

ASX CORPORATE GOVERNANCE COUNCIL DIVERSITY RECOMMENDATIONS: COMPLYING WITH ANTI-DISCRIMINATION LAWS

Introduction

In July 2010 the ASX Corporate Governance Council (CGC) adopted diversity-related amendments to its [Corporate Governance Principles and Recommendations](#). The revised recommendations include that listed companies adopt a diversity policy that sets measurable objectives for achieving gender diversity and report annually on their achievement against those objectives and on the proportion of women employed in the whole organisation, in senior management roles and on the board of directors.¹

The Australian Council of Human Rights Agencies, consisting of the Australian Human Rights Commission, ACT Human Rights Commission, NSW Anti-Discrimination Board, NT Anti-Discrimination Commission, Queensland Anti-Discrimination Commission, SA Equal Opportunity Commission, Tasmanian Office of the Anti-Discrimination Commissioner, Victorian Equal Opportunity and Human Rights Commission and the WA Equal Opportunity Commission, support the CGC's diversity recommendations and want to encourage all listed companies to implement those recommendations.

One important consideration for listed companies wishing to implement the CGC diversity recommendations are the anti-discrimination laws that operate federally and in each State and Territory.² The purpose of this document is to provide guidance to listed entities on how they can structure their diversity measures to comply with those laws.

Special measures provisions

The anti-discrimination laws federally and in each State and Territory other than NSW³ provide for measures intended to achieve equality for particular groups that may have suffered discrimination in the past. In the federal legislation, these are referred to as "special measures". We will use that term to refer to the equivalent provisions in all States and Territories.

Listed companies should design their diversity policies and related measures to fit within the special measures provisions. Companies should look to the legislation of the relevant jurisdiction to determine the requirements of a special measure.

¹ For further information, see the [summary of the CGC's diversity recommendations](#) on the ASX website.

² For further information about those laws, see the [summary of federal and state anti-discrimination legislation](#) on the Australian Human Rights Commission's website.

³ In Victoria new legislation which will come into effect in August 2011 (the *Equal Opportunity Act 2010 Vic*) which includes a special measures provision. The former legislation (the *Equal Opportunity Act 1995 Vic*) did not contain a special measures provision.

Attachment 1 provides links to the relevant anti-discrimination legislation for each jurisdiction as well as links to relevant information guides on special measures and the contact details for the anti-discrimination body for each jurisdiction. Companies should also seek independent legal advice.

Note: In NSW there is no special measures provision in its anti-discrimination legislation. You will need to apply for a specific exemption from the NSW Anti-Discrimination Board under s 126 or the Attorney General under s 126A of the [Anti-Discrimination Act 1977 \(NSW\)](#).

For more information ...

Contact the Australian Human Rights Commission and its counterpart in the State or Territory in which you carry on business and employ staff.

Links to the Commonwealth, State and Territory laws referred to in this release and other relevant information are set out in Attachment 1.

Disclaimer

The contents of this release and the links to other websites are not legal advice and are provided for information purposes only. Companies considering implementing special measures should seek their own independent legal advice.

Australian Council of Human Rights Agencies

ATTACHMENT 1: FURTHER INFORMATION ON ANTI-DISCRIMINATION LEGISLATION

JURISDICTION	LEGISLATION	SPECIAL MEASURES	USEFUL INFORMATION	AGENCY
COMMONWEALTH	Sex Discrimination Act 1984 (Cth)	Section 7D	<ul style="list-style-type: none"> Guidelines for special measures under the Sex Discrimination Act (1996) (available on request from the Australian Human Rights Commission) 	Australian Human Rights Commission
AUSTRALIAN CAPITAL TERRITORY	Discrimination Act 1991 (ACT)	Section 27	<ul style="list-style-type: none"> Guide to the consideration of discrimination complaints 	ACT Human Rights Commission
NEW SOUTH WALES	Anti-Discrimination Act 1977 (NSW)	No statutory exception. Applications for exemptions can be made to the NSW Anti-Discrimination Board under s 126, or the Attorney General under s 126A.	<ul style="list-style-type: none"> Guidelines on exemptions List of current exemptions 	NSW Anti-Discrimination Board
NORTHERN TERRITORY	Anti-Discrimination Act 1996 (NT)	Section 57	<ul style="list-style-type: none"> Guidelines on Special Measures 	NT Anti-Discrimination Commission
QUEENSLAND	Anti-Discrimination Act 1991 (Qld)	Section 105	<ul style="list-style-type: none"> Exemptions 	Qld Anti-Discrimination Commission
SOUTH AUSTRALIA	Equal Opportunity Act 1984 (SA)	Section 47	<ul style="list-style-type: none"> Special Measures 	SA Equal Opportunity Commission
TASMANIA	Anti-Discrimination Act 1998 (Tas)	Sections 25 and 26	<ul style="list-style-type: none"> Exceptions and Exemptions List of current exemptions How to apply for an exemption 	Tas Office of the Anti-Discrimination Commissioner
VICTORIA	Equal Opportunity Act 2010 (Vic)	Section 12	<ul style="list-style-type: none"> Exemptions 	Vic Equal Opportunity and Human Rights Commission
WESTERN AUSTRALIA	Equal Opportunity Act 1984 (WA)	Section 31	<ul style="list-style-type: none"> Information on sex discrimination 	WA Equal Opportunity Commission