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Section 51 – Measure to achieve equality – Aboriginal and Torres Strait Islander Employment

# Equal opportunity in public employment

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 Western Australian Museum 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 WA Museum 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 WA Museum aims to achieve equality and increase workforce representation. As such, the WA Museum has established an Aboriginal and Torres Strait Islander Employment Professional Development Strategy to prioritise increased Aboriginal and Torres Strait Islander participation in our Agency’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.’

# A white background with black dots Description automatically generated What is the difference between Section 50(d) and Section 51?

**Section 51** provides an Agency or 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 an Agency or 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 and Torres Strait Islander members of the community, thereby increasing the possibility that an Aboriginal or Torres Strait Islander 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 WA Museum is committed to improving employment opportunities and outcomes for Aboriginal and Torres Strait Islander people. As a measure to achieve equality, Section 51 of the Equal Opportunity Act 1984 (WA) will apply to this position. Therefore, Aboriginal and Torres Strait Islander people are encouraged to apply.*

# Are Aboriginal and Torres Strait applicants assessed differently in a Section 51 selection process?

All applicants must be assessed equitably against the same selection criteria and meet the minimum requirements to be found suitable for the role. 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 and Torres Strait 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 and Torres Strait Islander people unlawful?

Where an Agency/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 WA Museum must justify the use of Section 51.

Discrimination claims lodged against an Agency or Department, can be mitigated where there are relevant policies, strategies and statistical evidence to support the action.

# A white background with black dots Description automatically generatedHow does the WA Museum identify Aboriginal and Torres Strait Islander applicants?

As part of the recruitment process, applicants will be asked to identify themselves as being of Aboriginal or Torres Strait Islander descent (at application stage).

# Does the WA Museum 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 Section 51 of the Act, please see below:

* Equal Opportunity Commission [www.eoc.wa.gov.au](http://www.eoc.wa.gov.au/)
* Public Sector Commission [www.psc.wa.gov.au](http://www.psc.wa.gov.au)
* Director of Equal Opportunity in Public Employment [www.psc.wa.gov.au/deope](http://www.psc.wa.gov.au/deope)
* *Equal Opportunity Act 1984* [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au/)