

Preventing and responding to workplace sexual harassment and other unlawful sexual conduct

Human Resources Policy E5 (QH-POL-228)

Purpose

Queensland Health has a duty to provide a safe, respectful, and inclusive workplace free of sexual harassment and discrimination. This policy communicates Queensland Health's responsibility and commitment to ensure the prevention, response and management of sexual harassment and other unlawful sexual conduct at work.

Sexual harassment means behaviour that contravenes section 119 of the *Anti-Discrimination Act 1991*, or section 28A of the *Sex Discrimination Act 1984* (Cth).

Sexual harassment is unethical, unlawful and may be a criminal offence. Sexual harassment and other unlawful sexual conduct is unacceptable.

It is the responsibility of all employees to behave in a way that is respectful and inclusive and ensures the safety and well-being of others.

Application

This policy applies to employees of the Department of Health (the department) and Hospital and Health Services (HHSs), and anyone who works in any other capacity for Queensland Health including volunteer workers and contractors.

This policy applies to employees in all their work-related dealings with each other and with patients, customers, contacts or clients. It applies to employees while:

- in the workplace or while working offsite; or
- at work-related functions (including training events, social functions, and celebrations); or
- on work-related travel; or
- attending conferences; or
- communicating through different mediums such as text messaging or social media.

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

Delegation

The 'delegate' is as listed in the relevant human resource (HR) delegations manual as amended from time to time.

Legislative or other authority

- Anti-Discrimination Act 1991
- Code of Conduct for the Queensland Public Service
- Crime and Corruption Act 2001
- Criminal Code Act 1899
- Directive 12/23 - Preventing and responding workplace sexual harassment
- Human Rights Act 2019
- Industrial Relations Act 2016
- Information Privacy Act 2009
- Managing the risk of psychosocial hazards at work Code of Practice 2022
- Public Interest Disclosure Act 2010
- Public Sector Act 2022
- Respect at Work and Other Matters Amendment Act 2024
- Sex Discrimination Act (Cth) 1984
- Work Health and Safety Act 2011
- Work Health and Safety (Sexual Harassment) Amendment Regulation 2024

Related policy or documents

- Guidelines for complying with the positive duty under the Sex Discrimination Act 1984 (Cth) (Australian Human Rights Commission)
- HR Policy W1 Health, safety and wellbeing
- Health, Safety and Wellbeing Management System
- Health, Safety, and Wellbeing Risk Management Standard and Guideline
- HR Policy E1 Workplace conduct and ethics
- HR Policy E2 Anti-discrimination, human rights and vilification
- HR Policy E9 Requirements for reporting suspected corrupt conduct
- HR Policy E12 Individual employee grievances
- HR Policy E13 Workplace bullying
- Public Interest Disclosure policy or procedure (for example, HR Policy I5 Public Interest Disclosure)
- Queensland Health First Nations First Strategy 2032
- Queensland Health Preventing and responding to workplace sexual harassment and other unlawful sexual conduct fact sheets

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Policy

1 Principles

Queensland Health has zero tolerance for conduct that constitutes sex discrimination, sexual harassment, sex or gender-based harassment, amounts to subjecting a person to a hostile work environment and/or related acts of victimisation.

Queensland Health is committed to promoting and protecting the psychosocial and physical health, safety and wellbeing of employees, and building and maintaining a positive workplace culture, free of unlawful sexual conduct and promoting gender equality (gender inequality being an underlying driver of unlawful sexual conduct).

Queensland Health has an obligation to educate and support all employees to prevent, intervene early and respond to offensive behaviour. Further, under Public Sector Commission Directive 12/23, Queensland Health will ensure all employees are educated and trained to appropriately identify sexual harassment in the workplace, are aware of their obligations and rights in relation to sexual harassment in the workplace and are aware of reporting and response processes. In addition, leadership training will be provided regarding the expected standards of behaviour and how to appropriately respond to reports of workplace sexual harassment.

Queensland Health acknowledges sexual harassment is a psychosocial hazard and as such is to be managed in accordance with Part 3.1 of the WHS Regulation risk management process.

Queensland Health acknowledges the significant impact of sexual harassment and other unlawful sexual conduct on employees who experience or witness it.

Queensland Health is committed to a person-centred, gender-informed and trauma-informed approach when addressing allegations of sexual harassment and other unlawful sexual conduct.

Queensland Health is committed to ensuring leaders and managers will listen to, respect, empower and support individuals who report allegations of sexual harassment and other unlawful sexual conduct and act to resolve concerns and exercise their due diligence. Under the Managing the risk of psychosocial hazards at work Code of Practice 2022, due diligence means taking active measures to confirm that Queensland Health has allocated sufficient resources to health and safety and has considered risks from psychosocial hazards, implements control measures to manage identified risks, and reviews the effectiveness of those control measures.

Under the Code of conduct for the Queensland Public Service (the Code), employees are required to report behaviour that could amount to wrongdoing, including conduct that is not consistent with the Code, where it is safe to do so.

Human Rights

Under the *Human Rights Act 2019* Queensland Health has an obligation to act and make decisions in a way that is compatible with, and gives proper consideration to, human rights. When deciding or acting under this policy, managers and decision-makers must comply with that obligation.

Reframing the relationship

Queensland Health is committed to supporting a reframed relationship with Aboriginal peoples and Torres Strait Islander peoples in accordance with Chapter 1 Part 3 of the *Public Sector Act 2022*. All delegates and employees have a responsibility to apply these principles when implementing HR policies.

Managing the risk of psychosocial hazards at work Code of Practice 2022

Queensland Health is committed to promoting and protecting the physical and psychological health, safety, and wellbeing of its workers by providing a safe and inclusive workplace with a focus on preventing harm. As an employer, Queensland Health has an obligation under the *Work Health and Safety Act 2011* to manage risks to employees arising through our work, work environments, systems, and practices. When applying this policy, proper consideration must be given to the Managing the risk of psychosocial hazards at work Code of Practice 2022, including identifying psychosocial hazards and assessing and managing any risks.

2 Preventing workplace sexual harassment and other unlawful sexual conduct

Queensland Health acknowledges that pursuant to section 47C of the *Sex Discrimination Act 1984* (Cth), and section 25 of the *Respect at Work and Other Matters Amendment Act 2024*, it

has a positive duty to take reasonable and proportionate measures to eliminate, as far as possible, unlawful sexual conduct, which is:

- sex discrimination in a work context;
- sexual harassment in connection with work;
- sex-based harassment in connection with work;
- conduct creating a workplace that is hostile on the ground of sex and/ or gender identity; and
- related acts of victimisation.

Throughout this policy and related supporting resources, the conduct covered by the positive duty shall be referred to as **unlawful sexual conduct**. The positive duty aims to create systemic change by preventing unlawful sexual conduct from happening in the first place, rather than reacting to conduct after it has occurred and already caused harm. This is because preventative action that addresses sexual harassment and unlawful sexual conduct at a systemic level is more effective at creating safe, respectful, and inclusive workplaces.

The positive duty also extends to the conduct of third parties towards employees.

Queensland Health is committed to taking a risk-based approach to the prevention and response to unlawful sexual conduct in accordance with the Health, Safety, and Wellbeing Risk Management framework.

3 Risk management

Queensland Health recognises that unlawful sexual conduct is an equality risk and a health and safety risk. Queensland Health acknowledges that the prevention of unlawful sexual conduct requires adherence to the WHS risk management framework and process:

1. **identify hazards** (in consultation with employees)
2. **assess risks** (frequency of exposure, likelihood, severity and consequence), (in consultation with employees)
3. **control risks** (in accordance with the hierarchy of controls), (in consultation with employees)
4. **review control measures** (in consultation with employees).

Risk management is a requirement under WHS legislation and expectation under the positive duty and is to be included in the Prevention and Response Plan that each senior leader is required to develop for their accountability area to satisfy the positive duty. Senior leaders should consider whether known drivers and risk factors for unlawful sexual conduct exist in their workplace. This will help to assess the risk and take effective actions to prevent it, in alignment with the hierarchy of controls.

For more information on risk management and unlawful sexual conduct please refer to the E5 fact sheet Preventing and responding to workplace sexual harassment and other unlawful sexual conduct.

4 Recognising sexual harassment and other unlawful sexual conduct

Section 28A of the *Sex Discrimination Act 1984 (Cth)* provides that a person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Similarly, section 119 of the *Anti-Discrimination Act 1991 (Qld)* states that sexual harassment is occurring if a person:

- (a) subjects another person to an unsolicited act of physical intimacy (for example, physical contact such as patting, pinching or touching in a sexual way, or unnecessary familiarity such as deliberately brushing against a person); or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person (for example, sexual propositions); or
- (c) makes a remark with sexual connotations relating to the other person (for example, unwelcome and uncalled for remarks or insinuations about a person's sex or private life, or suggestive comments about a person's appearance or body); or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person (for example giving unwanted/ unsolicited gifts);

and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so:

- (a) with the intention of offending, humiliating, or intimidating the other person; or
- (b) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated, or intimidated by the conduct.

Queensland Health's workplace extends beyond physical workspaces or worksites.

Workplace sexual harassment and other unlawful sexual conduct may occur:

- in the workplace or in other work-related locations including patient homes, or public spaces where work is conducted
- outside of working hours at work-related events (for example, conferences, social events, business trips)
- through different mediums (for example face to face, text messaging, email or social media).

Important Note:

- behaviours or actions do not have to be repeated to be unlawful sexual conduct.
- some sexual conduct, such as sexual assault, indecent exposure and stalking is also a criminal offence.

5 Roles and responsibilities

All employees have a responsibility to treat each other with respect and dignity and have the right to work without being subjected to unlawful sexual conduct.

Employees must:

- model the Code of Conduct and Public Sector values, including behaving in a way that promotes a safe, respectful, and inclusive workplace environment, free of unlawful sexual conduct
- comply with this policy and follow reasonable instructions and procedures to prevent and respond to allegations of unlawful sexual conduct
- familiarise themselves with the available workplace support options and specialist referral services, and sensitively communicate with colleagues who have experienced unlawful sexual conduct, maintain their confidentiality and encourage them to seek assistance
- report unlawful sexual conduct and support those who have experienced unlawful sexual conduct to report it through the channels outlined within this policy
- comply with the responsibilities as outlined above, as well as confidentiality requirements and follow all reasonable instructions if a participant (complainant/ respondent/ witness) in a grievance relating to alleged unlawful sexual conduct.

Managers and supervisors will:

- model the Code of Conduct and Public Sector values, including behaving in a way that promotes a safe, respectful, and inclusive workplace environment, free of unlawful sexual conduct
- inform employees about unacceptable behaviours that enable or condone unlawful sexual conduct
- identify and address inappropriate behaviours as a psychosocial hazard and manage as a safety risk and advocate for zero tolerance of sexism
- monitor the workplace to ensure acceptable standards of conduct
- treat alleged unlawful sexual conduct seriously and take immediate, appropriate and proportionate action when responding by considering:
 - the severity of the behaviour
 - the wishes of the person who reported the alleged behaviour
 - how to demonstrate respect and support for employees who report alleged unlawful sexual conduct
- ensure employees who report alleged unlawful sexual conduct, lodge complaints or witness unlawful sexual conduct are not victimised or discriminated against
- ensure employees who report alleged workplace unlawful sexual conduct are advised of their rights and obligations under the *Public Interest Disclosure Act* and *Crime and Corruption Act*

- seek advice and support for the management of complex or serious matters from areas such as Human Resources, Ethical Standards, Integrity Units, Workplace Health and Safety Representatives, legal advisors or equivalents
- promote and implement this policy in their work area and within their team
- promote a positive reporting culture, including supporting and encouraging bystanders (witnesses) to report any inappropriate behaviour
- ensure their team's sexual harassment training is up to date.

Senior leaders will:

- model the Code of Conduct and Public Sector values, including behaving in a way that promotes a safe, respectful, and inclusive workplace environment, free of unlawful sexual conduct
- provide and maintain safe and inclusive workplaces that protect the health and safety of employees
- support managers to take appropriate and proportionate action when responding to reports of alleged unlawful sexual conduct
- have a current Prevention and Response Plan for their accountability area developed by 1 March 2025 in consultation with managers, supervisors, and employees within their jurisdiction. The plan must include the risk management process and hierarchy of controls. This plan must be reviewed every time a person makes a complaint, or if the health and safety committee or health and safety representative requests a review
- take all reasonable action to identify the risk of unlawful sexual conduct associated with Queensland Health's operations and workforce
- consult with employees about unlawful sexual conduct related health and safety issues such as through the Workplace Health and Safety Committee or Consultative Forum
- use appropriate resources, control measures (for example, training) and processes to address unlawful sexual conduct risks
- ensure employees who report alleged unlawful sexual conduct are advised of their rights and obligations under the *Public Interest Disclosures Act* and *Crime and Corruption Act*
- use person-centred practices and prioritise the care and support of impacted employees in Queensland Health's approach to resolving unlawful sexual conduct issues
- fulfill the responsibilities required under section 21 of the *Public Sector Act 2022* relating to supporting a reframed relationship with Aboriginal peoples and Torres Strait Islander peoples when taking action to prevent and respond to unlawful sexual conduct in accordance with this policy. This includes but is not limited to:
 - promoting cultural safety and cultural capability at all levels of the public sector
 - working in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, when making decisions directly affecting them
 - promoting a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples

- supporting the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.
- recognise culturally significant connections for Aboriginal peoples and Torres Strait Islander peoples involved with a concern, complaint or grievance about unlawful sexual conduct
- ensure that a person (including any support person) involved in the response to, management of a concern, complaint or grievance about unlawful sexual conduct, that involves Aboriginal peoples and Torres Strait Islander peoples or culturally and linguistically diverse people, is culturally capable.
- ensure support and communication is culturally appropriate during complaint processes
- consider any elements of conscious or unconscious bias that may impact Aboriginal and Torres Strait people raising concerns about unlawful sexual conduct and complaint processes, including the use of mitigation strategies
- consider the cultural rights of Aboriginal peoples and Torres Strait Islander peoples under section 28 of the *Human Rights Act 2019*.

Human resources and/or ethical standards practitioners must:

- support impacted employees through a trauma-informed and person-centred approach, and ensure employees have had input into their preferred way for issues to be managed
- promote this policy and resources to support:
 - employees who report alleged sexual harassment (the complainant)
 - managers or supervisors managing sexual harassment matters
 - employees who have been named in an allegation of sexual harassment (the respondent)
- provide guidance and support to managers or supervisors managing sexual harassment matters on options to resolve issues
- ensure appropriate internal and external support avenues are available to employees:
 - who report alleged sexual harassment
 - identified as respondents to alleged sexual harassment
- ensure that any response to sexual harassment is managed in line with agency policies and employment directives.

6 Support options

As an organisation Queensland Health is committed to supporting employees who have reported alleged sexual harassment. This includes informing complainants of their rights and options to report concerns formally or informally with the agency, or through external pathways as outlined later in this document.

Internal and external support and advisory services are available for employees who experience, witness or are the subject of allegations of sexual harassment or other unlawful sexual conduct.

Where an employee is the subject of an unlawful sexual conduct allegation, the employee will be provided with procedural fairness throughout any process or investigation of the reported allegation. The employee will also have access to support options including access to advice on their rights, the employee assistance service and union representation, if applicable.

Support and regular communication will be provided through any resolution or investigation process.

Agency contacts

The Queensland Health Sexual Harassment Contact Officer (SHCO) Network is available throughout the state on a face to face or online basis. SHCOs may provide an employee with information about support services and reporting pathways. Their contact details are on QHEPS.

An employee may also seek assistance from a union representative, human resources officer or health and safety representative to lodge or respond to a complaint and/ or provide information on reporting pathways.

Counselling support services

Queensland Health offers an Employee Assistance Service (EAS) to all employees and their immediate family members. The EAS offers free and confidential support services through face-to-face, telephone and online counselling and is available 24 hours a day, seven days a week. Refer to QHEPS for the right contact number for your area.

EAS can also provide specific advice to managers about how best to support employees who have experienced sexual harassment, through the manager assist service.

The Australian Human Rights Commission (AHRC) also lists a range of external agencies on their Seeking Support Factsheet which may be able to provide advice, information and support to persons who have experienced or witnessed unlawful sexual conduct.

7 Confidentiality and disclosure

The details surrounding sexual harassment issues will be kept confidential. Only those who are involved in resolving or preventing further incidents should be made aware of the complaint and response.

On occasion, a complainant may ask to limit who is aware of the information about alleged sexual harassment. This may not always be possible, particularly when:

- the issues are serious
- the alleged conduct involves a senior leader in the organisation
- there are safety risks to others
- Queensland Health has a legislated obligation to report the alleged sexual harassment to another entity (e.g., suspected corrupt conduct to the Crime and Corruption Commission (CCC)).

8 Outcome advice

Queensland Health recognises the positive impact on complainants when the outcome of grievance processes is known.

The directive requires Queensland Health to advise a complainant of the outcome of a grievance process.

Complainants can request advice on the outcome of management action taken and the outcome of any discipline process arising from the grievance. Queensland Health will provide this information and the complainant must keep it confidential. However, the complainant may disclose it:

- if required by law
- to an immediate family member, support person, union representative or confidential counsellor, provided that any such person agrees to keep the information confidential.

Definitions

Unless otherwise defined, the terms in this policy have the meaning set out in the *Public Sector Act 2022*.

Term	Definition
Accountability area	Department of Health divisions and each Hospital and Health Service (HHS) are accountability areas within Queensland Health (as defined in the Queensland Health <i>Health, safety and wellbeing policy W1 (QH-POL-401)</i> and <i>Health, safety and wellbeing governance standard (QH-IMP-401-6)</i>).

Term	Definition
<p>Conduct creating a workplace environment that is hostile on the grounds of sex and gender identity</p>	<p>Workplace environments may be hostile and intimidating to people of a particular sex, even if behaviour is not specifically directed at them or any person. A person can engage in conduct that creates a hostile workplace environment for someone else, even if they did not intend to do so. This is because general actions can contribute to a workplace culture that makes people feel degraded, humiliated or offended in ways that are associated with their sex.</p> <p>Hostile workplace cultures foster everyday sexism and make it more difficult for workers to speak up and report unlawful sexual conduct when it occurs.</p> <p>Types of behaviours that might create a hostile workplace environment include:</p> <ul style="list-style-type: none"> • conduct involving gendered stereotypes, such as expecting only women to tidy a room after a meeting • making demeaning comments about anatomical attributes or topics such as pregnancy, menstruation or menopause • the display or circulation of obscene, sexist, pornographic or sexual photos, materials, posters or gifts • making sexist, derogatory, suggestive or sexual comments, jokes or banter • sexist, derogatory, suggestive or sexual emails, phone calls, text messages or online interactions, including the use of emojis with sexual connotations • Requesting a person to engage in degrading conduct based on their sex. <p>A person may experience a hostile workplace environment from conduct that they encounter, hear or witness while in their workplace. A person who experiences a hostile workplace does not always need to be present during the relevant conduct. The conduct may still be unlawful if a person is made aware of the relevant conduct that occurred at a workplace.</p>
<p>Corrupt conduct</p>	<p>In the context of sexual harassment, section 15 of the <i>Crime and Corruption Act 2001</i> defines corrupt conduct as conduct by anyone that adversely affects the performance of functions or exercise of powers of an individual or department and results in the performance of functions or the exercise of power that:</p> <ul style="list-style-type: none"> • is not honest or impartial • knowingly or recklessly breaches trust placed in a person holding an appointment • involves a misuse of information or material acquired in connection with work. • If proved, it would be a criminal offence, or a result in a disciplinary breach providing reasonable grounds for terminating a person's services. <p>Corrupt conduct also involves specific types of conduct that impairs, or could impair, public confidence in public administration.</p> <p>For example, sexual harassment committed by a senior departmental official may be corrupt conduct if it adversely affects the exercise of powers of the individual, knowingly breaches trust placed in a person holding an appointment and is a criminal offence.</p>

Term	Definition
Gender equality	All actions to implement the positive duty should contribute to achieving gender equality – where people of all genders have equal rights, rewards, opportunities and resources. Achieving gender equality involves taking action beyond ‘equal treatment’ to achieve ‘equal outcomes’, also known as substantive gender equality. Gender inequality is both an underlying cause and consequence of unlawful sexual conduct.
Person-centred	<p>A person-centred approach to workplace sexual harassment means placing people - the targets of sexual harassment - at the centre of any response to sexual harassment. It is about listening to, empowering and supporting people who are impacted by sexual harassment (https://www.respectatwork.gov.au/).</p> <p>Person-centred approaches ensure that workplace systems, policies and practices affirm the safety and dignity of the people who encounter them and support healing.</p> <p>Being person-centred does not always mean doing what a person requests, but it does mean genuinely considering their wishes and the impact that decisions may have on them.</p>
Public Interest Disclosure	<p>Chapter 2 of the <i>Public Interest Disclosure Act 2010</i> (PID Act) defines a public interest disclosure as the disclosure, in the public interest, of information about wrongdoing in the public sector.</p> <ul style="list-style-type: none"> • This can include information about: • a substantial and specific danger to the health and safety of a person with a disability • an offence or contravention of legislation that would cause a substantial and specific danger to the environment • reprisal because of a belief that a person has made or intends to make a public interest disclosure • corrupt conduct • maladministration that adversely affects a person’s interest in a substantial and specific way • a substantial and specific danger to public health or safety • a substantial and specific danger to the environment.
Psychosocial hazard	<p>A hazard that arises from, or relates to, the design or management of work, a work environment, plant at a workplace or workplace interactions and behaviours and may cause psychological harm, whether or not the hazard may also cause physical harm.</p> <p>Sexual harassment and other unlawful sexual conduct is a psychosocial hazard under the Managing psychosocial hazards in the workplace Code of Practice 2022 and WHS legislation.</p>
Queensland Health	Queensland Health includes all divisions of the Department of Health and all Hospital and Health Services.

Term	Definition
Senior leader	<p>A senior leader, also known as an executive leader, is the most senior person of each accountability area and can include persons reporting to that position (as defined in the Queensland Health <i>Health, safety and wellbeing policy W1 (QH-POL-401)</i>, WHS legislation and <i>Guidelines for complying with the positive duty under the Sex Discrimination Act 1984 (Cth)</i>).</p>
Sex-based harassment	<p>Section 28AA (1) of the <i>Sex Discrimination Act 1984 (Cth)</i> states that a person harasses another person (the person harassed) on the ground of sex if:</p> <p>(a) by reason of:</p> <ul style="list-style-type: none"> (i) the sex of the person harassed; or (ii) a characteristic that relates generally to persons of the sex of the person harassed; or (iii) a characteristic that is generally attributed to persons of the sex of the person harassed; or (iv) the person engages in unwelcome conduct of a demeaning nature in relation to the person harassed; and <p>(a) the person does so in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.</p> <p>Sex-based and gender-based harassment can happen when a person is degraded, put down or disrespected because of their sex or gender, or a characteristic generally associated with people of that sex or gender. Workplace cultures that foster sex-based and gender-based harassment and everyday sexism provide environments where sexual and sex-based and gender-based harassment can thrive.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • asking intrusive personal questions based on a person’s sex or gender (for example, inappropriate questions about menopause, menstruation, body characteristics or genitalia) • making inappropriate comments and jokes based on a person’s sex or gender • displaying images or making comments that are sexist or strongly prejudiced against a particular sex or gender • asking a person to engage in degrading conduct based on their sex or gender.

Term	Definition
Sex discrimination/ Sex-based harassment/ Gender-based harassment	<p>Section 28AA (1) of the <i>Sex Discrimination Act 1984</i> (Cth) states that a person harasses another person (the person harassed) on the ground of sex if:</p> <p>(a) by reason of:</p> <ul style="list-style-type: none"> (i) the sex of the person harassed; or (ii) a characteristic that relates generally to persons of the sex of the person harassed; or (iii) a characteristic that is generally attributed to persons of the sex of the person harassed; or (iv) the person engages in unwelcome conduct of a demeaning nature in relation to the person harassed; and <p>(b) the person does so in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • uninvited physical intimacy • uninvited sexual propositions • remarks with sexual meaning. <p>Sex or gender-based harassment means the harassment of a person on the basis of the person's sex or gender, by unwelcome conduct of a demeaning nature, with the intention of offending, humiliating the person or in circumstances where a reasonable person would have anticipated the person would be offended, humiliated or intimidated by the conduct (<i>Work Health and Safety Regulation 2011</i>).</p> <p>Workplace cultures that foster sex or gender-based harassment and everyday sexism provide environments where this unlawful behaviour can thrive.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • asking intrusive personal questions based on a person's sex or gender (for example, inappropriate questions about menopause, menstruation, body characteristics or genitalia) • making inappropriate comments and jokes based on a person's sex or gender • displaying images or making comments that are sexist or strongly prejudiced against a particular sex or gender <p>asking a person to engage in degrading conduct based on their sex or gender.</p>

Term	Definition
Third party	<p>In this context, third parties can include, but are not limited to:</p> <ul style="list-style-type: none"> • customers, clients and patrons (for example, in industries such as hospitality, retail, transport and public services) • clients (for example, in the professional services industry and in personal training) • patients, clients, residents, service users and visitors (in industries such as healthcare, disability and aged care, as well as community and public services) • students in the context of an educational institution, such as a university, TAFE or school and other visitors such as parents • suppliers and visitors • members of the public. <p>The positive duty requires Queensland Health to take reasonable and proportionate measures to eliminate, as far as possible, unlawful sexual conduct being engaged in by third parties <i>towards</i> employees in connection with work.</p> <p>This aspect of the positive duty does not apply to discrimination on the ground of sex. In this context, third parties can include, but are not limited to:</p> <ul style="list-style-type: none"> • customers, clients and patrons (for example, in industries such as hospitality, retail, transport and public services) • clients (for example, in the professional services industry and in personal training) • patients, clients, residents, service users and visitors (in industries such as healthcare, disability and aged care, as well as community and public services) • students in the context of an educational institution, such as a university, TAFE or school and other visitors such as parents • suppliers and visitors • members of the public. <p>For example, a care worker being harassed by a patient when on home visit or an employee being harassed by a contractor sharing a workplace.</p>

Term	Definition
Trauma-informed	<p>Trauma-informed approaches require that workplace processes build in an understanding of trauma and how it affects people and avoid causing further harm. They prioritise safety, choice and empowerment and also recognise the impact of trauma on a person’s ability to recall information. Processes should prevent harm and promote repair and recovery to the greatest extent possible.</p> <p>Trauma-informed approaches ensure that workplace systems, policies and practices affirm the safety and dignity of the people who encounter them and support healing.</p> <p>Being trauma-informed does not always mean doing what a person requests, but it does mean genuinely considering their wishes and the impact that decisions may have on them.</p> <p>Some key principles to consider in providing trauma informed support include, but are not limited to:</p> <p>Safety – employees should be made to feel physically and psychologically safe. Personal interactions should be conducted in a way that promotes a sense of safety and do not trigger further trauma.</p> <p>Trust and transparency – decisions should be made openly and transparently and with the goal of building trust. Clear expectations of what support is available to employees should be communicated.</p> <p>Collaboration – power differences between employees and managers should be levelled to support shared decision making and healing.</p> <p>Empowerment – employee’s strengths should be built upon and validated, including a belief in resilience and the ability to heal from trauma.</p> <p>Choice – every employee’s experiences are unique and managing them requires an individual approach.</p> <p>(Trauma informed practice, Mental Health Australia).</p>

Term	Definition
Victimisation	<p>People should be able to stand up for their legal rights, or help others to do so, without being threatened or treated badly in return.</p> <p>Victimisation involves retaliatory action, or the threat of such action, against a person because they have asserted, or intend to assert, their rights under the law, or because another person thinks that they have. A person can also be victimised if they help someone else to assert their rights (for example, by being a witness).</p> <p>Victimisation happens when a person is treated badly or is subjected to a detriment. People are often victimised after they call out or make a report about experiencing or witnessing unlawful conduct.</p> <p>Examples of behaviour that could amount to victimisation include:</p> <ul style="list-style-type: none"> • threatening to demote someone, or denying them a promotion because they made (or intend to make) a complaint of sex discrimination • excluding an employee in the workplace, or refusing their reasonable requests, because they appeared as a witness in support of a colleague who made a complaint of sex-based harassment • moving an employee who has made a complaint to another work location, or a non-client-facing role, without first checking if they want to move. <p>The positive duty extends to acts of victimisation that relate to complaints, proceedings, assertions or allegations about the other unlawful sexual conduct covered by the positive duty.</p>
Zero tolerance	<p>A zero tolerance stance does not necessarily mean that everyone accused of sexual harassment will be dismissed from their employment, but rather than Queensland Health will always take appropriate and proportionate steps to prevent harm from occurring in the first place and that there will be proportional outcomes for this conduct.</p>

History

Date	Policy change
20 December 2024	<p>Policy:</p> <ul style="list-style-type: none"> • amended to include the legislated positive duty • amended to update references and naming conventions • amended to include reframing the relationship with Aboriginal and Torres Strait Islander peoples principles • amended to include requirement to consider psychosocial hazards and manage risks (Section 1 – Principles) • amended to include alignment to Directive 12/23 Preventing and responding to workplace sexual harassment • amended to include the positive duty under the Sex Discrimination Act 1984 (Cth).

Date	Policy change
July 2020	Policy: <ul style="list-style-type: none"> • formatted as part of the HR Policy review • amended to update references and naming conventions • application amended as a result of changes to the Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019.
January 2018	Policy: <ul style="list-style-type: none"> • formatted as part of the HR Policy review • amended to update references, naming conventions and definitions • amended to reflect changes of the Industrial Relations Act.
November 2016	Policy: <ul style="list-style-type: none"> • formatted as part of the HR Policy review • amended to update references, naming conventions and definitions • application extended to other persons who exercise power or control resources for or on behalf of the Department of Health including contractors, consultants, students and volunteers • content regarding workplace harassment removed as the <i>Workplace Harassment</i> HR Policy E13 (April 2010 version) was reinstated as a result of the restoration of conditions under the Industrial Relations Act 1999 effective 11 June 2015 • included requirements for managers and supervisors when they receive a complaint from an employee who has experienced or witnessed sexual harassment in the workplace (Attachment One) • included actions employees can take to address sexual harassment (Attachment One).
May 2014	Policy amended to: <ul style="list-style-type: none"> • update reference to Code of Practice • update definition of workplace harassment (including definitions of 'unreasonable behaviour' and 'repeated behaviour') to align to definition in Guide for Preventing and Responding to Workplace Bullying
January 2014	Policy formatted as part of the HR Policy Simplification project. Policy amended to: <ul style="list-style-type: none"> • update title from 'Sexual Harassment' to 'Workplace Harassment and Sexual Harassment' • incorporate provisions of Workplace Harassment HR Policy E13 • limit the application of the policy to Department of Health employees • remove 'possible causes of workplace harassment' and 'possible consequences of workplace harassment' sections • update definitions section • update references and naming conventions.

Date	Policy change
July 2008	Amended to remove Queensland Health Guidelines for Managers and Supervisors – Preventing and Resolving Sexual Harassment, which are not available.
April 2008	Developed as a result of HR Policy Framework consolidation.
Previous	IRM 3.15-5 Sexual Harassment

Attachment 1: Reporting procedure

There are internal and external avenues open to employees to report concerns about unlawful sexual conduct.

A complainant may choose to follow any of the options listed below and is not limited to one option. The complainant's preference about the most appropriate option or action to address the behaviour will depend on their individual circumstances. Within Queensland Health, the options available to report concerns of unlawful sexual conduct include:

- 1) Addressing the behaviour through self-management or local action
- 2) Making an individual employee grievance
- 3) External pathways.

1 Addressing the behaviour through self-management or local action

Self-management

If a complainant believes they are experiencing sexual harassment or have witnessed sexual harassment, and feels comfortable to do so, they may take steps to deal with the behaviour themselves. This may include talking directly to the other person, drawing attention to the specific behaviour, and asking the person to stop.

Where a complainant chooses to deal with the behaviour directly, the complainant should keep a record of what happened, when and where it happened, who was involved and anything else they believe may be important. This record will be relevant should the behaviour continue, and the employee proceeds with any of the options outlined below.

Local action

A complainant may seek the support of their manager or any other appropriate person within Queensland Health in dealing with the behaviour. This may include asking a person to be present during a conversation with the respondent, to facilitate the conversation, or asking them to speak with the other person on their behalf. A complainant may seek support from a senior manager rather than their direct manager if this is a more appropriate support option.

While the complainant may ask the manager to only deal with the behaviour through local action, managers have an obligation to deal with any wrongdoing they are made aware of. In some cases, further action may be required, even where the complainant has stated they do not want any further action to be taken. This may be the case in situations where the behaviour can be classified as a work health and safety risk or requires disciplinary action to be taken. The manager will work with the complainant to take their views into account and keep communicating with them if further action needs to be taken.

2 Making an individual employee grievance

Where a complainant isn't comfortable dealing with the behaviour directly or with the assistance of another person, they may choose to make an individual employee grievance.

A complainant who makes a grievance, will be given the opportunity to identify the resolution they consider appropriate. Queensland Health will consider this in deciding how to best manage and resolve the concerns. This may involve less formal outcomes, such as the other person being spoken to about stopping the behaviour or other appropriate management action. Where possible, Queensland Health will explain its reasons if it does not handle or resolve the matter in the way the complainant requested.

As outlined in directive 12/23, a complainant who lodges an individual employee grievance for sexual harassment matters, writes directly to the chief executive or the relevant delegate of the department. **The complainant is not required to have attempted to resolve the matter in any way in the first instance.**

Queensland Health will consult with the complainant on how they wish the matter to be resolved, including whether their complaint could constitute a public interest disclosure under the *Public Interest Disclosure Act 2010* (Qld) or corrupt conduct under the *Crime and Corruption Act 2001* (Qld) (CC Act) and **provide a decision about the grievance within 14 days of receiving it unless the timeframe has been extended by mutual agreement between the complainant and Queensland Health.** It must be noted however that if the matter is assessed as corrupt conduct, it will be managed pursuant to the CC Act and associated timeframes, rather than the Queensland Health individual employee grievance procedure.

3 External pathways

As outlined by the directive, a complainant may also choose to lodge concerns about sexual harassment to external organisations.

An employee may choose to:

- lodge a grievance under the Individual employee grievance (IEG) directive.
- lodge a grievance under a modern award.
- lodge an industrial dispute with the Queensland Industrial Relations Commission (QIRC).
- lodge a complaint to the Queensland Human Rights Commission (QHRC) in relation to alleged sexual harassment (within 12 months of the alleged conduct occurring) under chapter 7, part 1 of the Anti Discrimination Act, and also, apply to the QIRC for an order, if required, to protect an employee's interests by prohibiting a person from actions that might prejudice:
 - the investigation or conciliation of a complaint
 - an order that the tribunal might make after a hearing.
- refer a complaint from the QHRC to the QIRC if it is unresolved by the QHRC, or unresolved after 6 months of lodging it with the QHRC.

4 How Queensland Health will respond

When an employee reports alleged unlawful sexual conduct, or when Queensland Health becomes aware that unlawful sexual conduct has occurred, Queensland Health will ensure the employee is supported and their wishes are considered when deciding about how to manage the issue. Queensland Health will respect the employee's wishes and best interests as far as possible, however it may not solely determine the organisation's response or the outcome.

Reported allegations of unlawful sexual conduct will be taken seriously, with a focus on supporting the complainant. Where an employee reports they have experienced or witnessed alleged unlawful sexual conduct, the employee has the right to be appropriately consulted about their workplace options and not be relocated from their usual workplace, unless the employee requests to be relocated, or, after all other options have been explored, relocation is the only acceptable means of ensuring the safety of the employee.

Throughout the course of resolving the matter, Queensland Health will communicate regularly with the complainant and their union, if they advise they are represented by a union.

Possible outcomes

Where matters cannot be dealt with informally, Queensland Health will consider the appropriate pathway which may include a formal investigation or possible discipline action.

5 Consequences for responsible employees

Where allegations of unlawful sexual conduct are substantiated, the delegate will take action that is consistent and proportionate to the allegations that are substantiated.

The possible outcomes will also depend on whether an informal resolution or a formal grievance was preferred by the complainant. The Public Sector Commission Directive 12/23 lists possible outcomes for responsible employees, including action that may result if serious allegations of unlawful sexual conduct are substantiated.