Aboriginal and Torres Strait Islander Identified Positions

Limiting a work opportunity to a person of a particular race is generally unlawful discrimination. However, the law recognises that there are some groups who are affected by past or continuing disadvantage (and so need assistance to secure work), and that sometimes work must be performed by a person of a particular race (because of the nature of the work).

Under the Anti-Discrimination Act 1991 (the Act), ‘race’ includes being Aboriginal or Torres Strait Islander.

The term ‘identified position’ is not used in the Act, however it is generally understood to mean a job where the employer identifies that it is to be filled only by a person with a particular attribute, such as race.

This information sheet is about positions that are identified for Aboriginal and Torres Strait Islander people. By this we mean a person who:

a) identifies as an Aboriginal and/or Torres Strait Islander person; and

b) is of Aboriginal and/or Torres Strait Islander descent; and

c) is accepted as an Aboriginal and/or Torres Strait Islander person by the Aboriginal and/or Torres Strait Islander community in which he or she lives.

Where race discrimination is allowed

The Anti-Discrimination Act 1991 sets out some circumstances, called ‘exemptions’ where discrimination on the basis of race can be lawful. The exemptions include:

Genuine occupational requirement exemption (section 25)

A person may impose genuine occupational requirements for a position.

This will apply where the work can only be done by a person who is Aboriginal or Torres Strait Islander.

Examples:

- Engaging with Aboriginal and Torres Strait Islander people to provide services specific to them.
- Providing training about Aboriginal and Torres Strait Islander culture.
Equal opportunity measure exemption (section 105)

A person may do an act to promote equal opportunity for a group of people with an attribute (such as race) if the purpose of the act is not inconsistent with the Anti-Discrimination Act 1991.

This would apply to a program to increase the number of Aboriginal and Torres Strait Islander people in work.

Example:

- Designating trainee positions in the mining industry for Aboriginal or Torres Strait Islander people so that they can learn skills for work.

Welfare measure exemption (section 104)

A person may do an act to benefit the members of a group of people with an attribute (such as race) whose welfare the act was designed if the purpose of the act is not inconsistent with the Anti-Discrimination Act 1991.

Example:

- Developing an employment and training program to increase and improve employment prospects for local Aboriginal and Torres Strait Islander people, where there has been long term disadvantage and high unemployment in that community.

Welfare measures are usually about delivering services or programs to Aboriginal and Torres Strait Islander people, rather than creating jobs.

Advertising identified positions

Setting out the reason why the job is only for Aboriginal or Torres Strait Islander people in the advertisement will reduce the risk of a complaint of race discrimination.

Examples for job advertisements:

- **Genuine occupational requirement**
  
  *To perform this role it is essential that the person is an Aboriginal or Torres Strait Islander person. It is therefore a genuine occupational requirement under section 25 of the Anti-Discrimination Act 1991.*

- **Equal opportunity measure**
  
  *This is a program to improve the under-representation of Aboriginal and Torres Strait Islander people in this [industry/area…] and is an equal opportunity measure under section 105 of the Anti-Discrimination Act 1991.*

Tribunal exemptions

A person or persons may apply to the tribunal for an exemption. For work-related applications the tribunal is the Queensland Industrial Relations Commission.

The tribunal may grant an exemption under section 113 from the operation of a specified provision of the Act (such as race in recruiting for employment) for up to five years. An exemption may be renewed for further periods of up to five years by making another application.
A tribunal exemption applies to a specific set of circumstances for a specified length of time. If an exemption is granted, a complaint of discrimination cannot be accepted by the Queensland Human Rights Commission against the person or business to whom the exemption has been granted.


The Queensland public sector

Queensland government departments, agencies and employees are bound by Public Service Commission (PSC) directives and guidelines. Relevant instruments in relation to identified positions for Aboriginal and Torres Strait Islander peoples are:

- Recruitment and selection Directive No 15/13
- Evidence of attribute – Aboriginal and/or Torres Strait Islander identified roles – PSC Guideline, 20 June 2013

More information

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