
THE GREENS (WA)

SEXUAL HARASSMENT BY-LAW

VERSION 2 | 2020

1. PREAMBLE

- 1.1. The Party is committed to providing a safe environment for all members and volunteers. The Party will not tolerate Sexual Harassment, assault or violence under any circumstances.
- 1.2. All complaints of Sexual Harassment will be taken seriously, handled efficiently, and treated with respect and confidence.
- 1.3. These by-laws should be read together with the Conflict Resolution By-Laws.
- 1.4. The Party acknowledge that Sexual Harassment is unlawful and inconsistent with Party's values, and note the operation of the *Sex Discrimination Act 1984* (Cth), and the *Equal Opportunity Act 1984* (WA).

2. PURPOSE

- 2.1. The purpose of these by-laws is to set out the processes that are available to a Member or Party volunteer who has experienced Sexual Harassment within Party spaces. This includes, but is not limited to, Party online spaces and organised activities.
- 2.2. The process set out in this by-law is not intended to be used in response to complaints of sexual assault or violence, except where the Complainant specifically requests that this process be followed.
- 2.3. These by-laws are not intended to apply to staff members of the Party or staff of Party members of parliament, except when acting in their capacity as Party members. Any member or volunteer wishing to raise a complaint about a staff member can do so following the relevant staff complaints process.

3. SEXUAL ASSAULT OR VIOLENCE

- 3.1. If an instance of sexual assault or violence is brought to the attention of a Complaints Officer:
 - a. The Complaints Officer should immediately provide the Complainant with the list of support services outlined in Annexure One;
 - b. With the Complainant's consent the Complaints Officer should immediately refer the Complaint to the police; and

- c. With the Complainant’s consent, and regardless of whether the matter is referred to the police, the Co-Convenors of the Party should be immediately advised of the incident, to allow them to consider commencing action under the Censure, Suspension and Expulsion By-Laws.

DEFINITIONS

For the purposes of these by-laws, and any associated materials:

“Activities” means the behaviour, conduct or general participation of any Member or volunteer in their capacity as much, including by not limited to any meetings, events, or online spaces.

“Advocate” means the person appointed by either of the parties to assist that party during the determination of a complaint. To ensure the integrity of the process, they must be accepted by the Complaints Officer.

“AGM” means the Annual General Meeting of The Greens (WA) Inc.

“Child” means an individual who is under 18 years of age

“Complainant” means a person who brings a complaint in accordance with these by-laws.

“Complaints Officer” means a person appointed under section 4 of these by-laws to receive complaints of Sexual Harassment.

“Constitution” means the Constitution of The Greens (WA) Inc.

“Grievance Coordinator” means a Grievance Coordinator appointed under The Greens (WA) Conflict Resolution By-Laws.

“Member” means a Party member as defined in Part 3 of the Constitution.

“Party” means The Greens (WA) Inc.

“Party Appointed Observer” means an independent observer aged 18 years or over whose role is to vouch for the accurate reflection of the conflict resolution process.

“Parties” means the Complainant and the Respondent.

“Respondent” means a Member identified by a Complainant whose alleged actions have been perceived to cause or contribute to a complaint.

“Reps” means the Representatives Council of The Greens (WA).



“Sexual Harassment” means an

- (a) unwelcome sexual advance;
- (b) unwelcome request for sexual favours; or
- (c) other unwelcome conduct of a sexual nature,

which makes a person feel offended, humiliated or intimidated, where a reasonable person would anticipate that reaction in the circumstances. Please see Annexure Two for examples of conduct which may constitute Sexual Harassment.

“Sexual Abuse” in accordance with S. 124A of Children and Community Services Act 2004 (WA), and in relation to a child, includes sexual behaviour in circumstances where:

- (a) the child is the subject of bribery, coercion, a threat, exploitation or violence;
- (b) the child has less power than another person involved in the behaviour; or
- (c) there is a significant disparity in the developmental function or maturity of the child and another person involved in the behaviour.

“Support Person” means a trusted friend or colleague over the age of 18 and chosen by the Respondent and/or Complainant. To ensure the integrity of the process, they must be accepted by the Complaints Officer.

“Working With Children Check” means a screening obtained by the Department of Communities (WA) under the Working With Children Check program.

4. COMPLAINTS OFFICERS

4.1. Reps must appoint no less than three officers who are able to receive and deal with complaints of Sexual Harassment. The Complaints Officers must include:

- a. at least one Grievance Coordinator or Resolution Officer;
- b. at least one Office Bearer of the Greens (WA); and
- c. at least two people who do not identify as a cisgendered male.

4.2. There is no term limit for Complaints Officers, but their appointments shall be confirmed annually at the first meeting of Reps following the AGM.

4.3. Complaints Officers are to be selected through the following process:

- a. Nominations for Complaints Officers are called for by Administration Working Group.
- b. Members wishing to nominate must include a short description of any qualifications or experience, in particular skills and training.
- c. Names and descriptions of nominees (including any Members re-nominating from the previous year) must be circulated eleven (11) days prior to the Reps Meeting.

- d. Objections may be sent in writing to the Co-Convenors of the Party to be received at least five (5) days before the Reps Meeting.
 - e. Objections must be presented in confidence, to the nominating Member who may choose to withdraw or proceed with nomination.
 - f. If the affected nominee does not withdraw, the objection (unless withdrawn) must be presented to the Reps Meeting while the nominee is present and they must be provided an opportunity to respond.
 - g. All nominees must absent themselves from the room while the selection is being made.
 - h. Selection is made by an optional preferential secret ballot with an option for seek-other candidate.
- 4.4.** All Complaints Officers, once appointed, shall obtain a Working With Children Check paid by the Party.
- 4.5.** All Complaints Officers are to be provided with training in identifying and responding to Sexual Harassment, abuse and violence.
- 4.6.** Contact details for Complaints Officers must be made available from:
- a. The Party's office; and
 - b. The Party's website.
- 4.7.** Contact details must also be published to members annually, and circulated through Regional Groups and working groups.
- 4.8.** If Complaints Officers are unable to fulfill their duties for a time period (e.g. going overseas), they must inform the State Director.

5. PROCESS

- 5.1.** In order to initiate a complaint of Sexual Harassment, a Complainant may contact a Complaints Officer in any way that they feel comfortable. A complaint does not need to be made in writing.
- 5.2.** When a complaint is received, a Complaints Officer will:
- a. refer the Complainant to the support services outlined in Annexure One;
 - b. obtain and record a full, detailed account of the incident/s;
 - c. explain the options available under these by-laws, the Conflict Resolution By-Laws, and the Censure, Suspension and Expulsion By-Laws to the complainant;
 - d. notify the other Complaints Officers and the State Director via email that they have received a complaint and the names of the Complainant and Respondent;
 - e. ascertain the Complainant's preferred outcome (for example, an apology, the behavior to change, or a change in the circumstances in which the parties come into contact);

- f. agree on the next step and send a written summary of the complaint and preferred outcome to the Complainant for them to confirm as an accurate record;
- g. keep a confidential record of all details of the discussion and decisions taken in the course of the discussion, which will be retained by the Party in accordance with confidential document handling processes.

5.3. If the Complaints Officer considers that:

- a. the nature of the alleged conduct is so serious as to present an immediate organisational risk to the Party; or
 - b. there is a significant risk that the safety of the Complainant will be prejudiced by the Respondent's ongoing involvement with the Party,
- then the Complaints Officer may, subject to the agreement of the Complainant, refer the matter to a Co-Convenor of the Party, with a recommendation that the Respondent be suspended pursuant to s. 11 of the Greens (WA) Constitution and the Censure, Suspension and Expulsion By-Laws.

5.4. If possible, the Complainant should inform the Respondent that the conduct, which is the subject of the complaint, is unwelcome and unwanted. If the Complainant can't do this directly, the Complaints Officer may support the Complainant in making a direct approach to the Respondent. The conversation should include:

- a. informing them of the relevant conduct; and
- b. explaining the Complainant's preferred outcome.

5.5. If the Complainant is not comfortable making a direct approach to the Respondent, then the Complaints Officer may mediate an informal resolution of the matter. The Complaints Officer should ensure that the following process applies:

- a. inform the Respondent of the complaint and provide them with an opportunity to respond;
- b. ensure both parties understand their rights and responsibilities under the Constitution and relevant by-laws;
- c. if appropriate, mediate an outcome that is satisfactory to the Complainant and the Respondent;
- d. follow-up to ensure the behavior does not re-occur; and
- e. keep a confidential record of all details of the discussion and decisions taken in the course of the discussion, which will be retained by the Party in accordance with confidential document handling processes.

5.6. Both the Complainant and the Respondent are entitled to have an Advocate or Support Person present during any stage of this process.

5.7. If a satisfactory resolution cannot be reached through the processes outlined at 6.4 or 6.5, then the matter should be referred to a Grievance Coordinator and dealt

with pursuant to the Conflict Resolution By-Laws. The Complaints Officer may support the Complainant through the initial stages of the referral.

6. COMPLAINTS INVOLVING CHILDREN

6.1. The complaints processes outlined in this by-law are applicable for children in accordance with the following provisions:

Lodging Complaints

6.2. A child who is 16 or 17 years of age can lodge a complaint, and then participate in the complaints resolution process:

- a. independently, if the Parent or Guardian has provided written permission allowing the child to do so;
- b. with the support of a Parent or Guardian, or an Advocate or Support Person who is aged 18 years or over, who will be present at any meetings and/or included in any communications and subject to confidentiality requirements as if they were a party to the complaints resolution process; or
- c. in the presence of a Party Appointed Observer who is aged 18 years or over, in circumstances where the child does not have a Parent or Guardian, Support Person or Advocate.

6.3. A child under 16 years of age can lodge a complaint independently, but must then be supported throughout the complaints resolution process with:

- a. the support of a Parent or Guardian, or an Advocate or Support Person who is aged 18 years or over, who will be present at any meetings and/or included in any communications and subject to confidentiality requirements as if they were a party to the complaints resolution process; or
- b. a Party Appointed Observer who is aged 18 years or over, in circumstances where the child does not have a Parent or Guardian, Support Person or Advocate.

Receiving Complaints

6.4. A child who is 16 or 17 years of age can receive a complaint, and then participate in the complaints resolution process:

- a. independently, if the Parent or Guardian has provided written permission allowing the child to do so;
- b. with the support of a Parent or Guardian, or an Advocate or Support Person who is aged 18 years or over, who will be present at any meetings and included in any communications and subject to confidentiality requirements as if they were a party to the complaints resolution process; or

- c. in the presence of a Party Appointed Observer who is aged 18 years or over, in circumstances where the child does not have a Parent or Guardian, Support Person or Advocate.

6.5. A child under 16 years of age can receive a complaint independently, but must then be supported throughout the complaints resolution process with:

- a. the support of a Parent or Guardian, or an Advocate or Support Person who is aged 18 years or over, who will be present at any meetings and/or included in any communications and subject to confidentiality requirements as if they were a party to the complaints resolution process; or
- b. a Party Appointed Observer who is aged 18 years or over, in circumstances where the child does not have a Parent or Guardian, Support Person or Advocate.

6.6. If a complaint is received about a child who is a non-Member, and that child does not wish to participate in the complaints resolution processes, the Party may ask them to no longer participate as a volunteer.

6.7. Working With Children Checks

All Complaints Officers and Party Appointed Observers engaged in complaints resolution processes involving children must have a valid Working With Children Check that is filed with the Party.

6.8. Child Sexual Abuse

If a Complaints Officer receives a complaint from a child and is concerned that the child is suffering from Sexual Abuse, the following processes must be followed:

- a. The Complaints Officer must ensure that the immediate safety of the child is prioritised and then discuss with the child what support they require including, with the child's consent and where the Complaints Officer feels it is safe to do so, informing the Parent or Guardian;
- b. The Complaints Officer must report the incident to the Department of Communities, or equivalent;
- c. The Complaints Officer must then report the incident to a Co-Convenor or the State Director, who will consider taking action to ensure the safety of the Complainant, and other members and supporters, including where appropriate initiating a suspension under the Censure, Suspension and Expulsion By-laws.
- d. The Complaints Officer must inform the child of their reporting requirements in accordance with the processes outlined above.

7. CONFIDENTIALITY

- 7.1. The Party acknowledges that raising complaints of Sexual Harassment can involve difficult and intimate conversations.
- 7.2. Regardless of the process followed under these by-laws, all aspects of any allegations are to remain confidential.
- 7.3. Any member who breaches the confidentiality provisions of these by-laws may be referred to Reps pursuant to the Censure, Suspension and Expulsion By-Laws.
- 7.4. These confidentiality provisions do not apply to the Complainant or the Respondent.
- 7.5. The State Director is to receive notice of a complaint being received, notice of resolution, and receive the confidential record of the discussion and decisions taken in the course of the discussion on behalf of the Party.

8. VEXATIOUS COMPLAINTS

- 8.1. A person whose complaint is found to be vexatious may be referred to Reps pursuant to the Censure, Suspension and Expulsion By-Laws.
- 8.2. A complaint under these by-laws will be vexatious if it lacks reasonable grounds, and:
 - a. is malicious;
 - b. is intended to harm someone's reputation;
 - c. the Complainant's conduct is unreasonable, in raising the complaint; or
 - d. the complaint is raised with the intent of wasting time or resources, or to cause stress and confusion to the Respondent, Party Office Bearers or staff, or anyone involved in investigating the complaint.
- 8.3. Should the Respondent believe the complaint to be vexatious, they should advise the Complaints Officer. The Complaints Officer should refer the entirety of the initial complaint to the Grievance Coordinator for resolution pursuant to the Conflict Resolution By-Laws.

Annexure One: Relevant Service Providers in Western Australia

Sexual Assault & Domestic Violence National Help Line

1800 Respect (1800 737 732)

Sexual Assault Resource Centre (SARC)

Crisis 24 hour (08) 9340 1828

Country areas (free call) 1800 199 888

Ph: (08) 9340 1820 (office)

Fax: (08) 9381 5426

https://healthywa.wa.gov.au/Articles/S_T/Sexual-Assault-Resource-Centre-SARC

Waratah Support Centre (Bunbury)

Phone: (08) 9791 2884

Freecall: 1800 017 303

Fax: (08) 9721 3102

<http://www.waratah.asn.au>



Annexure Two: Conduct that may constitute Sexual Harassment

Sexual Harassment includes any unwelcome behaviour of a sexual nature that could be reasonably expected to make someone feel offended, humiliated or intimidated.

This may include (but is not restricted to):

- physical contact such as touching, fondling or other physical contact without consent;
- unwelcome comments or questions about someone's sex life or physical appearance;
- a request for sex or sexual favours;
- leering, staring, ogling;
- displaying sexually offensive photos, pinups or calendars, reading matter or objects;
- sexually offensive comments, stories or jokes;
- sexual propositions or continued requests for dates;
- sending sexually explicit messages by phone, email or any other source; or
- an unwelcome sexual advance.

It should be noted that in some instances, incidents may involve behaviour that constitutes both harassment and assault and that sometimes the difference between harassment and assault is not entirely clear.