Purpose: To outline the responsibility of all employees in relation to discrimination in employment within the Department of Health.

Application: This policy applies to all employees working for the Department of Health. Queensland Ambulance Service employees are to refer to their local policy/procedure.

Delegation: The ‘delegate’ is as listed in the Department of Health 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)
- Industrial Relations Act 2016
- 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 Disability Plan 2014-2019

Policy subject:

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Attachment One  Responsibilities and requirements
1 Policy statement

The Department of 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 Attachment One).

2 Discrimination

Discrimination, whether direct or indirect, is unlawful under the Anti-Discrimination Act 1991 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.

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 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, the Department of 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 the 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.

If the employee who made the initial employee complaint is dissatisfied with the decision made at an internal review, the employee may refer their complaint to the Anti-Discrimination Commission of Queensland (ADCQ). If the matter is not able to be settled at the ADCQ, then it may be referred to the Queensland Industrial Relations Commission for determination. Employees considering referring a complaint to an external body 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 corrupt conduct.

Definitions:

<table>
<thead>
<tr>
<th>Department of Health</th>
<th>The Department of Health includes:</th>
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<tbody>
<tr>
<td></td>
<td>• Clinical Excellence Division</td>
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<td>• Corporate Services Division</td>
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<td>• Healthcare Purchasing and System Performance Division</td>
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<td>• Strategy, Policy and Planning Division</td>
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<td>• Chief Health Officer and Prevention Division</td>
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<td>• Office of the Director-General</td>
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<td>• Health Support Queensland</td>
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<td>• eHealth Queensland</td>
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<td>any successor agency of those listed above however so named.</td>
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<table>
<thead>
<tr>
<th>Direct discrimination</th>
<th>1. 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, in circumstances that are the same or not materially different.</th>
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<tr>
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<td>2. It is not necessary that the person who discriminates considers the treatment is less favourable.</td>
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<td>3. The person’s motive for discriminating is irrelevant.</td>
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<td>4. 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.</td>
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<td>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.</td>
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</table>

Example 1 -
R refuses to rent a flat to C because—
• 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.
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.
**Example 2 -**
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.

### 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 the Department of 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 Department of Health.

### Indirect discrimination
1. Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term—
   (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.
2. Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example—
   (a) the consequences of failure to comply with the term; and
   (b) the cost of alternative terms; and
   (c) the financial circumstances of the person who imposes, or proposes to impose, the term.
3. It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination.
4. In this section—
   *term* includes condition, requirement or practice, whether or not written.

**Example 1 -**
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.

**Example 2 -**
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 headdress.

### Unlawful discrimination
Complaints of discrimination prohibited under federal legislation may also be considered unlawful discrimination. The federal legislation includes:
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Disability Discrimination Act 1992*
- *Australian Rights Commission Act 1986.*
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 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.

Victimisation
Victimisation occurs under the Anti-Discrimination Act 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 of discrimination or victimisation.

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

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 2018
• Policy:
  – 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
• Policy:
  – 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 Anti-Discrimination Act 1991
  – 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.
<table>
<thead>
<tr>
<th>Year</th>
<th>Changes</th>
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<tbody>
<tr>
<td>January 2014</td>
<td>• Policy formatted as part of the HR Policy Simplification project.</td>
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<td></td>
<td>• Policy amended to:</td>
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<td></td>
<td>− include section on “vilification”</td>
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<tr>
<td></td>
<td>− clarify legislative requirements</td>
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<td></td>
<td>− to remove information that is duplicated in legislation or other</td>
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<td></td>
<td>HR policies/guideline documents</td>
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<tr>
<td></td>
<td>− update references and naming conventions.</td>
</tr>
<tr>
<td>September 2009</td>
<td>• Amended to include a definition for transgender.</td>
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<tr>
<td>August 2009</td>
<td>• Amended section 7.3 to provide further detail on discrimination</td>
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<td>grounds.</td>
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<tr>
<td>April 2009</td>
<td>• Developed as a result of the HR policy consolidation project.</td>
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<tr>
<td>Previous</td>
<td>• IRM 3.15-3 Anti-Discrimination.</td>
</tr>
</tbody>
</table>
Attachment One – Responsibilities to ensure workplace is free from anti-discrimination and vilification

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Department of 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 attachment, 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 the Department of Health are required to:

- model appropriate behaviour
- provide leadership on the implementation of diversity and inclusion initiatives which promote a workplace free from unlawful discrimination
- 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.

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
- contact your local human resources team for support and guidance on how to manage the risk.

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.