATION

Participants will have access to information that will be personally and politically sensitive and which, in the hands of unauthorised individuals or political opponents, could cause harm or disadvantage to individuals or the party.

All participants must maintain confidentiality regarding the sensitive information pertaining to a matter and only share such information in manners determined by the ACC. A breach of this declaration is deemed to be a breach of the Code of Conduct.

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