

IMPORTANT NOTICE

Lockheed Martin Australia Pty Ltd, Sikorsky Aircraft Australia Ltd and Lockheed Martin Global Inc (the applicants) have applied to the Victorian Civil and Administrative Tribunal (VCAT) for exemption from the *Equal Opportunity Act 2010* (Vic) (**the Act**) to allow each of the applicants to undertake the following activity:

- 1 Request and require existing and prospective employees and contract workers who are likely to be required to access controlled material and/or restricted material or to comply with security requirements to:
 - a. provide their citizenship information;
 - b. advise of any changes in the citizenship information that they have already provided or that may be required to comply with security requirements; and
 - c. execute any non-disclosure agreement required by an associated instrument.
- 2 Notify applicants for roles which are likely to require access to controlled material and/or restricted material and/or compliance with security requirements that they may be adversely affected by security requirements, including if they are not an Australian citizen or if they hold dual citizenship from countries proscribed as applicable.
- 3 Impose a condition on offers for employment or contract work which are likely to require access to controlled material and/or restricted material and/or compliance with security requirements that the person must be authorised to access such material pursuant to an individual approval obtained from the relevant Australian or overseas government department or otherwise.
- 4 Reject applications by prospective employees or prospective contract workers based on citizenship information rendering the person ineligible to access controlled material and/or restricted material or unable to comply with security requirements, and taking into account citizenship information in determining who should be offered such positions
- 5 Restrict employees and contract workers from accessing controlled material and/or restricted material based on the citizenship information which renders them ineligible to do so, including by:
 - a. transferring employees or contract workers to other positions or projects which do not require access to controlled material and/or restricted material and/or compliance with the security requirements;
 - b. restricting access to areas of the applicants' facilities connected with the work on programs subject to the security requirements; and/or
 - c. establishing security systems and access protocols to prevent unauthorised access to controlled material and/or restricted material.
- 6 Maintain records of citizenship information of employees and contract workers who are likely to require access to controlled material and/or restricted material and/or to comply

with security requirements, relating to approvals, access, and clearances granted under security requirements.

- 7 Disclose, where required, citizenship information of employees and contract workers to:
 - a. the US Department of State;
 - b. the US Department of Commerce;
 - c. the Australian Department of Defence; and
 - d. any other organisation, company or government department for which, or on whose behalf, or at whose request one or more of the applicants undertakes work in respect of which one or more of the applicants has, directly or indirectly, an obligation not to transfer controlled material and/or restricted material to persons of certain nationalities or comply with security requirements.
- 8 Terminating the employment or engagement of employees or contract workers on the basis that:
 - a. due to the citizenship information of the employee or contract workers, the applicants are prohibited from permitting that individual access to controlled material and/or restricted material pursuant to the security requirements; and
 - b. it is not reasonable in all the circumstances to redeploy or transfer that individual to another role within the applicants' operations, or within a business operated by one of the applicants' associated entities.

Citizenship Information means:

- a. an individual's passport details (including provision of a certified copy of any passport), citizenship, nationality and/or residency (including previous and dual citizenship, nationality and residency), place and country of birth and/or substantive contacts to proscribed countries; and
- b. details regarding the matters in (a) above in respect of that individual's immediate family members and contacts.

(the exempt conduct).

The applicants have suggested the following conditions apply to the exemption:

SCHEDULE OF CONDITIONS TO EXEMPTION

- 1 This exemption only applies where the applicants have taken all steps reasonably available (including steps that might be reasonably taken in negotiating or performing any contract) to avoid the necessity to engage in the exempt conduct.

- 2 This exemption order applies only to the applicants' conduct where the applicants have taken all steps that are reasonably available to avoid engaging in exempt conduct, including:
- i relying on any applicable exemptions or exceptions within the security requirements;
 - ii where a prospective employee or contract worker, employee or contract worker is not approved for access to controlled material and/or restricted material, requesting that the US Department of State, or requesting that the relevant export license holder(s) request that the US Department of State, amend the relevant export licenses or other associated instrument to enable the prospective employee or contract worker, employee or contract worker to have access to controlled material, unless the applicants, on reasonable grounds, determine that either:
 - a. the prospective employee or contract worker, employee or contract worker is not the best candidate for the position and work;
 - b. such a request to the US Department of State does not have significant prospects of success; or
 - c. such a request to the US Department of State is not likely to be determined within the timeframe in which it is necessary for the prospective employee or contract worker, employee or contract worker to commence the relevant work for the Applicants; and

in the event that the US Department of State requires the applicants to provide further information specific to the prospective employee or contract worker, employee or contract worker, then with the consent of that person, the applicants will work with the person to supply all relevant information to the US Department of State so that an application for approval may be made in relation to that person.

- 3 Where, pursuant to this exemption order, the applicants wish to reserve the right to make a conditional offer of employment or engagement in relation to a position which will or may involve access to controlled material and/or restricted material, any advertisement, invitation for expressions of interest, or other promotional information referring to the position must include the information that:
- a. the position will or is likely to require access to controlled material and/or restricted material and that any person occupying the position must be able to satisfy security requirements which may require specific authorisation for that person to access that material; and
 - b. if the candidate for the position is concerned as to whether or not they will satisfy the requirement in condition 3(a) above, they should contact a nominated employee of the relevant applicant who is able to provide the applicant with relevant information, including the information set out in condition 4 below.
- 4 The applicants:
- a. must specifically communicate to prospective employees or contract workers for roles, and to any employee or contract worker who currently requires or who may in future require access to controlled material and/or restricted material:

- i express notice that the prospective employee or contract worker, employee or contract worker may be adversely affected by security requirements based on citizenship information;
 - ii a reasonable explanation in plain English of the nature of any such adverse effects;
 - iii notice that the applicants have an exemption under the *Equal Opportunity Act 2010* to enable them to take steps to prevent access to controlled material and/or restricted material;
 - iv that any necessary application for specific authorisation for a person to access controlled material and/or restricted material will be made by the applicants, in appropriate cases;
 - v information about how the prospective employee or contract worker, employee or contract worker can apply for Australian citizenship; and
 - vi information regarding the prospective employee's or contract worker's, employee's or contract worker's rights under Australian Federal, State and Territory discrimination laws.
 - b. may comply with this condition through a range of alternatives, including individual written notices, published policy statements, web-based posting or other similar means.
- 5 Where, pursuant to this exemption order, an employee or contract worker who is not authorised pursuant to security requirements to have access to controlled material and/or restricted material (including pursuant to any individual security clearance), is moved from a job requiring access to such material to a job not requiring access to such material the applicants must, through a duly authorised officer, explain to the person why he or she is being transferred and must otherwise take all reasonable steps to avoid or limit harm or loss to that person.
- 6 Where the applicants use a system of coded security passes to restrict access to controlled material and/or restricted material, or to restrict access to material subject to security requirements, the security passes must not be coded in such a manner that a person's nationality can obviously be identified from the coding.
- 7 All information relating to security passes, security clearance levels and access to controlled material and/or restricted material shall be restricted to persons in the following departments or positions and to their properly appointed nominees on a 'need to know' basis:
- a. Human Resources;
 - b. Facility Security;
 - c. Export/Import Compliance; and
 - d. an employee or contract worker's Hiring Manager.
- 8 The applicants' employment or other relevant policies shall be amended as soon as reasonably possible so as to refer to the terms of this exemption order, including all

- 9 conditions attaching to it, and to expressly state that the applicants' request for citizenship information is made solely for the purposes of compliance with security requirements.
- 10 The applicants are required to provide a written report to the Victorian Human Rights Commission every twelve months from the date of this exemption order, over the period of the exemption order, detailing:
 - a the steps it has taken to comply with the above conditions;
 - b the number of persons affected by this exemption order, the nature of any adverse effects of this exemption order, and the steps taken by the applicants to address those adverse effects;
 - c the anti-discrimination training provided or facilitated by the applicants to employees and contract workers; and
 - d measures taken by the applicants to implement and comply generally with the terms of this exemption order.

**The Tribunal will hear the application at 10:00 AM on
11 May 2023 by teleconference.**

**Interested persons can attend by dialling 03 9137 8300
CODE 7001.**

**If you want to make a submission to the Tribunal either for or against the
application, you must send it in writing to humanrights@vcat.vic.gov.au.**

Please quote reference H376/2022.

The closing date for submissions is 21 April 2023.

