

Anti-discrimination, human rights and vilification

Policy Number: E2 (QH-POL-101)

Publication date: October 2020

Purpose: To outline the responsibility of all employees in relation to discrimination, human rights and vilification in employment within Queensland Health.

Application: This policy applies to all employees working for Queensland Health.

This policy does not apply to employees of Queensland Ambulance Service. Instead, Queensland Ambulance Service employees are to refer to their local policy/procedure.

Delegation: The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Service Human Resource (HR) Delegations Manual, as amended from time to time.

Legislative or other authority:

- *Anti-Discrimination Act 1991*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*
- *Disability Services Act 2006*
- *Hospital and Health Boards Act 2011*
- Hospital and Health Boards (health equity strategies) Amendment Regulation 2020
- *Human Rights Act 2019*
- *Industrial Relations Act 2016*
- *Multicultural Recognition Act 2016*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*
- *Racial Discrimination Act 1975 (Cth)*
- *Sex Discrimination Act 1984 (Cth)*

Related policy or documents:

- Code of Conduct for the Queensland Public Service
- Employee complaints HR Policy E12 (QH-POL-140)
- Diversity and inclusion HR Policy G2 (QH-POL-132)
- Reasonable adjustment HR Policy G3 (QH-POL-210)
- Queensland Health Workforce Diversity and Inclusion Strategy 2017-2022
- Queensland Government Guide: Handling human rights complaints
- Aboriginal and Torres Strait Islander Health Workforce Strategic Framework 2016-2026
- Queensland Health Aboriginal and Torres Strait Islander Cultural Capability Framework (2010-2033)
- Queensland Health Statement of Action towards closing the gap in health outcomes



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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.
- respecting, protecting and promoting the human rights of all people in Queensland. Under section 58 of the *Human Rights Act 2019*, there is an obligation that decision-makers act in ways that are compatible with human rights. When making a decision under a directive, policy or guideline, decision-makers must give proper consideration to human rights relevant to that decision.

Employee responsibilities relating to discrimination, human rights and vilification are outlined in Attachment One.

2 Discrimination

Discrimination, whether direct or indirect, is unlawful under the *Anti-Discrimination Act 1991* (section 7) on the basis of the following grounds:

- Sex
- Relationship status
- Pregnancy
- Parental status
- Breastfeeding
- Age
- Race
- Impairment
- Religious belief or religious activity
- Political belief or 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 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.

Section 15(5) of the Human Rights Act allows for an express exception to the prohibition of discrimination. Measures that are taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

3 Human Rights

Section 15 of the Human Rights Act protects the rights of all people in Queensland:

- To recognition as a person before the law
- To enjoy their human rights without discrimination.

The Human Rights Act (sections 15 to 37) protects the following 23 fundamental human rights:

- Recognition and equality before the law
- Right to life
- Protection from torture and cruel, inhuman or degrading treatment
- Freedom from forced work
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Freedom of expression
- Peaceful assembly and freedom of association
- Taking part in public life
- Property rights
- Privacy and reputation
- Protection of families and children
- Cultural rights—generally
- Cultural rights—Aboriginal peoples and Torres Strait Islander peoples
- Right to liberty and security of person
- Humane treatment when deprived of liberty
- Fair hearing
- Rights in criminal proceedings
- Children in the criminal process
- Right not to be tried or punished more than once
- Retrospective criminal laws
- Right to education
- Right to health services.

4 Vilification

Section 124A of the Anti-Discrimination Act provides that 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.

5 Ramifications of behaviour that amounts to unlawful discrimination and vilification

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 sections 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 for the actions of its employees.

6 Complaints about unlawful discrimination or vilification

Complaints of unlawful discrimination or vilification should be made in accordance with the Employee complaints HR Policy E12. Alternatively, an employee can lodge their complaint with the Queensland Human Rights Commission (QHRC).

An employee should be aware that if they raise concerns about unlawful discrimination or vilification with Queensland Health, 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.

If the employee who made the employee complaint with Queensland Health is dissatisfied with the outcome of the complaint or internal review, the employee may refer their complaint to the QHRC. If the matter is not able to be settled at the QHRC, then it may be referred to the Queensland Industrial Relations Commission (QIRC) for determination. Employees considering referring a complaint to an external body, e.g. QHRC or QIRC, should contact the relevant external body for specific information about their processes and any timeframes that may apply.

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

7 Complaints about human rights

A complaint may be made under the Human Rights Act if an employee believes that their human rights have been breached, and the alleged breach occurred after 1 January 2020. Further information regarding the management of human rights complaints is available in the Queensland Government Guide: Handling human rights complaints.

This complaint should be made to the delegate. A complaint does not need to specifically mention human rights to engage the Human Right Act and care should be taken to assess complaints, as it may engage human rights.

If the employee does not receive a response to the complaint within 45 business days, or if the response is not satisfactory to the employee, the employee may refer their complaint to the QHRC. Employees considering referring a complaint to the QHRC (refer [QHRC complaints](#)) should seek from that external body specific information about processes and timeframes that may apply.

Definitions:

Direct discrimination	<ul style="list-style-type: none"> • Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different. <i>Example 1 -</i> <i>R refuses to rent a flat to C because—</i> <ul style="list-style-type: none"> • C is English and R doesn't like English people • C's friend, B, is English and R doesn't like English people • R believes that English people are unreliable tenants. <i>In each case, R discriminates against C, whether or not R's belief about C's or B's nationality, or the characteristics of people of that nationality, is correct.</i> • It is not necessary that the person who discriminates considers the treatment is less favourable. • The person's motive for discriminating is irrelevant. <i>Example 2 -</i> <i>R refuses to employ C, who is Chinese, not because R dislikes Chinese people, but because R knows that C would be treated badly by other staff, some of whom are prejudiced against Asian people. R's conduct amounts to discrimination against C.</i> • If there are two or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, the person treats the other person less favourably on the basis of the attribute if the attribute is a substantial reason for the treatment. • In determining whether a person treats, or proposes to treat a person with an impairment less favourably than another person is or would be treated in circumstances that are the same or not materially different, the fact that the person with the impairment may require special services or facilities is irrelevant.
Disciplinary action	For the purposes of this policy, disciplinary action is action pursuant to sections 187 and 188 of the Public Service Act. Where a person is not subject to the disciplinary provisions of the Public Service Act (e.g. a contractor) other appropriate action may be taken which may lead to termination of the relationship with Queensland Health.
Employee	For the purposes of this policy, employee 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 the Queensland Health.
Indirect discrimination	<ul style="list-style-type: none"> • Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term— <ul style="list-style-type: none"> (a) with which a person with an attribute does not or is not able to comply; and (b) with which a higher proportion of people without the attribute comply or are able to comply; and (c) that is not reasonable. • Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example— <ul style="list-style-type: none"> (a) the consequences of failure to comply with the term; and (b) the cost of alternative terms; and

	<p>(c) the financial circumstances of the person who imposes, or proposes to impose, the term.</p> <ul style="list-style-type: none"> • It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination. • In this section— <i>term</i> includes condition, requirement or practice, whether or not written. <p><i>Example 1 -</i> An employer decides to employ people who are over 190cm tall, although height is not pertinent to effective performance of the work. This disadvantages women and people of Asian origin, as there are more men of non-Asian origin who can comply. The discrimination is unlawful because the height requirement is unreasonable, there being no genuine occupational reason to justify it.</p> <p><i>Example 2 -</i> An employer requires employees to wear a uniform, including a cap, for appearance reasons, not for hygiene or safety reasons. The requirement is not directly discriminatory, but it has a discriminatory effect against people who are required by religious or cultural beliefs to wear particular headaddresses.</p>
Unlawful discrimination	<p>Complaints of discrimination prohibited under federal legislation may also be considered unlawful discrimination. The federal legislation includes:</p> <ul style="list-style-type: none"> • <i>Racial Discrimination Act 1975</i> • <i>Sex Discrimination Act 1984</i> • <i>Disability Discrimination Act 1992</i> • <i>Australian Human Rights Commission Act 1986.</i>
Vicarious liability	<p>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 Anti-Discrimination Act, both the person complained about and the employer may be held responsible. Employers need to demonstrate the steps taken to prevent the behaviour.</p>
Victimisation	<p>Victimisation happens if a person (the respondent) does an act, or threatens to do an act, to the detriment of another person (the complainant):</p> <p>(a) because the complainant, or a person associated with, or related to, the complainant—</p> <ol style="list-style-type: none"> (i) refused to do an act that would amount to a contravention of the Act; or (ii) in good faith, alleged, or intends to allege that a person committed an act that would amount to a contravention of the Act; or (iii) is, has been, or intends to be, involved in a proceeding under the Act against any person; or <p>(b) because the respondent believes that the complainant, or a person associated with, or related to, the complainant is doing, has done, or intends to do one of the things mentioned in paragraph (a)(i), (ii) or (iii).</p>

Work or work related areas	<p>In work or work related areas a person must not discriminate:</p> <p><i>In the pre-work area:</i></p> <ul style="list-style-type: none"> • 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. <p><i>In the work area:</i></p> <ul style="list-style-type: none"> • 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.
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History:

October 2020	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – formatted as part of the HR Policy review – amended to update references and naming conventions – title amended from 'Anti-discrimination and vilification' to 'Anti-discrimination, human rights and vilification' – application amended from Department of Health to Queensland Health – amended to include the human rights requirements – application amended as a result of changes to the Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019.
January 2018	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – formatted as part of the HR Policy review – amended to update references and naming conventions – amended to reflect changes of the Industrial Relations Act.
November 2016	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – formatted as part of the HR Policy review – amended to update references and naming conventions – application amended to Department of Health – amended to update definitions of direct and indirect discrimination to reflect the wording in the <i>Anti-Discrimination Act 1991</i> – amended to include information regarding the review process of external bodies (e.g. Queensland Industrial

	Relations Commission, Queensland Ombudsman or Anti-Discrimination Commission Queensland) in section 5.
January 2014	<ul style="list-style-type: none"> • Policy formatted as part of the HR Policy Simplification project. • Policy amended to: <ul style="list-style-type: none"> – include section on “vilification” – clarify legislative requirements – to remove information that is duplicated in legislation or other HR policies/guideline documents – update references and naming conventions.
September 2009	<ul style="list-style-type: none"> • Amended to include a definition for transgender.
August 2009	<ul style="list-style-type: none"> • Amended section 7.3 to provide further detail on discrimination grounds.
April 2009	<ul style="list-style-type: none"> • Developed as a result of the HR policy consolidation project.
Previous	<ul style="list-style-type: none"> • IRM 3.15-3 Anti-Discrimination

Attachment One – 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 standard practice and ensure employee entitlements continue to be met.

1 Responsibilities

Employees are legally obliged to ensure that they do not unlawfully discriminate or vilify against fellow employees, supervisors, line managers, clients, patients or any other person with whom they come into contact through work. Employees must understand their obligations under the *Human Rights Act 2019* and act in ways that are compatible with human rights.

1.1 Executives

Executives are required to:

- model appropriate behaviour
- provide leadership on the implementation of diversity and inclusion initiatives which promote a workplace free from unlawful discrimination
- help Queensland Health build a culture that respects and promotes human rights
- ensure compliance with legislative obligations
- ensure appropriate resources are available to support and implement diversity and inclusion initiatives
- ensure diversity and inclusion principles are integrated into everyday management practices
- make support mechanisms available to employees e.g. employee assistance program.

1.2 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, vilification and breaches of human rights seriously and sensitively
- take immediate and appropriate action to address allegations of unlawful discrimination, vilification and breaches of human rights
- contact your local human resources team for support and guidance on how to manage the risk.

1.3 All employees

All employees are required to:

- understand what unlawful discrimination is
- understand their obligations under the Human Rights Act
- give proper consideration to human rights when making decisions
- 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, either experienced by them directly or indirectly, or behaviour they witness being experienced or inflicted directly or indirectly on another person or persons, which could be considered unlawful discrimination
- comply with the requirements of this policy.