



The Department and Section 51

Frequently asked questions





Section 51 – Measure to achieve equality – Aboriginal Employment Equal opportunity in public employment – Department of Justice

The Western Australian *Equal Opportunity Act 1984* (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.

What is Section 51 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 access to facilities, services or opportunities to meet their special needs in relation to employment.

Why is the Department of Justice using Section 51?

The Public Sector Commissioner's Circular: (2018-02) *Measures to achieve equality in human resource management*, requires all agencies to implement human resource management practices that optimise opportunities for people from diversity groups to engage in public sector employment. For this reason, the Department of Justice (the Department) is using Section 51 of the Act to provide employment and career opportunities to Aboriginal and Torres Strait Islander people.

In using Section 51, the Department aims to achieve equality and increase workforce representation. As such, the Department has established an Aboriginal Workforce Development Strategy to better attract, appoint, retain and advance Aboriginal people the Department's workforce.

What is the Public Sector Commissioner's position on the use of Section 51?

The Public Sector Commissioner's strategy for Aboriginal people: *Attract, appoint and advance: An employment strategy for Aboriginal people*, outlines the performance objective of 'promoting the application of measures to achieve equality under the Act, and the policy framework for substantive equality.' 2

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

Section 51 provides a Department 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 a Department 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.

Why apply Section 51 to selection processes?

It is anticipated that a Section 51 selection process, will attract a greater number of applications from Aboriginal members of community, thereby increasing the possibility that an Aboriginal person may be appointed.



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

Where Section 51 is applied, the following wording has been approved for inclusion on targeted advertisements:

The Department of Justice is committed to improving employment opportunities and outcomes for Aboriginal and Torres Strait Islander people. As a measure to achieve equality and support, Section 51 of the Equal Opportunity Act 1984 (WA) will apply to this position. Aboriginal people are encouraged to apply.

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

All applicants must be 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.

Are Section 51 opportunities still subject to redeployment clearance?

If the opportunity is for a period of more than six (6) months, it will still need to be cleared for redeployment purposes.

Are job advertisements encouraging applications from Aboriginal people discriminating unlawfully?

Where a Department 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.

If someone lodges a complaint with the Equal Opportunity Commission (EOC), how does the EOC assess its validity?

When a complaint is made, the Department must justify the use of Section 51. Discrimination claims lodged against a Department, can be mitigated where there are relevant policies, strategies and statistical evidence to support the action.

How does a Department identify Aboriginal applicants?

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

Does the Department require an exemption from the State Administrative Tribunal to use Section 50(d) or Section 51?

No, an exemption is not required from the State Administrative Tribunal.

Where can I find more information on how to apply Section 51?

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

- Department of Justice www.justice.wa.gov.au
- Equal Opportunity Commission www.eoc.wa.gov.au
- Public Sector Commission www.psc.wa.gov.au
- Director of Equal Opportunity in Public Employment www.psc.wa.gov.au/deope
- Equal Opportunity Act 1984 www.legislation.wa.gov.au