Anti-Discrimination and Vilification

Policy Number: E2 (QH-POL-101)
Publication date: January 2014

Purpose: To ensure that employees understand the expectations and legal obligations in relation to discrimination in employment within Queensland Health.

Application: This policy applies to all Queensland Health employees, including employees working in and for the:

- Department of Health
- non-prescribed Hospital and Health Services
- prescribed Hospital and Health Services.

Delegation: The ‘delegate’ is as listed in the Department of Health Human Resource (HR) Delegations Manual and the Hospital and Health Services Human Resource (HR) Delegations Manual – HRM Functions of the Director-General, as amended from time to time.

Legislative or other authority:
- Anti-Discrimination Act 1991
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Human Rights and Equal Opportunity Commission Act 1986 (Cth)

Related policy or documents:
- Code of Conduct for the Queensland Public Service
- Employee Complaints HR Policy E12 (QH-POL-140)
- Diversity HR Policy G1 (QH-POL-125)
- Equal Employment Opportunity HR Policy G2 (QH-POL-132)
- Reasonable Adjustment HR Policy G3 (QH-POL-210)
- Identified (Lawful Discrimination) Roles HR Policy B58 (QH-POL-151)

Policy subject:

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1 Policy statement

Queensland Health is committed to providing a workplace free from unlawful discrimination and vilification for employees, patients, clients, contractors and volunteers. All employees are responsible for ensuring the workplace is free from unlawful discrimination and vilification (responsibilities are outlined in the Schedule One of this policy).

2 Discrimination

Discrimination, whether direct or indirect, is unlawful on the following grounds under the Anti-Discrimination Act 1991:

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

Discrimination is unlawful in work, or work related areas, and in the provision of services to patients and clients.

The Anti-Discrimination Act 1991 allows for some exemptions to the prohibition of discrimination, (e.g. for genuine occupational requirements) and is also relevant to discrimination in other areas of public life - refer to the Anti-Discrimination Act 1991.

3 Vilification

A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of race, religion, sexuality or gender identity of the person or members of the group.

4 Behaviour that amounts to unlawful discrimination, vilification and victimisation

Action will be taken against employees found to have engaged in behaviour that amounts to unlawful discrimination or vilification. This may include disciplinary action up to and including termination of employment pursuant to section 187 and 188 of the Public Service Act 2008. Action will also be taken against any employee who victimises or retaliates against a person who has complained about, or provided information in relation to, alleged unlawful discrimination or vilification.

An employee who has engaged in unlawful discrimination, vilification or victimisation may be held individually liable for their actions or subject to private legal action. In addition, Queensland Health may be held vicariously liable.
5 Complaints about unlawful discrimination or vilification

Complaints of unlawful discrimination or vilification should be made in accordance with Employee Complaints HR Policy E12.

An employee should be aware that if they raise concerns about unlawful discrimination or vilification, a manager has an obligation to take appropriate action. If an employee asks that no action be taken, a manager is still required to consider the nature and seriousness of the alleged conduct in determining whether action is taken.

Unlawful discrimination or vilification may constitute suspected official misconduct and may need to be reported in accordance with local requirements for reporting official misconduct.

Complaints of unlawful discrimination or vilification are required to be reported annually to the Department of Health.

Definitions:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Includes permanent, temporary and casual employees, Visiting Medical Officers, contractors, consultants, students, volunteers and others who exercise power or control resources for or on behalf of Queensland Health.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct discrimination</td>
<td>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.</td>
</tr>
<tr>
<td>Indirect discrimination</td>
<td>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.</td>
</tr>
<tr>
<td>Victimisation</td>
<td>Victimisation occurs under the Anti-Discrimination Act 1991 when a person does an act, or threatens to do an act, to the detriment of another person because they have made, or are planning to make, a complaint for discrimination or victimisation.</td>
</tr>
<tr>
<td>Vicarious liability</td>
<td>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 Anti-Discrimination Act 1991, both the person complained about and the employer may be held responsible. Employers need to demonstrate the steps taken to prevent the behaviour.</td>
</tr>
</tbody>
</table>
Disciplinary action | For the purposes of this policy disciplinary action is action pursuant to s187 and s188 of the *Public Service Act 2008*. Where a person is not subject to the disciplinary provisions of the *Public Service Act 2008* (e.g. a contractor) other appropriate action may be taken which may lead to termination of the relationship with Queensland Health.

Work or work related areas | In work or work related areas a person must not discriminate:

*In the pre-work area:*
- in the arrangements made for deciding who should be offered work; or
- in deciding who should be offered work; or
- in the terms of work that is offered, including, for example, a term about when the work will end because of a person’s age; or
- in failing to offer work; or
- by denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- in developing the scope or range of such a program.

*In the work area:*
- in any variation of the terms of work; or
- in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker; or
- in dismissing a worker (which includes ending the particular work of a person by forced retirement, failure to provide work or otherwise); or
- by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- in developing the scope or range of such a program; or
- by treating a worker unfavourably in any way in connection with work.

History:

| January 2014 | • Policy formatted as part of the HR Policy Simplification project.  
• Policy amended to:  
  o include section on “vilification”  
  o clarify legislative requirements  
  o to remove information that is duplicated in legislation or other HR policies/guideline documents  
  o update references and naming conventions. |

| 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. |

| Previous | • IRM 3.15-3 Anti-Discrimination |
Anti-Discrimination and Vilification – Schedule One
Requirements and Responsibilities

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and schedule and ensure employee entitlements continue to be met.

1 Responsibilities

Employees are legally obliged to ensure that they do not unlawfully discriminate against fellow employees, supervisors, line managers, clients, patients or any other person with whom they come into contact through work.

2 Executives

Executives in Queensland Health are required to:
- model appropriate behaviour
- provide leadership on the implementation of equity and diversity initiatives which promote a workplace free from unlawful discrimination
- ensure compliance with legislative obligations
- ensure appropriate resources are available to support and implement equity and diversity initiatives
- ensure equity and diversity principles are integrated into everyday management practices.

3 Managers and supervisors

Managers and supervisors are required to:
- model appropriate behaviour
- monitor the workplace to ensure acceptable standards of conduct are observed
- take reasonable steps to promote this policy and educate employees about appropriate and acceptable workplace behaviour
- treat all allegations of discrimination seriously and sensitively
- take appropriate action to address allegations of unlawful discrimination.

4 All employees

All employees are required to:
- understand what is unlawful discrimination
- not engage in any conduct which is considered unlawful discrimination
- not encourage other employees to engage in conduct which could amount to unlawful discrimination
- report behaviour which could be considered unlawful discrimination
- comply with the requirements of this policy.