

Section 51 - Aboriginal Employment - A Guide for Applicants

This guide provides applicants with clear information about the use of Section 51 of the *Equal Opportunity Act (WA) 1984* (the Act) in recruitment processes. It explains how Section 51 operates and why it has been applied to this vacancy.

What is Section 51 of the Act?

The Act recognises that equal opportunity is not necessarily achieved by treating everyone the same. The objective of the Act is to promote equality of opportunity and eliminate discrimination for individuals, wherever possible. The Act also recognises that in certain circumstances discrimination, which would otherwise be unlawful, can be used positively to further meet the objects of the Act.

Section 51 of the Act is **a measure intended to achieve equality related to race**. It affords a person of a particular race (such as Aboriginal and Torres Strait Islander people) access to facilities, services or opportunities to meet their special needs in relation to employment.

Why is the State Solicitor's Office (SSO) using Section 51?

The SSO is committed to achieving equality and increasing Aboriginal and Torres Strait Islander representation across our Office. We aim to become an employer of choice for Aboriginal and Torres Strait Islander people. For this reason, the SSO is using Section 51 of the Act to provide employment and career opportunities to Aboriginal and Torres Strait Islander people. The SSO's commitment is underpinned by our Reconciliation Action Plan and Diversity and Inclusion Strategy.

What is the difference between Section 51 and Section 50(d)?

Section 51 provides the SSO with the ability to advertise jobs targeting a racial group; however, applicants not of the specified racial group may still apply for the opportunity.

Section 50(d) applies when the SSO identifies that service provision to people of a particular race, is best provided by a person of the same race. Therefore, it is a genuine qualification for the position and only applicants of that racial group may apply.

How will applicants know when Section 51 applies to a selection process?

Specific wording/badging will be used in the advertising of positions to alert potential applicants that Section 51 is to apply to candidates being targeted.

Are Aboriginal applicants assessed differently in a Section 51 selection processes?

All applicants are assessed equitably against the selection criteria and meet the minimum requirements therein. However, in cases where more than one applicant meets the criteria, preference can be given to an applicant who has declared they are of Aboriginal descent.

How does the SSO identify Aboriginal and Torres Strait Islander applicants?

As part of the recruitment process, applicants will need to identify themselves as being of Aboriginal or Torres Strait Islander descent.

Are job advertisements encouraging applications from Aboriginal people discriminating unlawfully?

Where the employer can demonstrate that the advertised position is a measure intended to provide equal opportunities in employment to a target group, there is no unlawful discrimination.

Where can I find more information on Section 51?

To find out more about Section 51 of the Act, please see below:

- Equal Opportunity Commission - www.eoc.wa.gov.au
- Public Sector Commission - www.psc.wa.gov.au
- Director of Equal Opportunity in Public Employment - <https://www.wa.gov.au/organisation/public-sector-commission/director-of-equal-opportunity-public-employment>
- *Equal Opportunity Act 1984 (WA)* - www.legislation.wa.gov.au