

From: **Jeremy Buckingham**  
Date: Mon, 22 Oct 2018 at 7:44 pm  
Subject: SDC: Late proposal one is unconstitutional and destructive  
To: [REDACTED]

Dear local group contact,

Unfortunately, yet again there is a late proposal to the upcoming SDC to remove me from the ticket for the Legislative Council that was recently voted by a ballot of all NSW Greens members.

### **PROPOSAL IS UNCONSTITUTIONAL**

Proposal LP01 is not valid because it clearly contravenes the Greens NSW Constitution. Section 11c of the Constitution states how the order of the ticket is decided:

**11c. The order in which candidates are placed on the electoral ticket shall be the order in which they are elected in the PR count**, except if, in counting each even-numbered sub-group of candidates from the top (that is, the top two, the top four, the top six, and so on up to the number of candidates to be elected), a sub-group is found where less than half of the sub-group are women, the next most successful woman candidate (if any) shall be promoted to the lowest ranked position of that sub-group.

Neither the Committee of Management nor the State Delegates Council has the power to make a decision that is contrary to the Constitution.

The only power the SDC has is under section 9.9.4 of the preselection rules which allows it to set aside the whole preselection ballot result, if there is a significant flaw in the process:

*"The SDC retains the ability to set aside the result of a ballot if the preselection process is considered to be flawed in a way that would significantly affect the outcome of the ballot."*

That would not change the order of the ticket, but abolish the entire ticket and require the party to instigate a new preselection ballot to produce another order for the ticket.

Grassroots democracy is a founding principle of the Greens. The Greens NSW conducted a grassroots preselection with a vote of all NSW Greens members with the ballot counted on 12 May 2018. I placed second in the preselection vote, and the SDC then ratified the result of the ballot and ticket for the 2019 state election, adjusted for affirmative action, at a special SDC on 26 May 2018,

It is deeply inappropriate for the Committee of Management to propose that the State Delegates Council to overturn the result of the grassroots preselection ballot.

### **NO ADVERSE FINDINGS**

In regards to the allegations made against me, an independent investigation properly constituted and conducted under party policy did not substantiate any allegation of wrongdoing and recommended that no adverse findings be made against me. The investigator wrote:

*"I am **not** satisfied that there is sufficient evidence that a reasonable person could conclude, on the balance of probabilities, that an incident/incidents of sexual harassment as defined by the legislation has occurred."*

The independent investigator recommended:

*"The Greens NSW resolve this matter with no adverse finding against you with respect to sexual harassment or inappropriate behaviour towards Ms Buckland."*

### **NATIONAL COUNCIL LETTER**

The National Council passed the resolution without informing me they were discussing the issue and without considering a submission from myself - a clear denial of procedural fairness and natural justice.

The suggestion that I may have breached any section of the party's sexual harassment policy is wrong. I have never claimed that the original complaint itself was politically motivated or vexatious. I have never claimed the complainant has used the complaint for political manoeuvring.

What I have criticised is the use of the publicity generated by the significant breach of confidentiality relating to the complaint (the 730 story) for political manoeuvring. I wrote:

*"The people who politicise complaints for political gain should be ashamed. They trade important principles of justice for base political manoeuvring and for personal political advantage."*

This sentence does not name any specific person, and alludes to people - plural. I refer to the 'politicisation' of complaints, not the complaint itself. It is clear that I am referring to the use of the publicity generated by the 730 story for political manoeuvring.

The political manoeuvring I refer to is exemplified in some of the public statements made by various people after the 730 story aired, some of which are now subject to defamation action. It is also exemplified by the unsuccessful attempts to remove me from the NSW Legislative Council ticket and strip me of portfolio responsibilities at the August State Delegates Council meeting.

For the sake of clarity, I make no assertion that the complaint itself was politically motivated nor that the complainant herself was involved in using the publicity generated by the reporting on complaint for political manoeuvring.

It is important to note the language in the letter from National Council. They do not assert that I have definitely breached the sexual harassment policy but express concern that there may be a breach. The National Council has invited me to make a submission on the issue, which I will be submitting later this week.

It is inappropriate for the Committee of Management to simply decree that a member has breached a policy. The Committee of Management did not contact me or ask for a submission from me before making its decree. The first I heard was an email from the convenors demanding I resign from the ticket or else they would put this proposal to the SDC.

Again, there is a denial of procedural fairness and natural justice. These are not just words, but vitally important principles for both justice and good governance. Section 6.6 of the NSW Greens Constitution lays out a procedure for complaint handling. The Committee of Management have sidelined this procedure with their decree.

### **SDC SHOULD NOT PUNISH PEOPLE FOR NO WRONGDOING**

There was no finding of wrongdoing against me relating to the substantive complaint. There has been no finding of wrongdoing against me for anything else. What we have is a series of false assertions that I have breached a policy being pushed by a faction that wishes to expel me or kick me off the ticket. If the SDC acts to punish a member who has had no adverse finding made against them, then it will set a very dangerous precedent and will breach the Constitution.

We Greens should seek to resolve conflict and reconcile and mediate differences. This approach is not constructive, but is very destructive when we should all be uniting to save the planet from climate change.

I hope the SDC resists this factional attempt to overturn a grassroots preselection result.

Regards,

Jeremy Buckingham

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