

Our Reference:

BR 04/733
3.6/001



CEPU

COMMUNICATIONS
ELECTRICAL
PLUMBING
UNION

1st December, 2004

BRANCHES, as addressed -

Dear Colleague,

**RE: CEPU COMMUNICATIONS DIVISION
SEXUAL HARASSMENT AND OTHER FORMS OF HARASSMENT
COMPLAINT PROCEDURES AND POLICY**

**COMMUNICATIONS
DIVISION**

ABN 22 401 014 998

Colin Cooper
Divisional President

Brian Baulk
Divisional Secretary
139-155 Queensberry St
[PO Box 472]
Carlton South
Victoria 3053
Australia

Ph: 03 9349 2100
Fax: 03 9349 1952
E-mail: cdco@cepu.asn.au
Web: www.cepu.asn.au

We refer to the Divisional Executive meeting on 22nd-23rd November 2004 which amended the Sexual Harassment and Other Forms of Harassment Complaint Procedures by the insertion of the words 'appropriate and' after the words 'which is' into the 3rd dot point on page 5 of the document.

Enclosed is a copy of the amended Procedures document. I have also attached the Policy on Sexual Harassment and Other Forms of Harassment document.

If you have any queries please contact Carol Gee.

Yours fraternally,

Sharelle Herrington,
ACTING DIVISIONAL SECRETARY.

Enc.

CG:lc.

CEPU Communications Division

Sexual Harassment and Other Forms of Harassment Complaint Procedures

Copyright © CEPU (Communications Division)

CEPU Communications Division

Sexual Harassment and Other Forms of Harassment Complaint Procedures

Introduction

The Union takes sexual harassment and other forms of harassment seriously and it will not be tolerated under any circumstances.

The following complaint procedures adopted by CEPU Communications Division set out the procedures to be followed in the event that a complaint of sexual harassment or harassment is made by or against any officer, employee or member of the Union.

Any person who makes a complaint of sexual harassment or harassment will be advised of their right to:

- discuss the problem with the alleged harasser in an attempt to resolve the matter in a constructive way; and/or
- try to resolve the complaint through the Union's endorsed procedures; and/or
- pursue the complaint under the provisions of the Commonwealth Sex Discrimination Act 1984 or relevant State/Territory through lodging a complaint with the Human Rights and Equal Opportunity Commission or appropriate State body; and/or
- pursue the complaint through another appropriate representative body such as their union.

Objectives

The objectives of the complaint procedures are to ensure that:

- (a) all complaints are treated seriously and impartially and are responded to within the shortest possible timeframe;
- (b) confidentiality is maintained;
- (c) no victimisation will result from the making of the complaint;
- (d) the rights of the complaint and of the respondent (alleged harasser) will be respected at all times and that each is given an adequate opportunity to be heard and to respond to material presented by the other; and
- (e) the outcome of the grievance and reasons for the decision are provided to both parties.

CEPU Procedures

The Union's complaint procedures provide both informal and formal options for the resolution of a complaint. The option to be followed will be determined by the person making the complaint. A flow chart of the complaints procedure is at Attachment 1.

(a) Informal Process

- A complainant who chooses to discuss the problem directly with the respondent may seek advice on possible strategies from any other person.
- A complainant may also choose to ask another officer, employee or member to speak to the respondent on their behalf.
- All involved in informal procedures will observe the requirements of confidentiality and the desirability of a speedy resolution to the complaint.
- If the alleged behaviour continues, then the complainant has the option to make a formal complaint.

Complaints involving criminal behaviour, behaviour which places others at risk, or behaviour which affects the union as a whole, must be handled formally, regardless of the complainant's wishes.

This should be explained to the complainant by any officer, employee or member of the union who is approached for advice.

(b) Formal Process

If an officer, employee or member of the Union chooses to attempt to resolve their complaint through the Union's formal internal procedure the following steps will be followed:

- The complaint is to be provided in writing to the relevant Branch Secretary (or nominee) the Divisional Secretary (or nominee) outlining the nature of the complaint.
- A copy of the Sexual Harassment and Other Forms of Harassment Policy and Complaint Procedures will be made available to the complainant within 24 business hours of receiving the complaint.
- The Branch Secretary or Divisional Secretary or their nominee will discuss and if necessary further advise the complainant in writing within 5-7 business days (or earlier depending on the seriousness of the complaint) from when they are in receipt of the complaint of possible steps to be undertaken in line with CEPU Sexual Harassment and Other Forms of Harassment Policy and Complaint Procedures.

- Should the complainant wish to proceed with the complaint a copy of the complaint along with a copy of the CEPU Sexual Harassment and Other Forms of Harassment Policy and Complaint Procedures will be made available to the respondent.
- Similarly any written response from the respondent will be provided to the complainant.
- The Branch Secretary or Divisional Secretary or their nominee will contact both parties as soon as possible with a view to arranging mediation/conciliation of the complaint.
- If the complainant remains dissatisfied with the outcome or progress of the complaint or it would be inappropriate to refer the complaint back to the Branch Secretary (or nominee), the complaint may then be referred to the Divisional Secretary (or nominee), if this has not previously occurred, who will attempt further mediation/conciliation.
- If the complaint is not resolved by mediation/conciliation, the Divisional Secretary (or nominee) may then arrange for an investigation to be undertaken to determine whether the alleged incident(s) did or did not happen. The standard of proof required in this area is on the *balance of probabilities* which means deciding whether something probably did or did not happen.
- If still dissatisfied with the outcome the complainant will be advised of their right to refer the matter to Human Rights and Equal Opportunity Commission or State Tribunal and/or their union.

Note: An external person may be appointed to undertake the mediation/conciliation and/or investigation of a complaint.

At all stages of the complaint all parties must ensure that there is no undue delay in trying to resolve the complaint. The complainant and respondent must be kept advised of any delays in handling a complaint.

Confidentiality is expected from the complainant, the respondent and anyone who is helping to resolve the complaint. Information regarding the complaint will only be disclosed to those who can assist in the resolution of the matter.

A complainant or respondent may be represented and/or supported by a third party of their choosing at any interview occurring as a result of the complaint.

If the Branch Secretary or Divisional Secretary is satisfied that the complaint is substantiated they may:

- counsel the harasser;
- instruct the harasser to issue an apology to the complainant;
- impose disciplinary action such as a warning, demotion, dismissal or any other penalty which is appropriate and consistent with the rules of the CEPU; and/or
- implement appropriate sexual harassment or other harassment training and awareness for the harasser.

It is not always possible to substantiate a complaint, even if the complaint is justified. It needs to be clear to both parties that unsubstantiated may not mean that the incident did not occur. It may mean that no decision could be made because there was not enough information.

If a complaint cannot be substantiated the Branch Secretary or Divisional Secretary may counsel both parties, authorise increased monitoring or training or take any other action consistent with the rules of the CEPU.

Record Keeping

The purpose of record keeping is to identify if or when there are patterns of behaviour or cultural problems within the union which should be addressed through appropriate training and or disciplinary action.

If a Branch Secretary or Divisional Secretary or their nominee has had advisory discussions with a complainant or has taken informal action on an individual's behalf a brief diary entry noting the incident, the area where it occurred and action taken must be kept.

If a formal complaint has been mediated/conciliated a record must be kept on a confidential file of the complaint and response, details of the mediation/conciliation and the outcome.

If a formal complaint has been investigated a full record is required, including statements provided by the parties, records of interview by the investigation officer with the parties and witnesses. Records must contain names, times, dates, details of specific incidents and frequency of occurrences.

If a formal complaint against an official or employee is found to be substantiated a summary of the complaint, the finding and the disciplinary action taken must be recorded in their personal file. This can be removed after a reasonable period of time if there has been no repetition of the behaviour.

All other documentation relating to the investigation must be kept in a sealed confidential file which can only be accessed with the authority of the Divisional Secretary (or nominee).

All records will need to be retained for a reasonable amount of time (i.e. 12 months) in the event that a complaint is subsequently lodged with the Human Rights and Equal Opportunity Commission or a State or Territory anti-discrimination agency.

Withdrawal of a complaint

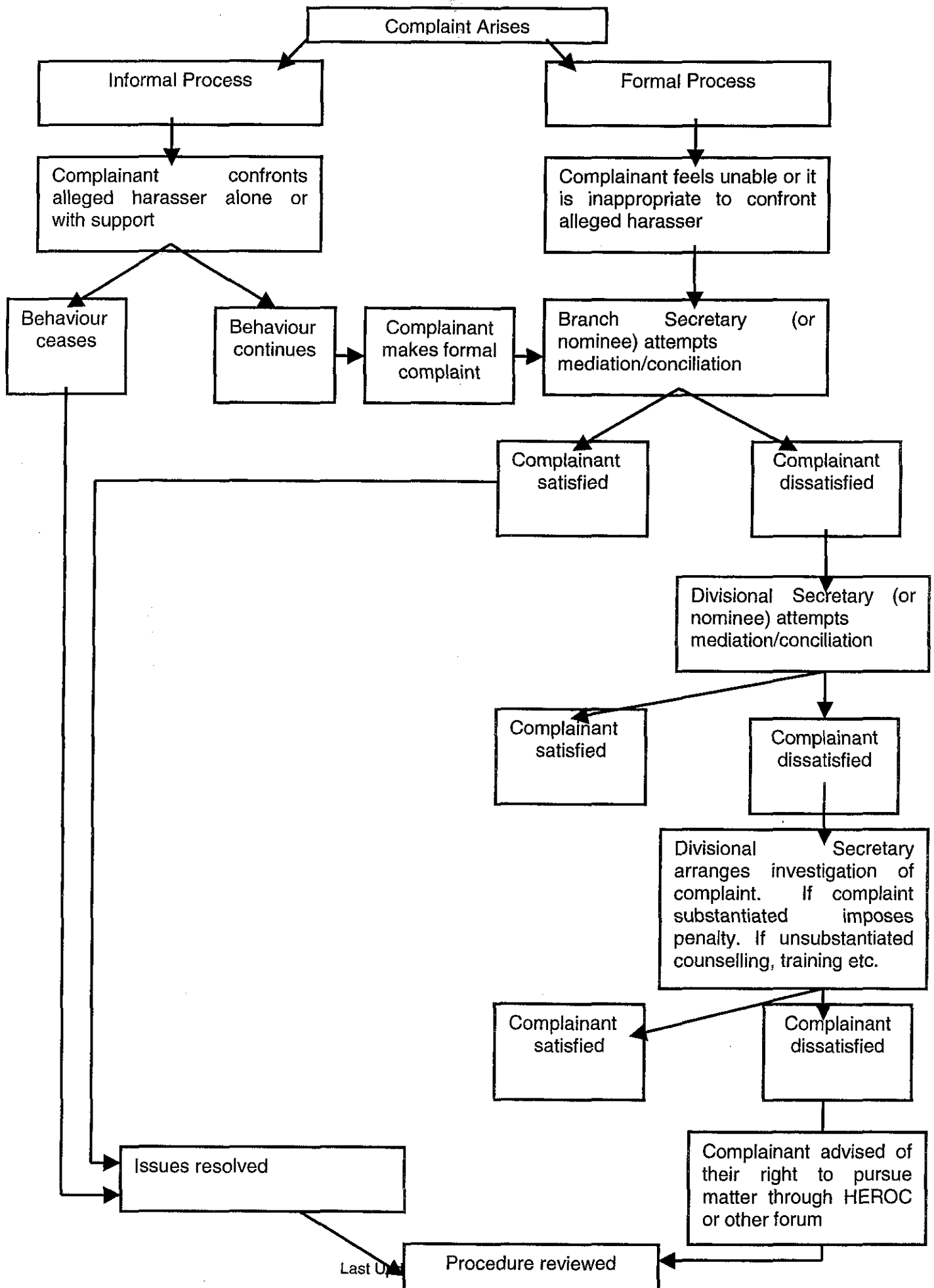
A person who makes a complaint under the formal process has the right to withdraw it at any time.

Rejection of vexatious, frivolous or inappropriate complaints

The Branch Secretary or Divisional Secretary or their nominee may decline to continue to deal with a complaint:

- that is vexatious;
- that is frivolous or trivial;
- that the grievance would be more appropriately dealt with in an external forum; or
- where an external dispute resolution mechanism has been actioned and that it would be inappropriate for the internal complaint procedure to commence or continue.

The making vexatious or frivolous complaint is also misconduct. It could result in disciplinary action commensurate with that which could have been taken against the accused person, had the complaint been substantiated.

COMPLAINT PROCEDURES

Note: An external person may be appointed to undertake the mediation/conciliation and/or investigation of a complaint.

CEPU Communications Division

**Policy on Sexual Harassment and
Other Forms of Harassment**

Copyright © CEPU (Communications Division)

CEPU Communications Division

Policy on Sexual Harassment and Other Forms of Harassment

Introduction

The CEPU is committed to ensuring that the working environment is free from sexual harassment and other forms of harassment.

The CEPU believes that all officers, employees and members have a right to be treated with dignity, courtesy and respect in the workplace.

Sexual harassment and other forms of harassment will not be tolerated under any circumstances. All complaints will be treated in a fair and confidential manner. Any person making a complaint will be protected from victimisation.

The following policy adopted by Divisional Executive sets out the legal definition of sexual harassment, the responsibilities of officers, employees and members and identifies other forms of harassment. The procedures to be followed in the event of a harassment complaint are set out in the document entitled, *CEPU Sexual Harassment and Other Forms of Harassment Complaint Procedures*.

All officers, employees and members of the CEPU are required to comply with and support the sexual harassment and other forms of harassment policy.

Breaches of the policy may result in disciplinary action and disciplinary action may be taken against anyone who victimises a person who has complained of harassment.

Disciplinary action may include an apology, counselling, a warning, demotion, dismissal or any other penalty which is consistent within the rules of the CEPU.

Aim

The aim of the policy is to create a working environment which is free from discrimination sexual harassment or any other form of harassment and where all officials, employees and members of the CEPU are treated with dignity, courtesy and respect.

The objectives are:

- a) To take all reasonable steps, including the provision of training where appropriate, to ensure that all officers, employees and members know their rights and responsibilities in relation to sexual harassment and other forms of harassment.
- b) To provide an effective procedure for handling complaints based on the principles of natural justice.
- c) To ensure that the rights of the complaint/and respondent (alleged harasser) are respected at all times.
- d) To promote appropriate standards of conduct at all times.

What is sexual harassment?

Sexual harassment can be defined in the following way:

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which makes a person feel humiliated, intimidated or offended and where it is reasonable in the circumstances that the person harassed would be offended, humiliated or intimidated. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment. (The Human Rights and Equal Opportunity Commission Sexual Harassment Code of Practice, Commonwealth of Australia 1996).

Examples of sexual harassment

Sexual harassment may include:

- uninvited touching;
- uninvited kisses or embraces;
- smutty jokes or comments;
- making promises or threats in return for sexual favours;
- displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas;
- repeated invited to go out after prior refusal;
- "flashing" or sexual gestures;
- sex-based insults, taunts, teasing or name-calling;
- staring or leering at a person or at parts of their body;
- unwelcome physical contact such as massaging a person without invitation or deliberately brushing up against them;
- touching or fiddling with a person's clothing;
- requests for sex;
- sexually explicit conversation;
- persistent questions or insinuations about a person's private life;
- offensive phone calls or letters;
- stalking;
- offensive e-mail messages or computer screen savers.

What sexual harassment is not

Behaviour which is welcomed, consensual or reciprocated is not sexual harassment. Interactions based on mutual attraction, friendship and respect do not constitute sexual harassment.

Sexual harassment is against the law

Sexual harassment is prohibited by the Federal *Sex Discrimination Act, 1984* and anti-discrimination laws in all States and Territories (see Attachment 1).

Sexual harassment in employment is prohibited in the following circumstances:

- i. *recruitment and selection* – for example, during job interviews;
- ii. *the course of employment* – for example, at the workplace, during working hours, at work-related activities such as meetings, training courses, conferences, field trips, work functions and office Christmas parties;
- iii. *termination of employment* – for example, where an employee is dismissed for objecting to sexual harassment or resigns because of intolerable sexual harassment;
- iv. *any other circumstance that could arise in the context of the relationships outlined below* – for example, sexual harassment of an employee by a fellow employee, regardless of when or where it occurs.

Under the legislation employers are required to take all reasonable steps to prevent sexual harassment.

Responsibilities of the Union, officials, employees and members

The Human Rights and Equal Opportunity Commission Sexual Harassment Code of Practice specifies:

- (a) A union employee must not sexually harass:
 - i. a co-worker;
 - ii. a prospective co-worker;
 - iii. a workplace participant carrying out duties in the same workplace as the union employee;
 - iv. a union member;
 - v. a person seeking to become a union member.
- (b) A union member must not sexually harass:
 - i. a fellow union member;
 - ii. a person seeking to become a member.
- (c) A union employee or member must not engage in any act of victimisation.
- (d) A union employee or member must not cause, instruct, induce, aid or permit another person to commit an act of sexual harassment.
- (e) Unions are vicariously liable for acts of sexual harassment committed by employees or agents in connection with their duties unless “all reasonable steps” were taken to prevent sexual harassment occurring.
- (f) Agents of the union can include shop stewards and other workplace delegates.

- (g) Individual persons are liable for their own acts of sexual harassment and victimisation. As well spreading gossip and rumours may expose individuals to defamation.

Sex discrimination and harassment

Sex discrimination occurs when someone is treated less favourably than someone else in the same or similar circumstances on the grounds of sex, marital status or pregnancy. For example, separate pay scales for men and women.

Sex discrimination also occurs in employment policies and practices which appear to be neutral but which actually adversely affect a higher proportion of one sex or marital status than the other. For example, a rule that all police officers must be six feet tall.

Sex based harassment is harassment which is directed at someone because of their sex. It is usually based on some form of constant derogatory taunts and references about a person's gender.

It is unlawful to discriminate or harass someone on the basis of sex.

Other forms of harassment

Other types of behaviour which offends, humiliates or intimidates on the basis of for example, age, family responsibilities, race, disability, sexual preference, transgender can be brought within discrimination provisions in both State and Federal legislation.

Examples include making hurtful jokes about a person's age, imitating their accent or mannerisms, racist comments or graffiti, using derogatory terms for disabilities.

Bullying is also a form of harassment and can be brought within anti-discrimination and criminal codes. When a person's health or safety is at risk, bullying is a breach of occupational health and safety laws.

Examples include verbal abuse, intimidation, threats, taunts or teasing, and degrading or embarrassing practical jokes.

CEPU policy is that other forms of harassment or bullying are not acceptable and will not be tolerated.

Complaint procedures

Procedures for dealing with sexual harassment and other harassment complaints are set out in a document entitled, *CEPU's Sexual Harassment and Other Forms of Harassment Complaint Procedures*. The procedures enable any person who makes a complaint of sexual harassment or harassment to either:

- discuss the problem with the alleged harasser in an attempt to resolve the matter in a constructive way; and/or

- choose to resolve the complaint through the Union's endorsed procedures entitled, *Sexual Harassment and Other Forms of Harassment Complaint Procedures*; and/or
- choose to pursue the complaint under the provisions of the Commonwealth Sex Discrimination Act 1984 or relevant State/Territory legislation through lodging a complaint with the Human Rights and Equal Opportunity Commission or appropriate State body; and/or
- choose to pursue the complaint through another appropriate representative body such as their union.

Any person wishing to make a complaint through the *CEPU Sexual Harassment and Other Forms of Harassment Complaint Procedures* should contact the relevant Branch Secretary (or nominee) or the Divisional Secretary (or nominee).

Policy review

The policy will be widely promoted and updated as required. Both the policy and the complaint procedures will be subject to review.

Federal, State and Territory Anti-Discrimination Legislation

Human Rights and Equal Opportunity Commission Act 1986 (Federal)

Racial Discrimination Act 1975 (Federal)

Sex Discrimination Act 1984 (Federal)

Disability Discrimination Act 1992 (Federal)

Workplace Relations Act 1996 (Federal)

Anti-Discrimination Act 1977 (NSW)

Equal Opportunity Act 1984 (SA)

Equal Opportunity Act 1984 (WA)

Discrimination Act 1991 (ACT)

Anti-Discrimination Act 1991 (QLD)

Anti-Discrimination Act 1992 (NT)

Anti-Discrimination Act 1998 (TAS)

Equal Opportunity Act 1995 (VIC)

Note: Employers are required to comply with both the Federal legislation and relevant State or Territory legislation.