

Conflict Resolution Committee
The Greens NSW

Cc: Damiya Hayden
Convenor, The Greens NSW

By email only.

Friday 15 April 2022

**Response to complaint about my behaviour and
complaint against those responsible for this abuse of process**

I refer to the Damiya Hayden's email of 17 March 2022 attaching a complaint against me signed by 11 members of the NSW Greens and dated 17 December 2021. I note that no explanation was provided for the 3-month delay in forwarding the complaint. Thank you for granting me a 2-week extension of time. Please accept this as my response to the complaint.

Please also accept this as a formal complaint brought by myself, and fellow Greens NSW member Dr Catherine Lynch, against the 11 members responsible for this abuse of process. I will also be providing a further document with examples of breaches of The Greens NSW constitution by the complainants and which will also provide further important context for my actions as well as details of the grounds of our independent complaint against them.

The contents of this response are as follows:

- i) No substance to the complaint
- ii) Party members are not compelled to agree with all Greens policies
- iii) My position in respect to the identified Greens policies
- iv) Conflict between gender identity policies and principle of social justice
- v) How the current gender identity policies constitute discrimination
- vi) My comments to the Daily Telegraph in relation to Abigail Boyd
- vii) My attendance at the protest in relation to McIver's Ladies Pool
- viii) My comments made by email within Working Groups
- ix) The complaint breaches the principle of grassroots democracy and is an abuse of process
- x) Request for no further action be taken and complainants to be reprimanded

i) No substance to the complaint

I reject the unsubstantiated allegation that I have engaged in behaviour that is in contravention of Greens principles and policies or that I have been disruptive or that I have transphobic or trans exclusionary views. I strongly refute the claim that I have inflicted direct harm or created an unsafe space within the party and consider these allegations defamatory. The material attached and detailed in the schedule does not substantiate any such claim.

Clause 6.6.1 of the Greens NSW Constitution states:

Any two individual members may make a written complaint to the Convenor alleging that another individual member(s) has:

a. refused or neglected to comply with a provision of this constitution; and/or

b. acted in a manner prejudicial to the interests of The Greens NSW.

I have re-read the NSW Greens Constitution, as well as the Australian Greens Charter and Constitution which members agree to abide by when joining, and I have not refused or neglected to comply with any of these provisions. It is asserted that I have “crossed a line”, but there is a failure to identify against what provision I have offended.

I also reject any suggestion that I have acted in a manner prejudicial to The Greens NSW. Rather I would suggest I am doing my best to draw attention to continued breaches of the constitution taking place within the party. I would submit that those members who have been actively silencing dissent within the party in respect to gender identity policy, and who are now misusing this complaints process for that purpose, are acting in a manner which breaches the principle of grassroots democracy and which is prejudicial to the interests of The Greens NSW.

ii) Party members are not compelled to agree with all Greens policies

I have never represented myself to be a spokesperson on behalf of the Greens in any capacity and I do not see any provision which compels me, as a rank and file member of the party, to express agreement with all party policies or to refrain from critiquing these policies. Indeed, any such provision would be incompatible with the principle of grassroots democracy.

Clause 12.1 requires that “[t]he actions, activities and public statements of all members of The Greens NSW **who are elected to Public Office** shall be consistent with the Charter, Constitutions, policies and decisions of the Party.”(emphasis added) However, this provision does not bind individual members such as myself who do not hold any public office.

Indeed Clause 13.1 specifically states that policy frameworks are to “*permit opinions to differ over the details of the policies.*” And this is just as well, considering that there are significant conflicts between the various policies and their competing objectives. As a member I am entitled to participate in policy formation (clause 13.3 of The Greens NSW Constitution; clause 9.7g Australian Greens Constitution) and therefore must be able to express views in accordance with my conscience without being subjected to personal attacks and having my communications blocked.

iii) My position in respect to the identified Greens policies

Greens NSW Sex, Sexuality and Gender Identity policy:

Principle 3. “The Greens NSW ... Do not tolerate a person being harassed, abused, vilified, stigmatised, discriminated against, disadvantaged or exploited because they are, or are perceived to be, intersex, transgender, bisexual, gay or lesbian.”

I agree with this policy and do not accept that my conduct can be characterized as harassing, abusing, vilifying, discriminating, disadvantaging or exploiting any individual, transgender or otherwise. However, I have certainly been personally harassed, abused, vilified, stigmatized and discriminated against as a result of expressing my views on this subject. Examples will follow in a further document detailing our complaint against the complainants.

Greens NSW Women's policy explicitly acknowledges trans women as women:

Principle 2.2. "Including first Australians and other women who experience added barriers, such as women with disabilities, trans women and women from culturally and linguistically diverse (CALD) backgrounds, acknowledging that these women often face intersectional discrimination."

I do not agree with the inclusion of trans women as women within the NSW Women's policy. However, I believe barriers and intersectional discrimination experienced by anyone within society rightly should be condemned.

Australian Greens Sexual Orientation, Gender Identity and Intersex policy:

Principle 6. "People have the right to self-identify their gender, which is integral to people's lived experiences as citizens and members of the community. We recognise transgender and non-binary gender identities exist and are valid."

I support people's right to self-identify their gender as long as 'gender', which is a social construct, is not confused or conflated with 'sex' which is a physiological reality. I support the right of individuals to challenge the gender binary by dressing and presenting in a manner which may challenge traditional sex stereotypes. This is very different from supporting laws that encourage and enable individuals to misrepresent their sex for official and unofficial purposes which has the potential to result in harm either to themselves or others.

Principle 12. "Trans and gender diverse young people should have the freedom to affirm their gender. Any medical interventions involved in this process should be guided by the young person, their families and their medical specialists."

Having been closely involved through my legal work with young people who have *detransitioned* and who deeply regret the hormonal and surgical treatments to which they have been subjected, I cannot support this policy. It carries a suggestion that medical interventions may be involved to "affirm" one's gender. I am well aware of the significant harm currently being inflicted on children and other vulnerable people by the affirmation model of treatment promoted within the lucrative sex-change industry.

The Greens NSW need to consider their duty of care and review this principle as a matter of urgency to keep pace with international developments which indicate that the affirmation model of treatment for gender dysphoria is now under review in those countries where it was first introduced. I note that clause 13.7 of the NSW Constitution requires that "*Policies shall be regularly reviewed to ensure clarity, currency and adherence to Greens principles.*" There is no excuse for the Greens lagging behind when there are members in the party, such as myself, trying to alert our MPs to these developments.

Aim 14. "Intersex, transgender and gender diverse people to be able to alter their sex or gender on all official documents, consistent with how they live and identify, irrespective of their marital status, without the requirement for gender affirmation surgery or hormonal therapy."

It is important that gender does not displace official recording of sex in contexts where it is relevant and constitutes an important legal, medical or statistical record. I do not believe there is any utility in recording self-identified gender and do not support the altering of sex on

official documents, regardless of whether the individual has undertaken surgery or hormonal interventions. I do not support the falsification of official documents or the creation of legal fictions that do not serve the interests of the public. Enabling the alteration of birth certificates and other identity documents facilitates fraud and other criminal transgressions on both an individual and societal level.

Policies along these lines have created travesties such as Lia Thomas dominating US women's college swimming, males staffing women's domestic and sexual violence services and the increasing numbers of male sex offenders being accommodated in women's prisons. There are however options that provide a compromise and balancing of the rights of trans people and women, including the option of identity documents that do not disclose sex and are sufficient for most purposes where sex is not a relevant consideration.

iv) Conflict between Gender Identity Policies and principle of social justice

I am unable to defend Green's policies in the area of gender identity since they directly conflict with both my personal ethics and professional obligations as a human rights lawyer. I believe elements of these policies conflict with the principle of social justice which constitutes one of the four pillars of the Australian Greens. There is nothing fair, compassionate or kind about policies which endorse medical experimentation on children and other vulnerable people, dismantle women's sex-based rights and vilify, stigmatise and seek to silence those who speak out about the harm being done.

I note that clause 31 of the Australian Greens Constitution provides:

31.2 An elected Member of Parliament will adhere to the policies of The Greens:

a) except where, in the opinion of the Member, their duty to the constituents is in conflict with The Greens' policy then the Member may vote according to their duty to their constituents; or

b) except where the view of the Member is in conflict with The Greens' policy, then the Member may vote according to their conscience.

However, I am disappointed that The Greens NSW are specifically excluded from this very important provision by clause 31.5. It is a great pity that our MPs have been deprived of their ability to act in accordance with their personal conscience in this way. Fortunately, I am not an elected member of The Greens NSW and therefore I am still capable of being guided by good conscience in the face of flawed Greens policy.

v) How the current gender identity policies constitute discrimination

The Australian Greens Constitution states:

10. Non-discrimination

10.1 The Greens are committed to women, men and those with other gender identities having equal status within society and will practice gender equity and equal opportunity, including where appropriate affirmative action.

10.2 At no time will any member be discriminated against within The Greens due to gender, age, race, ethnicity, class, religion, disability, sexuality, marital status, or membership of a minority group.

I strongly support this provision and believe that my actions are consistent with it. I am very familiar with both state and federal discrimination laws as this is the area in which I practice

and in relation to which I have considerable legal expertise. I am not transphobic as I neither hate, nor am I frightened of, trans people. I do not say or write anything with the intent of causing disrespect or upset to trans people. I am also not trans exclusionary as I do not agree with their exclusion in any context on the ground of their gender identity. However, I do support the right of women to have spaces, services, sport and other affirmative action opportunities which exclude all males on the basis of their sex, including those who identify as trans or non-binary.

According to Australian Government Guidelines and scientific understanding, sex is determined by chromosomal, gonadal and anatomical characteristics. Trans women are not women in the usual sense of the word meaning adult human females. While a person may assume a masculine or feminine gender identity of their choice, their actual sex is unchanged. Cosmetic changes to a person's appearance and even the removal of their reproductive organs does not result in a change to their sex, as it is encoded in every cell of their body. However, as a matter of courtesy, others may address an individual in accordance with their assumed gender identity rather than their sex. While I support this on an individual level, I do not support facilitating a societal wide mass delusion based on dysphoric beliefs and nor do I think it is ultimately kind or ethical to engage in this kind of deception.

I am concerned that the Greens gender identity policies reflect a flawed understanding of discrimination. 'Equal status' does not demand identical treatment of all people in every circumstance. Indeed, the failure to take account of real physical differences between people can result in greater inequity and may constitute 'indirect discrimination'. For example, failing to make adjustments for a physical difference (eg: not providing ramp access for a person in a wheelchair) is likely to constitute discrimination. Treating people differently to take account of real differences does not necessarily constitute less favourable treatment. Meanwhile treating people identically when they have different needs and requirements can be discriminatory and harmful.

The failure to acknowledge the real physical differences between males and females similarly has the potential to result in discrimination. Women menstruate, gestate and lactate and to date there has been limited adjustments made by the workforce to accommodate these realities. Gender identity policies which advocate that we ignore sex-based differences have the potential to result in further discrimination against women and girls, effectively dismantling sex-based rights and reversing affirmative action measures put in place to address the disadvantage experienced by females. Discrimination legislation does not demand that a male who identifies as a woman should in all circumstances be treated as if they were a woman, but only that they should not be subjected to less favourable treatment than others in key areas such as employment, accommodation and the provision of goods and services.

vi) Comments to the Daily Telegraph in relation to Abigail Boyd

While I accept that publicly expressing disgruntlement with the actions of a Greens MP is not ideal, I would never have resorted to this if grass roots participatory democracy were operating within the party as intended by the constitution. As is quite clear from the material presented within the complaint, I have been attempting for some years to have my concerns addressed in relation to the harmful impact of current gender identity policies and have been repeatedly blocked and subjected to personal attacks for doing so. This context needs to be considered when considering the comment which I provided when contacted by the Daily Telegraph.

The complete disregard for encouraging free expression of viewpoints shown by MPs Abigail Boyd and Jenny Leong has been demonstrated on many occasions and I attach examples of this. The on-line censorship of the article by Margot Oliver, for the issue of Greenmail that specifically requested contributions on *Sex and Gender*, demonstrates the extent to which the party is allowing its actions and policies to be dictated by those who quickly resort to threats rather than respecting the right of rank and file members to hold varying opinions.

Had either of the MPs bringing this complaint against me taken any steps to address the concerns expressed by myself and others in recent years, I would not have resorted to providing a comment to the media when I was contacted. However, in view of the complete breakdown of democratic processes within the party, it occurred to me that this would at least ensure engagement on these very important issues, as indeed it has. It is extremely disappointing that these MPs pay greater heed to a report in the *Daily Telegraph* than to concerns expressed by rank and file members within the party.

vii) Protest in relation to McIver's Ladies Pool

I do not recant from the views I have expressed in my internal communications that have been listed as part of this complaint. I do, however, object to the attempt to tar me with the actions of others. I do not believe I was present when Jenny Leong walked into the Council Chambers and I was not involved in heckling her. Indeed I did not enter the building at any stage and don't recall seeing Jenny, although I think a colleague from LGB Alliance mentioned having spoken to her. I believe I arrived late at this event, which I was attending due to having been instructed by a client in relation to the matters in dispute.

It is very disappointing that this was a "Greens endorsed rally". It is my recollection that the women in attendance for the counter protest were the ones being subjected to abuse and that the following media coverage was extremely unfair and biased. I note the complaint refers to "*The altercation between these Greens members and the trans rights protesters was reported in the media.*" Neither I nor anyone involved in the counter protest were there as Greens members, or identified as such, so I really do not know what is being referred to here. I was not involved in any altercation with anyone, although there was abuse directed at our group by trans rights protesters.

It is very concerning to me that the Greens would endorse a protest which was specifically directed at undermining McIver's Ladies Pool as a space historically reserved for women and their children and specifically granted an exemption for that purpose pursuant to the *Anti-Discrimination Act*. I believe such action should not have taken place at all, and certainly not without consultation with the Greens Women's Working Group.

It is ironic that I am accused of preventing Greens spaces from being safe for members, when the MPs involved in bringing this complaint are devoting time to undermining the few remaining safe spaces for women, including the only swimming pool in NSW accessible by women who belong to certain religious minorities or who have other reasons for needing a female only space. If Jenny saw me or other Greens at the counter protest and was concerned by our involvement, it would have been appropriate for her to contact me and discuss the matter since she knows me and has my details.

viii) Comments made by email within Working Groups

Clause 22.6.7 provides that : *The working group shall endeavour to promote broad discussion of its particular policy area(s) within The Greens NSW* and 22.6.8 states that *“The working group shall make use of the internet to involve all interested Greens members in its processes.”*

I refute any suggestion that I overtake and dominate discussions, that my views are “unproductive” or that my contributions are needlessly hurtful. I think the examples provided with the complaint against me speak for themselves. It is clear that these communications have been by email rather than during face to face discussions so it is not even possible for me to overtake or dominate as others can readily ignore the sentiments I express and choose not to respond to them. My emails have not been so prolific that I can be accused of dominating the list.

While I acknowledge that some members may be offended by my opinions, I can assure you that I am equally offended by their views but that I respect their right to voice them in a political forum. It is disappointing that they do not extend the same courtesy to me and the many other Greens (and increasingly ex-Greens) who share my perspective. The use of personal attacks against me and anyone who speaks in my support has ensured that other members have been reduced to communicating their support for my position privately. It is disturbing that the MPs bringing this complaint have actively engaged in conduct of this type. I attach examples.

In view of my background both within and outside of the party, the comparison with anti-refugee commentary or climate denial is frankly insulting. In a party committed to grass roots democracy, dissenting views should be met with reasoned rebuttal rather than use of blocking, silencing and personal attacks. I would like to think that the Greens is a party that aspires to produce policy which is both compassionate and evidence-based and that members attempt to educate rather than ostracize members who dare question accepted wisdom within the party. At no stage have the complainants attempted to engage with me on the content of my concerns but instead have resorted to personal attacks.

ix) Complaint breaches principle of grassroots democracy and is an abuse of process

I am a long-term member of the Greens who has until the last couple of years actively contributed to election campaigns by hanging corflutes, delivering flyers, door knocking, cold calling, handing out how to votes at stalls, train stations, during pre-polling and on election day itself, scrutineering and many other tasks, as well as participating in branch, campaign and working group meetings. In view of my demonstrated commitment to the party, I am appalled at the arrogant and disrespectful treatment to which I have been subjected by these Greens MPs. This conduct has directly caused me to reduce my level of support for the party and I am not alone in this regard.

A number of provisions are being breached by this attempt to forcibly quash dissent in relation to Greens gender identity policies. This action breaches one of the four pillars of the Greens, namely the principle of grassroots (participatory) democracy which is set out at clause 1.2.3 of the NSW Greens Constitution and clause 5.1(c) of the Australian Greens Constitution. It is also a breach of the Australian Greens Charter which requires Greens *“to facilitate a free flow of information between citizens and all tiers of government.”*

I note that no effort has been made to mediate this matter despite provision for this at clause 6.6.6 in the constitution and indeed I appear to have been blocked from party communications without the matter even having been heard, thus detracting from my ability to garner support. I submit that this complaint is a blatant act of bullying and breaches clause 1.3.8 of the NSW Greens constitution as it constitutes a repressive and destructive practice which should be resisted.

x) Request for no further action be taken and complainants to be reprimanded

It appears that adherence to Greens policy in relation to gender identity has been elevated by the complainants to being a pillar of the party, displacing grassroots democracy. I will certainly not be making any pledge to a party constituted in this manner. The complaint against me does not establish any breach of clause 6.6.1. so I request that you find that no further action should be taken in respect to this matter pursuant to either clause 6.6.10 or 6.6.12 of the NSW Constitution. Instead I would ask that our complaint against those responsible for this abuse of process should result in them being issued with a warning not to engage in future actions of this type which puts at risk the interests of Greens NSW.

Anna Kerr

As required by clause 6.6.1 of The Greens NSW Constitution, the contents of this letter making a cross-complaint, is also supported by the following member of The Greens NSW:

Dr Catherine Lynch

