



**JULIA BURNS CONSULTING**  
Incorporating  
**QUALITY MANAGEMENT SOLUTIONS**

**REPORT and RECOMMENDATIONS of the  
 EXTERNAL REVIEW OF ACT LABOR PARTY POLICIES AND PROCESSES CONCERNING THE  
 REPORTING OF INAPPROPRIATE CONDUCT  
 February 2018**

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## Executive Summary

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The standard you walk past is the standard you accept

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This review heard strong support for Labor Party values but that some people do not feel safe and respected within ACT Labor. Some have reported having witnessed or experienced bullying, harassment or other forms of discrimination and exclusion.

**The strongest message from interviews was that the culture of ACT Labor needs to change so that it reflects the Party's publicly espoused values and policy positions.**

Culture can be described as the consistent patterns of behaviour and communication, the norms of the organisation and – importantly – what is accepted and rewarded. Espoused values of any organisation are only truly part of its culture if they are demonstrated and expected in members' behaviours. ACT Labor's values and members' behaviours need to align with the intention to be a safe, supportive and inclusive organisation. Some members who participated in the interviews do not feel this is currently the case. In particular, they pointed to how gender, social class, age and the dominance of factional positions play out at the personal level as well as for policies and issues.

Further strategies are needed to ensure all members feel safe and supported within ACT Labor, consistent with Labor Party values and responsibilities of the Party under Work Health and Safety and other legislation.

***This review recommends that ACT Labor focus on four areas:***

- ***cultural change which ensures that what is accepted and rewarded in ACT Labor aligns with its public policy position, and is based on "reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner"***
- ***refreshed policies and procedures to provide the framework to safeguard rights and provide for sanctions where needed, and recognising responsibilities under relevant legislation;***
- ***more effective advice on and communication of Labor values, the Code of Conduct and inclusive practice, and strong promotion of these by the Party leadership; and***
- ***proactive measures to support and sustain a highly inclusive, respectful culture within the Party.***

The ACT Labor Party has a strong platform around inclusion, social justice and respect. Members subscribe strongly to the Party's values (over 90% of members in the 2017 membership survey indicated they joined because they support Labor values). The ACT Labor resolution driving this review flagged that it wished to ensure everyone, particularly

young people, women and members of diverse and minority groups, feels safe, respected and supported in the party.

### The interviews

The review team interviewed 20 people who came forward in response to an invitation to members to speak to the terms of reference. The interviews highlighted areas for further attention and improvement.

Why did people come forward?

- a personal story to be told;
- the feeling that certain issues needed to be aired;
- a responsibility to inform the process;
- varying degrees of anger and frustration and 'nowhere to put it'.

Themes from interviews

- Lack of diversity – including in gender, age, level of education and experience in the party
- Women – gender imbalance in membership numbers, lack of support, significant discrimination and disrespect, cases of bullying, harassment and violence.
- Young people – feeling of disconnection, disrespectful behaviours, need for more development
- Co-option of language – need for appropriate use of the terms “bullying” and harassment”
- Rules and the “hidden Code” – members not knowing enough about the Rules and Code
- Formal and informal processes – seeking a balance between formal and informal, and a Disputes Tribunal that is more effective
- Confidentiality and a fair hearing – seeking assurances that complaints and allegations will be handled appropriately
- Sanctions – need for a range of options
- Conduct Contact Officers – not well-known or utilised, need more training and tools
- Independent assessment and support – need for some independent elements both to investigate and support
- Volunteers – concerns about support and protection for volunteers

In addition to interviews, this review examined the ALP Labor Party policies and procedures around the reporting of inappropriate conduct including the Code of Conduct, how it is expressed, how it is communicated and how it is implemented and reinforced in practical ways. It also considered obligations under the ACT *Work Health and Safety Act 2011* (WHS Act) and other legislation and what is considered good practice.

## Legal issues

The Review identified some significant areas where ACT Labor needs to improve its treatment of risks implicit in some legislation.

Particular attention needs to be paid to:

- Work health and safety responsibilities of the organisation, to members and volunteers, not just staff
- Duty of care and negligence
- Accessory liability
- Vicarious liability
- Responses to and treatment of cases with criminal implications (eg sexual assault)

## Recommendations

The Review has made 53 recommendations to strengthen and improve processes and procedures to support the diverse membership of the party, to more effectively communicate around members' expectations and responsibilities of conduct in the Party, and to proactively develop ways to support members in a more inclusive culture.

The Recommendations appear at pages 27-37 of this report.

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## A. Background

The 2017 ACT Labor Party Annual Conference resolved that the party conduct an external review of policies and processes concerning the reporting of inappropriate conduct and consider new ways of ensuring that everyone, particularly young people, women and members of diverse and minority groups, feel safe, respected and supported in the party.

Julia Burns Consulting was engaged to conduct the review. Information about Julia Burns Consulting can be found at [www.juliaburnsconsulting.com.au](http://www.juliaburnsconsulting.com.au). The review was conducted in the period October to December 2017.

### (i). Terms of Reference

As directed by the 2017 Annual Conference, ACT Labor will undertake an external review of its processes and policies around the reporting of inappropriate conduct and consider new ways of ensuring that everyone, particularly young people, women and members of diverse and minority groups, feel safe, respected and supported in the party.

This review will

- Take into account the impact that the political nature of the party as an organisation has in regards to how people respond to being the subject of bullying or harassment, or in supporting someone who has been the subject of inappropriate conduct.
- Consider any barriers that preclude those who have experienced gender-based bullying or harassment from utilising dispute-resolution mechanisms.
- Include recommendations to improve current processes, with particular regard to the nature of gender-based bullying and harassment.
- Include processes for dealing with such reports, and will address whether current action and responses are appropriate and consistent with current laws and best practice.
- Include recommendations on the usefulness of current arrangements, including 'conduct contact officers'.
- Training options and standard responses to complaints, as well as including information on best practice approaches to the management of volunteers.

The Administrative Committee directs the Secretary to engage a suitably qualified external reviewer for the purposes of conducting this review and to provide the necessary resources required for the review to be conducted successfully.

### (ii). Process

The review process comprised a desk top examination of ACT Labor Party policies and processes informed by interviews with members who responded to an invitation to speak to the issues. Jo Chivers (Branch President) and Matthew Byrne (Branch Secretary) emailed members on 17 October 2017 to inform them about the conduct of the review and to invite people to be part of the process and nominate to be interviewed. The interviews were held anonymously from the party hierarchy and administration and used to inform the recommendations and findings of the review. Twenty members were interviewed by Ms Lee

Emerson and Ms Jane Diedricks, Senior Consultants with Julia Burns Consulting in October and November 2017.

## **B. Observations and Themes from the interviews**

### **Why people came forward**

We asked people why they came forward for interview. The responses included:

- a personal story to be told;
- the feeling that certain issues needed to be aired;
- a responsibility to inform the process;
- varying degrees of anger and frustration and 'nowhere to put it'.

Most respondents also indicated they have great faith in what the Party stands for and its values, and wanted the party to be better and stronger for undertaking the review.

A common refrain was that it is not easy to be in politics – it is hard work, stressful and there is conflict - “That is the nature of it, that is politics.”

Many interview participants perceived the culture in ACT Labor to be very adversarial with overtones of sexism, racism and ageism adding to factional positioning; conflict can be intense, and behaviour can deteriorate and get personal. Many commented that they found the interplay of the personal and political difficult to tease apart and perhaps there were more differences due to interpersonal relations rather than to do with the party. They had observed some people “hide behind the bullying label” and that what’s called bullying and harassment by some can sometimes be more about being disgruntled and having difficult interpersonal relations than systemic or organisational behaviours.

On the other hand, some significant concerning examples were proffered which involved alleged behaviour within ACT Labor community and in the context of Party functions. These included bullying and harassment, disrespectful behaviours and alleged sexual harassment. The examples were given to highlight the seriousness of what may or can occur and the perceived lack of justice and support in the system for victims/complainants. In the absence of explicit, strong promotion of values and behaviours expected of members, interviewees believe that some poor behaviours (including bullying and harassment) and divisive attitudes are ignored and thereby given space to grow and take a toll.

### Commentary

There were different types and levels of inappropriate behaviour reported ranging from difficult relationships centred on lack of trust or understanding, through to alleged bullying and harassment and alleged sexual harassment. These behaviours were often but not always gender-based. Clear definitions and appropriate and proportionate responses to all

types of disrespectful behaviour are needed. While robust and tough conversations, and positioning, strategizing and competing are facts of life in a political environment, ACT Labor needs to be clearer about what is acceptable and act to deal with behaviour that is not.

A useful framework to bear in mind in considering this range of behaviours in this complex environment of a political party is the guide used in workplaces – Fair Work Australia and Safe Work Australia have made it clear that it is not bullying or harassment to undertake reasonable management action carried out in a reasonable manner. The test in ACT Labor might be framed as **“reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner”**. The key test is *how* actions are taken – ie respectfully and lawfully. This is to be judged not just by another person’s perceptions, but by considering what conclusions an independent, uninvolved person would come to about what has occurred.

ACT Labor’s Code of Conduct does not use the terms bullying and harassment rather, it refers to **intimidation or harassment (bullying)** in the following way:

*Extract from 2017-2018 Rules:*

B.12.5. Party members will not engage in intimidation or harassment (bullying) of another member or members as described in these rules.

B.12.5.a. Intimidation and harassment is unwelcome, unsolicited and usually unreciprocated behaviour by one member to another member for members.

B.12.5.b. The behaviour may target the other’s status or give the other reasonable cause to feel offended, humiliated or intimidated; or may create a frightening, hostile, offensive or distressing environment. It includes, but is not confined to:

B.12.5.c. Intimidation or harassment may be based on some real or perceived attribute or difference, including gender, race, disability, sexual preference, age and spiritual or political belief;

B.12.5.d. Intimidation or harassment may lead to loss of members, both those who observe this behaviour as well as those directly involved; or can cause members to transfer to another sub-branch.

B.12.6. Party members who engage undertake any of the following activities will be deemed to have engaged in intimidation or harassment:

B.12.6.a. Offensive physical contact or coercive behaviour intended to be derogatory or intimidating;

B.12.6.b. insulting or threatening behaviours such as shouting or gestures;

B.12.6.c. Making unjustified and unnecessary comments about a person’s abilities;

B.12.6.d. Distributing written materials or pictures which are offensive or obscene;

B.12.6.e. Threatening, abusive or offensive phone calls, letters, notes or electronic messages on e-mail or computer social networks or other computer web sites;

B.12.6.f. Persistent following or stalking;

B.12.6.g. Making dismissive comments, prejudice or stereotypical assumptions about the group a person belongs to;

B.12.6.h. isolating or continually excluding a person or group from normal social activities and networks;

B.12.6.i. Making jokes about food preferences, religious practices or social custom;

B.12.6.j. Attributing stereotypical or extreme behaviour to a particular racial group;

B.12.6.k. Practical jokes played on people with physical disabilities;

B.12.6.l. Overbearing or abusive behaviour toward people with intellectual disabilities;  
B.12.6.m. Excluding, isolating or giving unwelcome attention to those with medically sensitive conditions; and/or  
B.12.6.n. Making sexist comments, e.g. such as jokes or remarks attributing certain sexual or sexist conduct to members of a particular group because of gender, race or sexual preference.

The presentation and structure of the Code makes it difficult to read and be readily understood. While it covers many salient points, there are gaps and the Code mixes values, philosophy and behaviours.

Clearer definition around bullying and harassment is required to assist in relation to understanding the legal obligations of members and volunteers.

The Fair Work Commission defines **bullying** at work as follows:

- a person or a group of people **repeatedly** behaves unreasonably towards a worker or a group of workers at work; AND
- the behaviour creates a risk to health and safety

The Fair Work Commission and Safe Work Australia provide guidance that bullying behaviour may involve, for example, any of the following types of behaviour:

- aggressive or intimidating conduct
- belittling or humiliating comments
- spreading malicious rumours
- teasing, practical jokes or 'initiation ceremonies'
- exclusion from work-related events
- unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- displaying offensive material
- pressure to behave in an inappropriate manner.

It is important to highlight that *an intent to bully is not required* to meet the threshold of bullying behaviour under the Fair Work and WHS Acts. The listed behaviours may be intentional or unintentional. It is enough that the behaviours may be bullying if they are **repeated, unreasonable** and **create a risk to health and safety**.

Furthermore, as advised by Safe Work Australia, if the behaviour involves violence, for example - physical assault or the threat of physical assault – the victim should be supported to the police if they choose that path.

Some examples in the current Code may be read as limiting its scope, when those behaviours may arguably meet the definition of bullying. Furthermore, the reference to 'deemed' at B12.6 may be inconsistent with the commitment to procedural fairness in the context of assessing a complaint. The current Code also needs to include reference to members *and* volunteers.

Workplace **harassment** is unwanted behaviour that offends, humiliates or intimidates a person, and targets them on the basis of a characteristic such as gender, race or ethnicity.

Harassment relates to the prohibition in anti-discrimination laws against sexual harassment and sex-based discrimination in the workplace. These laws offer an alternative legal framework to health and safety laws in that a victim of harassment can make a complaint to an external agency – in effect, launching a legal proceeding against the harasser and potentially the organisation.

The Code will benefit from being refreshed to improve the language, definition and coverage of the range of behaviours (generally and in the political context), the structure and presentation. In this respect, guidance provided by Safe Work Australia, the Fair Work Commission and the Australian Human Rights Commission may assist in tailoring an appropriate Code of Conduct for ACT Labor.

The Code is also not as visible as it needs to be – see section below about the Rules and the hidden Code.

That Code, the Rules and the policy framework should be strengthened and clarified, and this report makes recommendations on this matter. **(Recommendations 4-10)**

Any form of discrimination may result in an adverse outcome for the health and safety of persons who perceive them-selves to be victims of that conduct. Australian courts have demonstrated that a not for profit organisation may be subjected to fines for an adverse outcome that could have been prevented by a reasonably available remedy.

There is clearly scope for the possibility of complaints within ACT Labor in relation to sexual harassment or violence. There are unacceptably high levels of sexual violence in the broader Australian community and, according to the Australian Human Rights Commission (AHRC), existing research shows that young people, especially young women between the ages of 18 and 24, are at an increased risk of experiencing sexual violence. This is of particular relevance to Young Labor members.

Recently the AHRC delivered a call to action to the university community on the rates of violence experienced by young people in Australian universities.

ACT Labor should clearly and strongly assert its determination to ensure all members and volunteers are safe from all forms of bullying and harassment. It should look to the *Universities' Respect. Now. Always. (RNA)* campaign and practical steps they are implementing in relation to sexual assault and harassment to educate that sexual assault and harassment are unacceptable and empower those who have experienced sexual assault or harassment to seek help and support if they need it. **See Recommendations 41-45** and resources listed in the [Appendix](#).

Some interviewees commented on the lack of action or comment by people who witness inappropriate behaviour including harassment. The now well-quoted line from former Australian of the Year, Lieutenant-General David Morrison, is pertinent here:

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The standard you walk past is the standard you accept

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The Terms of Reference for this review sought to ensure that “everyone, particularly young people, women, and members of diverse and minority groups, feel safe, respected and supported in the party”. The strongest message from interviews was that the culture of ACT Labor needs to change for this to occur. Culture can be described as the consistent patterns of behaviour and communication, the norms of the organisation and – importantly – what is accepted and rewarded. Espoused values of any organisation are only truly part of its culture if they are demonstrated and expected in members’ behaviours. ACT Labor’s values and members’ behaviours need to align with the intention to be a safe, supportive and inclusive organisation. Some members who participated in the interviews do not feel this is currently the case. In particular, they pointed to how gender, social class, age and the dominance of factional positions play out at the personal level as well as for policies and issues.

ACT Labor needs to be aware of invisible as well as visible forms of discrimination. Patronage is one area particularly relevant to political parties. Patronage can be through decisions made, appointments made, and processes used, assistance given to individuals and personal interactions. Patronage can be positively geared to enable the advancement of people with excellent potential. Patronage tends to be very personal but can be consciously or unconsciously skewed to favour those most like the patrons or those with the characteristics the patrons (power brokers) believe are the ‘winning’ combination. It may therefore be gendered, racist, ageist or discriminate against people who are not in a favoured or dominant group. Patronage can also form an invisible discrimination against

those who do not meet the patrons' criteria for favour. The converse of the favoured can be the victimisation of those who miss out irrespective of merit (by virtue of a lost opportunity) or by being on the outer circle, not part of the favoured group, and therefore not valued for their views or contribution (at least relatively).

The nature of political parties and the culture of patronage needs to be tempered by strong statements of values, transparent processes for decisions and appointments, and complemented by opportunities (such as mentoring and training) to positively discriminate towards people who may not otherwise benefit from the traditional culture.

## **KEY THEMES FROM INTERVIEWS**

### **Lack of diversity**

*Greater diversity in membership and in positions of influence will engender positive change*

There were 1455 members of which 884 or 61% were male and 571 or 39% were female according to the membership survey of February /March 2017. Analysis by gender, age and activity status would be valuable. Anecdotal evidence suggested that there is a considerable drop off in the numbers of women actively participating over the life course and particularly at peak child rearing and workforce participation stage - possibly offset somewhat in the older years.

Members who do not feel accepted and valued tend to withdraw from active roles in ACT Labor and from the Party itself. This impacts the membership profile and who gets to exercise influence over the longer term. Some members expressed the view that the Party in the ACT is predominately "male and white" and some commented that whilst membership diversity was encouraged, that diversity was accepted as long as members fell into line with the long-established practices or viewpoints. They questioned whether diversity was embraced when it led to challenging existing views and ways things are done.

In particular, concerns about meaningful inclusion for women and for young people came up in most of the interviews. Many interviewees found it difficult to point to bullying and harassment that was clearly distinguishable from the tough engagement around politics (although examples of that were provided). Nevertheless, they pointed to ways of behaving and ways of seeking and using power and influence in the party they worked to exclude people who are not in the dominant power group(s).

The exclusion and isolation that some members felt could be subtle and come in the form of a 'reminder' from others that they were not tertiary-qualified or experienced enough in public sector policy to contribute meaningfully to party discussions. A number of participants felt their views were not considered because of stereotypes held about them such as they were 'white and male', or 'female and not white', and therefore categorised as holding or not holding a certain view without the benefit of discussion or clarification.

Some pointed to a lack of support to create an equal playing field eg for those with caring responsibilities; others were concerned that some interest groups were adopting 'ways of the past' that excluded women and others from participation; and some pointed to a disconnect between what ACT Labor stood for and how it behaved internally. Several participants commented that whilst the party is supportive of women's issues and equality issues, such as same sex marriage, they saw a disconnect in some members' behaviours. Another example given was some members' use of language to denigrate transgender people and transgender social and political issues.

Where knowledge is power, some people felt that there should be more help to get to know and understand the rules and the way that party politics works, for example through more training and mentoring opportunities.

They also pointed to wanting to see the leadership actively supporting the Labor values and inclusiveness within the business of the Party as well as in the policy platform.

## **Women**

### ***"Gender problems are bigger and deeper than you would ever expect"***

We heard that women are a minority group in ACT Labor and feel they will remain that way unless things change to make them feel more safe, respected and included. Members interviewed believed that there is "structural sexism in the Party" and that "the bar is higher for women". They felt that some discriminatory things are too nebulous to refer to the Disputes Tribunal such as the more subtle undermining of individual women's contribution, manner or approach, the timing of Branch meetings in relation to caring responsibilities, or the actual or perceived sentiment that a woman will vote a certain way based on her gender and thus engagement with her is overlooked or disregarded. They felt the numbers of women coming into the Party does not translate into sustained membership over time.

Having significantly more men than women members impacts gender balance in official party roles and in availability for preselection. We heard that an earlier analysis of membership numbers showed a marked gender differential in the 30 to 45 year age cohort where work and family responsibilities are high. It was thought that more women, discouraged by the lack of support, pull back from being active in the party, leaving more space for men to take up or continue unchallenged in influential positions. More women visible in the Party, willing to show political and personal leadership are needed for the overall health and sustainability of the Party membership. Some interviewees identified the need for ways to recruit more women as more women would mean more support for women and fewer having to stand for the same roles all the time. This in turn might help address the risk of burnout experienced by the women who stay on.

Many interviewees gave examples of gender-based discrimination and disrespect, such as:

- The use of explicit and derogatory language to describe men who support a female's point of view as 'less than male' or 'under the control' of females.
- The example cited above where engagement or lack of engagement with female members is based on a perception as to their point of view without verifying with the individual. – 'I would expect her to vote that way, she is a woman'.
- Being physically intimidating by standing over or too close to a woman when disagreeing or asserting a different position
- During debate, becoming personal and referring to issues personal to the female candidate. The assessment made that the woman 'runs' from the 'fight' and lacks the 'ticker' – rather than removing herself from inappropriate behaviour that does not reflect the party values.
- Meetings and other commitments not taking into account the child care needs of some women (and men).
- Poor attitudes towards women and use of derogatory or demeaning language ("some outrageous bullying and sexual harassment") that can go unchallenged as it tends to become normalised, changing the reference points for behaviour.

Feedback was also provided that women as a cohort in ACT Labor could benefit from working together rather than along factional lines to support improvement in the party. This would also be true for men, working across factional boundaries with women to support a culture that is free from gender bias.

#### Commentary

There are three angles from which gender-based issues need to be addressed. They are *representation* (ie improving and then sustaining the numbers of women in ACT Labor and in senior positions); *treatment* (particularly by men); and *support* (to be confident and resilient, and also when facing inappropriate treatment). Of course, the three aspects are not separate, but interwoven.

*Representation:* ACT Labor could build further on its current actions to give effect to the strong platform commitment to women. It already monitors the level of women's membership and participation within the ACT branch of the Australian Labor Party and reports these figures annually as part of the Branch Secretary's report to the ACT Labor Annual Conference. The platform supports the provision of resources, wherever possible, to enhance the recruitment, training, participation and retention of women within the Party and expects an ACT Labor Government Cabinet to have equal numbers of men and women.

**See Recommendations 35-40**

*Treatment:* At the heart of gender-based disadvantage lies the attitudes and culture of (some) others. In any organisation where gender-based issues are present, if the treatment

of women, in language, attitudes, exclusion etc, is not tackled, no amount of reporting, training and supporting will achieve real change. **See Recommendations 1 and 8**

*Support:* Targeted training, development and support for women, young women in particular, could build confidence in communication and presentation, handling conflict and developing resilience. Support provided should also recognise that caring responsibilities fall disproportionately on women and providing additional support may be needed for participation both in training and in party activities generally. **See Recommendations 37-39**

Greater gender analysis is warranted to uncover more of the story of how women are participating and where they are not, and how this is tracking over time. Exit interviews when women leave or choose not to renew their membership might also be illuminating about the issues at play. **See Recommendations 36 and 40**

## **Young people**

*Young people and Young Labor are particularly susceptible.*

Several interviewees from Young Labor indicated that they want and need, but do not feel they have, the benefit of access to senior leaders for mentoring. They indicated that they want to see senior people modelling in an apolitical (non-factional) way the behaviours they believe the party advocates for society more generally.

*“People bring passion and aspirations with them to Young Labor and ‘failure’ is public and felt deeply.”*

Some members observed that being able to separate the personal from the political is particularly difficult for young members immersed in Party activities where this is intertwined with their social life – the coincidence of social and political activities. Getting the numbers can rub up against friendships; changing views or taking a factional position can seem like a personal betrayal to some on the other side of the position.

The ways factional politics plays out was clearly an important factor and creates a difficult dynamic especially for young people in ACT Labor. Interviewees said that in the senior ranks ACT Labor is dominated by the Left faction. By contrast, Young Labor has a strong Right faction in the ACT; broadly speaking, members of Young Labor view this as the source of disaffection and a reason why they feel Young Labor is not valued by the rest of ACT Labor, and openly criticised. This in turn leads to a breeding ground for feelings of exclusion and ‘conspiracy theories’. A case in point raised a number of times in interviews is that Young Labor does not have a voting position on the Administrative Committee despite its size and the amount of work undertaken by Young Labor.

The politics of factions is very strong, and some interviewees observed that it appears to some people in the party to be more important than the wellbeing of individuals. They saw this as an acute issue for young people who have not developed the resilience that comes

with life experience or the knowledge and experience of politics in action with its robust debate, strongly expressed views, and passionate advocacy.

## **Commentary**

Young people have enthusiasm but can lack life experience to provide a broader perspective on the rigours of robust political life. Because for many members of Young Labor, their political and social lives are either closely related or completely inseparable, the impact of factions, the behaviours modelled by more senior people and their own personal relationships can be substantial.

The AHRC-driven work which universities are undertaking in relation to sexual violence and harassment could be useful for Young Labor.

As with gender-based issues, however, age-based issues cannot be resolved by those who are on the receiving end of poor treatment. While factions and power will always play a part in a political organisation, there is a responsibility for more experienced members to conduct themselves both in their dealings with younger people and with each other in a way that models “reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner”. It is arguable, both in an ethical sense and under WHS legislation, that ACT Labor has some duty of care for young members and volunteers, particularly when some are very young, new to Canberra and/or with few other supports.

The broader work which we recommend about bullying and harassment, cultural change etc will obviously also help address some of the younger members’ concerns.

## **See Recommendations 41-48**

### **Co-option of language**

*What is bullying and harassment and what are unacceptable behaviours?*

On a more general level, many felt that the language of bullying and harassment has been co-opted for political and personal advantage/leverage. Some interviewees felt that the terms are used for some action and behaviours which are not bullying and harassment. There was a recurring theme that the terms bullying and harassment are used by some people to discredit others and/or to claim a form of victimhood when unsuccessful in robust political contest.

Many participants expressed the desire to somehow define or describe ‘political behaviour’ and when behaviour crosses the line into harassment or abuse – this could assist in reinstating the appropriate definition and application of ‘bullying’ and ‘harassment’ to complaints and mitigate against hijacking of the terms.

## Commentary

It appears that the current culture of ACT Labor impacts how people respond to a perception of being the subject of bullying or harassment – there was a sense that this was more the issue than purely the political nature of the party. It was recognised that the political nature of the party is a major influence on the culture and if gendered, racist, ageist and adversarial positions go unchallenged, the culture will reflect that. ACT Labor and its culture need to be actively nurtured to be the culture that reflects the larger values of the Party – egalitarian and democratic.

This is another area where the concept of “reasonable action” ie political positioning, debate etc, carried out in a “reasonable manner” – could be a useful guide.

## Rules and ‘the hidden Code’

Many interviewees felt members are not familiar with the Code of Conduct and its importance, and do not know about what they could or should do if they feel they or someone else is being bullied or harassed. We heard that there are so many rules, and this is intimidating to new people. Interviewees said that no-one explains the rules, so it feels overwhelming; the “long termers” who know the rules “parade” their knowledge and make others feel stupid.

Further, we heard that the Code of Conduct is “buried in the rules”, inaccessible and lacking transparency; processes are obscure and not utilised; the rules don’t give sufficient advice about how to go about things. *“Rules should not be invisible: everyone should be able to read and understand them. [They] should enable people to navigate a process.”*

The existence, visibility and promulgation of appropriate policies and procedures will also help to mitigate risks, particularly relating to Work Health and Safety obligations.

Rules tend to not be looked at until needed but there is power in the rules and it cuts both ways: *“It is a big thing to put in a complaint” where it can destroy reputation and end a career in Party.* This was felt to be a greater risk for the complainant as there is a culture of disbelief with the onus of proof on victim.

## Commentary

While this review has identified the need for significant cultural change and increase in support for members, the bedrock of change will need to be clarity in the rules – as set out in the Code of Conduct, Bullying and Harassment policy, and associated procedures, including the roles of Conduct Contact Officers. **See Recommendations 4-16.**

## Formal and informal processes

Most interviewees felt the need to have a balance of formal and informal processes. They sought informal processes to cut through and not inflame or magnify issues, combined with

the protections of formal processes to ensure there was ‘no kangaroo court’ and in recognition that there are always ‘rotten apples’ where formal protection is needed. There were many suggestions to develop more informal processes including informal mediation using restorative justice principles, coupled with feedback to the membership that members had been heard and conflict resolved through processes such as mediation. A frustration was reported by some members that where steps had been taken to resolve complaints, there was no communication about it and the void had been filled with gossip and hearsay.

We heard of examples of informal processes in addressing bullying and harassment where a senior person spoke to someone ‘on the side’ and apparently addressed inappropriate behaviour. Interviewees in general expressed more confidence in informal processes than formal, but spoke of many cases where no action appeared to have been taken. These fuel a belief that the aggrieved person or group is being left out to dry and not valued. It was strongly asserted that when people do not take action or call someone out on poor behaviour (or worse), that lack of action should be recognised as taking a side. The perception is that by choosing silence or inaction, they are making a choice to support the person accused and not support the potential victim – it is not a neutral position.

It was reported by some participants that there is no confidence in the Disputes Tribunal. It was described as too partial, factional when it comes to a vote, having insufficient redress options and expertise, and consequences are subject to the authority of the Sub- Branch where the outcome of Disputes Tribunal can effectively be overruled.

Participants who expressed a preference for mediation as a mechanism for conflict resolution, highlighted their desire for the mediator to be someone external to the party - professional with appropriate training – as internal people would be seen as having a view and this would prejudice the process.

## **Commentary**

A combination of good informal and formal processes is warranted. Good practice in complaint and dispute handling is to resolve things in as informal a manner and as quickly as possible, and to only go to more formal processes where this has either not achieved an acceptable outcome, or where the seriousness of the issue warrants it. **See**

### **Recommendation 5**

Mediation could be initiated by directive of Disputes Tribunal or other means. It would allow the complainant to get some power back by supporting a level field; a position of power changes the dynamics and parties get to experience how it feels from the other side. There should be an opportunity to get mediation even if not yet proven/disproved – “mediation first” approach

## **Confidentiality and a culture of fair hearing**

Lack of confidentiality was a major concern of all interview participants in relation to complaints processes. Some talked about the need for a private process, for there to be absolute confidentiality of a complaint if the complainant wishes and a serious penalty for a breach of confidentiality. Some interviewees also expressed the need for their concerns and complaints to be taken seriously. One interviewee noted “We will continue to lose young women from the party unless there is a ‘culture of belief’”.

## **Commentary**

When people feel that they are less powerful than the person who has aggrieved them, or the people who will make decisions about what happens about a complaint, a fair hearing and protection from retribution will always be key.

The call for a culture of belief might be more appropriately addressed by a culture of a fair hearing, to avoid the implication that all complaints will be upheld. Nevertheless, there is obviously a need for complainants to feel that complaints will not be dismissed without some appropriate form of consideration.

Confidentiality of processes is important for complainants, but needs to be balanced with procedural fairness for respondents (eg the right to know the details of the complaint and the right to be heard). Where informal processes such as mediation are used, participants should agree on what aspects will remain confidential.

More broadly, for ACT Labor, confidentiality about internal conflict is important to the Party’s reputation.

## **See Recommendation 6-7**

## **Sanctions**

The range and effectiveness of sanctions received many comments. The options available to the Disputes Tribunal were seen as too limited and there was a call for a suite of remedies including a range of sanctions that can be used, and the capacity to be flexible in how these are applied. Some interviewees talked about wanting sanctions with genuine consequences that answer the “so what” test -I break the rules, so what happens?

Some interviewees expressed a view that expulsion from the party should be the last resort and only when most serious fault is proven; other sanctions should be used eg take away voting rights for a time, reprimand, suspension.

## Commentary

Restorative justice processes or mediation where the complainant is given the option to be able to say what they would like to be done such as receive acknowledgement or a written apology, have a mediated face to face meeting or similar. There needs to be good robust mechanisms to avoid perceived arbitrariness and “a suite of sanctions which is able to be escalated if behaviour doesn’t change”, along with clear natural justice protections and appeal process for the person being sanctioned. **See Recommendation 18**

## Conduct Contact Officers (CCOs)

One of the protections in the current rules is having **Conduct Contact Officers** and some felt that having people nominated to the roles was in itself effective. It seems however, from the comments we heard, that the role of **Conduct Contact Officers** is not well known or recognised (“no idea what the CCOs are or what they do”), and for those familiar with the role it was felt there is inadequate training and support for them to be effective.

Participants comments that CCOs lack a tool kit of remedies and need a formalised training package and that the role of a CCO needs to be better communicated and strengthened with training and mentoring support. Some participants felt there would be benefit in the appointment of an independent CCO or contact person (someone outside of the party), similar to an employee assistance provider and/or ethics advisor. (see below)

There were also some comments that having CCOs within a sub-branch hierarchy meant that sometimes they were not someone the complainant felt comfortable talking to.

## Commentary

Having a CCO within each sub-branch is consistent with the principles of seeking to resolve disputes and complaints at the lowest possible level and with as little formality as possible. However, there is also a possibility that at times they will not be the best person for a member or volunteer to approach with a complaint or dispute. This could be because they are perceived to be unlikely to be unbiased; because of concerns about confidentiality, or because of the seriousness of the issue.

It is also important that the relevance of gender, age, race etc are taken into account in establishing the options for reporting and resolving issues

Having a group of CCOs not specifically aligned to or representing their sub-branch, who are well-trained, have clear procedures to follow, and whose role is clearly communicated to all members, is important. Members should be able to raise concerns with any CCO.

This should be complemented by the establishment of one or more external, independent CCOs as well, for situations where an internal CCO is deemed by the complainant not to be appropriate. **See Recommendations 11-16.**

## **Independent assessment/support**

There were many suggestions about bringing some independent elements into the system. Some have been canvassed above. Suggestions made by interviewees included:

- an independent member on the Disputes Tribunal (“disputes and factions don’t mix”)
- a separate, external, investigations function which would consider allegations and complaints and make recommendations to the Disputes Tribunal
- an external mechanism to report bullying and harassment (the external CCO referred to above)
- an external agency to provide support (akin to an Employee Assistance Program)
- mentoring
- external training providers
- a formal link with counselling and support services in areas already identified by the ALP and community-based organisations as necessitating streamlined and dedicated access - such as domestic violence, mental health, LGBTQI etc. It is envisaged that linkages with these specialised organisations would provide a toolkit for referral and referral options – and potentially an educative service for all party members.

One interviewee noted that you “Can’t expect to rely on Party members to volunteer their time in areas of professional expertise” and there is also the perception of a potential conflict of interest/lack of impartiality if and when Party members take up these roles.

## **Commentary**

Consideration of all of these suggestions is warranted in the new approach to conduct in ACT Labor. **See Recommendations 17 and 27.**

## **Volunteers**

Members need to comply with the Code of Conduct and their obligations under WHS laws in relation to their interactions with volunteers - the Code is no less relevant in relation to volunteers. This requirement may also be heightened taking into account that a number of volunteers are generally inexperienced and are currently not provided with training by ACT Labor in relation to the Code or other considerations (see below).

Comments were also made that during election time, in particular when door-knocking and in general public areas, volunteers may be placed in situations where behaviour towards them is inappropriate or aggressive and may place them at risk in terms of their personal safety. Interviewees identified the need for the establishment of protocols for door-knocking (ie not individuals on their own) and training regarding strategies for managing aggressive behaviour and ensuring personal safety, as well as emergency procedures for support. On a more

general note, it was commented that “members need to know and respect volunteers too”. Some simple measures were noted in the 2017 membership survey such as to reward volunteers eg with refreshments; “don’t flog them”; maintain contact between elections, explain the Rules and where to go if they experience bullying or harassment, offer activities and form community partnerships.

Safe Work Australia has highlighted a number of best practice measures in relation to the engagement of volunteers. The key best practice measures are that volunteers are provided with training that explains to volunteers how to do their jobs safely, including emergency procedures and protocols and other associated policies (including Code of Conduct particularly in relation to bullying and harassment) and providing an understanding that volunteers also have an obligation to take reasonable care not to endanger other people’s health and safety (including members and other volunteers).

In addition to the WHS focus of Safe Work Australia’s best practice measures, consideration should also be given to ensuring that training identifies the behavioural expectations of members *and* volunteers and clear communication of the people within the Party to contact for assistance in general. **See Recommendations 49-50.**

### **C. Behaviour and culture – legislative and public policy frameworks**

**Note: notwithstanding the relevant qualifications of one of the authors, the following content cannot be considered as formal legal advice**

#### **(i) Work Health and Safety and duty of care**

##### **Commentary**

##### WHS Act 2011 (ACT)

With regard to inappropriate behaviours such as bullying and harassment, the *Work Health and Safety Act 2011 (ACT)* (WHS Act) is applicable in consideration of the liability and obligations of officers and members of the ACT Labor Party.

The WHS Act is drafted in an expansive manner; in other words, the legislation has been drafted to cover as many places and categories of people as possible, including places where work is carried out for business or an undertaking (ie: not limited to a traditional workplace) and volunteers (ie: members and participants). The Act does not identify different WHS obligations as a consequence of the nature of the business or undertaking; accordingly, the obligations under this Act are not ‘watered down’ due to the political nature of the organisation. Following from this, in assessing alleged bullying and inappropriate behaviour, the context of the political environment may be a consideration however it cannot be a reason that absolves officials or individual members of their obligations under the WHS Act.

The WHS Act places quite onerous responsibilities on officers and individuals to ensure the health and safety of their subordinates and participants. Furthermore, the penalties for non-compliance are very significant for individuals and organisations in terms of monetary value and reputational impact.

### The duty of care and the law of negligence

Act Labor also has some significant responsibilities and risks under common law, in relation to some aspects of misconduct in the party, particularly relating to bullying and harassment and other forms of inappropriate behaviour.

In addition to WHS Act responsibilities, the concepts of duty of care and negligence are relevant to the operations of ACT Labor. The duty under the common law of negligence is very similar to the statutory duties imposed under work health and safety legislation. Under this duty, an organisation is liable unless the organisation does what is reasonable to reduce or eliminate the risk of a person(s) suffering an injury (includes a psychiatric injury). However, the duty will only arise if a reasonable person would have foreseen that the organisation's actions (or inactions) would lead to a risk of the complainant (or class of persons which includes the complainant) suffering an injury that is recognisable and foreseeable.

It is possible that a complainant may initiate legal proceedings under the *Civil Law (Wrongs) Act 2002 (ACT)* alleging negligence (breach of duty of care) in relation to allegations of bullying or inappropriate behaviour. It is also very relevant to officials and senior members of ACT Labor that the Court might also pay particular attention to the position of trust held. A person in a position of trust holds some position of authority (eg an elected position within the Branch or sub-branch), or is more senior than the victim or complainant in the organisation. If the perpetrator of a crime, or the respondent to an allegation, or someone who could reasonably have taken action either to prevent or address an incident or matter, holds a position of trust, any failure to act could be considered by the court to be of particular significance.

In *Swan v Monash Law Book Co-operative (2013)*, an employer was found to be liable under the common law of negligence for its failure to intervene early to avoid or limit damage and injury caused to a bookshop employee from sustained workplace bullying. While the ALP is not an 'employer' in relation to its members and volunteers, the case of *Swan v Monash Law Book Co-operative (2013)* is illustrative of how an organisation may be found liable under the common law of negligence for its failure to intervene early to avoid or limit damage and injury.

The Court was highly critical of the employer's response in Swan. The Court highlighted that once risk of injury is reasonably foreseeable, you cannot avoid responsibility for controlling the risk and you can't simply ask what the complainant thinks should be done.

In this case, the Court found the organisation to be negligent due to the absence of the following:

- behaviour policies setting out expectations regarding workplace conduct;
- training about appropriate behaviour and how to respond to complaints;
- an investigation once the complaint was made;
- a formal system for bullying victims to seek help;
- informal counselling of the bully – the bully was not told the conduct would not be tolerated;
- an assessment of risk to the complainant/victim;
- monitoring of ongoing behaviour;
- policy or process;
- a systematic response to complaint – the organisation simply assumed that, because there were no further complaints, everything was okay; and
- a safe return to work procedure.

The Court ordered significant damages in this case against the organisation, totalling nearly \$600,000, with half for pain and suffering.

There are salutary lessons here for ACT Labor.

#### Accessory and vicarious liability under the Sex Discrimination Act

There are two other areas of the law relating to sexual harassment that are highly relevant to ACT Labor:

#### Accessory liability

Individuals, employers and other organisations can be held liable under section 105 of the *Sex Discrimination Act (Cth) 1984 (SDA)* if they 'caused, instructed, induced, aided or permitted' an individual to commit an unlawful act. For example, a manager who is aware that an employee is being sexually harassed and does nothing about it may be held liable as an accessory to the harassment. There is no defence available for this type of liability.

Strictly speaking, section 105 only applies to liability for unlawful sex discrimination, not sexual harassment. However, the courts have accepted that sexual harassment is a form of sex discrimination. Accordingly, section 105 can still operate to render a person liable as an accessory to sexual harassment.

Section 105 differs from the vicarious liability provisions discussed below in several ways. Unlike vicarious liability, an organisation can be an accessory to sexual harassment even if there is no legal relationship between the organisation and the harasser such as that of employer/employee. However in contrast to vicarious liability, an organisation must have contributed to the sexual harassment in order to be liable as an accessory, either knowingly, recklessly or through willful blindness.

In effect, a person will be an accessory to harassment if they were aware or should have been aware that sexual harassment was occurring, or that there was a real possibility of it occurring, did nothing to address it and thereby allowed the harassment to take place.

#### Vicarious liability under the SDA

It is a general legal principle that an individual is personally liable for his or her own unlawful acts. However, in the areas of discrimination and harassment employers (including organisations such as ACT Labor) can also be held liable for wrongs committed by their employees or members in connection with their employment. This is referred to as the principle of 'vicarious liability'.

Section 106 of the SDA makes employers vicariously liable for the unlawful conduct of their employees in connection with their employment. As noted below, this does not have to be strictly an employment relationship. This means that if an employee sexually harasses a co-worker, client, customer or other protected person the employer can be held legally responsible and may be liable for damages unless they took all reasonable steps to prevent the harassment occurring.

In *Horne v Press Clough Joint Venture* the WA Equal Opportunity Tribunal found that the union played a role in allowing the sexual harassment of the complainants to continue by failing to support their efforts to have the pornography removed. The union was held liable for the role played by the union shop stewards, even though they were not union employees. It was found that the shop stewards were acting as agents of the union when the harassment occurred, as they spent most of their time on union business and "...were perceived by both workers and management as representing both the workers and the Union..."

Employers and organisations held responsible in such circumstances are often required by courts to pay compensation, especially as they are usually deemed to have more capacity to pay than the alleged harasser.

**See Recommendations 19-22.**

#### Identifying the responsible body

Care may need to be taken in identifying the capacity of the person and the environment in which the alleged bullying or harassment takes place, as different legislation and policy may be applicable. For example, if the alleged perpetrator of the bullying was acting in their capacity as a Member of the Legislative Assembly, the question will be which body or organisation is liable for the behaviour and which legislative framework, policy or Code is applicable? This may be a key question for ACT Labor to consider in their management of bullying and/or harassment complaints going forward. Noting that the ACT ALP consists of various member organisations, including unions, ACT Labor might turn their mind to how matters are managed in conjunction with member organisations to establish a joint approach to the management of obligations and responsibilities and resolution of complaints. **See Recommendation 21**

## The reporting of alleged criminal conduct: consideration of current best practice processes

Given the significant recent actions by the university sector in relation to handling allegations of conduct that is potentially criminal in nature (eg sexual assault), some of the resources developed and approaches taken (eg by the University of Canberra and the Australian National University) are useful models for ACT Labor to consider. This is particularly relevant to Young Labor members, many of whom are university students.

These two local universities have established protocols for staff in responding to an allegation of sexual assault. The protocols clearly establish that forms of unwanted sexual behaviour, such as sexual harassment (not criminal law jurisdiction), are dealt with under other policies and procedures, for example their student complaint resolution policy.

### Reporting and the obligations of ACT ALP

In relation to reporting, Universities have adopted the approach that when a staff member becomes aware of an allegation that a student has been sexually assaulted, the University will be active in its support of the student by providing the support and information, including facilitating access to relevant counselling, medical, police or legal services. Initially, the primary concern of the Universities is to ensure the safety of the student making the allegations.

The Universities make clear their respect for the right of all survivors of sexual assault to be in control of the decisions affecting them, especially *the student's right* to decide whether to seek counselling or medical services or police or legal intervention.

In this respect, it is recommended that ACT Labor adopt a similar approach to that of the University sector in the ACT concerning the establishment of a separate protocol specifically addressing alleged sexual assault and the reporting framework, including the complainant's right to decide, the provision of information to facilitate access to counselling, medical and legal support, including the Canberra Rape Crisis Centre. **See Recommendation 43**

### To suspend or not to suspend membership?

ACT Labor's protocol should identify whether membership may be suspended as a result of an allegation of sexual assault. This should include when an allegation has been:

- made under the Code of Conduct but the victim has not gone to the police. Different approaches might be taken where
  - the matter is being investigated by the Party (including by an external investigator appointed by the Party); or
  - the complainant does not want an investigation to occur (which would make it impossible for the respondent to have an opportunity to address the allegations)
- referred to the police
- found to be proven and a criminal charge or conviction applied

The ANU, for example, notes that some complainants may prefer to go directly to the police and that a report of misconduct can also be made under the relevant Discipline Rule of the ANU (a legislative instrument in this instance). In the case of ACT Labor, a report of misconduct may be made under the ACT ALP Code of Conduct. The ANU advise that where a report is made to the police any action under the Rule may be suspended, as the police are the appropriate body to deal with what would then be an allegation of criminal conduct.

## **(ii) Public Policy Profile of the ALP – gender equity, domestic violence and social inclusion**

ACT Labor's Platform asserts that it is a plan for redressing and removing the causes of social injustice in our community. It shows people what they can expect of the Party, sets the standards for work and promises to continue to seek better ways of building a fairer society.

The Party's documents state that 'the Australian Labor Party was founded on the principles of social justice and equity for all Australians'. Social justice is concerned with the pursuit of a fair, just and equitable society - 'a fair go' or a 'level playing field'. Further, ACT Labor is committed to opposing all forms of adverse discrimination and social division, seeking to promote a fair and just society, which enables active participation of all members of the community.

Members interviewed want to see the Party values and the policy platform reflected in the way the organisation behaves internally as well as externally. Some people feel strongly there is a disconnect that needs to be addressed between the external face and the inner workings of the Party.

They would like to have these values more effectively embodied in Labor's way of operating and replace aggressive and divisive elements with a call to action consistent with its policy platforms on gender equity, domestic violence and social inclusion. This would enhance the way members contribute to the Party and how they interact with the public on issues of social justice and inclusion. One comment offered was that people would like to see a pledge or commitment to behaviours including to "respect and support all party members" not just to the Party Platform (as is currently the case).

### **Commentary**

As well as ensuring this is addressed to align values with actions, and to meet members' needs, it is a significant reputational issue. Behaviour within the Party that is inconsistent with Labor values does not meet "the Canberra Times" test.

In the Appendix to this report, we provide a range of links to resources which will assist ACT Labor in the implementation of the recommendations.

## D. Recommendations

*This review recommends that ACT Labor focus on four areas:*

- A. cultural change which ensures that what is accepted and rewarded in ACT Labor aligns with its public policy position, and is based on “reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner”.*
- B. refreshed policies and procedures to provide the framework to safeguard rights and provide for sanctions where needed, and recognising responsibilities under relevant legislation;*
- C. more effective advice on and communication of Labor values, the Code of Conduct and inclusive practice, and strong promotion of these by the Party leadership; and*
- D. proactive measures to support and sustain a highly inclusive, respectful culture within the Party.*

The recommendations are connected and often interdependent, but have been categorised into these four areas for ease of reference. In particular, many of the specific recommendations relating to policies, communication and proactive measures would be vital contributors to the first area of cultural change.

***A. Cultural change which ensures that what is accepted and rewarded in ACT Labor aligns with its public policy position, and is based on “reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner”.*** ACT Labor’s public policy position proclaims in various documents a commitment to social justice, a fairer society and equity for all. ACT Labor is committed to opposing all forms of adverse discrimination and social division. This must include being committed to being an exemplar of non-discriminatory, and non-violent behaviour. ACT Labor should reward those who demonstrate respectful behaviour and oppose any form of discrimination and violence, in line with Labor’s public policy position.

### Recommendations:

1. Revise the membership Pledge to include a commitment to behaviours which reflect the Labor policy position on fairness and lack of discrimination, and zero tolerance for discrimination, bullying, harassment and violence. This should be modelled by all party members, but particularly those of long-standing and those holding senior positions.
2. Set as a threshold test for appropriate behaviours, that they are “reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner” – noting that the best interests of the Party will always be to behave lawfully and respectfully.

3. Allocate appropriate resources to achieve successful implementation of the accepted recommendations.

***B. refreshed policies and procedures to provide the framework to safeguard rights and provide for sanctions where needed, and recognising responsibilities under relevant legislation;***

ACT Labor needs a refreshed suite of documents which set out policy and procedures regarding the conduct of members. The current hierarchy of Rules – Code – Harassment policy should be complemented with separate documents which give greater clarity. This is an important priority because there is a perception that gender-based discrimination and even violence is a reality from time to time as are some other forms of unlawful discrimination.

Rules and Code of Conduct

4. Revise the Rules, and submit these revisions for consideration and vote at the next Branch Conference, to
  - a. establish a clearer Code of Conduct (section B.12 of the current Rules) which:
    - i. includes all of the elements currently covered by rules B.12.1 to B.12.4 (unless otherwise amended, noting they are outside the scope of this review)
    - ii. mandates zero tolerance to discrimination, bullying, harassment and violence
    - iii. includes the threshold test of “reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner”
    - iv. defines discrimination, bullying, harassment in the language of the Australian Human Rights Commission and the Fair Work Commission
    - v. provides examples of unacceptable behaviour, but notes that this is not an exhaustive list
    - vi. references the (new) Bullying and Harassment policy
  - b. improve the Resolution of Disputes and Charges (section M) so that there is greater clarity between charges and disputes, and how the relevant processes apply to each.
  - c. The membership and operations of the Disputes Tribunal (as proposed in Recommendations 17 and 18 of this report
5. Develop a separate document which includes the Code of Conduct and a set of clear procedures for handling complaints, allegations and disputes under the Code of Conduct, to include:
  - a. How to raise matters and with whom (see Recommendations below re Conduct Contact Officers)
  - b. How serious allegations of physical and/or sexual violence will be handled, including referral to police
  - c. Investigation and resolution to only be as formal as required
  - d. Timely resolution

- e. Confidentiality
  - f. Fair hearing
  - g. Unbiased consideration
  - h. Sanctions being proportionate
  - i. informal and formal processes for investigating and resolving complaints or allegations, including the role of Conduct Contact Officers; options of using mediation and/or elements of restorative justice; formal investigations and the role of the Disputes Tribunal.
    - 1. Informal processes should include the option, where appropriate, of a matter being discussed between the individuals involved and an apology being offered and accepted
  - j. options for internal and external investigations and determinations including the role of Conduct Contact Officers; and the use of external experts to investigate complaints and allegations and make recommendations to the Disputes Tribunal
6. Confidentiality and a culture of a fair hearing in relation to complainants must be embedded in the Code of Conduct and in the policy and procedures relating to bullying and harassment. Complainants should be able to come forward with confidence that they will be heard and respected and the issue treated confidentially (thus protecting all parties) while the complaint is being investigated and resolved.
7. Confidentiality and procedural fairness need to be emphasised in all related training.

#### Bullying and Harassment policy and procedures

8. Establish a separate, more detailed policy on Bullying and Harassment, to highlight ACT Labor's zero tolerance position. This policy would:
- a. be referenced in the Code, and any breach treated as a breach of the Rules
  - b. Cover all of the elements currently covered by Rules B.12.5 and B.12.6, but reflect the language of the Australian Human Rights Commission and the Fair Work Commission
  - c. Provide some practical guidance in the policy about appropriate behaviour in the political context, guided by it being "reasonable action in line with the values and best interests of the Party, carried out in a reasonable manner".
  - d. Draw on the guidance material on such policies available from authorities such as the Australian Human Rights Commission and Safe Work Australia for adaptation
9. Develop a set of procedures for how complaints or allegations under the Bullying and Harassment policy are to be raised, and how they will be handled. These procedures should
- a. have as a first step a triage process where a Conduct Contact Officer, or the Branch Secretary, may take a decision that the matter will immediately be referred for external expert investigation

- b. include advice about support services available
  - c. establish rules about confidentiality
  - d. follow all other steps outlined in the new Code of Conduct procedures document
10. Establish a separate protocol specifically addressing alleged sexual assault and the reporting framework, including confidentiality, the complainant's right to decide (eg about whether they wish the matter to go to the police), and the provision of information to facilitate access to counselling, medical and legal support, including the Canberra Rape Crisis Centre

### Conduct Contact Officers (CCOs)

11. Revise the current composition of the CCO group. The new CCO group should be an ACT-wide group:
- a. With approximately 8 members appointed by the Administrative Committee or Branch Council on the basis of expressions of interest, and applying Affirmative Action principles. The CCOs should have:
    - Proven capacity to consider and resolve disputes and allegations and/or willingness to be trained or mentored to this end
    - Knowledge of ACT Labor Rules
    - Ability and commitment to operate in accordance with principles of procedural fairness
    - Not been the subject of, or closely associated with, any matter considered by the Disputes Tribunal in the preceding 5 years.
  - b. CCOs to serve a term of up to 3 consecutive years to allow for consistency and experience to develop
  - c. CCOs can be approached about a dispute or potential breach of the Code of Conduct by any member or volunteer, not only those from their own sub-branch or policy committee
  - d. The CCO group should include the Young Labor roles of Women's Officer, ATSI officer and LGBTQI officers as CCOs
  - e. The CCO group should also include one external CCO appointed by the Administrative Committee who can be approached by any member or volunteer where they wish the matter to be considered by someone external to the Party, particularly if internal CCOs are not appropriate for the circumstances.
12. The CCO group should have a senior party executive as its sponsor and adviser.
13. In line with Recommendations 11, appoint an external individual or organisation to perform the roles of external CCO and, where necessary, investigator. This position would:
- a. liaise with the complainant and respondent

- b. where appropriate, use mediation and principles of restorative justice to seek to resolve the issue
- c. conduct an investigation of the matters raised by interviewing the parties and relevant witnesses
- d. provide an independent assessment and recommendation to the Disputes Tribunal

Any decision to proceed to formal investigation by the external CCO (whether based on their own assessment of a case, or that of another CCO) would require the agreement of the Branch Secretary (to authorise expenditure).

14. Establish a set of procedures and guidance for CCOs covering:
  - a. Referral of matters to police and other bodies eg AHRC
  - b. The processes outlined in the Rules
  - c. Confidentiality, including and confidentiality agreement to be signed
  - d. skills and processes in resolving minor complaints
  - e. referring complainants to support services
  - f. identifying when complaints need expert external investigation
  - g. supporting complainants to lodge a formal complaint to the Disputes Tribunal
  - h. communication and education roles – see Recommendation 23.
  
15. Provide training to all new CCOs, and a refresher course to all CCOs, each year about handling complaints and allegations, to include:
  - a. bringing them up to date with case law
  - b. issues dealt with in ACT Labor over the last 12 months and lessons learned
  - c. CCO procedures
  
16. Issue a reminder annually to all members about the availability of CCOs and the process for engaging with them. Ensure that this information is readily available online for members.

#### Disputes Tribunal

17. Overhaul the Disputes Tribunal so that:
  - a. New Terms of Reference and procedures for the Disputes Tribunal are developed as a matter of priority, to reflect any revisions to the ACT Labor Rules and other matters outlined in this recommendation.
  - b. These Terms of Reference separate out matters which are handled by the Disputes Tribunal which relate to the Code of Conduct and those which relate to other aspects of the Rules.
  - c. The Tribunal's Terms of Reference are communicated to members and made readily available as an ongoing reference document
  - d. The Disputes Tribunal is comprised of 5-7 members, selected against the following criteria:
    - i. Relevant skills and experience in considering and resolving disputes and allegations (eg with legal or mediation qualifications)

- ii. Knowledge of ACT Labor Rules
- iii. Ability and commitment to conduct proceedings in accordance with principles of procedural fairness
- iv. Not the subject of, or closely associated with, any matter considered by the Disputes Tribunal in the preceding 5 years.
- e. Potential members to include
  - i. senior party members who have been Ministers or office-bearers in the Party; or
  - ii. former senior executives; and
  - iii. one appropriately qualified member of Young Labor
- f. Membership is determined annually by the Administrative Committee, based on the agreed criteria, and Affirmative Action principles. This will require two-thirds of the Administrative Committee to agree on the membership
- g. In relation to Code of Conduct matters:
  - i. A member may raise a matter concerning an alleged breach of the Code of Conduct direct with the Disputes Tribunal.
  - ii. It is preferable that before matters reach the Tribunal, one or more of the following has occurred:
    1. Where appropriate, individuals have tried unsuccessfully to resolve their differences informally; or
    2. A Conduct Contact Officer (CCO) has been advised of the issue and, after taking appropriate steps (see Recommendation 14) to resolve the matter, decides it requires a decision and possibly the application of sanctions by the Tribunal; or
    3. An external investigator has conducted an investigation of the matter (at the request of either a CCO, or the Branch President or Secretary) and refers the matter for decision and sanctions as appropriate (see also Recommendation 13)
  - iii. Where a member raises a matter direct with the Disputes Tribunal, the Tribunal may direct that one or more of the steps above be undertaken before any further Tribunal consideration of the matter occurs.
  - iv. The Disputes Tribunal has authority to make decisions, including on sanctions, about matters raised where mediation, conciliation or other mechanisms have failed to meet a satisfactory resolution
  - v. The Disputes Tribunal has authority to determine if a matter should be referred to police or other bodies, eg AHRC – but must take into account the preference of any complainant especially in the case of allegations of sexual assault
  - vi. For a Dispute Tribunal hearing where the complainant requests it, (eg in cases of alleged bullying or sexual harassment or assault) the Tribunal will provide options of giving evidence in camera, having a support person in attendance etc
  - vii. Protocols will also be developed to enable similar supports and protections should a matter which was heard by the Disputes Tribunal then proceed to an appeal

18. Expand and clearly articulate the suite of sanctions to apply when a complaint or allegation has been found to be proved under the Code of Conduct, to include but not be limited to:
  - a. The current provisions for Determinations in rules M.11 and M. 12 (eg suspension and expulsion)
  - b. Requiring a formal written apology
  - c. Mandatory training (eg in respectful behaviours, cultural awareness etc)

#### Work Health and Safety and other legal issues

19. Conduct a more detailed analysis of the extent to which the application of the ACT WH&S Act 2011 to the operations of ACT Labor, including volunteers, warrants an audit and risk assessment of policies, procedures and practices. This would include emergency protocols and management during election campaigns.
20. Ensure that any consideration of legal responsibilities take into account the possibility of accessory or vicarious liability.
21. Examine how conduct and WHS matters are managed in conjunction with member organisations (eg unions) to consider the practicality of establishing a joint approach to the management of obligations and responsibilities and resolution of complaints.
22. Establish protocols about how WHS issues, including those relating to bullying and harassment will be reported. See also Recommendation 43 in relation to reporting of sexual harassment and violence.

#### ***C. More effective advice on and communication of Labor values, the Code of Conduct and inclusive practice, and strong promotion of these by the Party leadership***

##### Advice and communication

23. Develop and implement a compulsory introductory course and information kit for new members about the Rules, to help them to know their rights and responsibilities from the outset. This should also cover the Code of Conduct, Bullying and Harassment policy and procedures, and the role of Conduct Contact Officers.
24. Make the Code of Conduct easily accessible, including online and in hard copy, and actively promote it, so that it has visibility and profile as well as remaining as a section of the Rules.
25. To support transparency and easier access to information, the CCO group's role should include providing expert advice on, and communicating and promoting:
  - Labor Values in practice in ACT Labor
  - Code of Conduct
  - Bullying and Harassment policy
  - the role of CCOs

- Options for dealing with complaints and disputes
  - Outcomes – as per recommendation 24.
26. The CCO group, including their senior sponsor, should report regularly to members about conduct issues that have arisen, and lessons learned, without disclosing details or breaching any confidentiality. This reporting will help to communicate that the Disputes Tribunal and Administrative Committee are active and fair.
27. The CCO group should actively promote and communicate the revised Code of Conduct, Bullying and Harassment Policy and new arrangements for CCOs, and create opportunities for senior people within the party to launch and promote them.
28. ACT Labor must require all executives of sub-branches, policy committees and Young Labor to promote the Code and the philosophy behind it, and to monitor its impact.

***D. Proactive measures to support and sustain a highly inclusive, respectful culture within the Party.***

While advice and communication as outlined above will assist in strengthening the culture of ACT Labor, more support and proactive measures are needed in specific areas and for particular groups. ACT Labor needs to develop initiatives that strongly embody inclusion and support for people who are at risk of disadvantage or may be or feel disadvantaged, particularly young people, women and members of diverse and minority groups.

General

29. Establish external support arrangements (similar to an Employee Assistance program or EAP) to provide third-party counselling and support service for victims of bullying and harassment including victims of sexual violence.
30. Establish mechanisms to develop greater use of mentoring with a view to broaden relationships and break down Party silos (for example between sub-branches). Mentoring relationships could be between, for example:
- new members and experienced members
  - Young Labor and more experienced members
  - Members with different backgrounds or areas of expertise

Mentoring could be encouraged, for example, by the creation of an online database of members willing to be mentors, including their areas of interest and expertise, which could be accessed by those members seeking a mentor.

31. Establish more opportunities for all members, but particularly new and younger members, to hear from senior Party figures eg breakfasts, panel discussions etc

32. Provide annual externally delivered training for members on conflict resolution, negotiation and decision-making skills which emphasise a consensual and depersonalised, issues-focused way of decision making rather than adversarial.
33. Provide annual externally delivered training on respectful behaviours, to focus on inclusive and respectful language and mindsets.
34. Ensure meetings, training and other time commitments are open and practical for all people wherever possible, tailored to their circumstance. For example,
  - a. ensure meeting places are safe and accessible,
  - b. recognise and support women and men with caring responsibilities in practical ways such as subsidising child and elder care when campaigning,
  - c. ensure communication tools and how meetings are conducted reflect the needs of any members with disability, English as a second language, limited education or limited experience in the political/public service environment, and the value of their inclusion and contribution.

### Women

ACT Labor needs to strengthen its representation and treatment of, and support for, women, in particular to reinforce and reflect Labor's policy commitment to women's equality and fighting sexual violence and discrimination.

35. At the next Annual Conference, make a statement of commitment to gender equity and zero tolerance for gender-based discrimination, harassment and violence. See also Recommendation 1 regarding the Pledge and Recommendation 39 in relation to sexual harassment and violence.
36. Conduct gender analysis of the membership data on a regular basis to provide greater insight into women's participation in the Party and where women do not appear to be engaged. Gendered disaggregation of all/most significant data items collected would provide a wealth of information to inform decisions around support to women in the Party. Trends over time provide indicators of gender equality/inequality and assist analysis.
37. Consult with female members to develop and run a sponsored leadership program for Labor women – including young women. This might be in the form of a series of modules covering communication, leadership, self-confidence, dealing with inappropriate behaviour, considering political career options etc.
38. Establish a Women's Network to encourage cross-factional support for all ACT Labor women. Encourage senior males to champion this Network.
39. Use the mentoring system (see Recommendation 28) to promote mentoring for women (young and older) – noting that younger women and those with child-caring

responsibilities can find it harder to stay connected.

40. Conduct exit interviews with women who leave or choose not to renew their membership to ascertain if there are concerns that should be addressed by ACT Labor.

#### Sexual harassment and violence

41. Adopt and enforce a policy of zero tolerance for sexual harassment and violence in ACT Labor's working and volunteering environments, meetings and events.
42. Strengthen the Rules to make this zero tolerance approach explicit (see also Recommendation 1 regarding amending the membership Pledge)
43. Adopt a separate protocol specifically addressing alleged sexual assault and the reporting framework, including the complainant's right to decide, the provision of information to facilitate access to counselling, medical and legal support, including the Canberra Rape Crisis Centre.
44. Develop a call to action for ACT Labor members based on the AHRC's recent call to action to the university community on the rates of violence experienced by young people in Australian universities – particularly to inform and protect Young Labor members but to be of relevance to all.
45. To clearly and strongly assert its determination to ensure all members and volunteers are safe from all forms of bullying and harassment, adopt practical steps from the Universities' *Respect. Now. Always. (RNA)* in relation to sexual assault and harassment to educate that sexual assault and harassment are unacceptable and empower those who have experienced sexual assault or harassment to seek help and support if they need it. (See link provided in Resources list)

#### Young Labor

46. Identify and implement steps to strengthen Young Labor's formal connections with the Party including:
  - the role they play on the Administrative Committee,
  - ensuring all Policy Committees include Young Labor representation,
  - identifying opportunities to develop leadership potential in practical ways.
47. Through implementation of the new Code of Conduct and Pledge, establish responsibility for more experienced members to model appropriate behaviours, regardless of factional allegiances, in their relationships with younger members.
48. Establish mechanisms to improve the culture of Young Labor, particularly with regard to respectful behaviour. This should include:
  - Establishing a position of Young Labor Mentor, to be held by a senior, experienced Party member, who would provide guidance to Young Labor members.

- Delivering more training and development opportunities targeted to Young Labor. In particular, examine opportunities for personal development, communication skills, emotional intelligence, leadership, team building, conflict resolution and negotiation in addition to opportunities to learn more about politics in practice.

### Volunteers

49. Provide support and training to volunteers particularly around their obligations, campaigning and managing bullying and harassment, including by the public.
50. Establish and/or reinforce emergency protocols for volunteers and members when door knocking, to deal with inappropriate treatment.

### Implementation

51. ACT Labor should commence implementation of all recommendations as soon as possible, including establishing a committee charged with driving and monitoring the implementation.
52. Where recommendations can be adopted by the Administrative Committee, this should be addressed at the earliest possible opportunity.
53. Where recommendations require changes to the Rules, these should be put forward as motions to the Annual Conference in 2018.

## Resources

UC's student support page, including Respect.Now.Always. (RNA) campaign

<http://www.canberra.edu.au/current-students/canberra-students/student-support/safe-and-respectful-community>

ANU Staff Protocol for Responding to an Allegation of Sexual Assault

<http://www.anu.edu.au/study/accommodation/advice-procedures/staff-protocol-for-responding-to-an-allegation-of-sexual>

ANU Student complaint resolution policy

[https://policies.anu.edu.au/ppl/document/ANUP\\_000468](https://policies.anu.edu.au/ppl/document/ANUP_000468)

Australian Human Rights Commission 2014, **Ending Workplace Sexual Harassment: A Resource for Small, Medium and Large Employers: 2014**

<http://www.humanrights.gov.au/publications/sex-discrimination>

Internal Journal for Educational Integrity – article on Academic Patronage (Brian Martin 2009)

<https://ojs.unisa.edu.au/index.php/IJEI/article/view/478>

Bullshift principles – a tool created to help people get more openness, honesty and straight talk at work

<https://www.bullshift.com/what-is-bullshift/>