

Sections 50(d) and 51 of the *Equal Opportunity Act 1984*

Genuine
occupational
qualification
and
measures
intended
to
achieve
equality

What is the difference?

If your agency has identified that service provision to people of a particular race is best provided by a person of the same race, s. 50(d) of the *Equal Opportunity Act 1984* (the Act) is a useful tool to apply.

If your agency has identified the need to increase the representation of a particular racial group by improving their employment opportunities you can apply s. 51 of the Act.

If you would like to view a full outline of the definitions you can access the Act via the State Law Publisher [website](#).

When does it apply?

Your agency has identified the need for a person from a particular racial group to undertake a specific role. Apply s. 50(d) of the Act.

For example:

An agency has established a position for an Aboriginal Development Officer. The role will be to assist Aboriginal Community groups to identify needs, develop and implement strategies to address employment, vocational education and training needs of Aboriginal people. For this position, Aboriginality is considered essential.

Your agency would like to increase workforce diversity and the representation of a particular diversity group. Apply s. 51 of the Act.

For example:

To improve Indigenous representation, an agency encourages Indigenous Australians to apply. The following text is used in the job advertisement:

'We are seeking to increase the diversity of our workforce to better meet the differing needs of our customers and to improve equal opportunity outcomes for our employees. Indigenous Australians are encouraged to apply'.

How does it apply?

Before testing the market your agency should establish if the position is an identified s. 50(d) of the Act. If there is a requirement for a particular race, applicants outside this criterion are not eligible to apply.

Sections 50(d) and 51 of the *Equal Opportunity Act 1984* explained

Sections 50(d) and 51 of the Act operate as exceptions to what would otherwise be unlawful discrimination under the Act. Indigenous Australians, for example, experience greater social and economic disadvantage than other groups in society, particularly in employment and when accessing goods and services.

Sections 50(d) and 51 of the Act make it possible for specific measures to be taken to address such disadvantage, without contravening the Act. However, a person who is not of the particular race or ethnic background for which a s. 50(d) or s. 51 of the Act position has been created, may still lodge a complaint of discrimination against the agency with the Equal Opportunity Commission (EOC). Therefore, an agency may need to respond to a complaint, should one be lodged, with evidence that the position is genuine and necessary.

If an agency has created positions it considers are justifiable under s. 50(d) and 51 of the Act, or intends to do so, it may apply to the State Administrative Tribunal (SAT) for an exemption from the operation of the race discrimination provisions of the Act. If the exemption is granted, then the agency will be protected from complaints of race discrimination in respect to those positions for a period of up to five years, usually with conditions. SAT can be contacted on (08) 9219 3111 or 1300 306 017.

How does it apply to Indigenous recruitment?

Your agency may undertake Indigenous recruitment through an occupational qualification (s. 50(d) of the Act) or as a measure to achieve equity (s. 51 of the Act).

What are the benefits?

Positive outcomes can be achieved through the application s. 50(d) of the Act positions, enabling services to be provided to a racial group by a person of the same race. The application of s. 51 of the Act enables agencies to create a more diverse workforce.

Assistance available?

For more information on how the Public Sector Commission can assist with your EEO management and workforce planning contact us on 9219 6000 or visit the [website](#).

For further information about unlawful discrimination call EOC enquiry line on (08) 9216 3900 or 1800 198 149 or visit the [website](#).

Acknowledgement

The Director of Equal Opportunity in Public Employment wishes to acknowledge the involvement and contributions of the following organisations in the preparation of this information sheet:

Equal Opportunity Commission
Website: www.eoc.wa.gov.au
Telephone: (08) 9216 3900

Department of Indigenous Affairs
Website: www.dia.wa.gov.au
Telephone: (08) 9235 8000

Department of Education
Website: www.det.wa.edu.au
Telephone: (08) 9264 4111