

Anti-Discrimination Human Resources Policy

Effective Date: September 2009

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1 PURPOSE

To ensure that employees understand Queensland Health's expectations and their legal obligations in relation to discrimination. Queensland Health seeks to:

- create a working environment which is free from discrimination and harassment and where each person is treated with courtesy, dignity and respect
- have employment practices which ensure that individuals or members of a particular group are not discriminated against because of their attributes
- promote appropriate standards of conduct
- promptly resolve issues when they occur and resolve complaints in a fair and timely manner.

2 APPLICATION

This policy applies to all Queensland Health employees.

3 GUIDELINES

Guidelines may be developed to facilitate implementation of this policy. The guidelines must be consistent with this policy.

4 DELEGATION

The 'delegate' is as listed in the Queensland Health Human Resource Delegations Manual as amended from time to time.

5 REFERENCES

- *Anti-Discrimination Act 1991*
- *Racial Discrimination Act 1975 (Commonwealth)*
- *Sex Discrimination Act 1984 (Commonwealth)*
- *Disability Discrimination Act 1992 (Commonwealth)*
- *Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)*
- Queensland Health Code of Conduct
- Queensland Health Equity and Diversity Strategic Plan
- Queensland Health Equal Employment Opportunity Operational Plan
- District Equal Employment Opportunity Operational Plan
- Queensland Health Strategic Plan for Multicultural Health 2007-2012
- Queensland Health Disability Service Plan 2007-2010
- Sexual Harassment HR Policy E5
- Workplace Equity and Harassment Officers HR Policy E8
- Diversity HR Policy G1
- Equal Employment Opportunity HR Policy G2
- Reasonable Adjustment HR Policy G3
- Grievance Resolution HR Policy
- Workplace Harassment HR Policy
- Identified (Lawful Discrimination) Positions HR Policy

6 SUPERSEDES

- IRM 3.15-3 Anti-Discrimination

7 POLICY

7.1 Discrimination

Discrimination, including direct and indirect discrimination occurs when a person is treated less favourably or harassed in certain areas of public life including their employment because of a personal characteristic or attribute. Specifically, discrimination occurs when a person is treated less favourably than another would be in the same or similar circumstances because of a characteristic that is irrelevant to his or her capacity to do the job.

7.2 Impact of discrimination

Discrimination and harassment in any form can have an adverse affect on the efficiency and effectiveness of Queensland Health. Discrimination undermines working relationships, creates low morale and impacts on the delivery of health services.

7.3 Grounds on which discrimination is prohibited

The *Anti Discrimination Act 1991* prohibits discrimination the following grounds:

- Sex.
- Relationship status.
- Pregnancy.
- Parental status.
- Breastfeeding.
- Age.
- Race.
- Impairment.
- Religious belief or religious activity.
- Trade union activity.
- Lawful sexual activity.
- Gender identity, i.e. gay, lesbian, bi-sexual, transgender and intersex.
- Sexuality.
- Family responsibilities.
- Association with, or relation to, a person identified on the basis of any of the above grounds.

The Racial Discrimination Act 1975 (Commonwealth) and the *Sex Discrimination Act 1984* (Commonwealth) also prohibit discrimination on many of the above grounds.

The Disability Discrimination Act 1992 (Commonwealth) prohibits discrimination on the grounds of physical disfigurement and the presence in the body of organisms capable of causing disease or illness (e.g. HIV virus).

The *Human Rights and Equal Opportunity Commission Act 1986* (Commonwealth) prohibits discrimination on the grounds of political opinion, medical record and criminal record.

7.4 Exemptions

The *Anti-Discrimination Act 1991* allows for some exemptions to the prohibition of discrimination, e.g. for genuine occupational requirements (refer Identified (Lawful Discrimination) Positions HR Policy). Advice is to be sought from Human Resources (HR) Branch.

7.5 Responsibility for preventing workplace discrimination and harassment

Managers and supervisors are expected to take an active role in preventing discrimination and managing the impacts if discrimination occurs.

Employees are legally obliged to ensure that they do not engage in discriminatory behaviour towards fellow employees, supervisors, line managers, clients, patients or any other person with whom they come into contact through work.

7.6 Liability if discrimination or harassment occurs

If an employee is found to have engaged in discriminatory or harassing behaviour, the employee is held liable. Queensland Health may also be considered vicariously liable unless it can be proven that reasonable steps were taken to prevent offences, e.g. provision of anti-discrimination training and policy.

8 APPLYING THE POLICY

8.1 Roles and responsibilities for preventing discrimination and harassment

8.1.1 Executives

Executives in Queensland Health are responsible for implementing equity and diversity initiatives, and ensuring unlawful discrimination does not occur within their area of accountability, including:

- providing leadership on the implementation of equity and diversity initiatives
- ensuring compliance with legislative obligations
- ensuring strong links exist between equity and diversity principles and the strategic/business/operational plans for the division/district
- committing appropriate resources to support and implement equity and diversity initiatives for the division/district through the budget process
- ensuring that equity and diversity considerations are incorporated into the deliberations of senior decision making forums
- ensuring that equity and diversity principles are integrated into everyday management practice and all human resource management practices.

8.1.2 Managers and supervisors

All managers and supervisors are responsible for implementing equity and diversity principles and ensuring unlawful discrimination does not occur in their workplaces.

These responsibilities include:

- demonstrating personal leadership and commitment to equity and diversity goals
- being aware of the requirements of the *Equal Opportunity in Public Employment Act 1992* and the *Anti-Discrimination Act 1991*
- being familiar with, and promoting relevant policies, including the Sexual Harassment HR Policy E5, Diversity HR Policy G1, Equal Employment Opportunity HR Policy G2, Reasonable Adjustment HR Policy G3, the Equity and Diversity Strategic Plan 2007-2010, and this policy
- modelling and promoting appropriate behaviour in relation to equity and diversity principles and practices, (e.g. in relation to job design, recruitment and selection, training and development, performance management, management of organisation change and the application of employment conditions)
- implementing work practices, policies and strategies to eliminate unlawful discrimination from their work areas
- ensuring work areas are free from harassment of any kind, including sexual harassment
- encouraging and assisting all staff, including target group members to take up developmental and career opportunities
- promoting cultural awareness and cultural respect
- consulting with all staff as part of decision making processes
- developing, promoting and supporting the workplace equity and harassment officers (WEHO) network within their work unit and division/district
- providing access to training and development opportunities on anti-discrimination.

8.1.3 All employees

All employees are responsible for ensuring their behaviour is in accordance with the Queensland Health Code of Conduct, and the principles of equity, diversity and anti-discrimination. These responsibilities include:

- behaving appropriately and ensuring respect for all individuals including managers, subordinates, colleagues and members of the public
- treating all individuals fairly and equally
- respecting diversity of all individuals
- ensuring no discriminatory, harassing or bullying behaviour.

8.2 Options for resolving discrimination and/or harassment

Employees who consider that they have been unlawfully discriminated against may use the following options to resolve their complaint:

- Have a discussion with a manager or supervisor as early as possible.
- Seek support from a WEHO.
- Lodge a grievance (refer Grievance Resolution HR Policy).
- Lodge a complaint with the Anti-Discrimination Commission Queensland.

8.2.1 Discussion with manager or supervisor

Discussion between the employee experiencing discrimination and their manager or supervisor is recommended, particularly in the early stages of a problem involving possible discriminatory behaviour.

The discussion may result in action being taken or the development of strategies to resolve the problem at the workplace level. If the problem remains unresolved the manager is to contact HR Branch.

8.2.2 Support of a workplace equity and harassment officer (WEHO)

The WEHO network assists Queensland Health in proactively addressing issues of equity, harassment and discrimination in the workplace. It provides all employees of Queensland Health with access to trained WEHOs who:

- act as a confidential source of information in relation to:
 - available options for resolving complaints of any form of harassment, bullying or discrimination
 - the rights and responsibilities of all affected parties
- provide an active support role to:
 - a complainant
 - an alleged offender
- provide general guidance and assistance to management and supervisors
- collect statistical information in relation to equal employment opportunity (EEO) related activities
- participate in the promotion of the WEHO network.

8.2.3 Lodging a grievance

If an employee considers that they have been discriminated against, and the matter has not been satisfactorily resolved, they may lodge a grievance. Refer Grievance Resolution HR Policy for further information.

8.2.4 Lodging a complaint with the Anti-Discrimination Commission Queensland

If an employee's complaint has not been resolved through the grievance process they may lodge a complaint with the Anti-Discrimination Commission Queensland.

8.3 Reporting

Queensland Health is required to report to the Public Service Commission (PSC) on the implementation of the EEO Strategic Plan and the Queensland Health workforce profiles.

9 DEFINITIONS

Discrimination	May occur on the basis of a range of attributes. If the attribute is not defined in the <i>Anti-Discrimination Act 1991</i> , then the discrimination is not unlawful. However, it may breach Queensland Health's Code of Conduct.
Unlawful discrimination	The <i>Anti-Discrimination Act 1991</i> prohibits discrimination on the basis of certain attributes. Discrimination on the basis of one of the identified attributes is unlawful discrimination.

Direct discrimination	Any action which specifically excludes a person or group of people from a benefit or opportunity or significantly reduces their chances of obtaining it because of a personal characteristic irrelevant to the situation eg sex, ethnic origin.
Indirect discrimination	Any outcomes of rules, practices and decisions which purport to treat people equally and therefore appear to be neutral, but which are unreasonable and reduce an individual's chances of obtaining a benefit or opportunity eg height and weight requirements for candidates for a role which are irrelevant.
Vicarious liability	The responsibility of an employer for the actions of employees or agents towards others as they do their work. If these actions are found to be unlawful under the Queensland <i>Anti-Discrimination Act 1991</i> , both the person complained about and the employer may be held responsible. Employers need to demonstrate the steps taken to prevent the behaviour.
Discrimination in employment	Prohibited action as defined by sections 14 and 15 of the <i>Anti-Discrimination Act 1991</i> including treating an employee unfavourably in any way in connection with work as a result a ground stated in this policy.
Disciplinary action	Action taken as a result of a disciplinary process and is the outcome of a substantiated allegation which involves a penalty.
Workplace Equity and Harassment Officer (WEHO)	A trained employee who assists all staff including managers by providing confidential information and support to assist with resolving any forms of harassment, bullying or discrimination.
Transgender	Anyone who lives, has lived, or chooses to live as a member of the opposite gender (sex) to their birth gender (refer to NSW Anti-Discrimination Board website: Publications, Transgender discrimination – guidelines for employers and service providers).

10 HISTORY

September 2009	Amended to include a definition for transgender.
August 2009	Amended section 7.3 to provide further detail on discrimination grounds.
April 2009	Developed as a result of the HR policy consolidation project.