

Small business handbook

Resources for preventing
discrimination and harassment
and building an inclusive workplace



Queensland
Human Rights
Commission

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This publication is available in electronic format on the Queensland Human Rights Commission's website at: www.qhrc.qld.gov.au.

This booklet is provided to assist you, but is a guide only.

The information contained is current at the time of publication and refers to Queensland state legislation only. If you are unsure how the information applies to your situation you can call our information line on 1300 130 670 or seek independent legal advice.

Contents

Introduction.....	4
What's in it for me?	5
Understanding the law: discrimination	6
Understanding the law: sexual harassment	8
Understanding the law: victimisation	9
Understanding the law: vilification	9
Understanding the law: bullying.....	9
Your rights and responsibilities	10
Tips for hiring	11
On the job	12
Protecting your business	13
Exemptions.....	15
Best practice.....	17
DOs and DON'Ts of managing complaints	18
20 common questions answered for small business	19
Sample policies	26
Sample policy: Discrimination & sexual harassment.....	27
Sample policy: Complaint procedure.....	32
About the QHRC	34

Introduction

In Queensland, the *Anti-Discrimination Act 1991* (the Act) protects people from discrimination, sexual harassment and other objectionable conduct in their daily lives, including when at work and as a customer.

The Queensland Human Rights Commission (QHRC) has a role to resolve complaints made under the Act as well as providing training and information to business, government and the community.

The material contained in this resource provides small business with a guide to preventing and managing discrimination and sexual harassment, and for promoting equality and diversity in areas such as recruitment, training and management. Policies included may be tailored to reflect your own workplace, organisational structure and industry.

Where to go for help

The Queensland Human Rights Commission provides free tools and information about Queensland anti-discrimination law.

Visit www.qhrc.qld.gov.au or phone our information line on 1300 130 670.

What's in it for me?

A complaint of discrimination or sexual harassment against a business can have major negative consequences—financial, legal and reputation.

On the other hand, implementing non-discriminatory practices makes good business sense.

If your business has non-discriminatory and flexible work practices, you will attract and keep skilled and committed workers and retain their skills in the business.

When morale, motivation and job satisfaction are high, your business will be more productive and profitable.

Having good workers means good service delivery and happy customers who keep coming back. Diversity in the workplace is about a mix of workers of different ages, sexes, races etc. which is more representative of the community.

Benefits of a non-discriminatory workplace

- reduced staff turnover;
- minimised legal liability and costs;
- higher staff morale;
- less conflict and disruption;
- better reputation and public image;
- more customers and diverse markets;
- better client service delivery;
- more positive workplace relations; and
- increased competitiveness & creativity.

Diversity and inclusion make good business sense.

Understanding the law: discrimination

The law which covers discrimination and sexual harassment in Queensland is the *Anti-Discrimination Act 1991*. It is unlawful to discriminate against people because of certain personal characteristics (attributes) or because they belong to a particular group identified by an attribute.

In Queensland it is unlawful to discriminate against someone because of:

- race;
- impairment (disability);
- age;
- sex;
- family responsibilities;
- pregnancy;
- sexuality;
- religious belief or religious activity;
- relationship status;
- parental status;
- breastfeeding;
- gender identity;
- trade union activity;
- political belief or activity;
- being a lawful sex worker; or
- association with anyone who has any of the above attributes.

For discrimination to be unlawful it must happen in an area of public life listed in the Act. Those areas of particular relevance for small businesses are:

- work—including recruitment, conditions of work and termination;
- supplying goods and services—including access to facilities or services;
- providing accommodation; and
- buying and selling property.

Discrimination examples

After Dominic had been working well as a chef for six months his boss discovered that he was on medication for depression. Dominic's boss sacked him after learning of his impairment. Dominic could make a complaint of direct discrimination to the Queensland Human Rights Commission.

A property manager refused to rent a unit to a single parent saying they 'really wanted a couple', despite the person demonstrating a good income and capacity to pay the rent.

What is discrimination?

Direct discrimination happens when a person is treated worse than others in similar circumstances, because of one or more of their attributes.

For example:

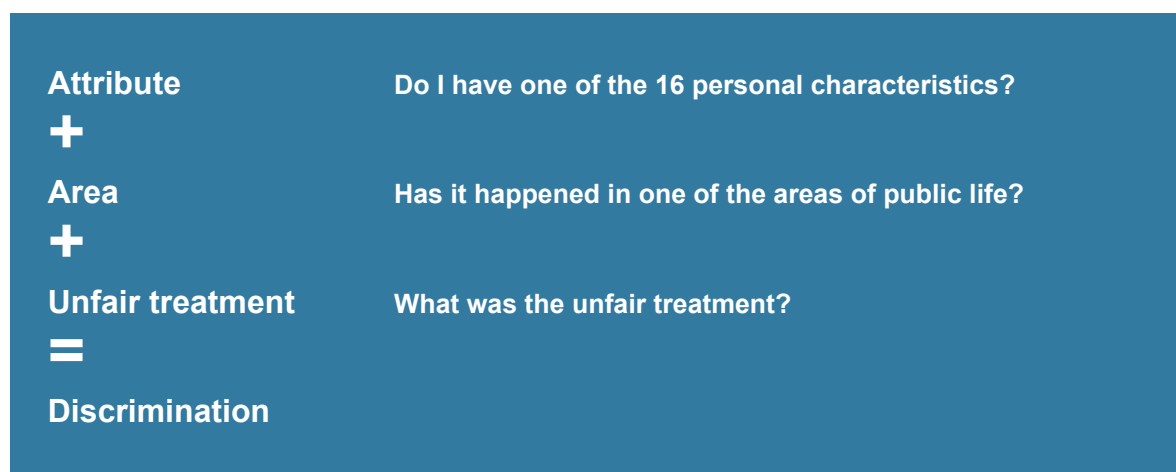
- deciding a person should not get a job because of their age, sex, race, sexuality etc;
- making offensive jokes about another worker's racial or ethnic background, sex, sexuality, age or impairment;
- searching only Aboriginal customers' bags when they exit the store.

Indirect discrimination happens when a requirement disadvantages a person because they are unable (or less able) to comply with the requirement because of an attribute, and the requirement is not reasonable in the circumstances. The fact that the disadvantage was not intended is not an excuse.

For example:

- a requirement to be able to walk up a large number of stairs to access a business would disadvantage a person with mobility impairment. Whether it is discrimination will depend on whether it is reasonable in the circumstances.
- a requirement for staff to work on Saturdays imposed by a small electrical retailer could not be complied with by a worker of the Seventh Day Adventist faith. Whether it is discrimination will depend on whether it is reasonable in the circumstances.

Is it discrimination?



Understanding the law: sexual harassment

Sexual harassment is:

- unwelcome conduct;
- sexual in nature;
- in relation to a person; and
- done with the intention, or possibility, of offending, humiliating or intimidating the person.

Sexual harassment might not be intentional. It depends whether a reasonable person would have anticipated that the other person might be offended, humiliated or intimidated by the conduct.

Sexual harassment:

- does not have to be repeated;
- is unlawful anywhere, not just at work;
- can happen to, and be done by men or women.

Sexual harassment can take many forms:

- physical—pinching or touching in a sexual way;
- lewd gestures, leering or ogling;
- verbal—sexual propositions, comments, jokes or innuendo, repeated unwanted invitations;
- offensive sexual phone calls, text messages, emails or social media posts;
- sexual or pornographic images.

Sexual harassment is unlawful anywhere.

Sexual harassment examples

A male sales rep complained of sexual harassment by his female manager who made unwelcome sexual advances to him, brushed up against him and touched him on the genitals.

An accounts clerk received sexually explicit emails from another worker which she found offensive.

Understanding the law: victimisation

Employers and workers should remember that the Act also prohibits victimisation.

Victimisation happens when a person is treated badly because they:

- have complained about discrimination or sexual harassment;
- are involved in a complaint or investigation (eg. as a witness); or
- have refused to do something that would be discriminatory.

Victimisation examples

Jung, a garage mechanic made a complaint about racial discrimination to the Queensland Human Rights Commission. His boss told him that if he did not withdraw his complaint he would be sacked.

Michael, a nightclub security officer was told by his supervisor to refuse entry to any African patrons. He was dismissed when he refused to follow this direction.

Understanding the law: vilification

Vilification is a public act or statement that is capable of inciting others to hate a person or their group because of their race, religion, gender identity or sexuality. Vilification where a person or their property is threatened with physical harm is also a criminal offence.

Vilification can show up in a number of ways including through leaflets, speech, graffiti, websites, public abuse or media remarks.

Understanding the law: bullying

The word bullying is not used in anti-discrimination legislation. However, a complaint of discrimination can be made if bullying behaviour happens to a person because of an attribute. Sometimes bullying can be sexual harassment.

Bullying behaviour is not just one type of behaviour. It can involve abuse, violence, intimidation, ridicule, humiliation and making unreasonable demands. But it can also be less obvious and aimed at isolating a person from their colleagues, peers or friends.

Race bullying

An office worker who recently immigrated from Sri Lanka was always asked to stay behind to look after the office over lunch, and when there were work functions. Her co-worker said things like 'you wouldn't like it anyway ... you wouldn't fit in.'

Sexual harassment bullying

A woman refused the repeated advances of her manager, who then became vindictive and tried to get her dismissed, telling the business owner that her work was poor.

Your rights and responsibilities

Employers

Employers have the right to:

- appoint, manage and dismiss workers and to expect reasonable performance from them;
- determine the work to be done, set performance expectations, review performance and provide feedback to workers;
- require workers to comply with a code or standard of conduct, dress code and other policies;
- expect a standard of behavior from customers and clients and take action in the case of unacceptable behaviour.

Employers have a responsibility to:

- operate their business in a safe and non-discriminatory way for workers and customers;
- take all complaints seriously;
- respond quickly, effectively and without bias;
- take reasonable steps to prevent any objectionable behavior; and
- ensure employees are not victimised because they made or supported a complaint.

Employees

Employees have a right to:

- have their work performance judged on their skills, knowledge and ability;
- have a workplace free from discrimination, sexual harassment and victimisation; and
- make a complaint.

Employees have a responsibility to:

- not discriminate, sexually harass or victimise co-workers or clients; and
- comply with their employer's policies.

Employees are also expected to positively contribute to a non-discriminatory work culture.

Under Queensland anti-discrimination law, the term 'worker' includes full-time, part-time, casual, contract, commission, work experience and volunteer workers. Apprentices and workers undertaking occupational training are also covered.

Tips for hiring

The aim of recruitment is to employ the best person for the job. You should avoid stereotyped assumptions about which gender, age group or race would be best for the job.

Job descriptions

Decide what is genuinely required to do a particular job, including qualifications, skills, abilities, knowledge and experience. Develop a job description outlining the responsibilities of the position and list the tasks to be done.

Make your selection based on these criteria.

Job advertisements

Give a clear job description in the advertisement. References to gender, marital status, age, race, family, religion etc should be avoided.

Application forms and interviews

Generally, it is against the law to ask a worker questions, whether verbally or in writing, about any of their attributes (age, race etc) unless there is a good work-related reason to do so.

For example, you may need to know their age if you intend to pay youth wages.

At interview, ask comparable questions of all applicants and stick to questions that have a direct bearing on the applicant's ability to do the job.

In some circumstances it may be appropriate to ask questions about an applicant's physical ability to do the job, including pre-existing injuries and medical conditions. Using this information about an applicant in the recruitment process must be done in compliance with the *Anti-Discrimination Act 1991*. The fact that a person has an injury or medical condition is not sufficient to justify not hiring them.

For further guidance refer to the For employers section on the QHRC website (www.qhrc.qld.gov.au).

Recruitment example

When looking for a receptionist, avoid assumptions such as 'the best person for the job will be a young woman'. The job description might read as follows:

Receptionist:

1. demonstrated ability to deal with the public efficiently and pleasantly;
2. ability to use computer and other office equipment;
3. articulate phone manner; and
4. well-groomed appearance.

This description doesn't limit the job to any particular type of person, and you can ask questions against these criteria at interview.

On the job

Maternity/parental leave

It is unlawful to dismiss a worker (including a part-time or casual worker) because she is pregnant.

Tips for supporting pregnant workers:

- Advise pregnant workers of their rights and responsibilities in relation to maternity and sick leave.
- Do not reduce a worker's terms and conditions or deny other benefits because of pregnancy.
- Make reasonable adjustments to the workplace to accommodate the normal effects of pregnancy.
- Keep in touch with the worker when she is on leave about work matters that have an impact on her.
- Advise and consult a worker on maternity leave if the business is undergoing a restructure.
- Offer redundancy arrangements to a worker on maternity leave in the same way you offer it to other workers. Just because a worker is pregnant or on maternity leave does not mean she will want to be made redundant.

Flexible work arrangements

Providing workers with flexibility in their work arrangements is the best way to optimize their performance and productivity. Common reasons for requesting flexible work arrangements include: parental and family responsibilities, a medical condition or accident, and religious or cultural commitments.

Depending on the nature of your business, adjustments may be able to be made, but in some cases it may not be possible.

Dismissal and redundancy

An employer may dismiss or retrench an employee if the decision is based on reasons other than pregnancy or family responsibilities such as:

- genuine financial reasons
- poor or inadequate work performance; or
- serious or willful misconduct
- and the employer complies with the requirements of unfair dismissal laws.

Retirement

A person must not be required to cease work upon reaching a certain age.

Protecting your business

Vicarious liability

As an employer, you may be held responsible for how your staff treat each other and your customers. This is known as vicarious liability, which in some cases may involve you paying out compensation, because of behaviour or actions of an employee.

Vicarious liability also applies to work related activities including functions, conferences and office parties.

You cannot avoid vicarious liability simply because you were unaware of what was going on. In practice, vicarious liability means that a complaint against an individual may also include their employer.

Employers have a legal obligation to take reasonable steps to prevent unlawful behaviour by staff.

Small businesses not exempt

Small and family businesses may find it difficult to put satisfactory policies and complaint procedures in place. However, it is often small businesses that have more potential for complaints, in particular sexual harassment complaints because of the close and sometimes complicated relationships between employers and employees.

Anti-discrimination law does not distinguish between large and small employers. Therefore it is recommended that even very small businesses have policies outlining appropriate behaviours and a procedure to deal with any complaints, and communicate them to all staff.

Small business owners can nominate themselves or another employee as a discrimination and sexual harassment complaints contact person, also known as a contact officer. Training and more information is available about this from the QHRC.

You can protect your business by showing that you take reasonable steps to prevent unlawful behaviour by your staff.

Taking reasonable steps

If a complaint is made against you or your business you may need to demonstrate the steps you have taken to prevent discrimination and harassment.

Taking reasonable steps means taking active steps to reasonably prevent discrimination and harassment from happening. What is reasonable for a large corporation may not be reasonable for a small business.

Here are some suggestions for small business:

Policy

- Have a policy on discrimination and sexual harassment and communicate it to all staff.
- Ensure the policy is written in plain English and is understood by all staff.
- Tell staff how they can easily access the policy.
- Reinforce the policy whenever possible—at staff meetings, through emails, on noticeboards.
- Distribute QHRC brochures to staff and display posters with anti-discrimination messages in the workplace.

A sample anti-discrimination and sexual harassment policy can be found at the back of this handbook.

Training

- Provide discrimination training for all staff.
- Access QHRC online training.
- Raise awareness by providing resources in the workplace if formal training is not possible.

Complaint process

- Have a process for dealing with complaints, communicate it effectively and follow it.
- Make sure the process is timely, fair and impartial, confidential and without repercussions.
- Take all complaints seriously and deal with them in line with the complaint process.

A sample complaint process can be found at the back of this handbook.

Consider any additional steps that you can do to inform staff, prevent and manage discrimination in the workplace. To decide what steps are reasonable for you, it may help to consider your:

- resources available
- nature of the industry
- working hours and level of supervision
- workplace culture and history of complaints
- working or live-in arrangements

Exemptions

Anti-discrimination legislation allows for exceptions—called ‘exemptions’—which recognise that in some circumstances discrimination can be lawful, provided it occurs for specific reasons.

The exemptions most relevant to small business are:

Genuine occupational requirement

In some limited circumstances you may impose a genuine occupational requirement based on an attribute (such as sex, race etc) for a particular job. This means that having a particular attribute is essential to the performance of the core duties of the job. For example:

A shop advertised for a female lingerie fitter. The job involved measuring and fitting undergarments for female customers. Because of the sensitive and private nature of the work, being a female was considered a genuine occupational requirement.

To determine if the requirement is a genuine occupational requirement, you must consider whether the position would be essentially the same without the requirement.

Beware of making stereotyped assumptions and consider each instance on a case by case basis. For example:

A gym wanted to advertise for an instructor under the age of 35. However, when they considered what was genuinely necessary to do the job, they found that it was more about fitness, presentation, communication and ability to motivate clients—and not age. Age in this case was not a genuine occupational requirement.

Workplace health and safety

You may do an act that is reasonably necessary to protect the health and safety of people at a place of work. This applies to protecting a worker or other workers. For example:

A cattery refused to give a woman who worked as an animal handler any more shifts when she advised that she was pregnant. The business was putting in place a measure to protect the health and safety of that worker. The woman was not immune to a disease carried by cats which can

Welfare measures

You may do an act to benefit the members of a group of people with an attribute for whose welfare the Act was designed. For example:

A pensioner discount day where prices are discounted only for pensioners is an example of a welfare measure.

Youth wages

You may advertise for workers under 21 years of age and pay them according to their age under the relevant award.

Protecting public health

You may do an act that is reasonably necessary to protect public health. But be sure to investigate that the public health risk is genuine and that routine hygiene would not be sufficient to protect against it. For example:

A childcare centre which excludes children from attending the centre when they have a contagious medical condition is a measure taken to protect public health.

Single sex employment

If your workers need to live in accommodation that you supply you can employ people of one sex, if it would be an unjustifiable hardship to you to supply separate men's and women's sleeping accommodation.

The existence of an exemption does not mean that complaints cannot be made against you or your business. Exemptions can be raised when you respond to a complaint of discrimination.

The onus is on you to prove on the balance of probabilities that the exemption applies in the particular circumstances of the complaint.

You should always seek legal advice about whether an exemption would apply to your situation before relying on one of these exemptions.

For more detailed information about exemptions refer to the QHRC website: www.qhrc.qld.gov.au.

Best practice

Use the following best practice tips to ensure you are taking all reasonable steps to protect your business from complaints of discrimination and sexual harassment:

Policies and procedures: write it down

- Create a clear anti-discrimination and sexual harassment policy.
- Review the policy regularly to ensure it complies with current legislation and addresses the needs of your workplace. You could incorporate this into your annual business planning and review process so it's not overlooked.
- Ensure all staff have access to your policy.
- Have a clearly documented complaints procedure so that your employees know how to make a complaint.

Information and training: talk about it

- Talk to your employees about discrimination and sexual harassment. Make sure they know what it is and that it is against the law.
- Make it clear that discrimination and sexual harassment are not tolerated in your workplace.
- Tell new employees as part of their induction and remind all employees at regular intervals.
- Let employees know that disciplinary action will be taken if there are breaches of policy.
- Provide regular, ongoing training on discrimination and sexual harassment. QHRC can deliver this training in your workplace.
- Advise employees to complain to the business manager/owner or to QHRC if discrimination or sexual harassment occurs.

Action: do it

- Keep records of employee inductions and ongoing training attendance.
- Ensure procedures are understood and followed.
- Appoint workplace contact officers to provide information and assistance to employees.
- Keep written records of all employee concerns, complaints and requests.
- Provide assistance for all parties to a complaint.

Sample policies are included at the back of this handbook. Use this as a basis for your workplace policy and amend it to suit your needs.

Businesses in a particular industry may consider collaborating to write a joint policy with their industry association's help.

DOs and DON'Ts of managing complaints

DOs

- Take ALL complaints seriously .
- Advise the person making the complaint of their rights and inform them of available options such as support, counselling etc.
- Explain the complaints procedure: try to find out what action they want to take.
- Act quickly.
- Document the complaint and progress/outcome; keep records secure and confidential.
- Remain impartial and do not prejudge the situation.
- Ensure the behaviour stops.
- Consider the training/development needs of staff.

DON'Ts

- Let the behaviour continue.
- Breach confidentiality.
- Make any assumptions about the validity of the complaint before it has been investigated.
- Assume the best option is to transfer someone.
- Leave the complainant in a dangerous or stressful situation.
- Tell the person making the complaint to ignore it.
- Delay action.

Staff should have a confidential means of making a complaint or seeking support.

There are two sides to every story so be thorough with your investigations.

20 common questions answered for small business

My employees work in shifts. How do I organise the roster so that everyone is treated fairly?

One of the best ways of making sure everyone is treated fairly is to give your team the responsibility for devising (or at least helping to devise) their own roster. Tell your employees why you are asking them to help and explain how the roster system affects the business. Give them some idea about how you would like the system to work and what the business will gain from it.

You should have the final say on the roster but the chances are that your team will be able to agree among themselves a way of working that suits you and them. For example, some employees may prefer to work late shifts to fit in with their partner's working arrangements and childcare needs; some may prefer to work early shifts to free up the rest of the day for other interests, and others may wish to work fixed shifts.

Once the roster has been agreed, remember to check back with your team every so often to make sure it is still working for them and for the business. This process will give your team some involvement with the business and their own way of working, and in return you'll earn their loyalty and commitment to making the scheme work.

One of my employees has asked to take four weeks' consecutive leave as she is getting married. As a small business, I've made it known that I don't allow people to take such a large amount of time off all in one block. Would it be fair on the rest of my team to make an exception for this one employee?

You should consider each request on a case-by-case basis, rather than having a blanket ban. During a quiet time, it might suit your business to allow the request providing there is adequate cover. Explain to your employees that the underlying rationale is determined by the needs of the business, which could mean during a busy period it may not be possible to grant a request.

At the moment we have urgent work that means we need people to work on Sundays. Some of my employees say they need to attend church on Sundays – am I allowed to make them come to work?

This depends on your employees' contract of employment. If the contract doesn't require your employees to work on Sundays, or allow you to require them on Sundays, then the answer is no.

If you demand that your employees come into work when there could be another way around the problem, you could face a complaint of religious discrimination. Whatever decision you make, be open and transparent, and show your employees that you have done your best to accommodate their situation.

Before you decide, you should explore the following options:

- See if the work could be done on a different day of the week.
- Explain the situation to your employees. They may agree to work for a limited number of hours on Sunday before or after attending church, or they might agree to working on Sundays for a set number of weeks.
- Negotiate with other employees – could any other members of staff cover on Sundays?

Business is slow and I need to reduce the number of hours my employees work. How do I choose whose hours to reduce?

However you go about choosing whose hours to cut, it's important to be open and honest with your employees so they understand why you need to reduce their hours and how it will affect them.

Firstly, talk to your staff. Teams will often willingly share out a reduction in hours if it means that people can keep their jobs in difficult times.

Ask for volunteers. Some employees may be willing to have their hours reduced or take a pay cut instead of redundancy or the business closing. This is an approach many businesses have taken in the downturn.

Try to give your employees an idea of how long it will be before things return to normal.

It may be unlawful discrimination if you base your decision on the age of your employees or if they have children and/or partners.

Are my casual workers entitled to the same benefits as my permanent staff?

All workers are protected against discrimination.

That includes workers who are full time, part time, permanent, temporary, contract, work experience, voluntary, and commission based.

Casual employees are entitled to take unpaid parental leave and also have the legal right to request a flexible working arrangement to care for dependent children if they:

- they have been working with their employer on a regular and systematic basis for at least 12 months; and
- have a reasonable expectation of ongoing employment.

I have two employees up for promotion who look the same on paper. However, one is a recently married younger woman and I assume she will want to start a family soon. How can I give the other person the job without looking like I'm discriminating?

You can't. Basing your decision on your assumptions about a candidate's personal circumstances in this way could lead to discrimination based on relationship status, pregnancy and/or sex.

You should advertise the promotion internally and appoint the best candidate for the job. To avoid a discrimination claim, you should use objective criteria to assess each candidate's skills, qualifications and experience.

If your female employee decides to start a family it doesn't need to be a problem for either her or your business. Successfully managing an employee who becomes pregnant is an essential part of being a good employer and can lead to better morale and a more productive workforce.

I have two employees at the same level, one of whom has a disability, and I want to promote one of them. How do I promote the employee without a disability, who I feel is better suited to the job, without it looking as though I am discriminating against the one who has the disability?

Make sure your appointments are fair and transparent, ideally by advertising the position within your business. Write a position description outlining the key responsibilities and duties of the job. Then assess each candidate against this. You should appoint the most suitable person for the promotion.

Make sure the position description does not disadvantage anyone because of their disability.

Where you can, make 'reasonable adjustments' to the job to overcome any barriers. Remember that you can get financial support under a number of government schemes to help you make reasonable adjustments for your disabled employees.

By making sure that a disabled employee has any necessary reasonable adjustments to enable them to do the role as well as any other employee, it should be clear that you have not discriminated if you choose to promote another employee.

I like to get to know applicants during the interview process so I generally ask some questions about their families, home life and hobbies. Is that OK?

You have the right to choose the best person for the job but you do not have the right to ask questions about personal matters that have nothing to do with the capacity of the applicant to do the job. Legislation specifically makes it against the law to ask for unnecessary information that may result in discrimination. Questions about personal matters may give applicants the expectation that if they don't answer them they will risk being seen as uncooperative and therefore an unsuitable candidate.

Ask comparable questions of all applicants which allows everybody an equal chance to outline their professional interests, previous work experience, work style, career plans and the skills that they can bring to your organisation.

I have a standard application form that I get all potential employees to fill out. It asks for their date of birth and medical history. I also request a photo of the applicant to be attached. Is that legal?

Generally it will be unlawful for you to ask questions on application forms about things such as a person's date of birth or medical history. When a person applies for a job they need to be judged on their skills and abilities. Personal matters have nothing to do with the ability to do most jobs. Inappropriate personal questions can influence decisions about an applicant's suitability for the job and may result in unlawful discrimination. It is only acceptable to ask personal questions for specific reasons, including where it may be necessary under award conditions such as for age related wages. You must be able to show why the information is needed.

You should not ask them to attach a photo of themselves to their applications as this could be seen as the same as asking someone's age, sex or race. Some employers ask applicants to bring along a photo to the interview because it assists the interview panel to remember the candidates. It is not against the law to ask for a photo at this stage.

One of my employees tends to make their medical and dental appointments during working hours. Another employee has complained about this as they themselves always make their appointments in their own time. How should I manage this issue?

You are not required by law to allow your employees to go to medical appointments in work time, but many employers do allow employees to take time off if appointments are at the beginning or end of the working day to minimise disruption.

Due to working hours and the opening times of doctors' surgeries/hospitals/dental surgeries it may not always be possible for staff to arrange appointments in their own time.

You may wish to accommodate employees' appointments by giving them the time off or asking them to make up the time they have taken. However, those requiring intensive, on-going or intermittent medical treatment or counselling as a result of disability or because they are pregnant may not always be in a position to schedule specialist appointments. In these cases unnecessary hardship should not be imposed on an employee. Enabling employees to negotiate time off to satisfy bona fide medical needs will enable them to ultimately perform better at work and reduce absenteeism rate or number of sick days in the long term.

I do not currently employ anyone with a disability. Do I still need to make my workplace comply with disability accessibility laws, for example by installing a lift?

Not unless your workplace is open to any members of the public. If, however, you are planning on refurbishing your premises, it would be good practice to try to make your premises as accessible as you can. Installing a lift is one option, but other smaller changes you can make include fitting an intercom by your reception door for people with mobility impairments and providing hearing loops for people who are deaf or hard of hearing. Simple changes like these will help make sure your office is accessible to any disabled employees you take on in the future or if any of your existing employees become disabled. It may also encourage more disabled people to apply to work for you.

I have to make some redundancies but a few of my staff are single parents and I know that this would be particularly hard on them and their families. Can I take into account the home situation of employees when making redundancies?

Even with the best of intentions, such an approach would be unfair on your other employees and potentially open you up to legal difficulties. It's best to use objective selection criteria which make sure the remaining workforce has the balance of skills and experience needed for your future requirements.

Am I allowed to contact someone with work while they're on maternity leave?

In general, it's always a good idea to keep in touch with your employees on maternity leave and encourage them to stay in contact with you. You should keep them informed of issues which may affect them. For example, you should keep them informed of any relevant promotion opportunities or job vacancies that arise during their maternity leave.

It can also help you both to prepare for your employee's return to work. Your conversations should be regular but not excessive or intrusive – it's a good idea to agree scheduled catch-ups with your employee before she goes on leave.

One of my employees frequently uses racist language in the office. While this is not targeted at anyone in particular, should I speak to them about their language?

It is your responsibility by law to make sure your employees are not subject to racist language that they may believe offensive or inappropriate (even if the language is not targeted directly at anyone).

You should make it clear to all your employees that such language is not tolerated in the workplace and could lead to disciplinary action.

Consider developing a code of conduct that bans racist behaviour and identifies it as gross misconduct. By having a code of conduct that you can enforce, you can help protect yourself from allegations of race discrimination.

One of my staff often calls me 'love'. I find this uncomfortable. What can I do to get them to stop?

For many people, terms of endearment, such as 'dear', 'love', 'honey', 'sweetie', and 'darling', are seen as inappropriate in professional relationships regardless of who is using them.

Rather than asking your employee not to call you 'love', which could be considered discriminatory if you don't object to other employees using this or similar terms, you should tell all your employees that you don't consider terms of endearment to be professional language for the workplace.

Depending on the circumstances, which includes the relationship between the people involved, using terms of 'endearment' such as those mentioned could be sexual harassment.

One of my employees often turns up to work late because they care for their elderly mother. As much as I sympathise with their situation, I worry that this encourages others to turn up late – would I be discriminating if I were to give them a formal warning?

Employees caring for elderly relatives have the right to request flexible working arrangements. This can include a range of measures from changing start or finish times, to reducing or compressing hours worked. Although you have the right to say no to a request, you must demonstrate a sound business reason for why you cannot make a reasonable adjustment.

As your employee would in any case be eligible to request flexible working, you may wish to address it with them. Allowing them to start (and perhaps finish) work later could accommodate their caring responsibilities, while still allowing them to contribute fully as a member of your team. It would also formalise their working hours, take away the risk that others will be encouraged to turn up late and ensure that your other employees realise they are working as hard as anyone else.

An employee may be eligible to access leave options to provide care or support to a member of their immediate family or household, because of a personal illness, injury or unexpected emergency affecting the member. A member of the employee's immediate family means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of an employee; or a child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

Several of my employees do not speak English as their first language and often talk to each other in their native language. This makes me, and other employees who cannot understand them, feel alienated. Can I make it a rule that my employees only speak in English when they are at work?

It is reasonable to ask all your employees to speak a common language in the workplace as this is conducive to productivity, and will avoid misunderstandings in relation to legal, financial, and health and safety issues.

You should be able to present a sound business case so your employees don't feel as though they are being discriminated against. While it is reasonable to ask all employees to speak a common language while on the job, you shouldn't insist this happens during breaks as this could be discriminatory.

One of my employees is a sloppy dresser. Would it be fair for me to tell them to smarten up?

Whether or not you have a written dress code, you can expect some minimum standards. It would be best to raise the matter informally before disciplining an employee who consistently turns up to work dressed unacceptably.

To avoid a situation such as this, you may wish to implement a dress code for both yourself and your employees to explain the standards that are expected in the workplace. A dress code can be as prescriptive or as informal as is appropriate for your business – its contents are very much a question of common sense. There are no legal principles that demand the inclusion of any one element. However, a well crafted dress code will avoid leaving you open to claims of discrimination.

Your dress code should show a professional and favourable image of your business. If you place restrictions/requirements on one sex, then you should place comparable restrictions/requirements for the other sex, although they don't have to be identical. They should be proportionate though and go no further than to present a professional image of your business.

In terms of religious discrimination, problems can occur if your dress code:

- bans the wearing of religious symbols;
- bans the wearing of demure clothing such as the hijab, burka, nicquab, shalwarkameez, and so on; and
- requires the wearing of clothing/symbols likely to be offensive to some religions.

If you allow enough flexibility to wear smart clothing that is consistent with religious requirements you are unlikely to have a problem.

Logistically, I can only offer flexible working to a minority of my employees. Is this fair or legal?

If you decide to offer flexible working to some employees and not others, you must be able to justify this with a sound business reason. You must consider each request separately and fairly. You should not discriminate between employees. Granting one request does not necessarily mean that you will be bound to grant every request. It is a good idea to keep a written record of all discussions on the issue in case your decision is challenged. You should be mindful that there are certain groups of people who, by law, have a right to ask you if they can work flexibly. This includes parents with a child under 16 (or a disabled child under 18) and people helping to look after an adult relative who needs care.

Where an employer can make a reasonable adjustment to accommodate an employee's request for flexible working because of family responsibilities, pregnancy, relationship status, impairment, etc all options should be fully considered. If you do not attempt to make a reasonable adjustment it may be considered indirect discrimination.

Further information regarding requests for flexible working is available at www.fairwork.gov.au

How can I ensure my employees are working if they are not in the office?

As with any employer–employee relationship, you need to establish an element of trust. It is, however, often the case that employees who have been offered the opportunity to work flexibly become more loyal to their employer and are willing to 'go the extra mile' in return.

There are several things you can do to make sure your employees work productively when they are not in the office:

- Measure progress in terms of outputs. Agree to deadlines with your employees so that they know what they need to deliver and when, and ask them to report back to you regularly (for example weekly) with an update on their progress.
- Keep in regular contact with them; they may not be in the office but they should be available to you by phone or email.
- Encourage them to come into the office on a regular basis for important team meetings, training and even social events.

If you suspect someone is abusing their flexible working arrangement then you should deal with the problem immediately and fairly. Flexibility is not an excuse for poor self discipline and you should expect the same high standards of an employee who is working flexibly as you would for anyone working a traditional 9am to 5pm pattern.

Sample policies

Explanatory note

The following pages contain samples of a discrimination and sexual harassment policy and a complaint procedure.

These documents have been designed to be very comprehensive for application to a wide variety of business structures.

The policies can be implemented in full for maximum benefit or tailored to apply to existing operations within your workplace. Editable versions of the policies are available on the QHRC website.

NOTE: Removing information from the policies may result in them being less effective.

Instructions for use

1. Review sample policies and replace all bold text in brackets such as (Company name) with information that is relevant to your specific business.
2. Read and action any instructions written in red italics text. Delete this text when instructions have been completed.
3. Save a copy of the final policy in a location where it can easily be accessed by all staff.
4. Refer to the policy when managing workplace discrimination, sexual harassment and victimisation.
5. Review the policy every two to three years or when circumstances change in your workplace.

Sample policy: Discrimination & sexual harassment

(Company name) is committed to creating a work environment which is free from discrimination and sexual harassment and where all members of staff are treated with dignity, courtesy and respect.

We have developed a policy on discrimination and sexual harassment, provide regular staff training on discrimination and sexual harassment, and have procedures for complaints.

Application of this policy

This policy applies to all staff:

- full-time, part-time, casual, permanent or temporary;
- contract or commission workers; and
- volunteers, vocational and work experience placements.

It applies to staff in all their work-related dealings with each other, and with customers, contacts or clients.

It applies to staff while in the workplace or off site, at work-related functions (including social functions and celebrations), while on trips and attending conferences.

Discrimination and equal opportunity

(Company Name) is an equal opportunity employer. At all stages of the employment relationship (recruitment and selection, terms and conditions of work, training and professional development opportunities, promotion and transfer, retirement, retrenchment and termination) staff will be treated on their merits and valued according to how well they perform their duties.

(Company Name) believes that all staff should be able to work in an environment free from discrimination, victimisation, sexual harassment, vilification and the seeking of unnecessary information on which discrimination might be based. We consider these behaviours unacceptable and they will not be tolerated.

Responsibility of staff

All staff contribute to maintaining a discrimination free and inclusive workplace and a healthy workplace culture.

Managers have a particular obligation to model appropriate behaviour; promote this policy; treat all complaints seriously and attend to them promptly; monitor the work environment and seek expert help for complex or serious matters.

All staff have the responsibility to comply with this policy; report incidents to their managers and not to participate in discriminatory or harassing behaviour.

Consequences of breach of the policy

Staff who make a complaint of discrimination or sexual harassment will not suffer any victimisation by **(Company name)** for making the complaint. This also applies to staff who agree to be a witness in a complaint or have a complaint made against them.

Disciplinary action will be taken by **(Company name)** against any staff member found to have breached this policy. Action will be appropriate to the breach and may include: an official warning and note on the person's personnel file, a formal apology, counselling, demotion, transfer, suspension, or dismissal for very serious matters.

Anti-discrimination legislation

Under the Queensland *Anti-Discrimination Act 1991* (the Act), discrimination, victimisation, sexual harassment, vilification and seeking unnecessary information on which discrimination might be based are illegal.

Discrimination on the following grounds is against the law:

- race, (including colour, descent or ancestry, nationality, national or ethnic origin);
- age (whether young or older);
- impairment (including biological, functional, learning, physical, sensory, mobility, cognitive, psychological, psychiatric impairment or the presence of an organism capable of causing disease);
- religious belief or activity (including not holding a religious belief);
- sex;
- gender identity;
- relationship status (including being married, single, divorced, separated, de facto or in a same sex relationship);
- sexuality;
- pregnancy;
- breastfeeding;
- parental status (including being or not being a parent, guardian, foster parent, adoptive parent, or step parent);
- family responsibilities (including the responsibility to care for and support a dependent child or immediate family member);
- lawful sexual activity as a sex worker;
- trade union activity;
- political belief or activity; and
- association with someone else who is identified because of one of the above attributes

These personal characteristics are called 'attributes'.

Other behaviour that is against the law includes:

- seeking unnecessary information on which discrimination might be based
- victimisation because a person has made a complaint, agreed to be a witness or has had a complaint made against them, or because they refused to do something that would contravene the Act
- sexual harassment is prohibited wherever it happens, even in 'private'
- vilification on the basis of a person's race, religion, gender identity or sexuality

Federal anti-discrimination legislation prohibits discrimination on the basis of criminal record, medical record or social origin.

What is discrimination?

Direct discrimination happens when a person is treated worse than others in similar circumstances, because of one or more of their attributes.

Direct discrimination may involve:

- making offensive 'jokes' about another worker's racial or ethnic background, sex, sexuality, age or impairment;
- expressing negative stereotypes about particular groups or using stereotypes as a basis for decisions about work e.g. 'Women with young children shouldn't work' or 'Older workers can't learn new skills';
- using selection processes based on irrelevant attributes such as age, race or impairment rather than on skills really needed for the job.

Indirect discrimination occurs when one rule applies to all, but in fact disadvantages a person (or group of people) because they are unable, or less able to comply with the rule because they have an attribute listed above. The fact that the disadvantage was not intended is not an excuse. For example:

- requiring everyone to be available for all shifts might not be possible for a person with responsibilities to care for children or an elderly parent;
- only hiring people who have never had a back injury or a workers compensation claim might rule out an employee whose health has returned and can do the job well;
- not considering the provision of some reasonable adjustments would disadvantage a person with an impairment who may be able to perform the essential parts of the job in a different way.

What is sexual harassment?

Sexual harassment is any form of unwelcome sexual attention towards another person, done with the intention, or possibility, of offending, humiliating or intimidating the other person. It may be experienced by women or men. Sexual harassment has nothing to do with mutual attraction, and such friendships are a private matter.

It includes uninvited touching or physical contact, leering at a person or at parts of their body, talking about your sex life or asking about another person's sex life, sexual jokes or propositions, sexually offensive communications (phone, email, SMS or social media.)

Sexual harassment is against the law wherever and whenever it occurs. (Company name) will not tolerate sexual harassment in the workplace or in any work-related context such as conferences, work functions and business trips.

Sexual harassment does not have to be repeated or continuous to be against the law. A single incident might offend, humiliate or intimidate the other person, even if not repeated. Other single incidents, such as an unwanted invitation or compliment, may not be sexual harassment. Some forms of sexual harassment, such as assault, physical molestation, stalking, sexual assault and indecent exposure, are also criminal offences.

The person being harassed does not need to say that the behaviour is unwelcome. Many people find it difficult to speak up. All employees are responsible for their own behaviour. If you think the behaviour may offend, then don't do it.

Vicarious liability

Under the Act the person who discriminates against, victimises, sexually harasses, vilifies or asks for unnecessary information can be liable for the unlawful behaviour as well as their employer, **(Company name)**, unless **(Company name)** can show we have taken reasonable steps to prevent it.

(Company name) provides all staff with brochures and information about discrimination and sexual harassment at induction, and conducts regular awareness training.

Managers must ensure that all staff are treated fairly and are not subject to any of the behaviours mentioned in this policy. They must also ensure that people who make complaints, or who are witnesses, are not victimised in any way.

What to do if you are discriminated against, sexually harassed, vilified or asked for unnecessary information

Don't ignore discrimination, sexual harassment, vilification or requests for unnecessary information, thinking it will go away, often it just gets worse. Choose the action you feel most comfortable with. You can follow more than one action at the same time.

Support and counselling

(Company name) provides confidential assistance to staff in the form of wellbeing support and professional counselling and encourages staff to seek help. Phone **(.....)**.

For information on leave entitlements or WorkCover claims phone **(usually HR)**.

Get more information before deciding what to do

Contact one of the following people in **(Company name)** who have been nominated to give information:

Name:
Position:
Location:
Contact details (telephone, email):

Name:
Position:
Location:
Contact details (telephone, email):

Contact your trade union for advice.

Call the Queensland Human Rights Commission on 1300 130 670 for information about your rights and responsibilities.

If you feel confident and want to deal with the situation yourself, you can use self-help techniques. However, it is not necessary that you try to resolve the complaint this way.

This option involves approaching the person responsible for the discriminatory or sexually harassing behaviour yourself. You should tell the person what you are unhappy about, why you are unhappy about it, and what you would like to happen. Taking a person with you for support may be helpful.

Make an internal complaint

(Company name) has an obligation to treat all complaints of discrimination, victimisation, sexual harassment, vilification or seeking unnecessary information seriously. All complaints will be handled confidentially and impartially, investigated promptly and recommendations implemented.

The starting point to resolving a complaint is to talk with someone. This can be your manager (or another member of the management team if more appropriate). Tell them what your concerns are; explain what has happened and how it has affected you.

The manager may take immediate action (e.g. removing offensive graffiti or posters).

The manager may provide a range of options. One approach is to centre on the resolution of the issue, without deciding fault. The manager may speak to the person you are making a complaint about, to see if the situation can be resolved simply.

Some matters are not resolved so easily, especially if the person being complained about denies or disputes the allegations, or the issues are complex. Your manager (or another management team member if appropriate) may handle your complaint, or refer it to specialist human resource staff or engage an independent external agency. This option will involve an investigation, collecting evidence and witness statements, and making findings and recommendations which will be implemented by **(Company name)**. The following human resource staff are available to discuss these options:

Name:

Position:

Location:

Contact details (telephone, email):

Make an external complaint:

You can complain to the Queensland Human Rights Commission (QHRC). They have offices in Brisbane, Rockhampton, Townsville, and Cairns and can be contacted on 1300 130 670 (statewide). An enquiry officer can send you a complaint form and explain the process to resolve your complaint. The QHRC complaint resolution service is free. The Commission's website www.qhrc.qld.gov.au has more information including the complaint form.

NOTE: A complaint to the QHRC must be made within one year of the incident, unless good reasons for any delay can be shown.

Policy review

All policies will be reviewed every two to three years, and distributed to staff. Should the need arise, the policies will be translated into appropriate languages.

(Company name) is committed to providing an environment which is safe for all staff. You will not be disadvantaged in your employment conditions or opportunities as a result of lodging a complaint.

Signed.....

Position: (Chief Executive of Company)

Sample policy: Complaint procedure

This policy aims to ensure that all employees involved in a complaint are treated fairly, by providing a straightforward process for dealing with complaints of discrimination, sexual harassment and victimisation.

Our complaints procedure is:

- Impartial: both sides have a chance to tell their side of the story.
- Timely: all complaints will be dealt with as quickly as possible.
- Confidential: information will only be shared with parties involved.
- Fair: you will not be victimised for making a complaint.

Step one

Approach the workplace **(Contact Officer/WHS Officer)** who can provide information about a range of options available to the employee with the complaint.

(If your workplace does not have a contact officer, insert the position within your company that is best able to provide information on complaint options.)

Step two

Where appropriate the complainant can try and sort out the issue informally with the person involved. The **(Contact Officer/WHS Officer)** can provide information on how to do this but does not have the role of support person. This step is NOT compulsory, but is recommended for minor issues that can be resolved informally between the parties.

Step three

If the issue cannot be sorted out informally, a formal complaint may be lodged by the employee. Details of the complaint must be produced in writing including full details of the alleged incident/s, time, place, who was involved and any other relevant information. The **(person receiving the complaint)** will then refer these details to the appointed company representative for dealing with complaints.

Step four

A full examination of the complaint will be conducted by a company representative, (which may be the Manager or another party), where appropriate, and may include the following actions:

- interview the alleged perpetrator in relation to the details of the complaint;
- require the alleged perpetrator to provide a response to the allegations; and/or
- further investigate the matter including taking evidence or witness statements from other parties including parties nominated by the alleged perpetrator in defending the matter.

Step five

On completing their examination of the matter, the person conducting the investigation will reach a final decision about the outcome of the investigation and provide this information to the **(company owner)** for final decision.

Step six

The decision of the **(company owner)** will be actioned, and the complainant and alleged perpetrator advised of the outcomes.

Outcomes may include:

- counselling;
- disciplinary action;
- an apology;
- training on anti-discrimination or other matters; and/or
- clearing the alleged perpetrator of any wrong.

(Include any other specific outcomes that may be relevant to your workplace)

All documentation associated with complaints and investigations of discrimination or harassment will be handled strictly in accordance with the relevant privacy legislation.

Policy review

All policies will be reviewed every two to three years, and distributed to staff. Should the need arise, the policies will be translated into appropriate languages.

(Company name) is committed to providing an environment which is safe for all staff. You will not be disadvantaged in your employment conditions or opportunities as a result of lodging a complaint.

Signed.....

Position: (Chief Executive of Company)

About the QHRC

We are an independent statutory body established under the Queensland *Human Rights Act 2019*. We were formerly the Queensland Human Rights Commission, and still handle complaints and training on discrimination, vilification, victimisation and sexual harassment, under the *Anti-Discrimination Act 1991* (Qld).

We support businesses, state and local government, the community sector and people throughout the state.

Our work includes:

- resolving discrimination complaints;
- delivering training to business, government and the community on discrimination and human rights; and
- promoting public discussion on human rights.

We have offices in Brisbane, Cairns, Townsville and Rockhampton.

Training

As the leading authority on the *Human Rights Act 2019*, QHRC is responsible for delivering practical training to help all people in Queensland to understand their rights and responsibilities under the Act, and to help organisations to promote and protect people's human rights. We also offer training on a variety of aspects of anti-discrimination law, including information and capacity building workshops on gender identity and supporting trans and gender diverse employees.

You can contact our training team at training@qhrc.qld.gov.au.

Complaints, information and enquires

The QHRC has a free enquiry service which can provide information about the Human Rights Act and Anti-Discrimination Act, rights and responsibilities under these laws, our complaints process, and referrals to other support or complaint agencies where relevant.

Our highly skilled complaint management team is responsible for assessing all complaints received and working with parties to resolve the issues through conciliation.

You can read more about our complaints process and conciliation on our website at www.qhrc.qld.gov.au, or contact our enquiry line on 1300 130 670.

STATEWIDE
tollfree 1300 130 670
info@qhrc.qld.gov.au
qhrc.qld.gov.au
fax 07 3193 9979



Queensland
**Human Rights
Commission**

South East Queensland office

Level 20, 53 Albert St
Brisbane Q 4000
(corner of Albert and Margaret Streets)
City East Post Shop
PO Box 15565
City East Q 4002
1300 130 670

Central Queensland office

Level 1, James Larcombe Place
209 Bolsover Street
Rockhampton Q 4700

PO Box 1390
Rockhampton Q 4700
1300 130 670 or 4933 5104

North Queensland office

Ground Floor, 187-209 Stanley St
Townsville Q 4810

PO Box 1566
Townsville Q 4810
1300 130 670 or 4421 4000

Far North Queensland Office

Ground Floor, 10 Grove Street
Cairns Q 4870

PO Box 4699
Cairns Q 4870
1300 130 670 or 4037 2100

The Queensland Human Rights Commission operates a telephone information and enquiry service.

People with a hearing or speech impairment can call through the National Relay Service:

- Speak & Listen users, phone 1300 555 727 then ask for 1300 130 670
- Internet Relay users, connect to the National Relay Service (see www.relayservice.com.au for details) and then ask for 1300 130 670.

The National Relay Service website includes information about the options available to people who are deaf, or have a hearing or speech impairment. They can also contact 1800 555 660 or helpdesk@relayservice.com.au for information or support.

Callers who want to speak to us in a language other than English can contact TIS (Translating and Interpreting Service) on 131 450 from anywhere in Australia. Our website also has brief information on discrimination, sexual harassment, vilification and how to contact the commission in thirty languages.

Contact us

STATEWIDE ENQUIRY LINE: 1300 130 670

WWW.QHRC.QLD.GOV.AU

TRAINING@QHRC.QLD.GOV.AU



Queensland
Human Rights
Commission