

POLICY

TITLE:	Equal Opportunity: Anti-Discrimination, Anti-Harassment and Anti-Bullying Policy		
DIRECTORATE:	Office of the CEO		
ADOPTED BY:	Council Resolution:		
DATE OF ADOPTION:	29 November 2024	DATE OF REVIEW:	29 November 2026
POLICY NUMBER:	142		
LEGISLATIVE REF:	<i>Local Government Act 2019; Section 173</i> <i>Fair Work Act 2009; Sections 153, 172, 195, 351</i> <i>Anti-Discrimination Act 1992 (NT)</i> <i>Anti-Discrimination Act 1991 (Cth)</i> <i>The Age Discrimination Act 2004</i> <i>Racial Discrimination Act 1975</i> <i>The Disability Discrimination Act 1992</i> <i>Sex Discrimination Act 1984 (Cth)</i> <i>Human Rights and Equal Opportunity Commission Act 1986</i> <i>Work Health and Safety (National Uniform Legislation) Act 2011</i> <i>Criminal Code Act 1983 (NT)</i> <i>Workplace Gender Equality Act 2012 (Cth) ("WGEA")</i>		

1. INTRODUCTION

1.1. Purpose

The purpose of this Policy is to affirm Barkly Regional Council's (BRC) commitment to providing a safe working environment free of bullying, discrimination, harassment, sexual harassment and victimisation in accordance with its legislative obligations.

Workplace bullying, harassment, sexual harassment, discrimination and victimisation are considered to be serious breaches of Council's Work Health and Safety Policy, Code of Conduct, and various other legislation.

1.2. Scope

This Policy applies to all Council employees, independent contractors, volunteers and work placement personnel at any location or event associated with BRC. It also applies to interactions with customers, rate payers, service providers and contractors in the provision of goods and services.

This Policy does not specifically apply to elected members of Council, although elected members must ensure that their decisions and resolutions do not directly or indirectly discriminate against workers. Such concerns will be handled under the *Code of Conduct – Elected Members*.

1.3. Responsibilities

Every individual associated with Council is responsible for ensuring that their behaviour is not deemed to be unacceptable, as outlined in this Policy.

The Chief Executive Officer (or authorised delegate) is responsible for the implementation of this Policy.

1.4. Policy Objectives

- 1) BRC is committed to providing workplace which is free of all forms of discrimination and harassment, including sexual harassment and bullying at work.
- 2) BRC is committed to ensuring that all workers are aware of their rights and obligations with respect to unlawful behaviour and is committed to providing appropriate training and support to ensure that everyone models exemplary behaviour in the performance of their duties.
- 3) All Directors and Managers, including Coordinators, Team Leaders and Supervisors must act immediately on any reports of any type of harassment.
- 4) The principles of natural justice will apply. Employees will not be disadvantaged in their employment conditions or opportunities as a result of lodging a good faith complaint.
- 5) Any reports of discrimination, harassment or bullying will be handled quickly and seriously. They will be investigated thoroughly, impartially and where possible, confidentially.
- 6) Human Resources is responsible for meeting any obligations for mandatory WGEA reporting.

2. POLICY STATEMENT

1.5. Policy

- 1) The Council may be held vicariously liable for the actions of its employees and agents unless it can demonstrate that it has taken all reasonable steps to prevent unlawful conduct from occurring.
- 2) Managers are required to take action if aware of any behaviour which could constitute unlawful behaviour, even if no complaint has been lodged.
- 3) Employees and other persons can be liable for the actions of others if they authorise, encourage or assist in unlawful behaviours. In some circumstances, inaction can amount to implicit authorisation.
- 4) It is the primary responsibility of Managers and Supervisors to adopt reasonable measures to provide a working environment which is free from discrimination, harassment, sexual harassment, bullying and victimisation.
- 5) It is the responsibility of every employee not to participate in discriminatory, harassing, bullying or victimising behaviour within the workplace.
- 6) Any person wishing to lodge a formal complaint of discrimination, harassment, bullying or victimisation should do so in accordance with the Grievance Procedure.
- 7) HR is the designated point of contact for the provision of information and support to any prospective complainant.
- 8) Appropriate disciplinary action or other corrective action may be taken against anyone found to have breached this Policy.

3. DISCRIMINATION

- 1) **Direct discrimination** is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute (listed below). The test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.
- 2) **Indirect discrimination** can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

3) Protected attributes include:

- age
- colour
- descent or national or ethnic origin
- disability/impairment
- industrial activity/inactivity
- irrelevant criminal conviction
- family status
- gender identity inc. transgender status
- lawful sexual activity or orientation
- marital status, including de facto
- physical features
- political belief or activity
- pregnancy/breastfeeding
- race
- religious belief or activity
- sex
- status as a parent or carer
- personal association with someone of the above attributes

Workplace discrimination can occur within:

- recruitment and selection
- employment terms, conditions, and benefits
- training and development provisions
- selection for transfer, promotion, retrenchment or dismissal or any other unfavourable treatment including harassment.

4. HARASSMENT

- 1) A person unlawfully harasses another person if he/she makes that other person feel offended, humiliated, or intimidated because of one of the protected attributes listed above. It may involve inappropriate actions, behaviour, comments or physical contact that is objectionable or causes offence. Harassment is unlawful.
- 2) Unlawful harassment may have occurred if the behaviour makes the victim feel:
 - offended and humiliated
 - intimidated or frightened
 - uncomfortable at work
- 3) Examples of unlawful harassment can include behaviour such as:
 - telling insulting jokes about particular protected attributes
 - sending explicit or sexually suggestive emails
 - displaying offensive or pornographic posters or screen savers
 - making derogatory comments about someone's race, religion or protected attributes
 - asking intrusive questions about someone's personal life, including their sex life.

5. SEXUAL HARASSMENT

- 1) Sexual harassment occurs when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person; or engages in any other unwelcome conduct of a sexual nature in relation to another person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
- 2) Sexual harassment is unlawful in the workplace, which includes any place a person goes for the purpose of carrying out any function in relation to his/her employment. The workplace extends to work related events and social functions.

- 3) Some examples of sexual harassment include:
- persistent, unwelcome demands or even subtle pressures for sexual favours or outings
 - staring or leering at a person or at parts of their body
 - unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person
 - offensive comments/questions about a person's physical appearance, dress, private life
 - sexually explicit pictures or posters or screen savers (words and images)
 - sexually explicit telephone calls, letters, faxes, emails or voice mail messages
 - humour such as smutty or suggestive jokes or comments
 - innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexual morality, or tales of sexual performance
 - requests for sex
 - insults or taunts based on sex
 - sexually explicit physical contact.
- 4) Some types of sexual harassment, referred to as 'relevant unlawful conduct' can also be offences under the criminal law, not limited to:
- physical molestation or assault
 - indecent exposure
 - sexual assault
 - stalking
 - obscene communications (by way of telephone calls, letters, emails etc.).
- 5) The above examples of serious sexual harassment will be immediately referred to the police.
- 6) Organisations have a positive duty to take proactive and meaningful action to eliminate, as far as possible, the following unlawful behaviour from occurring:
- discrimination on the grounds of sex in a work context
 - sexual harassment in connection with work
 - sex-based harassment in connection with work
 - conduct creating a workplace environment that is hostile on the grounds of sex
 - related acts of victimisation.

6. BULLYING AT WORK

- 1) **Bullying at work** is the repeated, unreasonable behaviour directed toward an employee, or group of employees, which creates a risk to health and safety.
- 2) Bullying includes behaviour outside the workplace, including threats, if it relates to work.
- **Unreasonable behaviour** is behaviour that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten the other person.
 - **Behaviour** includes actions of individuals or a group and may involve using a system of work as a means of victimising, humiliating, undermining, punishing or threatening.
 - **Risk to health and safety** includes risk to the mental or physical health of the employee.
- 3) Bullying at work can occur between any person in the workplace, or in connection with the workplace. The following examples of behaviour, where repeated or occurring as part of a pattern of behaviour could be considered to be workplace bullying:
- physical or verbal abuse (yelling, screaming or offensive language)
 - intimidation
 - excluding or isolating employees

- psychological harassment
 - assigning meaningless tasks unrelated to the job
 - making malicious, frivolous or vexatious rumors about a person with an intent to cause the person harm
 - undermining work performance by deliberately withholding information vital for effective work performance
- 4) Employers have a positive duty for proactively building and maintaining a safe and respectful working environment. In the context of workplace bullying, this means taking active measures to prevent it from occurring and addressing it if it does.
 - 5) Employees also have a responsibility to abide by safety standards and to cooperate with their employer's actions to ensure a healthy and safe workplace is maintained.
 - 6) Bullying does not apply to reasonable management action, taken in a reasonable way:
 - performance management processes
 - ongoing meetings to address underperformance or behaviours
 - counselling or disciplining a worker for misconduct
 - modifying a worker's duties, including by transferring or deploying the worker
 - investigating alleged misconduct
 - allocation of work in compliance with systems and policies
 - implementation of organisational change or rightsizing
 - 7) **Reasonable management actions** are comprised of three elements:
 - the behaviour must be management action
 - it must be reasonable for the management action to be taken, and
 - the management action must be carried out in a manner that is reasonable.
 - 8) Serious cases of bullying may also be illegal under the Criminal Code and may be referred to the police.

7. VICTIMISATION

It is unlawful for a person to subject or to threaten to subject another person to any detriment because the other person, or someone associated with the other person, has made an allegation or complaint of discrimination, harassment or bullying on the basis of a protected attribute.

8. RESOLUTION OF COMPLAINTS AND ISSUES OF CONCERNS

- 1) It is in the interest of any person or group who believe they have been unlawfully discriminated against, sexually harassed, bullied or victimised to take action to prevent the behaviour from recurring. If you consider you have been discriminated against, bullied or harassed it should be dealt with and should not be ignored as ignoring the behaviour could be taken as consent.
- 2) BRC believes that all disputes and issues of concern should be resolved quickly, confidentially (where possible) and wherever possible, at the lowest appropriate level, with ongoing monitoring. A range of informal and formal resolution options are available including:
 - i. Informal:
 - a) Inform the offender that the behaviour is offensive and unacceptable and ask them to stop it.
 - b) Resolve by consent through mediation and conciliation with support provided by Human Resources or an external party.
 - ii. Formal:
 - c) Formal resolution by the immediate Supervisor, Manager or Human Resources.
 - d) Initiate the *Grievance Procedure*

- e) Formal investigation or assessment by either Human Resources or an external provider.
- 3) Employees who believe they are being bullied or discriminated against in the workplace may apply to the Fair Work Commission (FWC) to have the matter heard via mediation, conference or hearing. In addition to the above listed, employees may approach the Anti-Discrimination Commission, NT WorkSafe or the Fair Work Ombudsman for independent advice.
- 4) Notwithstanding the above right, BRC prefers that employees raise the issue directly with BRC via the *Grievance Procedure*, where the person feels safe to do so.
- 5) Council provides confidential professional counselling services via an EAP provider, details of which are available in the workplace.

9. RELEVANT POLICIES

Policies and procedures to be read in conjunction with this policy are:

- 1) Work Health and Safety Policy
- 2) Grievance Policy
- 3) Codes of Conduct
- 4) Employment Contract
- 5) All relevant Council Policies

10. IMPLEMENTATION AND REVIEW

10.1. Implementation

To comply with the organisation's positive duty, training on this Policy will be provided upon commencement of employment and at regular intervals during employment and/or when required, in addition to workplace monitoring for these behaviours. There is no requirement under the Act to publish this policy on the Barkly Regional Council website.

10.2. Review

This Policy will be reviewed on or before 29 November 2026.

11. VARIATIONS, REVOCATIONS AND/OR CHANGES

Barkly Regional Council reserves the right to revoke and/or amend this policy from time to time as is considered necessary to better manage its business and/or to comply with any legislative requirements.

12. APPROVAL

This policy is approved.

Chris Kelly
Chief Executive Officer


Signature

29 Nov 2024
Dated

END