



Australian  
Human Rights  
Commission

# Targeted recruitment of Aboriginal and Torres Strait Islander people

A GUIDELINE FOR EMPLOYERS • 2015



OVERW

**This guideline has been endorsed by:**

- **ACT Human Rights Commission**
- **Anti-Discrimination Board of NSW**
- **Northern Territory Anti-Discrimination Commission**
- **Anti-Discrimination Commission Queensland**
- **Equal Opportunity Commission of South Australia**
- **Office of the Anti-Discrimination Commissioner of Tasmania**
- **Victorian Equal Opportunity and Human Rights Commission**
- **Equal Opportunity Commission of Western Australia.**

**Authors** Sarah Dillon and Rivkah Nissim, Australian Human Rights Commission

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**Cover photograph:** Glen Campbell/Fairfax Syndication (2012). Caption: Lionel Bulsey, 42, drives a monster truck at the Argyle Diamonds mine in the Northern Territory. Argyle Diamonds, a subsidiary of Rio Tinto, mines 90 per cent of the world's supply of champagne and cognac diamonds and all of its rare pink diamonds. It now employs more Indigenous Australians than any other company in the nation.

Please be aware that this publication may contain the names or images of Aboriginal and Torres Strait Islander people who may now be deceased.

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For further information about the copyright in this publication, please contact:

Communications Unit  
Australian Human Rights Commission  
GPO Box 5218  
SYDNEY NSW 2001  
Telephone: (02) 9284 9600  
Email: [communications@humanrights.gov.au](mailto:communications@humanrights.gov.au)

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# Message from the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Race Discrimination Commissioner

Most people are aware of the entrenched disadvantage that Aboriginal and Torres Strait Islander people experience, particularly in employment. The employment gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians has in fact widened in recent years.\* According to the Prime Minister's most recent *Closing the Gap* report, the proportion of Aboriginal and Torres Strait Islander people aged 15-64 years who are employed fell to 47.5 per cent in 2012-13, while the proportion of non-Indigenous Australians who are employed increased to 75.6 per cent.

Increasingly, employers are seeking to address this issue by providing opportunities in their workplaces. We welcome recruitment strategies that are designed to increase the representation of Aboriginal and Torres Strait Islander people in the workforce. Unfortunately, there is some misunderstanding that discrimination laws are an obstacle to addressing the inequality experienced by Aboriginal and Torres Strait Islander people in employment. On the contrary, discrimination laws recognise that some groups, including racial groups, have suffered historical disadvantage and do not enjoy their human rights equally with others. These laws permit employers to adopt 'special measures' to assist disadvantaged racial groups so that they can have similar access to opportunities as others in the community.

This guideline will help employers to use the 'special measure' provisions in the federal *Racial Discrimination Act 1975* (Cth) and state and territory discrimination laws, to target Aboriginal and Torres Strait Islander people for recruitment. We believe this is an important resource for employers seeking to advance the rights of Aboriginal and Torres Strait Islander peoples.



**Mick Gooda**  
Aboriginal and Torres  
Strait Islander Social  
Justice Commissioner



**Dr Tim Soutphommasane**  
Race Discrimination  
Commissioner

\* **Note – Use of the terms 'Aboriginal and Torres Strait Islander peoples' and 'Indigenous peoples' in this guideline:** The Australian Human Rights Commission recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. The terminology 'Aboriginal and Torres Strait Islander peoples' is used throughout this guideline. Sources quoted in this guideline may use various terms including 'Indigenous Australians', 'Aboriginal and Torres Strait Islanders', 'Aboriginal and Torres Strait Islander people(s)' and 'Indigenous people(s)'. Also, Australian governments use the terms 'Aboriginal and Torres Strait Islander people/s', 'indigenous people/s', 'Aboriginals', and other variations in their documents. This usage is preserved in quotations and extracts from these documents, and in the names of documents, to ensure consistency.

# Executive Summary

An Indigenous Engagement Survey conducted by the Business Council of Australia (BCA) in 2014 revealed that almost 70 per cent of respondent companies had Indigenous employment strategies and most respondents also indicated they planned to recruit Indigenous employees in 2015.

Implementing targeted recruitment strategies that address the discrimination Aboriginal and Torres Strait Islander people face in securing work opportunities is key to increasing their positive employment outcomes.

However, some employers have raised concerns that by conducting a targeted recruitment strategy for Aboriginal and Torres Strait Islander people they risk breaching discrimination laws. Many employers believe that they need to apply for an exemption from such laws before undertaking these programs. However, other than in New South Wales, this is not the case.

This guideline explains how targeted recruitment strategies for Aboriginal and Torres Strait Islander people can be consistent with discrimination laws. This is because discrimination laws (other than in NSW) permit 'special measures' which promote equal opportunity for disadvantaged groups. The unique situation in NSW is explained in section 4 of this guideline.

'Special measure' provisions in discrimination laws allow employers to implement such strategies for the benefit of Aboriginal and Torres Strait Islander people without breaching prohibitions on racial discrimination.

**Provided a targeted recruitment strategy meets the requirements of a special measure set out in section 2 of this guideline, it is lawful under discrimination law (except in NSW, where an employer is required to seek an exemption).**

The Australian Human Rights Commission (the Commission) has prepared this guideline, in the exercise of the Commission's function under s 20(d) of the *Racial Discrimination Act 1975* (Cth).<sup>1</sup> It has been prepared in consultation with the state and territory discrimination/equal opportunity authorities, to assist employers seeking to implement targeted recruitment strategies to increase the representation of Aboriginal and Torres Strait Islander people in the workforce.

## 'Targeted recruitment strategies' for Aboriginal and Torres Strait Islander people may include:

- reserving certain positions for Aboriginal and Torres Strait Islander applicants
- guaranteed interview schemes
- work placements, traineeships or mentoring programs
- engaging an Indigenous Recruitment Service to hire trainees, graduates and fill other roles

This document provides guidance to employers on designing and documenting these targeted recruitment strategies to meet the requirements of a 'special measure' in all Australian jurisdictions. The guideline is intended to apply nationally, to assist employers who want to conduct targeted employment in multiple states and/or territories. It also includes advice on practical steps employers can take to implement a targeted recruitment strategy as a 'special measure'.

It is based on the extensive experience and expertise of the Commission and state and territory discrimination/equal opportunity authorities in the administration of discrimination laws, and is intended to provide guidance on how those laws operate.

Whilst this guideline is not legally binding, in the view of the Commission and the state and territory discrimination/equal opportunity authorities, employers who can demonstrate that their targeted recruitment strategy for Aboriginal and Torres Strait Islander people meets the requirements set out in this guideline can have confidence that it is compatible with discrimination law (other than in NSW).



In the event of a complaint, the detailed documentation gathered in accordance with this guideline would provide a strong basis for an employer to establish that their strategy is a special measure and therefore consistent with discrimination law.

This guideline has been endorsed by:

- ACT Human Rights Commission
- Anti-Discrimination Board of NSW
- Northern Territory Anti-Discrimination Commission
- Anti-Discrimination Commission Queensland
- Equal Opportunity Commission of South Australia
- Office of the Anti-Discrimination Commissioner of Tasmania
- Victorian Equal Opportunity and Human Rights Commission
- Equal Opportunity Commission of Western Australia.

Finally, please note that this guideline is designed to address the requirements under Australian law for the specific ‘special measure’ of targeted recruitment of Aboriginal and Torres Strait Islander people. It is not intended as guidance on special measures generally – for broader guidance on special measures, including applicable principles of international human rights law, please see *Guidelines to understanding ‘Special measures’ in the Racial Discrimination Act 1975 (Cth)*.<sup>2</sup>

# 1. Application of discrimination laws

Discrimination laws in all Australian jurisdictions prohibit discrimination on the basis of race, including in connection with employment. **An employer is required to comply with both the federal Racial Discrimination Act and the relevant discrimination law which applies in the states and/or territories in which it operates.**

All of these laws contain exceptions to the general rule that people must be given the same opportunities regardless of their race. There are two types of exceptions which can apply in the case of targeted recruitment of Aboriginal and Torres Strait Islander people: 'special measure' provisions and 'genuine occupational requirement' provisions.



## Laws which prohibit racial discrimination

Law by jurisdiction	Exception for 'special measures' which includes recruitment?	Exception for genuine occupational requirements?
Cth – <i>Racial Discrimination Act 1975</i>	Yes – s 8	No
ACT – <i>Discrimination Act 1991</i>	Yes – s 27	Yes – s 42
NSW – <i>Anti-Discrimination Act 1977</i>	No <sup>3</sup>	Yes – s 14
NT – <i>Anti-Discrimination Act 1996</i>	Yes – s 57	Yes – sub-s 35(1)(b)(ii)
Qld – <i>Anti-Discrimination Act 1991</i>	Yes – s 105	Yes – s 25
SA – <i>Equal Opportunity Act 1984</i>	Yes – s 65	Yes – sub-s 56(2)
Tas – <i>Anti-Discrimination Act 1998</i>	Yes – ss 25 & 26	Yes – s 41
Vic – <i>Equal Opportunity Act 2010</i>	Yes – s 12	Yes – sub-s 26(3) and s 28
WA – <i>Equal Opportunity Act 1984</i>	Yes – s 51	Yes – s 50

### 1.1 'Special measures' – positive actions to promote equality for disadvantaged groups

A special measure is an action taken to address disadvantage experienced by a particular racial group, so that members of that group may enjoy their rights equally with other groups. Special measures support groups of people who face, or have faced, entrenched discrimination so they can have similar access to opportunities as others in the community.

An example of a special measure is a program which targets Aboriginal and Torres Strait Islander people for employment opportunities to redress their under-representation in a workplace.

All discrimination laws which prohibit racial discrimination, with the single exception of the NSW Act, have provisions which make clear that positive action to assist historically disadvantaged racial groups will not be considered unlawful discrimination.<sup>4</sup> The language used in the laws to describe such positive actions differs between the jurisdictions (i.e. sometimes they are called ‘equal opportunity measures’), but for the purposes of this guideline they will be referred to generally as ‘special measures’.

Discrimination law recognises that ‘equality’ does not always mean identical treatment. In order to achieve genuine, ‘substantive’ equality, it may be necessary to treat people differently in order to address existing inequality or disadvantage. Although special measures necessarily involve treating different racial groups differently, this differential treatment is not against the law if it meets certain criteria.

This means that **if an action taken to ameliorate the disadvantage experienced by a particular racial group meets the requirements of a special measure, it is not unlawful discrimination. It is therefore unnecessary for an employer to apply for an exemption from discrimination law to take such action**, unless they are operating in New South Wales.

As is explained in section 4 of this guideline, there is no relevant special measures provision under the *Anti-Discrimination Act 1977* (NSW). It is therefore necessary for employers wanting to conduct targeted recruitment for Aboriginal and Torres Strait Islander people in New South Wales to apply for an exemption from that Act.

In Tasmania, the Anti-Discrimination Commissioner encourages employers to seek an exemption for a targeted recruitment strategy even if it meets the requirements of a special measure. This is discussed further in section 5 of this guideline.

## 1.2 Genuine occupational requirements

State and territory discrimination laws also contain separate provisions which apply if being of a particular race is a genuine occupational qualification or requirement for a particular job.<sup>5</sup>

This may include roles which involve developing or implementing policies, programs or services targeting Aboriginal and/or Torres Strait Islander service users, or liaising with Aboriginal and/or Torres Strait Islander communities. For example, a company may create the position of an Aboriginal Liaison Officer, to provide support and information to Aboriginal and Torres Strait Islander staff and service users.

The wording and scope of the genuine occupational requirement provisions vary across the different jurisdictions. Employers will need to check the wording of the law in the jurisdiction/s in which they operate to see if the jobs they intend to advertise would fall within the provision.

If this provision does apply to the particular position, it is recommended that in advertisements for the position the employer include prominent wording to the effect that:

‘[Name of employer] considers that being Aboriginal or a Torres Strait Islander is a genuine occupational requirement for this position under s 42 of the *Discrimination Act 1991* (ACT)/ s 14 of the *Anti-Discrimination Act 1977* (NSW)/ sub-s 35(1)(b)(ii) of the *Anti-Discrimination Act 1996* (NT), s 25 of the *Anti-Discrimination Act 1991* (Qld)/ sub-s 56(2) of the *Equal Opportunity Act 1984* (SA)/ s 41 of the *Anti-Discrimination Act 1998* (Tas)/ sub-s 26(3) or s 28 of the *Equal Opportunity Act 2010* (Vic)/s 50 of the *Equal Opportunity Act 1984* (WA) [select applicable].’

Note however that the federal Racial Discrimination Act does not include an exception for genuine occupational requirements. This means that **even if being Aboriginal or Torres Strait Islander is a genuine occupational requirement for a position, an employer will still need to satisfy him or herself, and be prepared to demonstrate, that recruitment for this position also meets the criteria for a special measure** (set out in section 2 of this guideline) in order to comply with that Act.





The Age/Fairfax Syndication (2011)

### 1.3 Minimising risk of complaints when conducting targeted recruitment strategies

While an employer may be satisfied that their targeted recruitment strategy meets the criteria of a special measure, it is important to note that this does not necessarily prevent a person from making a complaint about the measure under discrimination law.

Complaints under discrimination laws must first be made to the Commission (in the case of complaints under federal discrimination law) or the relevant state or territory discrimination/equal opportunity authority, except in Victoria where a complaint can be made directly to the Victorian Civil and Administrative Tribunal.

These bodies generally attempt to resolve the complaint through conciliation between the parties. If the complaint is rejected, dismissed, terminated, referred or otherwise not resolved by the Commission or state or territory discrimination/equal opportunity authority, there may be a formal hearing of the matter before a relevant tribunal, or in the case of federal complaints, the Federal Court or Federal Circuit Court.

In the event that a complaint is lodged, an employer will generally be provided with the opportunity to provide information which supports the existence of a genuine occupational requirement, or the assertion that the strategy is a special measure.

If an employer follows the practical steps set out in the following sections of this guideline, this will assist in demonstrating that the strategy is a special measure which is consistent with discrimination law.

**If the relevant decision-maker (i.e. the Commission/er, tribunal or court) is satisfied that the legislative requirements for a special measure are met, the complaint or claim against the measure would not be successful, because the measure would not be unlawful.**

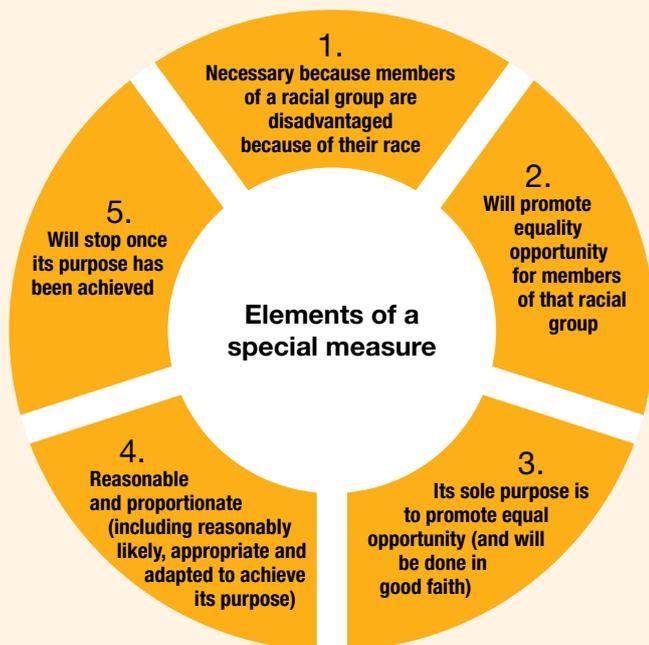
In some states, although legally unnecessary, an exemption for a special measure **may** be granted by a state or territory discrimination/equal opportunity authority or a tribunal (see section 5 and Appendix 3 of this guideline). If granted, an exemption provides greater certainty that a complaint relating to the measure would not be successful.

It should be noted that it is rare for the Commission or state or territory discrimination/ equal opportunity authorities to receive complaints about targeted recruitment strategies for Aboriginal and Torres Strait Islander people. In the last three years the Commission has not received any such complaints. Similarly, the discrimination/equal opportunity authorities in most other jurisdictions report that they too have received few or no such complaints in recent years.

## 2. Requirements for targeted recruitment strategies for Aboriginal and Torres Strait Islander people to qualify as special measures (except in New South Wales)

The purpose of this section is to provide a nationally consistent set of requirements for a ‘special measure’ targeted recruitment strategy for Aboriginal and Torres Strait Islander peoples.

The core elements of a special measure are essentially the same under all federal, state and territory discrimination laws. However, the wording of the criteria in the legislation of each jurisdiction differs slightly.<sup>6</sup>



The set of requirements below represents a consolidation of the various requirements under the federal Racial Discrimination Act and state and territory discrimination laws. It reflects the strictest requirements across the jurisdictions, so that an employer who can demonstrate that their recruitment strategy meets all of these criteria can have confidence that they would meet the test in every jurisdiction. Employers can use the template provided in Appendix 1 of this guideline to record how their program meets these criteria.

Note that each requirement must be met, and that the requirements are interrelated and overlapping, and therefore should not be read in isolation.

### 2.1 Demonstrate that the targeted recruitment strategy is necessary because members of a racial group are disadvantaged because of their race

An action can only be considered a special measure and therefore consistent with discrimination law when that action is necessary for members of a disadvantaged racial group to enjoy their human rights equally with others.

To demonstrate that a special measure is necessary, an employer will need to provide recent and reliable data as evidence that Aboriginal and Torres Strait Islander people experience disadvantage in employment because of their race.

The Australian Bureau of Statistics (ABS) provides data which can be relied upon to demonstrate disadvantage and therefore that a special measure is necessary.<sup>7</sup> For example, in its 2011 *Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians*, the ABS found that:

- about two in five Aboriginal and Torres Strait Islander people aged 15 years and over were employed, compared with about three in five non-Indigenous people
- Aboriginal and Torres Strait Islander people were about three times more likely than non-Indigenous people to be unemployed.<sup>8</sup>

The annual *Closing the Gap* reports released by the Prime Minister may also provide relevant data. For example, the Prime Minister’s 2015 report concludes that the gap in employment outcomes between Indigenous and non-Indigenous Australians has widened in recent years. The proportion of Aboriginal and Torres Strait Islander people aged 15–64 years who are employed fell from 53.8 per cent in 2008 to 47.5 per cent in 2012–13, while the proportion of non-Indigenous Australians who are employed increased from 75.0 per cent to 75.6 per cent.<sup>9</sup>

If an employer has data on the percentage of its workforce that is made up of Aboriginal and Torres Strait Islander people, and/or the levels of employment of Aboriginal and Torres Strait Islander people within the industry in which it operates, this would also be relevant.

Wherever possible, employers should consult with Aboriginal and/or Torres Strait Islander communities in the areas in which they operate to ascertain whether targeted recruitment strategies are necessary. The Commission supports the view that '[p]referential programs should always, where remotely feasible, be developed in consultation with those being helped, and individuals should always be given the opportunity of receiving normal, non-preferential treatment should they so prefer.'<sup>10</sup>

Support of Aboriginal and Torres Strait Islander communities for a targeted recruitment strategy would assist an employer in demonstrating not only that the program is necessary, but also that the program meets requirements 2, 3 and 4 below. This support from Aboriginal and Torres Strait Islander communities will generally lead to more effective implementation of the program.

A targeted Aboriginal and Torres Strait Islander recruitment strategy may also be included in the negotiation of an Indigenous Land Use Agreement (ILUA) with the local Aboriginal and /or Torres Strait Islander community which includes employment opportunities to be filled through targeted recruitment strategies. An example of an ILUA which includes agreement about employment outcomes is the Argyle Diamond Mine Participation Agreement, discussed in the box below.

### **Case study:**

#### **Argyle Diamond Mine Participation Agreement**

The Argyle Diamond Mine Participation Agreement (the Argyle Agreement) is a registered Indigenous Land Use Agreement (ILUA) between Traditional Owners of the East Kimberley region of Western Australia, the Kimberley Land Council and Argyle Diamond Mine (Argyle Diamonds). The Argyle lease occupies the traditional country of the Mirriuwung and Gidja peoples as well the Malgnin and Woolah peoples.

In 2001, Argyle Diamonds and the traditional owners came to the table to renegotiate and renew the relationship between the traditional owners and the mining company. The ILUA negotiations were conducted by two committees, that of the traditional owners and of Argyle Diamonds.

A significant focus of the Argyle Agreement is to achieve training and employment outcomes for local Aboriginal people. Argyle Diamonds has made a commitment to give support and preference to local Aboriginal people for jobs and training at the mine. The Training and Employment Management Plan that is part of the Argyle Agreement includes business and employment principles that aim to achieve and maintain a 40 percent local Aboriginal employment quota on commencement of the underground mine in 2008, continuing until the mine closes.

## **2.2 Explain how the targeted recruitment strategy will promote equal opportunity for (and therefore provide a benefit to) members of a racial group**

The special measure must be designed to improve the circumstances of a disadvantaged racial group by promoting equality of opportunity for that group. A targeted program aimed at increasing employment of a disadvantaged racial group is a clear example of a benefit which promotes equality of opportunity.

It is well-established in every jurisdiction that Aboriginal and Torres Strait Islander peoples constitute racial groups (both separately and as a combined group).<sup>11</sup>



Glen Campbell/Fairfax Syndication (2012)

### **2.3 Show that the sole purpose of the targeted recruitment strategy is to promote equal opportunity for members of the disadvantaged group (and that it will be undertaken in good faith for that purpose)**

A special measure should have as its sole purpose a specific and clear aim of addressing the situation where members of a racial group have experienced inequality.

The purpose of a special measure is determined by looking at the stated intention of the person undertaking the strategy, in this case, the employer.<sup>12</sup>

Accordingly, employers need to document their intention in conducting targeted recruitment strategies for Aboriginal and Torres Strait Islander people, for example, by using the template attached at Appendix 1 of this guideline. That documentation should include reference to the evidence which demonstrates why the measure is necessary, as mentioned above. A detailed record of the planning and rationale behind the measure will serve both as evidence of its purpose, and of the good faith of the employer undertaking it.

The question of whether the sole purpose of the measure is to advance the rights of a disadvantaged group is closely related to the requirement for proportionality, discussed immediately below.

### **2.4 Show that the targeted recruitment strategy is generally reasonable and proportionate, including that it is reasonably likely, appropriate and adapted to achieve its purpose**

A special measure must be designed to effectively address the actual disadvantage of the targeted group, that is, it must be 'appropriate and adapted' to its purpose.

An employer needs to show there is a rational connection between the planned strategy and its stated objective in such a way that it is reasonably likely that the strategy will be successful.

A special measure must also be proportional to the degree of disadvantage experienced by the target population.

All of these criteria are linked to the requirement to demonstrate by reference to the evidence why the measure is necessary, that is, to identify the disadvantage suffered by the particular group. Once the particular disadvantage is identified, the measure must be designed to address that disadvantage.<sup>13</sup>

The principle of proportionality requires that the means adopted to address the disadvantage must not go beyond what is necessary to do so.

## Case study:

### Reasonableness and proportionality

In *The Ian Potter Museum of Art (Anti-Discrimination Exemption)* [2011] VCAT 2236, the Victorian Civil and Administrative Tribunal considered the proposal by the Ian Potter Museum of Art (part of the University of Melbourne) to recruit an Indigenous person in the role of an Assistant Curator. The Tribunal held that the proposal was proportionate and reasonably likely to achieve its purpose of increasing the representation of Aboriginal and Torres Strait Islander people on the staff of the Museum and the University. The Tribunal held that the proposal was reasonably likely to achieve its purpose because, upon an Aboriginal or Torres Strait Islander person being employed in the position, this would increase the level of employment of Aboriginal and Torres Strait Islander people in the University. The Tribunal held that the proposal was also a proportionate measure as:

At present, out of a staff of 15, only one employee of the applicant is Indigenous. As at June 2009, across the University as a whole Indigenous employees represented less than 0.5% of the staff. That figure is dramatically less than the number required to represent the proportion of Indigenous people in the wider population. In these circumstances, the proposed conduct is a proportionate means of achieving the applicant's purposes.

To demonstrate that a targeted recruitment strategy meets these requirements, an employer should refer back to the evidence of the disadvantage which needs to be addressed as mentioned above. An employer should then explain that the strategy is an appropriate way of increasing employment of Aboriginal and Torres Strait Islander peoples. If an employer has unsuccessfully attempted to employ Aboriginal and Torres Strait Islander people in the past without implementing a targeted program, this history would be relevant to include.

The test for proportionality will be the same whether the targeted recruitment strategy includes individual or bulk recruitment. Given the significant gap in employment outcomes between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians, a bulk recruitment strategy targeting Aboriginal and Torres Strait Islander people by an employer is unlikely to fail the test of proportionality.

## 2.5 Show that the targeted recruitment strategy will stop once its purpose has been achieved

A special measure must be temporary, and cannot permanently establish separate rights for a particular group. However, the appropriate duration of a special measure is determined by whether it has achieved its purpose, not by a predetermined passage of time.<sup>14</sup> A special measure can continue for an extended period, so long as it ends once its objective has been achieved. Therefore, it is recommended that an employer designing a targeted recruitment program build in periodic reviews to evaluate its effectiveness in achieving its purpose.

An employer may set targets for the number of Aboriginal and Torres Strait Islander people intended to be employed as part of an Indigenous Employment Strategy or a particular recruitment program. The targeted recruitment program should end once those targets have been reached. However, a new program with different (higher) targets could then be undertaken.

Generally speaking, targeted recruitment strategies for Aboriginal and Torres Strait Islander peoples will no longer qualify as special measures once Indigenous Australians enjoy the same employment levels as non-Indigenous Australians.

# 3. Practical guidance on designing and implementing ‘special measure’ recruitment strategies

This section sets out practical steps an employer can take to make it clear that a targeted recruitment program for Aboriginal and Torres Strait Islander people is a special measure. Taking these steps will minimise the risk of complaints that such measures are discriminatory, and provide a strong basis to dispute such a claim in the unlikely event a complaint is made.

## 3.1 Record in writing the intent, design and evidence for the targeted recruitment strategy to be a special measure

It is very important for an employer to document why and how a targeted recruitment strategy will be a special measure to benefit Aboriginal and Torres Strait Islander peoples. This documentation should address all the requirements mentioned in the section above (i.e. the intent of the employer, the evidence of the need for the measure etc). The template attached as Appendix 1 to this guideline can be used for this documentation.

The recruitment should be consistently documented as an employment strategy to address the underrepresentation of Aboriginal and Torres Strait Islander peoples in the employer’s staff/industry/ local area. Reference should be made to the need to help address the general employment gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians.

A written record of the intent and evidence for the special measure will not only be important to demonstrate that the recruitment strategy is a special measure in the unlikely event of a complaint, but also will be useful in gaining executive support for the program within organisations.

An employer can also use this information to measure the success of the program, to determine whether and when its objective has been achieved.

## 3.2 In all documents make reference to the ‘special measure’ provisions which provide the legal basis for the targeted recruitment strategy

It is good practice for employers to clearly identify that their decision to target Aboriginal and Torres Strait Islander candidates for a certain position or group of positions has a legal basis. This will minimise the risk of other applicants challenging the employment as a possible breach of discrimination laws.

The Commission and state and territory discrimination/ equal opportunity authorities recommend that all advertisements and selection documentation for the special measures position(s) contain the wording:

‘The filling of this position is intended to constitute a special/equal opportunity measure under section 8(1) of the *Racial Discrimination Act 1975* (Cth), and [select appropriate jurisdiction/s from: s 27 of the *Discrimination Act 1991* (ACT) / s 57 of the *Anti-Discrimination Act 1996* (NT) / s 105 of the *Anti-Discrimination Act 1991* (Qld) / s 65 of the *Equal Opportunity Act 1984* (SA) / ss 25 and/or 26 of the *Anti-Discrimination Act 1998* (Tas) / s 12 of the *Equal Opportunity Act 2010* (Vic) and s 8(4) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) / s 51 of the *Equal Opportunity Act 1984* (WA)].

The position/s is/are therefore only open to Aboriginal or Torres Strait Islander applicants.’

## Case study:

### Comments from the Queensland Civil and Administrative Tribunal

In *Re AP Eagers Limited* [2012] QCAT 567, the Queensland Civil and Administrative Tribunal suggested that the employer Eagers include in its advertisement for targeted recruitment positions ‘*Eagers considers this advertisement to be an equal opportunity measure under s105 of the Anti-Discrimination Act 1991*’. In *Downer EDI Mining* [2013] QCATA 276 the Tribunal stated that using such wording can be useful ‘to assist with limiting the potential for any complaint’ and to ‘indicate the Company’s intentions to raise this exemption should a complaint be made’.

### Case study:

## Connecting a special measure to an Indigenous Employment Strategy

The Ian Potter Museum of Art (part of the University of Melbourne) wanted to recruit an Indigenous person in the role of an Assistant Curator. When asked to consider whether this recruitment was a special measure, the Victorian Civil and Administrative Tribunal looked at the University's *Indigenous Employment Framework 2010–2013*. This document recognised the disadvantage suffered by Indigenous Australians, included reference to relevant statistics from the Australian Bureau of Statistics and the number of Indigenous staff at the University, and stated the University's commitment to increase its number of Indigenous employees. This document contributed to the Tribunal's finding that the recruitment met the test for a special measure (see *The Ian Potter Museum of Art (Anti-Discrimination Exemption)* [2011] VCAT 2236).

### 3.3 Consider linking the recruitment strategy to an Indigenous Employment Strategy and/or Reconciliation Action Plan

An existing Indigenous Employment Strategy can provide useful context and support for the employer's action in implementing a special measure. Such a document makes clear to the public the employer's commitment to reducing unemployment for Aboriginal and Torres Strait Islander peoples.

An Indigenous Employment Strategy can be adopted as a separate policy document, or as part of a broader Reconciliation Action Plan (RAP). A RAP outlines practical action that an organisation can take to build strong relationships and enhance respect between Aboriginal and Torres Strait Islander peoples and other Australians. It also sets out an organisation's aspirational plans to drive greater equality.

If an employer's RAP makes specific reference to the intention to conduct targeted recruitment strategies to increase employment of Aboriginal and Torres Strait Islander people, this provides further evidence of the purpose, good faith and proportionality of the program.

More information on RAPs, including how to develop one, is available on Reconciliation Australia's website: [www.reconciliation.org.au/raphub/](http://www.reconciliation.org.au/raphub/)



### Case study:

## Including targeted recruitment strategies in a Reconciliation Action Plan

In Crown Resorts' *Elevate Reconciliation Action Plan 2015–17* it recognises that 'providing meaningful employment for Aboriginal and Torres Strait Islander Australians is central to reconciliation'. The Plan contains a commitment to 'employ, develop and promote Aboriginal and Torres Strait Islander people at our properties, at every opportunity'.

In its Plan, Crown states that it made a commitment in 2009 to hire 300 Aboriginal and Torres Strait Islander people; a goal which it achieved in 2013. Its current target for its Indigenous Employment Program is to provide 2,000 job opportunities by 2021.

Its Plan also contains the shorter-term measurable goal of hiring 200 new Aboriginal and Torres Strait Islander employees by July 2017.



### **3.4 Communicate the intention of the recruitment strategy throughout the recruitment process**

Communicating the intention of a targeted recruitment strategy throughout its development and implementation is crucial to minimising the risk that its rationale might be misunderstood. The employer's intention, including the legal provision relied upon, should be reflected in the internal documentation prepared in planning the measure, the job description, advertisements for the position/s, the information provided at a formal interview, and any recruitment documentation provided to the successful applicant/s.

If applicable, the employer can include links to its Indigenous Employment Strategy or Reconciliation Action Plan in any online advertisements for the position/s.

Employers can also consider the involvement of an Indigenous Liaison Officer as a point of contact for applicants for any targeted positions. This Officer could assist Aboriginal and Torres Strait Islander people with the recruitment process, and also explain the concept of and justification for special measures if required.

## 4. New South Wales: Applying for an exemption for a targeted recruitment strategy



Glen Campbell/Fairfax Syndication (2012)

New South Wales is the only jurisdiction that does not have a clear special measures provision in its discrimination legislation. Therefore **an employer wanting to conduct a targeted recruitment strategy for Aboriginal and Torres Strait Islander people in NSW must apply for an exemption from the *Anti-Discrimination Act 1977 (NSW)*** (the NSW Act). The only exception to this is if being of a particular race or ethnic background is a 'genuine occupational requirement' for the position advertised and the employment involves one or more of the circumstances set out in s 14 of the NSW Act.

For guidance on how to apply for an exemption in NSW to conduct targeted recruitment of Aboriginal and Torres Strait Islander people, see Appendix 2 of this guideline.

**Employers recruiting in NSW must also be able to show that a targeted recruitment strategy meets the requirements of a special measure** (set out in section 2 of the guideline), **even if they are granted an exemption from the *Anti-Discrimination Act 1977 (NSW)* to conduct the program (or can rely on the genuine occupational requirements provision)**. This is because an employer recruiting in NSW must comply with both the NSW Act and the federal Racial Discrimination Act, the latter of which does not allow for exemptions.

**See Appendix 2 for guidance on how to apply for an exemption in NSW to conduct targeted recruitment of Aboriginal and Torres Strait Islander people.**



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- When employers apply for exemptions to protect ‘special measure’ conduct, they may not be successful.<sup>15</sup> The granting of exemptions is discretionary, and the case law in some jurisdictions is inconsistent. Generally, the bodies with the power to grant exemptions consider whether an applicant requires an exemption in order to avoid breaching discrimination law. If the conduct meets the requirements for a special measure which is permitted under the relevant law, these bodies may refuse to grant an exemption. For example, in the case below, the Queensland Civil and Administrative Tribunal refused to grant an exemption to Downer EDI Mining because the company’s conduct was likely covered by the ‘special measure’ provision in s 105 of the Queensland *Anti-Discrimination Act 1991*.

### **Case study:**

#### Refusal to grant an exemption for a special measure

In 2013 Downer EDI Mining applied for an exemption from the *Anti-Discrimination Act 1991* (Qld) in order to designate, advertise and appoint specific roles to Aboriginal and Torres Strait Islander people. The Queensland Civil and Administrative Tribunal dismissed the application on the basis Downer EDI Mining did not need an exemption, primarily because the recruitment was likely to meet the requirements of an ‘equal opportunity measure’ which was permitted under s 105 of the Act.

Downer EDI Mining appealed, arguing that it did need the exemption, as even if s 105 applied, the company would still be open to claims of discrimination from non-Indigenous applicants who applied for the positions. In *Downer EDI Mining* [2013] QCATA 276 the Tribunal rejected this appeal, holding that ‘the application of section 105 is arguably open to Downer EDI and in the circumstances ...there is no need or necessity to grant an [sic] discretionary exemption.’

Employers considering applying for an exemption will also need to factor in the time it will take for an exemption application to be processed and finalised. This may be an issue if the employer needs to fill a vacancy by a certain date.

For more information about the process of seeking, and likelihood of obtaining, an exemption for a targeted recruitment strategy in a particular jurisdiction, please contact the relevant discrimination or equal opportunity authority (details are in the following section).<sup>16</sup>

## 6. Contact for more information

If you have any questions about planning and implementing a targeted recruitment strategy so that it meets the criteria for a special measure, please contact the Australian Human Rights Commission and/or the discrimination/ equal opportunity authority in the jurisdiction in which you wish to conduct the recruitment:

Jurisdiction	Discrimination law	Agency	Contact details
<b>Cth</b>	<i>Racial Discrimination Act 1975</i> (Cth)	Australian Human Rights Commission	<a href="http://www.humanrights.gov.au/contact-us-2">www.humanrights.gov.au/contact-us-2</a>
<b>ACT</b>	<i>Discrimination Act 1991</i> (ACT)	ACT Human Rights Commission	<a href="http://hrc.act.gov.au/contact-us/">http://hrc.act.gov.au/contact-us/</a>
<b>NSW</b>	<i>Anti-Discrimination Act 1977</i> (NSW)	Anti-Discrimination Board NSW	<a href="http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_contactus/adb1_contactus.aspx">www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_contactus/adb1_contactus.aspx</a>
<b>NT</b>	<i>Anti-Discrimination Act 1996</i> (NT)	NT Anti-Discrimination Commission	<a href="http://www.adc.nt.gov.au/contacts.html">www.adc.nt.gov.au/contacts.html</a>
<b>Qld</b>	<i>Anti-Discrimination Act 1991</i> (Qld)	Anti-Discrimination Commission Queensland	<a href="http://www.adcq.qld.gov.au/contact-us">www.adcq.qld.gov.au/contact-us</a>
<b>SA</b>	<i>Equal Opportunity Act 1984</i> (SA)	South Australian Equal Opportunity Commission	<a href="http://www.eoc.sa.gov.au/contact-us">www.eoc.sa.gov.au/contact-us</a>
<b>Tas</b>	<i>Anti-Discrimination Act 1998</i> (Tas)	Office of the Anti-Discrimination Commissioner (Tasmania)	<a href="http://www.antidiscrimination.tas.gov.au/contact_details">www.antidiscrimination.tas.gov.au/contact_details</a>
<b>Vic</b>	<i>Equal Opportunity Act 2010</i> (Vic)	Victorian Equal Opportunity & Human Rights Commission	<a href="http://www.humanrightscommission.vic.gov.au/index.php/how-we-can-help">www.humanrightscommission.vic.gov.au/index.php/how-we-can-help</a>
<b>WA</b>	<i>Equal Opportunity Act 1984</i> (WA)	Western Australian Equal Opportunity Commission	<a href="http://www.eoc.wa.gov.au/contact-us">www.eoc.wa.gov.au/contact-us</a>

Appendix 1:

# Template for record of targeted recruitment strategy addressing special measure criteria

## Description of recruitment strategy:

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## Declaration of intention to fill the above position/s through a ‘special measure’:

The position/s will only be open to Aboriginal or Torres Strait Islander applicants.

The filling of this position/these positions is intended to constitute a special/equal opportunity measure under section 8(1) of the *Racial Discrimination Act 1975* (Cth), and [select appropriate jurisdiction/s from: s 27 of the *Discrimination Act 1991* (ACT) / s 57 of the *Anti-Discrimination Act 1996* (NT) / s 105 of the *Anti-Discrimination Act 1991* (Qld) / s 65 of the *Equal Opportunity Act 1984* (SA) / ss 25 and/or 26 of the *Anti-Discrimination Act 1998* (Tas) / s 12 of the *Equal Opportunity Act 2010* (Vic) and s 8(4) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) / s 51 of the *Equal Opportunity Act 1984* (WA)].

1. **Why is the targeted recruitment strategy necessary? (Provide evidence that members of the racial group are disadvantaged because of their race)** (for example data from the Australian Bureau of Statistics, or *Closing the Gap* reports)

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2. **How will the targeted recruitment strategy promote equal opportunity for (and therefore provide a benefit to) members of a racial group?**

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**3. Explain how the sole purpose of the targeted recruitment will be to promote equal opportunity for members of the disadvantaged group (and that it will be undertaken in good faith for that purpose) (include here reference to any Reconciliation Action Plan or Indigenous Employment Strategy)**

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**4. Explain how the targeted recruitment strategy is generally reasonable and proportionate, (including reasonably likely, appropriate and adapted to achieve its purpose) (include why alternatives are not possible or will be ineffective)**

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**5. How long will the strategy continue, and how will the strategy's success in achieving its purpose be measured? (explain the timeframe for the strategy, any relevant employment targets and proposed time for review to assess whether the strategy is working)**

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## Appendix 2:

# Applying for an exemption from the *Anti-Discrimination Act 1977 (NSW)*

The Anti-Discrimination Board NSW has published guidelines on how to apply for exemptions to the *Anti-Discrimination Act 1977 (NSW)*, available here: [www.antidiscrimination.justice.nsw.gov.au/Pages/adb1\\_antidiscriminationlaw/adb1\\_exemptions/adb1\\_exemptions.aspx](http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/adb1_exemptions/adb1_exemptions.aspx).

An employer wanting to conduct targeted recruitment would need to apply for the exemption to the President of the Anti-Discrimination Board NSW under s 126 of that Act (unless the employer can rely upon the genuine occupational requirements exception in s 14).

The Anti-Discrimination Board's guidelines set out that an exemption is likely to be granted 'where the purpose of a targeted job is to give the particular group an opportunity that was previously unavailable to them, in order to redress past disadvantage or discrimination.' The guidelines give the following as an example of an employment exemption that is likely to be granted:

An organisation wishes to set aside several positions for Aboriginal and Torres Strait Islander people because their research shows that they are traditionally under-represented in the particular industry. In its s 126 exemption application the organisation shows that it intends to provide training and ongoing support for new recruits and has ensured that there will be career opportunities for them in the future.

In recent years applications for exemptions for recruitment of Aboriginal and Torres Strait Islander people have been the most common type of exemption applications received by the Anti-Discrimination Board NSW.

In the guidelines the Anti-Discrimination Board lists the information an employer must provide to the President as part of their application, and the six criteria that the employer must address to convince the President to grant the exemption.<sup>17</sup> Much of the information mentioned above in this guideline as necessary to establish that a recruitment program is a special measure would be relevant to an application for an exemption under s 126 of the NSW Act.

For example, to be granted an application the employer must address:

- **how targeting the position, service or program would further equal employment opportunity in its workplace** – very similar to requirement 2 of a special measure
- **how long** the employer would like the exemption for **and the reasons for that length of time** – this relates to the requirement 5 that a special measure not continue once it has achieved its purpose
- whether the proposed exemption is **appropriate or reasonable** – very similar to requirement 4 of a special measure
- whether the proposed exemption is **necessary** – same as for requirement 1 of a special measure, an employer can demonstrate necessity by providing recent statistical information about the disadvantage suffered by Aboriginal and Torres Strait Islander peoples
- whether there are any **non-discriminatory ways** of achieving the objects or purposes for which the proposed exemption is sought – this is also related to requirement 4 for a special measure (particularly the concept of proportionality). Much of the information which would address that requirement would be relevant here – particularly any evidence that past non-targeted recruitment strategies used by the employer did not increase its number of Aboriginal and Torres Strait Islander employees
- whether the proponent of the proposed exemption has taken **reasonable steps**, or is able to take any reasonable steps, to **avoid or reduce the adverse effect** of a particular act or action before seeking the exemption – to show this an employer could point to other recruitment programs it runs which are not restricted to Aboriginal and Torres Strait Islander persons, and therefore provide employment opportunities to non-Indigenous persons
- the public, business, social or other community **impact** of the granting of the proposed exemption – an employer can refer here to the positive impact that the targeted recruitment will have in terms of increasing employment of Aboriginal and Torres Strait Islander peoples

## Appendix 3: Targeted recruitment in Tasmania

- any conditions or limitations to be contained in the proposed exemption – note that the duration of an exemption will generally be tied to the length of time the employer demonstrates it will be funding the program (i.e. the position/s) for.

An exemption under s 126 of the NSW Act can be granted for a maximum of 10 years.<sup>18</sup>

**Employers recruiting in NSW must also be able to show that a targeted recruitment strategy meets the requirements of a special measure** (set out in section 2 of this guideline), **even if they are granted an exemption from the *Anti-Discrimination Act 1977 (NSW)* to conduct the program (or can rely on the genuine occupational requirements provision)**. This is because an employer recruiting in NSW must comply with both the NSW Act and the *Racial Discrimination Act 1975 (Cth)* (the latter of which does not allow for exemptions).

In the event a complaint is made to the Anti-Discrimination Commissioner about targeted recruitment in Tasmania, the complaint (if not resolved through conciliation) would have to be referred to the Anti-Discrimination Tribunal for inquiry.

Under the Tasmanian *Anti-Discrimination Act 1998*, exceptions under the Act, including the special measures exceptions (sections 25 and 26), must be proven on the balance of probabilities.<sup>19</sup>

While the Anti-Discrimination Commissioner has some authority to determine whether or not a special measure exception properly applies, the Commissioner may not always have authority to determine that sections 25 and/or 26 apply to a complaint either at initial assessment or after investigation.

It would therefore be at the inquiry by the Tribunal that an employer would have to prove, on the balance of probabilities, that the exception applied to its conduct and, as a result, the conduct was not unlawful.

However, if an exemption is granted for targeted recruitment, the Anti-Discrimination Commissioner has express authority to reject or dismiss a complaint of conduct that falls within the scope of the exemption granted.<sup>20</sup>

Because of this, the Anti-Discrimination Commissioner encourages employers seeking to engage in targeted recruitment in Tasmania to apply for an exemption under the *Anti-Discrimination Act 1998 (Tas)*. This provides protection against a complaint about any conduct that falls within the scope of the exemption granted. In applying for an exemption, providing material that satisfied the requirements set out in section 2 of this document is likely to be sufficient.

The Tasmanian Anti-Discrimination Commissioner has published information on how to apply for exemptions to the *Anti-Discrimination Act 1998 (Tas)* available here: [www.antidiscrimination.tas.gov.au/exemptions/applying\\_for\\_an\\_exemption](http://www.antidiscrimination.tas.gov.au/exemptions/applying_for_an_exemption).

## Endnotes

- 1 Section 20(d) of the *Racial Discrimination Act 1975* (Cth) provides for the Commission to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of infringements of the operative provisions of the Act.
- 2 Available at [www.humanrights.gov.au/publications/guidelines-understanding-special-measures-racial-discrimination-act-1975-cth-2011](http://www.humanrights.gov.au/publications/guidelines-understanding-special-measures-racial-discrimination-act-1975-cth-2011) (viewed 15 July 2015).
- 3 Note that the exception for ‘special needs programs and activities’ in s 21 of the *Anti-Discrimination Act 1977* (NSW), which permits certain measures to promote equal access to facilities, services and opportunities for persons of a particular race, is currently interpreted by the New South Wales Anti-Discrimination Board as not including employment.
- 4 *Racial Discrimination Act 1975* (Cth), s 8(1); *Discrimination Act 1991* (ACT), s 27; *Anti-Discrimination Act 1996* (NT), s 57; *Anti-Discrimination Act 1991* (Qld), s 105; *Equal Opportunity Act 1984* (SA), s 65; *Anti-Discrimination Act 1998* (Tas), ss 25 and 26; *Equal Opportunity Act 2010* (Vic), s 12 (see also *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 8(4)); *Equal Opportunity Act 1984* (WA), s 51.
- 5 See *Discrimination Act 1991* (ACT), s 42; *Anti-Discrimination Act 1977* (NSW), s 14; *Anti-Discrimination Act 1996* (NT), sub-s 35(1)(b)(ii); *Anti-Discrimination Act 1991* (Qld), s 25; *Equal Opportunity Act 1984* (SA), sub-s 56(2); *Anti-Discrimination Act 1998* (Tas), s 41; *Equal Opportunity Act 2010* (Vic), sub-s 26(3) and s 28; *Equal Opportunity Act 1984* (WA), s 50.
- 6 For the wording in a particular jurisdiction, see: *Racial Discrimination Act 1975* (Cth), s 8(1); *Discrimination Act 1991* (ACT), s 27; *Anti-Discrimination Act 1996* (NT), s 57; *Anti-Discrimination Act 1991* (Qld), s 105; *Equal Opportunity Act 1984* (SA), s 65; *Anti-Discrimination Act 1998* (Tas), ss 25 and 26; *Equal Opportunity Act 2010* (Vic), s 12 (see also *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 8(4)); *Equal Opportunity Act 1984* (WA), s 51.
- 7 See, for example, *The Ian Potter Museum of Art (Anti-Discrimination Exemption)* [2011] VCAT 2236, [25]–[26] and [39].
- 8 Australian Bureau of Statistics, *Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians, 2011*, ABS cat no 2076.0 (2012). At [www.abs.gov.au/ausstats/abs@.nsf/Lookup/2076.0main+features802011](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2076.0main+features802011) (viewed 2 June 2015).
- 9 Department of the Prime Minister and Cabinet, Australian Government, *Closing the Gap: Prime Minister’s Report 2015* (2015) p 13, available at [www.dpmpc.gov.au/pm-c-indigenous-affairs/publication/closing-gap-prime-ministers-report-2015#jobs](http://www.dpmpc.gov.au/pm-c-indigenous-affairs/publication/closing-gap-prime-ministers-report-2015#jobs) (viewed 2 June 2015).
- 10 G Evans, ‘Benign Discrimination and the Right to Equality’ (1974) 6 *Federal Law Review* 26, 30.
- 11 See further the definitions of ‘race’ in *Racial Discrimination Act 1975* (Cth), sub-s 8(1) (and see *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, art 1(1) and (4)); *Discrimination Act 1991* (ACT), Dictionary; *Anti-Discrimination Act 1977* (NSW), s 4; *Anti-Discrimination Act 1996* (NT), s 4; *Anti-Discrimination Act 1991* (Qld), Dictionary; *Equal Opportunity Act 1984* (SA), s 5; *Anti-Discrimination Act 1998* (Tas), s 3; *Equal Opportunity Act 2010* (Vic), s 4; *Equal Opportunity Act 1984* (WA), s 4.
- 12 ‘Any fact which shows what the persons who took or who promoted the taking of a measure intended it to achieve casts light upon the purpose for which it was taken provided the measure is not patently incapable of achieving what was so intended’: *Gerhardy v Brown* (1985) 159 CLR 70, 135 (Brennan J).
- 13 In *Gerhardy v Brown* Brennan J stated ‘The need must match the purpose’: 159 CLR 70, 137.
- 14 See for example Committee on the Elimination of Discrimination Against Women, *General Recommendation 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, (2004), para 20. At: [www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) (viewed 18 June 2015).
- 15 For example in Victoria the Victorian Civil and Administrative Tribunal has dismissed applications for exemptions where the conduct is a special measure (because it is therefore not necessary to grant the applicant an exemption), but has made a declaration that the proposed recruitment is a special measure under s 12 of the *Equal Opportunity Act 2010*. For more information about the process in Victoria, contact the Victorian Equal Opportunity and Human Rights Commission.
- 16 There are also factsheets available on the processes for applying for an exemption from the discrimination laws in Tasmania and Queensland: see *Applying for Exemption under the Tasmanian Anti-Discrimination Act 1998*, at [www.antidiscrimination.tas.gov.au/exemptions/applying\\_for\\_an\\_exemption](http://www.antidiscrimination.tas.gov.au/exemptions/applying_for_an_exemption) (viewed 15 June 2015); *Applying to QCAT for an exemption under the Anti-Discrimination Act 1991* (Qld), at [www.adcq.qld.gov.au/resources/brochures-and-guides/fact-sheets/qcat-exemptions](http://www.adcq.qld.gov.au/resources/brochures-and-guides/fact-sheets/qcat-exemptions) (viewed 15 June 2015).
- 17 See *Anti-Discrimination Regulation 2014* (NSW) reg 6.
- 18 *Anti-Discrimination Act 1977* (NSW), s 126(3).
- 19 *Anti-Discrimination Act 1998* (Tas), s 101.
- 20 *Anti-Discrimination Act 1998* (Tas), s 64(1)(h).

## Further Information

### **Australian Human Rights Commission**

Level 3, 175 Pitt Street  
SYDNEY NSW 2000

GPO Box 5218  
SYDNEY NSW 2001  
Telephone: (02) 9284 9600

National Information Service: 1300 656 419  
General enquiries and publications: 1300 369 711  
TTY: 1800 620 241  
Fax: (02) 9284 9611  
Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

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