QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Matter No: AD / 2026 / 39

Form 20 – Affidavit

INDUSTRIAL REGISTRAR
26 JUN 2026
QUEENSLAND

Industrial Relations Act 2016, s 989
Industrial Relations (Tribunals) Rules 2011, r 52, r 53, r 55

Information

- This form is to be used to prepare an Affidavit.
- Please read this form carefully and complete all relevant sections. Information that is missing or non-compliant with the relevant section of an Act or the Rules may result in the non-acceptance of your form.
- Documents which are longer than 30 pages in length must be provided to the Industrial Registry in hard copy before it will be accepted for filing.
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Instructions

- Affidavits must comply with the formal requirements for documents in accordance with rules 50 to 57 of the *Industrial Relations (Tribunals) Rules 2011*.
- The affidavit must set out the facts divided into consecutively numbered paragraphs. Each paragraph should be confined to a distinct part of the subject matter.
- This affidavit must be sworn or affirmed before a person authorised by law to witness the swearing of affidavits (e.g. Justice of the Peace, Commissioner for Declarations, Lawyer).
- Each page must be signed by the deponent (person making the affidavit) and the witness (person taking the affidavit).
- ***Attach extra page(s) if you need more space, ensuring that Part 5 containing the signature is always on the last page of the form and that each additional page is signed at the bottom of the page by the deponent and witness.***
- Any handwritten alteration to the affidavit must be initialled by the deponent and witness.
- If this affidavit contains exhibits (document mentioned in the affidavit and used with the affidavit) you will need to complete a **Form 21 - Certificate of Exhibit to Affidavit** for each exhibit (which is also to be signed and witnessed).
- If the affidavit is sworn by a person incapable of reading the affidavit or physically incapable of signing it, the witness must complete the Certificate at Part 6.
- If required by the Court, Commission or Registrar, the deponent must appear to give evidence or for cross-examination.
- The Court, Commission or Registrar may remove or strike out any material contained within the affidavit deemed to be a scandalous or oppressive matter.

[redacted]

Signed: Kathryn Ellis

Taken by: [redacted]
[Signature of witness]
Justice of the Peace/Commissioner for Declarations/Lawyer

1. Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)
	Gibbs & Cox (Australia) Pty Ltd (Second Applicant)

v

Respondent:	N/A

If there are more than two parties to the application, please complete a **Form 1 – Parties list** and file with this form.

This affidavit is filed for the:	☑ **Applicant/Appellant**	☐ **Respondent (or as the case may be)**

2. Contact details of party filing this affidavit

Title [please select]:	☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Mx ☐ Other: _______		
Name of Party:	Leidos Australia Pty Limited		
Name of contact person: [if party is an organisation]	Kathryn Ellis		
Postal/Service address:	Level 2, 42 Lakeview Drive		
	Suburb/Town Scoresby		Postcode 3179
Phone number:	03 9958 9610	**Mobile number:**	0415 870 056
Email address:	Kathryn.Ellis@au.leidos.com		

3. Deponent's details (person making the affidavit)

Title [please select]:	☐ Mr ☐ Mrs ☑ Ms ☐ Miss ☐ Mx ☐ Other: _______	
Deponent's Name:	Kathryn Ellis	
Postal/Service address*:	Level 2, 42 Lakeview Drive	
	Suburb/Town Scoresby	Postcode 3179

* The deponent does not have to give a residential address if they are concerned about their safety. They may give another address at which they are satisfied they will receive documents e.g. a business address.

[redacted]

Signed: Kathryn Ellis

Taken by: [redacted]

[Signature of witness]
Justice of the Peace/Commissioner for Declarations/Lawyer

4. Evidence

Attach extra pages if you need more space ensuring that Part 5 containing the signature is always on the last page of the form and that each additional page is signed at the bottom of the page by the deponent and witness.

Affidavit

I, Kathryn Ellis, of Level 2, 42 Lakeview Drive,

[insert full name of deponent] [insert residential or business address of deponent*]

☐ state on oath: **OR** ☑ do solemnly and sincerely affirm and declare, that:

[see over page]

[redacted]

Signed: Kathryn Ellis______________________ Taken by: [redacted]______________

[Signature of the deponent/substitute signatory] [Signature of witness]
Justice of the Peace/Commissioner for Declarations/Lawyer

Evidence

Use this extra page if you need more space in the affidavit ensuring that Part 5 containing the signature is always on the last page of the form and that each additional page is signed at the bottom of the page by the deponent and witness.

Affidavit of Kathryn Ellis

I, Kathryn Ellis, of Level 2, 42 Lakeview Drive, Scoresby in the State of Victoria, solemnly affirm:

1. I am General Counsel in the sole and permanent employ of Leidos Australia Pty Limited (**Leidos**) which carries on business from the above address. Relevantly, I am responsible for provision of legal advice to Gibbs & Cox (Australia) Pty Ltd (**GCA**) and Leidos.

2. I am authorised to make this affidavit on behalf of Leidos and GCA (the **Leidos Entities**).

3. On 28 June 2021, Leidos was granted an exemption under s 113 of the *Anti-Discrimination Act 1991* (Qld) (**AD Act**) to engage in particular conduct that would otherwise contravene the AD Act. The exemption was granted for the period from 28 June 2021 to 27 June 2026.

   Annexed to this affidavit and marked "**KE-1**" is a copy of the decision in *Re: Leidos Australia Pty Ltd* [2021] QIRC 229.

4. I make this affidavit in support of the Leidos Entities' application for:

   a. a renewal of the exemption granted to Leidos Australia; and

   b. the grant of a new exemption to cover GCA.

Leidos

5. I have been employed at Leidos Australia in my current position since November 2019.

6. The Leidos Entities are subsidiaries of Leidos Inc., a US defence, aviation, information technology, and biomedical research company that provides scientific, engineering, systems integration and technical services, including extensively to the US Department of Defense, US Department of Homeland Security and US Intelligence Community.

7. In Australia, the Leidos Entities provides large-scale systems integration and information technology services, primarily to the Commonwealth of Australia, including in the areas of defence, intelligence and health.

8. Leidos continues to perform the majority of its work for the Department of Defence (**Defence**), as does GCA.

9. Leidos is the largest commercial provider of services, in terms of contract value, to Defence's Chief Information Officer Group (**CIOG**). The CIOG leads the design, delivery and operation of Defence's "Single Information Environment" (**SIE**), an infrastructure network encompassing Defence's information, computing and communications infrastructure. The SIE is essential and integral to core Defence functions including intelligence, surveillance, reconnaissance, communications, information warfare, command and management.

10. The Australian Intelligence Community, being the six Australian security and intelligence agencies, also significantly relies on the information technology and services provided by Leidos.

11. Supporting Defence and its capability building and operations requirements constitutes approximately 80% of the Leidos Australia core business and over 95% of GCA's core business in Queensland and across Australia. Such work continues to be fundamental to ensuring Australia's national security interests are met.

Contracts with Defence

12. Leidos currently has a number of major contracts with Defence, including:

[redacted] [redacted]

a. the contract for the Centralised Processing program under which Leidos transformed and consolidated 280 Defence data centres into 11 domestic and three international data centres, and continues to provide ongoing services support (including servers, storage, database, mainframe and service management) for both the transformed and residual untransformed environments. The current value of this contract is greater than $800 million. Its current and final term ends on 2 September 2027;

b. the Joint Project 2030 Joint Command Support Environment (JCSE) Phase 8 Sustainment contract to support the JCSE "command and control" system used by the Headquarters Joint Operations Command of the Australian Defence Force (ADF) (i.e. the operational-level headquarters responsible for the command and control of ADF operations globally) to support military planning, operations and campaigns, Joint and Coalition exercises and other ADF activities. The current value of this contract is greater than $50 million. Its current and final term ends on 21 February 2027;

c. the SEA 1770 Rapid Environmental Assessment contract to deliver platforms and sensors to enable the Royal Australian Navy to conduct safe operation and movement of ships and to enable landing craft to come ashore, which is critical to ADF operations, especially following disaster events where underwater conditions may have significantly changed. The current value of this contract is greater than $30 million. The term of the contract's support phase currently ends in August 2028, with options to extend the contract until 2043; and

d. the LAND 2110 Phase 1B contract to supply to the ADF and support its chemical, biological, radiological and nuclear defence capabilities. The current value of this contract is greater than $250 million for the support and sustainment phases. The current term will expire on 31 December 2027 and there are options to extend until 31 December 2035.

13. GCA currently has the following contracts with Defence:

a. SEA5000 Hunter Class Frigate - Specialist Engineering Services Support, being a contract to supply specialist naval engineering and naval program management personnel to support CASG's SEA5000 project office. Gibbs & Cox personnel work primarily on the Defence Protected Network (**DPN**);

b. CASG Submarines Branch - Submarines Systems Engineering Support, being a subcontract with Jacobs Defence Pty Ltd to provide support to CASG Submarines Branch technical activities. Gibbs & Cox personnel work primarily on the DPN; and

c. Various contracts with Defence providing specialist engineering support including MVSPO Project Engineering Support, and SEA1180 Specialist Engineering Support.

14. As at June 2026, Leidos engaged 1464 direct employees (including full-time, part-time and casual) and one contractor (collectively, "**personnel**"), with approximately forty-one personnel working in Queensland under contracts with Defence.

15. GCA has 21 direct employees, one of whom reside and perform work within Queensland.

US laws and regulations

16. The Leidos Entities are required to comply with all applicable laws and regulations, which include US import and export control laws and regulations which are extra-territorial.

17. Over 50% of defence equipment and technology acquired by the Commonwealth is sourced from the US and is subject to both Australian and US export controls. Minimising the risk of diversion of controlled technology, data and other material to unauthorised entities, including unauthorised individuals, is a key tenet of both Australian and US export control regulation.

18. The key US Government export control regulations that are relevant to and affect the Leidos Entities and their contractual obligations with the Commonwealth are:

a. the *US International Traffic in Arms Regulations* (**ITAR**), which control the import and export of certain defence-related articles and services, including technical data, listed on the US Munitions List; and

[redacted] [redacted]

b. the *Export Administration Regulations* (**EAR**), which control the import and export of commercial items and dual-use items ('dual-use items' being commercial items that have, or may be modified to have, military capability).

19. This application for an exemption is intended to cover technology, data and other material that are deemed "controlled" under the ITAR and EAR (**Controlled Technology**), requiring US export authorisation in order to lawfully transfer the Technology to non-US individuals or entities under those regulations.

20. In order to perform the work and fulfil its obligations under its contracts with the Commonwealth, the Leidos Entities require access to Controlled Technology.

21. Both the ITAR and EAR contain restrictions on the access to and diversion of Controlled Technology to specific countries (**Proscribed Countries**), including to individuals who hold, or have held, nationality of Proscribed Countries, even where those individuals are located within Australia. Under the EAR, an individual's nationality is deemed to be the most recent citizenship.

22. The Proscribed Countries under ITAR are set out in section 126.1 of those regulations, as updated from time to time. As at the date of this affidavit, the Proscribed Countries under section 126.1 of ITAR are: Afghanistan, Belarus, Burma, Central African Republic, China, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Ethiopia, Haiti, Iran, Iraq, Lebanon, Libya, Nicaragua, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, and Zimbabwe.

23. The Leidos Entities maintain a procedure which sets out a process that it directs all employees to follow to ensure that its obligations under ITAR are followed. While titled a Leidos Australia procedure, it is expressed to also cover GCA.

    Annexed to this affidavit and marked "**KE-2**" is a copy of the Leidos Australia Management of Dual and Third Country Nationals Procedure.

The Application

24. In order to comply with the US export control laws (including conditions imposed by the US Department of State), the Leidos Entities may be required to conduct certain activities in relation to current and prospective personnel that contravene the *AD Act* and other Australian state and territory anti-discrimination legislation, particularly in respect of discrimination on the ground of race.

25. As the Leidos Entities only seek this exemption for the purpose of being able to comply with US laws in order to perform contracted works for Defence, the Leidos Entities understand the exemption should only be applied where absolutely necessary for this purpose and accordingly seek for the exemption, should it be granted, to be limited to the scope set out in the application.

26. On 4 February 2026, the Leidos Entities were granted an exemption in New South Wales (NSW) by the President of the Anti-Discrimination Board under the *Anti-Discrimination Act 1977* (NSW).

    Annexed to this affidavit and marked "**KE-3**" is a copy of the exemption.

27. On 18 July 2024, the Leidos Entities were each granted an exemption in Victoria by the Victorian Civil and Administrative Tribunal under the *Equal Opportunity Act 2010* (Vic).

    Annexed to this affidavit and marked "**KE-4**" is a copy of the exemptions.

28. On 10 November 2023, Leidos was granted an exemption in South Australia by the South Australian Civil and Administrative Tribunal under the *Equal Opportunity Act 1984* (SA).

    Annexed to this affidavit and marked "**KE-5**" is a copy of the exemption.

29. On 22 December 2025, the Leidos Entities were granted an exemption in the Australian Capital Territory by the ACT Human Rights Commission under the *Discrimination Act 1991* (ACT).

    Annexed to this affidavit and marked "**KE-6**" is a copy of the exemption.

[redacted] [redacted]

Consequences if further exemption is not granted

30. If the Leidos Entities are not granted the exemption sought, they will not be able to lawfully conduct the activities necessary to comply with US export control laws to obtain the Controlled Technology required for performing their contracted works for the Commonwealth in Queensland, potentially resulting in a number of significant consequences.

31. Significant financial and other penalties, including imprisonment, may be imposed on the Leidos Entities and on the US exporter of Controlled Technology to the Leidos Entities if Controlled Technology is shared with individuals holding citizenship or nationality of a country that has not been authorised by the US Department of State, either by way of an exemption or exception, or explicitly approved by way of licence or agreement.

32. In addition to imposing financial penalties, the US Department of State also has the power of 'statutory debarment' under the US Arms Export Control Act for non-compliance with ITAR. Statutory debarment would prohibit the Leidos Entities from accessing Controlled Technology for a specified period should they be found to be in breach of ITAR.

33. If the Leidos Entities are unable to access Controlled Technology, they would be unable to fulfil their respective contractual obligations with Defence and will therefore not be able to provide the critical services and support which are essential to Australia's defence and national security interests, not only in Queensland but across Australia.

34. Further, should the Leidos Entities be unable to perform their contracted works, the employment of the Leidos Entities' personnel across Australia who work under contracts with Defence, including approximately 42 personnel in Queensland, may be adversely affected and may result in a significant number of redundancies.

Termination and redeployment

35. As some of Leidos' projects and programs do not require access to Controlled Technology, and as Leidos Australia has been able to undertake past recruitment in a manner consistent with the previous exemption granted to it, Leidos Australia does not anticipate that performing any of the exempted activities, should a further exemption be granted, would result in any need to consider the redeployment or termination of engagement of any existing personnel.

36. As projects undertaken by GCA generally require very experienced personnel they have been able to meet the ITAR requirements to date through either Australian citizens who are security cleared or via the secondment of US citizens. The granting of an exemption for GCA will accordingly not result in any need to consider the redeployment or termination of engagement of any existing personnel.

37. As GCA's activities grow in Australia, GCA foresees that future graduates applying for roles with GCA may have dual nationalities and it may become necessary to collect and use nationality data to discriminate against such applicants in order to ensure ongoing compliance with the ITAR.

Diversity and inclusion

38. The Leidos Entities are committed to maintaining a diverse workforce and inclusive culture, which is an integral part of its organisational strategy. While titled a Leidos Australia policy, it is expressed to also cover GCA.

    Annexed to this affidavit and marked **"KE-7"** is a copy of Leidos Australia's Inclusion and Diversity Policy.

39. Were it not for the requirements under the ITAR and the EAR, the Leidos Entities would not be applying for this exemption under the AD Act.

Signed: [redacted] Taken by: [redacted]

[Signature of the deponent/substitute signatory] [Signature of witness]

Justice of the Peace/Commissioner for Declarations/Lawyer

5. Signature

The contents of this affidavit are true and correct. Where the contents of this affidavit are based on information and belief, the contents are true to the best of my knowledge and I have stated the source of that information and the grounds for the belief and, if contained in a document, I have attached that document to this affidavit.

I understand that it is a criminal offence to provide a false matter in an affidavit, for example, the offence of perjury under section 123 of the Criminal Code.

I state that: [Deponent to complete – ***only tick if applicable*** – leave blank if not applicable]:

- [x] This affidavit was made in the form of an electronic document
- [x] I electronically signed this affidavit
- [x] This affidavit was made, signed and witnessed under Part 6A (Audio visual link) of the *Oaths Act 1867*.

SWORN/AFFIRMED BY:

Signature of person making the affidavit	
Full name of deponent:	Kathryn Ellis
Signature of deponent:	[redacted]
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

Alternative signature panel if substitute signatory signs	
Complete this section only if the affidavit was signed by a substitute signatory (a person directed to sign the affidavit on behalf of the deponent) ***Signed for and at the direction of the deponent by:***	
Full name of substitute signatory:	
Signature of substitute signatory:	
Sworn/Affirmed at [place]:	
Date:	

BEFORE ME:

Witness details	
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Date:	26/06/2026
Insert name of law practice/place of employment:	Kingston Reid

6. Certificate (pursuant to rule 55 of the *Industrial Relations (Tribunals) Rules 2011*):

WITNESS to complete [*only tick if applicable*]

If deponent is incapable of reading or physically signing the affidavit

☐ I certify that this affidavit was read in the presence of the deponent who seemed to understand it, and signified that they made the affidavit.

☐ I certify that this affidavit was read in the presence of the deponent who seemed to understand it, and signified that they made the affidavit, but was physically incapable of signing it.

☐ A substitute signatory signed for and at the direction of the deponent.

7. For Special Witnesses (see s 12 of the *Oaths Act 1867*)

SPECIAL WITNESS to complete [*only tick if applicable*]

For special witnesses only:

☑ I am a special witness under the *Oaths Act 1867* (see s 12 of the *Oaths Act 1867*).

☑ This affidavit was made in the form of an electronic document.

☑ I electronically signed this affidavit.

☑ This affidavit was made, signed and witnessed under Part 6A (Audio visual link) of the *Oaths Act 1867* - I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.

Signed: [redacted]
[Signature of the deponent/substitute signatory]

Taken by: [redacted]
[Signature of witness]
Justice of the Peace/Commissioner for Declarations/Lawyer

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Matter No:

/ /

Form 21 – Certificate of Exhibit to Affidavit

Industrial Relations Act 2016, s 989
Industrial Relations (Tribunals) Rules 2011, r 53

Information

- This form is to be used when attaching exhibits to an affidavit. Exhibits are documents mentioned in the affidavit and used with the affidavit. Attach one Certificate per exhibit.
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Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-1
Marked:	Re: Leidos Australia Pty Ltd [2021] QIRC 229
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Re: Leidos Australia Pty Ltd* [2021] QIRC 229
PARTIES:	**Leidos Australia Pty Ltd** (Applicant)
CASE NO:	AD/2020/63
PROCEEDING:	Application
DELIVERED ON:	28 June 2021
MEMBER:	Hartigan IC
HEARD AT:	Brisbane
HEARING DATE:	11 November 2021
ORDER:	**1. The Orders are in terms set out in Schedule 1 in the reasons for the decision.**
CATCHWORDS:	INDUSTRIAL LAW – DISCRIMINATION – exemptions – application to grant exemption under s 113 of the *Anti-Discrimination Act 1991* (Qld) – exemption in relation to discrimination on the grounds of race so the applicant can comply with US export control laws – exercise of discretion
LEGISLATION:	*Anti-Discrimination Act 1991* (Qld), s 4, s 7, s 14, s 15, s 15A, s 24, s 25, s 113, s 124, s127, s 174B *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 43 *Constitution of Queensland Act 2001* *Equal Opportunity Act 2010* (Vic), s 26 *Export Administration Regulations* (US) *Human Rights Act 2019* (Qld), s 3, s 4, s 5, s 7, s 8, s 9, s 13, s 15, s 25, s 48, s 58 *Industrial Relations Act 1988* (Cth) *Industrial Relations Act 2016* (Qld), s 174B, s 544

US Arms Export Control Act

US International Traffic in Arms Regulations

CASES:

Anglo Coal (Moranbah North Management) Pty Ltd [2018] QIRC 52

BAE systems Australia Defence Pty Ltd – Exemption (Human Rights) [2015] VCAT 230

BAE systems Australia Limited (Anti-Discrimination Exemption) [2012] VCAT 349

Chivers v State of Queensland (Queensland Health) [2014] QCA 141

Director of Housing v Sudi (Residential Tenancies) [2010] VCAT 328

Exemption application re Boeing Australia Holdings Pty Ltd and Ors [2003] QADT 21

Exemption application re Boeing Australia Holdings Pty Ltd and Ors (No. 3) [2008] QADT 34

Lifestyle Communities Ltd (No 3) (Anti-Discrimination) [2009] VCAT 1869

Linfox Australia Pty Ltd – Exemption (Human Rights) [2015] VCAT 528

Qantas Airways Ltd v Christie (1998) 193 CLR 280

Raytheon Australia Pty Ltd (Human Rights) [2014] VCAT 1370

Re: Ipswich City Council [2020] QIRC 194

Re: Kalwun Development Cooperation Limited [2019] QIRC 141

Thales Australia Limited and ADI Munitions Pty Ltd Exemption (Human Rights) [2014] VCAT 1441

The Australian Institute for Progress Ltd v The Electoral Commission of Queensland [2020] QSC 54

Vale v State of Queensland & Ors [2019] QCAT 290

WBM v Chief Commissioner of Police [2010] VSC 219; 27 VR 409

WBM v Chief Commissioner of Police [2012] VSCA 159; 43 VR44

Wotton v State of Queensland (No 5) [2016] FCA 1457

Reasons for Decision

Introduction

[1] The Applicant, Leidos Australia Pty Ltd ("Leidos"), seeks an exemption, pursuant to s 113 of the *Anti-Discrimination Act 1991* (Qld) ("AD Act"), from the operation of specified provisions of the AD Act. The provisions of the AD Act that Leidos seeks exemption from are ss 14, 15, 15A, 124 and 127 of the AD Act in so far as those sections relate to the attribute of "race"[1].

Relevant background

[2] Leidos relies on the evidence of Ms Alison McPheat[2] in support of the application. Ms McPheat's evidence addresses the work performed by Leidos, the international statutory framework that Leidos operates its business in accordance with and the purpose for which the exemption is sought. I have summarised relevant parts of that evidence below.

[3] Leidos contends that it requires the exemption sought in order to comply with the laws of the United States of America ("the US") which governs access to certain defence-related technology and data ("Controlled Material") which Leidos requires for performing contracted works for the Commonwealth of Australia, in particular, the Department of Defence ("Defence").

[4] Leidos is a subsidiary of Leidos Inc, a US defence, aviation, information technology and bio medical research company that provides scientific, engineering, system integration and technical services, including exclusively to the US Department of Defence, US Department of Homeland Security and US Intelligence Community.

[5] In Australia, Leidos provides large scale systems, integration and information technology services, primarily to the Commonwealth of Australia, including in the areas of defence, intelligence and health.

[1] Race is defined in the *Anti-Discriminations Act 1991* (Qld); Schedule 1 to include "colour, descent or ancestry, ethnicity or ethnic origin and nationality or national origin".
[2] Affidavit of Alison McPheat filed on 29 June 2020 and Affidavit of Alison McPheat filed on 14 October 2020.

[6] Leidos states that it performs the majority of its work for Defence and that it is the largest commercial provider of services, in terms of contract value, to the Defence's Chief Information Officer Group ("CIOG"). The CIOG leads the design, delivery and operation of Defence's Single Information Environment ("SIE"), an infrastructure network encompassing defences information, computing and communications infrastructure.

[7] The SIE is integral to core defence functions including intelligence, surveillance, recognisance, communications, information welfare, command and management.

[8] Leidos further states that the Australian Security and Intelligence Agencies, significantly rely on the information, technology and services provided by Leidos. Leidos states that supporting Defence and its capability building and operations requirements constitute approximately 80% of Leidos' core business in Queensland and across Australia. Leidos contends that such work is fundamental to ensuring Australia's national security interests are met.

[9] Leidos identifies that it has a number of major contracts with Defence including:[3]

> (a) the contract for the Centralised Processing program under which Leidos transformed and consolidated 280 Defence data centres in 11 domestic and three international data centres, and continues to provide ongoing services support (including servers, storage, database, mainframe and service management) for both the transformed and residual untransformed environments. The current value of this contract is greater than $800 million. Its term currently ends on 31 December 2022 with options to extend to 2027;
>
> (b) the Joint Project 2030 Joint Command Support Environment Phase 8 Sustainment contract to support the JCSE "command and control" system used by the Headquarters Joint Operations Command of the Australian Defence Force ("ADF") (i.e. the operational-level headquarters responsible for the command and control of ADF operations globally) to support military planning, operations and campaigns, Joint and Coalition exercises and other ADF activities. The current value of this contract is greater than $50 million. Its term currently ends on 21 February 2022 with options to extend to 2026;
>
> (c) the SEA 1770 Rapid Environmental Assessment contract to deliver platforms and sensors to enable the Royal Australian Navy to conduct safe operation and movement of ships and to enable landing craft to come ashore, which is critical to ADF operations, especially following disaster events where underwater conditions may have significantly changed. This current value of this contract is greater than $30 million. The acquisition phase of this contact is expected to complete by the end of May 2020. The term of the contract's support phase currently ends in about November 2023 and is renewable for a further 5-year period; and
>
> (d) the LAND 2110 Phase 1B contract to supply to the ADF and support its chemical, biological, radiological and nuclear defence capabilities. The current value of this contract is greater than $250 million for an initial support phase of 5 years with an option to extend for a further 5 years to 2026.

[10] Leidos contends that in order to provide the contracted works required by Defence, it requires access to Controlled Material. The access to Controlled Material is subject to US export control laws including the *International Traffic In Arms Regulations*[4]

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[3] Affidavit of Alison McPheat filed 29 June 2020.

[4] ITAR controls the import and export of certain defence-related articles and services including technical data, listed on the US munitions list.

("ITAR") and the US *Export Administration Regulations*[5] ("EAR") (collectively referred to as "US export control laws").

[11] The Controlled Material relevant to Leidos' application is intended to include technology, data and other material that is deemed "controlled" under the US and export control laws and requires US export authorisation in order to lawfully transfer the material.

[12] Leidos submits that the US export control laws restrict, and in some cases, prohibit access to Controlled Material by persons on the basis of nationality, citizenship, country of birth and association with persons of certain nationalities, citizenship or countries of birth.

[13] ITAR and EAR both contain restrictions on the access to and diversion of Controlled Material to specific countries ("Proscribed Countries"), including to individuals who hold, or have held, nationality of Proscribed Countries, even where those individuals are located within Australia.

[14] Leidos identifies that the Proscribed Countries under ITAR are set out in section 126.1 of those regulations, as updated from time to time. As at 31 August 2019, the Proscribed Countries under section 126.1 of ITAR were: Afghanistan, Belarus, Burma, Central African Republic, Cote d'Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Haiti, Iran, Iraq, Kyrgyzstan Lebanon, Libya, North Korea, People's Republic of China, Russia, Somalia, South Sudan, Syria, Venezuela, and Zimbabwe.

[15] Under the US export control laws, restrictions are placed on access to Controlled Material by individuals classified as a:

(a) a "Dual National", who for Australian purposes is an individual who holds Australian citizenship, in addition to citizenship of one or more other countries (except for the US); or

(b) a "Third Country National", who for Australian purposes is an individual who holds nationality of a country or countries other than Australia or the US.

[16] Leidos states that where it receives, accesses or manages Controlled Material, it must ensure that it has approval to do so from the US Department of State, by way of a licence or agreement, and must ensure that it complies with all conditions associated with the relevant licence or agreement. Leidos further states that when issuing licences or approving agreements, the US Department of State will generally impose the following conditions on the entity being approved to receive, access or manage Controlled Material:

(a) a requirement to disclose the nationalities of personnel who will have access to the Controlled Material; and

(b) a limitation or prohibition on access to the Controlled Material by Individuals who hold, or have held, Dual or Third Country nationality of a Proscribed Country.

[5] EAR controls the import and export of commercial items and dual use items.

[17] Where Controlled Material is categorised as "US unclassified" under US Government regulation, Leidos may rely on the exemption under section 126.18 ITAR (126.18 Exemption), which enables personnel who hold an Australian Government-issued Security Clearance, at the "Baseline" level or above, to access that Controlled Material.

[18] However, the 126.18 Exemption does not apply to Controlled Material that is categorised as "US classified" or above. Leidos submits that this requires it to manage access to ensure personnel do not access the Controlled Material where they hold or have held Dual or Third Country Nationality of a Proscribed Country under section 126.1 of ITAR, or where they have substantive ties to such Proscribed Countries.

[19] Leidos submits that it requires access to both US classified and US unclassified Controlled Material in order to perform the work and to fulfil its obligations under its contracts with the Commonwealth.

[20] Leidos contends that in order to comply with the US export control laws to access the necessary Controlled Material, Leidos may be required to undertake activities pursuant to those laws, including pursuant to conditions imposed under those laws by the US Secretary of State, when granting or approving licences or agreements for access to Controlled Material.

[21] Leidos identifies that it seeks the exemption under the AD Act in order to conduct specific activities. It identifies those activities as follows:[6]

> (a) inform applicants for employment in roles which require access to Controlled Material and are subject to permits, licences, approvals or agreements made under US and Australian import and export control laws that they may be adversely affected by ITAR and EAR controls if they are not an Australian citizen or if they hold, or have held, dual nationality and/or citizenship from proscribed countries, or have substantive contacts with proscribed countries;
>
> (b) request information from prospective personnel who perform work on Leidos' premises or offsite on Defence programs and who are subject to Leidos' control and direction for positions related to projects which use Controlled Material, in relation to their citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with Proscribed Countries, provided the request for information is limited to information for determining whether an application for authorisation would be required to allow the prospective personnel to have access to Controlled Material and whether in Leidos' reasonable judgment that an application would have significant prospects of success;
>
> (c) impose a condition on any offer of employment in roles which are likely to require access to Controlled Material that the applicant must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approval obtained from the US Department of State or otherwise;
>
> (d) take into account the citizenship, previous citizenships, race or nationality, or substantive contacts (where such contacts are affiliated with Proscribed Countries) of current or prospective personnel in determining whether they may be offered a role or allocated work that involves access to Controlled Material;
>
> (e) maintain records of the nationalities, citizenships and substantive contacts of personnel who have or may have access to Controlled Material;

[6] Affidavit of Alison McPheat filed 29 June 2020.

(f) require current or prospective personnel involved in projects which access Controlled Material to notify Leidos of any change to their citizenship or substantive contact status;

(g) restrict access to Controlled Material to particular current or prospective personnel based on their citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with Proscribed Countries;

(h) record information relating to security clearances granted to Leidos personnel who are under the control and direction of Leidos in relation to work requiring access to Controlled Material;

(i) impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material.

(j) maintain records of the nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement;

(k) establish security systems and access protocols that will prevent the unauthorised re-export or retransfer of Controlled Material; and

(l) disclose, if and when required, citizenship, previous citizenships, race or nationality, or substantive contracts where such contracts [sic] are affiliated with countries proscribed by section 126.1 of ITAR, of Leidos' personnel in Queensland to:

(i) the US Department of State;
(ii) the US Department of Commerce;
(iii) Defence; and
(iv) any other organisation for which, or on whose behalf, or at whose request Leidos undertakes work in respect of which Leidos has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities.

[22] Clearly, engaging in such activities is a breach of the prohibition on discrimination on the basis of race in respect of the pre-work and work area as set out in the AD Act, including with respect to ss 14, 15, 15A and also ss 124 and 127 of the AD Act.

[23] Leidos contends that a failure to comply with US export control laws could result in significant financial and criminal penalties and to "statutory debarment" of Leidos by the US Department of State, which would prevent Leidos accessing the Controlled Material for a specified period. Leidos argues that the proposed exemption is necessary to enable it to lawfully access Controlled Material required for its contracted works in support of Defence and its capability building and operational requirements, which in turn are fundamental to Australia's security interests.

[24] The question for my determination is whether, pursuant to s 113(1) of the AD Act, I should grant the exemption sought.

Procedural matters required by s 113(2) of the AD Act

[25] Pursuant to s 113(2) of the AD Act, before deciding an application, the Tribunal[7] must provide a copy of the application and material filed in support of the application to the Queensland Human Rights Commission (QHRC) and have regard to any submission made by the QHRC on the application, including any submission on the process for considering the application.

[7] The Queensland Industrial Relations Commission is the Tribunal for the purposes of s 113 of the AD Act.

[26] The QHRC was notified and provided a copy of the application and supporting information and on 17 August 2020, QHRC provided written submissions.

[27] I issued a Directions Order requiring Leidos to engage in a notification process by providing a copy of the application and supporting information to the Queensland employees, contractors and other workers of Leidos, the Queensland Council of Unions and the Ethnic Communities Council of Queensland.

[28] Additional directions were issued that the QHRC to provide notice of the application made by Leidos and the supporting information by publishing copies of same in its newsletter and on social media.

[29] A further direction was issued that the Industrial Registrar of the Queensland Industrial Relations Commission place a notice of the application by including a hyper-link copy of the application and supporting information on the Queensland Industrial Relations Commissions' website and advising that if any interested party wished to make a submission and/or appear at the hearing of the application, that they were to notify the Queensland Industrial Relations Commission of such an intention by advising the Industrial Registrar in writing or by email.

[30] I am satisfied that Leidos complied with directions in so far as it advised the Queensland Council of Unions and the Ethnic Communities Council of Queensland, and, further, that there were no relevant Queensland employees, contractors or other workers who needed to be advised of the application.[8]

[31] No notice of intention seeking to be heard and/or appear at the hearing of the application was received by any interested party.

Leidos' application for exemption

[32] Leidos' application seeks an exemption in the following terms:

> **1.** Pursuant to section 113 of the Act and subject to the conditions contained in the Schedule, an exemption is granted to the Applicant from the operation of sections 14, 15, 15A, 124 and 127 of the Act for the period [INSERT 5-YEAR PERIOD].
>
> **2.** The exemption is granted in respect of the operation of sections 14, 15, 15A, 124 and 127 of the Act insofar as those sections relate to the 'race' (as that attribute is defined in section 4 of the Act) of the Applicant's workforce.
>
> **3.** The exemption permits the Applicant to engage in the following activities:
>
> ***Applicants for employment***
>
> (a) Inform applicants for employment or contract work in roles which require access to Controlled Material and are subject to permits, licenses, approvals or agreements made under US and Australian import and export control laws that they may be adversely affected by ITAR and EAR controls if they:
> (i) are not an Australian citizen; or
> (ii) hold, or have held, dual nationality and/or citizenship from countries other than the US or Australia; or

[8] Affidavit of Alison McPheat filed 7 October 2020.

(iii) hold permanent residency in a country or countries other than the US or Australia;
(iv) have substantive contacts with countries proscribed by section 126.1 or ITAR;

Request for information about nationality

(b) Request and maintain records of information from Personnel who perform or may perform work on the Applicant's premises or offsite and who are subject to the Applicant's control and direction for positions related to projects which use Controlled Material, in relation to current citizenship, prospective citizenship, previous citizenships, permanent residency, race or nationalities, or substantiative contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, provided the request for information is limited to information for the purposes of paragraphs (c) to (l) below:

Use of nationality information

(c) Impose a condition of any offer of employment in roles which are likely to require access to Controlled Material that an applicant for those roles must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approved obtained from the US Department of State or otherwise;

(d) Take into account current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities, or substantive contacts of personnel where such contacts are affiliated with countries proscribed by section 126.1 of ITAR in determining whether those personnel may be offered a role or allocated work that involves access to Controlled Material;

(e) Maintain records of the current citizenships, prospective citizenships, previous citizenships, permanent residency, race and nationalities and substantive contacts of personnel who have or may have access to Controlled Material;

(f) Require personnel involved in projects which access Controlled Material to notify the Applicant of any change to their citizenship or permanent residency status, nationalities or substantive contacts;

(g) Restrict access to Controlled Material to particular personnel based on their current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

(h) Record information relating to security clearances granted to personnel who are under the control and the direction of the Applicant in relation to work requiring access to Controlled Material;

(i) Impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material;

(j) Maintain records of the current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement.

(k) Establish security systems and access protocols that will prevent the unauthorised export or transfer (including re-export or re-transfer) of Controlled Material;

(l) Disclose, if and when required, current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, of the Applicant's personnel in Queensland to:
(i) the US Department of State;
(ii) the US Department of Commerce;

(iii) the Australian Department of Defence; and
(iv) any other person or organisation for which, or on whose behalf, or at whose request the Applicant undertakes work in respect of which the Applicant has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities.

4. In this exemption:
(a) **"Act"** means the *Anti-Discrimination Act 1991*;
(b) **"Applicant"** means Leidos Australia Pty Ltd (ACN 612 590 155)
(c) **"Controlled material"** means material (including equipment, technology, articles and services) and information (including classified or sensitive information and technical data) to which the security requirements apply;
(d) **"EAR"** means the *Export Administration Regulations* of the US;
(e) **"ITAR"** means the *International Trafficking in Arms Regulations of the US*;
(f) **"Personnel"** means the current and prospective workforce of the Applicant, including employees, contract workers, employees of contractors and candidates or applicants for these roles;
(g) **"Security requirements"** means any of the following:
(i) requirements of Australian or US laws, including but not limited to ITAR and EAR, including requirements of any permit, licence or approval granted, or agreement made, under those laws;
(ii) contractual requirements applying to the Applicant and relating to any of the requirements mentioned in subparagraph (i) above.
(h) **"US"** means United States of America.

Schedule: Conditions

1. This exemption applies only to the Applicant's conduct where:

(a) it is necessary to enable the Applicant to obtain and maintain US export licenses and approvals or to perform contractual obligations which involve access to Controlled Material;

(b) the Applicant has taken all steps reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 14, 15, 15A, 124 and 127 of the Act, including:
(i) reliance of ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR, where applicable;
(ii) where personnel are nationals or dual nationals of a country not approved for access to Controlled Material, then the Applicant will either request the US Department of State, or request the relevant export license holders to request the US Department of State to amend the relevant export licenses to enable those personnel to have access to Controlled Material, unless the Applicant, on reasonable grounds, determines that either:
(A) the personnel are not the best candidate for the relevant position; or
(B) such an application does not have significant prospects of success,
(iii) in the event the US Department of State requires the Applicant to provide further information specific to an individual, then with the consent of the individual, the Applicant will work with the individual to supply all relevant information to the US Department of State so than an application for approval may be made in relation to that individual.

2. Where, pursuant to this exemption, the Applicant wishes to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled 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 that any individual occupying the position must be able to satisfy the ITAR-based requirements which may require specific authorisation for that individual to access Controlled Material; and

(b) if a candidate for the position is concerned as to whether or not they will satisfy the requirement in (a) above, the candidate should contact a nominated member of the Applicant's personnel who is able to provide relevant information, including information about the scope of the exemption and the candidate's individual rights.

3. The applicant must provide to the Queensland Human Rights Commission a written report for every 12-month period from the date of this exemption order. Each report must be provided within 21 days from the end of the relevant reporting period. Each report must detail:

(a) the steps it has taken to comply with the terms of the exemption;

(b) the number of persons affected by the exemption, the nature of the effects and the steps taken to redress any adverse effects; and

(c) the implementation of and compliance generally with the terms of the exemption.

[33] Leidos submits that the reason it seeks the exemption is to ensure it does not breach the AD Act when it engages in the activities listed above in order to comply with the US export control laws.

The relevant legislative provisions

The AD Act

[34] Section 174B(b) of the AD Act provides the Tribunal with power to grant exemptions in relation to work related matters.

[35] Section 113(1) of the AD Act relevantly provides that, on application by a person, the Commission may grant an exemption to the person from the operation of a specified provision of the Act. Section 113 of the AD Act is in the following terms:

113 Tribunal

(1) The tribunal, on application by—

(a) a person, on the person's own behalf, or on behalf of the person and another person or other people; or

(b) 2 or more people, on their own behalf, or on behalf of themselves and another person or other people; or

(c) a person or people included in a class of people on behalf of the people in that class;

may grant an exemption to the person, people or class of people from the operation of a specified provision of the Act.

Note—
See also section 174C in relation to the tribunal's powers for deciding the application.

...

(6) An exemption—

(a) may be granted subject to such terms as the tribunal provides; and

(b) may be granted so that it applies only in such circumstances, or in connection with such activities, as the tribunal determines; and

(c) is to be granted for a specified period of not more than 5 years.

(7) An exemption under subsection (1) may be renewed for further periods of not more than 5 years, on application by the person or people to whom, or in respect of whom, the exemption was granted.

...

[36] The application sought by Leidos seeks to exempt it from the operation of ss 14, 15, 15A, 124 and 127 of the AD Act for a period of five years.[9]

[37] Section 7(g) of the AD Act prohibits discrimination on the basis of the attribute of "race".

[38] Section 14 of the AD Act prohibits discrimination in the area of "pre-work" including by prohibiting discrimination in relation to the arrangements made for deciding who should be offered work, or, in deciding who should be offered worked.

[39] Section 15 of the AD Act prohibits discrimination in the work area including by prohibiting discrimination in varying terms of work, in dismissing a worker, by denying a workers access to opportunities at work, and the general unfavourable treatment of a worker in anyway in connection with work.

[40] Section 15A of the AD Act prohibits discrimination by a proposed partnership in deciding who should be invited to become a partner and the terms on which a person is invited to be a partner.

[41] Section 124 of the AD Act prohibits the request of unnecessary information on which unlawful discrimination might be based.

[42] Section 127 of the AD Act prohibits the publication and display of advertisements which in any way contravene the AD Act.

[43] The exercise of the discretion conferred by s 113 of the AD Act on the Tribunal is broad and unfettered.[10] However, a number of considerations have been identified as matters that may assist the Tribunal in the exercise of its discretion.[11] These considerations include:

(a) whether the exemption is necessary;

(b) whether there are non-discriminatory ways of achieving the objects or purposes for which the exemption is sought;

(c) whether the exemption is in the community interest;

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[9] The maximum period allowable under the *Anti-Discrimination Act 1991* (Qld), s 113(6)(c).

[10] *Re: Kalwun Development Corporation Limited* [2019] QIRC 141, [6].

[11] *Exemption application re Boeing Australia Holdings Pty Ltd and Ors* [2003] QADT 21.

(d) whether any other person or body, other than the applicant, support the application;

(e) whether it is reasonable and appropriate to grant the exemption; and

(f) the effect of not granting the exemption.

[44] I will address these considerations further below following my consideration of the *Human Rights Act 2019* (Qld) ("HR Act").

The HR Act

[45] In addition to the matters referred to above, the Tribunal must also consider any relevant matters arising in accordance with the HR Act.

[46] The main objects[12] of the HR Act are to protect and promote human rights, to help build a culture in the Queensland public sector that respects and promotes human rights and to help promote a dialogue about the nature, meaning and scope of human rights.

[47] The way in which the HR Act provides that the main objects are to be achieved[13] include, inter alia, by:

(a) requiring public entities to act and make decisions in a way compatible with human rights;[14] and

(b) requiring courts and tribunals to interpret statutory provisions, to the extent possible that is consistent with their purpose in a way compatible with human rights.[15]

[48] Section 9(1) and (2) of the HR Act provides the meaning of "public entity". Relevantly, s 9(4)(b) of the HR Act provides that "public entity" does not include "...a court or tribunal, except when acting in an administrative capacity."

[49] Accordingly, a determination must be made as to whether the Tribunal is acting in a judicial or administrative capacity when deciding as to whether it will grant an exemption pursuant to s 113 of the AD Act.

[50] The QHRC submits that if the Tribunal is acting in an administrative capacity then it is obliged, pursuant to s 58 of the HR Act, to give proper consideration to human rights when making decisions and to act and make decisions in a way that is compatible with human rights.

[51] Alternatively, the QHRC submits that if the Tribunal determines that it is acting in a judicial capacity, it needs to consider the human rights that apply to the function of granting an exemption and that Leidos' application engages the rights set out in s 15 of

[12] *Human Rights Act 2019* (Qld), s 3.
[13] Ibid, s 4.
[14] Ibid, s 4(b).
[15] Ibid, s 4(f).

the HR Act, in particular, "... the right to equality and to equal protection of the law without and against discrimination".

[52] The issue as to whether the Tribunal is acting in either a judicial or administrative capacity when considering to grant an exemption under s 113 of the AD Act was considered by Deputy President Merrell in *Re: Ipswich City Council*[16] ("Ipswich City Council").

[53] As noted in Ipswich City Council,[17] the QIRC is established as a court of record in Queensland. The *Constitution of Queensland Act 2001* does not contain any constitutional principle of separation of powers. Thus, the QIRC can, for example, exercise its judicial power when, under s 544(1)(b) of the *Industrial Relations Act 2016* (Qld) ("IR Act") it enforces its own decisions. It can also exercise power that is administrative in nature, for instance when it certifies agreements under Ch. 4 of the IR Act.

[54] Deputy President Merrell, when considering whether the decision granting an exemption could be characterised as either judicial or administrative, relevantly noted:[18]

> The determination of existing rights and liabilities has been accepted as the defining characteristic of the judicial function. Put another way, the exercise of judicial power is giving a binding and authoritative determination between different parties as to their legal rights and duties according to existing legal principles. On the other hand, the general distinction between legislation and the execution of legislation is that legislation determines the content of a law as a rule of conduct or a declaration as to power, right or duty, whereas executive authority applies the law in particular cases. The exercise of statutory power, neither legislative nor judicial in character, is most likely administrative in character, it being a category of power applicable to executive or governmental decision-making generally.
>
> Section 447(1)(p) of the *Industrial Relations Act 2016* provides that the Commission's functions include any other function conferred on the Commission under that Act or any other Act. Section 174B of the Act provides:
>
> **174B Functions of industrial relations commission**
>
> The industrial relations commission has the following functions—
>
> (a) in relation to complaints about contraventions of this Act that are referred, or to be referred, to the commission under this Act—
>
> (i) to make orders under section 144 before the complaints are referred to the tribunal; and
>
> (ii) to review decisions of the commissioner under section 169 about lapsing of the complaints; and
>
> (iii) to enforce agreements for resolution of the complaints by conciliation; and
>
> (iv) to hear and decide the complaints;
>
> (b) to grant exemptions from this Act in relation to work-related matters;
>
> (c) to provide opinions about the application of this Act in relation to work-related matters;
>
> (d) any other function conferred on the commission by this Act;
>
> (e) to take any other action incidental or conducive to the discharge of a function mentioned in paragraphs (a) to (d).

[16] [2020] QIRC 194.
[17] Ibid, [24].
[18] Ibid, [25]-[28].

Some the functions conferred on the Commission by s 174B clearly involve the exercise of judicial power. For example, the power to hear and decide complaints of unlawful discrimination made under the Act involves the making of a binding and authoritative determination between different parties as to their legal rights and duties according to existing legal principles.

By contrast, the function of granting an exemption from the Act in relation to work related matters does not involve the exercise of judicial power because it does not involve making a binding and authoritative determination between different parties as to their existing legal rights and liabilities. Furthermore, the granting of an exemption in relation to work-related matters does not involve the exercise of legislative power because it does not involve a determination of the content of a law as a rule of conduct and does not involve making a declaration as to power, right or duty.

(Citations Omitted)

[55] Accordingly, the decision as to whether or not to grant an exemption under s 113(1) of the AD Act does not involve the enforcement of existing legal rights, nor does it involve making a binding and authoritative determination between legal parties of their legal rights and duties according to existing legal principles. As such, a decision made pursuant to s 113 of the AD Act involves the Tribunal acting in an administration capacity. Consequently, in determining the application, the Tribunal must observe the relevant provisions of s 58 of the HR Act. I will address s 58 and other provisions of the HR Act further below.

Section 58 of the AD Act applies

[56] Section 58 of the HR Act applies to the Tribunal when determining whether or not to grant an exemption pursuant to s 113(1) of the Act. Section 58 relevantly provides as follows:

58 Conduct of public entities

(1) It is unlawful for a public entity—

(a) to act or make a decision in a way that is not compatible with human rights; or

(b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

...

(5) For subsection (1)(b), giving proper consideration to a human right in making a decision includes, but is not limited to—

(c) identifying the human rights that may be affected by the decision; and

(d) considering whether the decision would be compatible with human rights.

(6) To remove any doubt, it is declared that—

(a) an act or decision of a public entity is not invalid merely because, by doing the act or making the decision, the entity contravenes subsection (1); and

(b) person does not commit an offence against this Act or another Act merely because the person acts or makes a decision in contravention of subsection (1).

[57] Section 7 of the HR Act defines human rights to mean "...the rights stated in part 2, divisions 2 and 3". Part 2, Div. 2 of the HR Act deals with civil and political rights. Section 15[19] provides for recognition and equality before the law in the following terms:

15 Recognition and equality before the law

(1) Every person has the right to recognition as a person before the law.

(2) Every person has the right to enjoy the person's human rights without discrimination.

(3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.

(4) Every person has the right to equal and effective protection against discrimination.

(5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

[58] Section 25 of the HR Act provides for the right to privacy as follows:

25 Privacy and reputation

A person has the right –

(a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
(b) not to have the person's reputation unlawfully attacked.

[59] Section 8 of the HR Act defines "compatible with human rights" as follows:

8 Meaning of *compatible with human rights*

An act, decision or statutory provision is compatible with human rights if the act, decision or provision—

(a) does not limit a human right; or

(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13.

[60] Section 13 of the HR Act provides that human rights may be limited as follows:

13 Human rights may be limited

(1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

(2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant—

(a) the nature of the human right;

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;

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[19] Within Pt 2, Div 2.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose;

(e) the importance of the purpose of the limitation;

(f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;

(g) the balance between the matters mentioned in paragraphs (e) and (f).

Section 48 of the HR Act applies

[61] Section 5 of the HR Act relevantly provides as follows:

5 Act binds all persons

(1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) This Act applies to—

(a) a court or tribunal, to the extent the court or tribunal has functions under part 2 and part 3, division 3; and

(b) the Parliament, to the extent the Parliament has functions under part 3, divisions 1, 2 and 3; and

(c) a public entity, to the extent the public entity has functions under part 3, division 4.

(3) Subsection (2) does not limit or otherwise affect—

(a) another function conferred by this Act on an entity mentioned in the subsection; or

(b) a function conferred by this Act on any other entity.

(4) Nothing in this Act makes the State liable to be prosecuted for an offence.

[62] Consequently, pursuant to s 5(2)(a) of the HR Act, the HR Act applies to a court or tribunal, to the extent the court or tribunal has functions under Pt. 2 and Pt. 3, Div. 3 of the HR Act.

[63] Section 48 of the HR Act is contained in Pt. 3, Div. 3 of the Act and provides as follows:

48 Interpretation

(1) All statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.

(2) If a statutory provision can not be interpreted in a way that is compatible with human rights, the provision must, to the extent possible that is consistent with its purpose, be interpreted in a way that is most compatible with human rights.

(3) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.

(4) This section does not affect the validity of—

(a) an Act or provision of an Act that is not compatible with human rights; or

(b) a statutory instrument or provision of a statutory instrument that is not compatible with human rights and is empowered to be so by the Act under which it is made.

(5) This section does not apply to a statutory provision the subject of an override declaration that is in force.

[64] Accordingly, s 113 of the AD Act, must be interpreted in a way that is compatible with, or most compatible with, human rights to the extent possible consistent with its purpose.

Submissions of the QHRC

[65] The QHRC appeared at the hearing and indicated its position was not to oppose the application but rather to assist the Tribunal.[20]

[66] The QHRC's written submissions may be summarised as follows:

(a) the onus rests with Leidos to establish that the exemption is necessary and that the genuine occupational exception in s 25 of the AD Act does not apply;

(b) the requirement to make a decision and to interpret statutory provisions in a way that is compatible to human rights, necessitates the application of the test in s 13 of the HR Act in determining any limitation on human is reasonable and demonstrably justified;

(c) the human rights relevant to the application are:

i. the right to privacy; and

ii. the right to equality and to equal protection before the law.

(d) some factors relevant to findings in Victorian decisions that the limitation of rights and granting of an exemption was justified are not present in this application including namely:

i. the extent to which work in Queensland is relevant to Leidos' contract; and

ii. the extent of employment opportunities for Queenslanders.

[67] The QHRC submits that if the genuine occupational requirement exception in s 25 of the AD Act applies, then it is not necessary to grant the s 113 exemption sought by Leidos. Accordingly, it is necessary for me to consider this issue at the outset.

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[20] T1-4 115-16.

Genuine occupational requirement exemption – s 25 of the AD Act

[68] Section 25(1) of the AD Act provides that a person may impose a genuine occupational requirement for a position. Section 24 of the AD Act provides that it is not unlawful to discriminate in the work or work related area if an exemption in s 25 applies.

[69] Leidos submits that the requirement that a person not be of a particular nationality is not an essential element of a position.

[70] The QHRC contends that Leidos' submissions conflicts with the jurisprudence of the former Queensland Tribunal in *Exemption application re Boeing Australia Holdings Pty Ltd and Ors (No. 3)* ("the 2008 Boeing decision").[21] The QHRC submits that while the Tribunal is not bound by the decision, it is persuasive and the onus rests with Leidos to satisfy the Tribunal that the 2008 Boeing decision should not be followed.

[71] Before I consider the 2008 Boeing decision in the context of this matter, I will consider the nature of the 'requirement' and whether it forms a requirement of a particular position.

[72] The meaning of "inherent requirement" was considered in *Qantas Airways Ltd v Christie*[22] ("Christie") and has subsequently been considered and applied in the context of the consideration of s 25 of the AD Act and the meaning of "genuine occupational requirement".[23]

[73] In Christie it was held:[24]

> ... an inherent requirement is something that is essential to the position. And certainly, an employer cannot create an inherent requirement for the purposes of s 170DF(2) by stipulating for something that is not essential or, even, by stipulating for qualifications or skills which are disproportionately high when related to the work to be done. But if a requirement is, in truth, essential, it is irrelevant that it derives from the terms of the employment contract or from the conditions governing the employment relationship.

[74] In Christie, McHugh J considered the difference between the requirements for the position as opposed to the requirements of a job and held:[25]

> In some cases the distinction between the inherent requirements of a particular position and those of a particular job, although subtle, may be material. This is often likely to be the case where qualifications are concerned, particularly those qualifications that are not concerned with the physical or mental capacity to perform the tasks involved in the position. Thus to be an American born citizen is an inherent requirement of the position of President of the United States, but it is not an inherent requirement of the "job" of President if that term refers to the work done by the President.

[75] In Christie, Gaudron J held:[26]

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[21] [2008] QADT 34.
[22] (1998) 193 CLR 280.
[23] *Exemption application re Boeing Australia Holdings Pty Ltd and Ors (No. 3)* [2008] QADT 34; *Chivers v State of Queensland (Queensland Health)* [2014] QCA 141, [57].
[24] *Qantas Airways Ltd v Christie* (1998) 193 CLR 280.
[25] Ibid, [73].
[26] Ibid, [294]-[295] per Gaudon J.

> … an inherent requirement is something that is essential to the position. And certainly, an employer cannot create an inherent requirement for the purposes of s 170DF(2) by stipulating for something that is not essential or, even, by stipulating for qualifications or skills which are disproportionately high when related to the work to be done. But if a requirement is, in truth, essential, it is irrelevant that it derives from the terms of the employment contract or from the conditions governing the employment relationship.

[76] In *Vale v State of Queensland & Ors*[27] it was held that:

> 'Inherent' has been interpreted to mean 'existing in something as a permanent attribute or quality; forming an element, especially an essential element of something; intrinsic, essential'. In this context, that which is essential to the performance of a particular position must be regarded as an inherent requirement of that position.

[77] Prior to the 2008 Boeing decision, the then Tribunal considered an earlier application for exemption made by Boeing in *Exemption application re: Boeing Australia Holdings Pty Ltd & related entities*[28] ("the 2003 Boeing Decision"). In the 2003 Boeing Decision, Sofronoff P (as the then President of the former Tribunal) considered whether s 25 of the AD Act applied in the circumstances of that matter. Relevantly, the exemption was sought by Boeing in that matter to allow it to lawfully meet the requirements of the ITAR and EAR. In the course of his reasons granting the exemption, Sofronoff P determined that s 25 of the AD Act did not apply and relevantly held:[29]

> There are no general or specific exemptions that apply. It might conceivably be argued that the exemption in section 25 of the Act applies, namely that it is a 'genuine occupational requirement' that employees be of the appropriate nationality. However that would be an argument with significant difficulty. Firstly, 'genuine occupational requirement' has been interpreted narrowly. In this case, the problem arises because of the application of foreign law to the work. There is no issue concerning the employees' ability to carry out the inherent requirements of the roles. These requirements are not 'occupational' - rather they are legislative.
>
> Secondly, the operation of the 'genuine occupational requirements' exemption becomes even more difficult in relation to the exclusion of employees from jobs where they might not be directly required to come into contact with controlled information but, because of where they are required to work, there is an unacceptable risk of accident or involuntary 'transfer'.
>
> There is certainly an arguable case that if the applicants take the steps outlined to meet the ITAR and EAR, there will be a breach of the Act.

[78] In the 2008 Boeing decision, President Savage[30] (as the then President of the former Tribunal) referred to the 2003 Boeing Decision and noted that it has been heard ex parte and that he had before him extensive argument on the point. Savage P determined that it was an inherent requirement of the position that a person who is employed by Boeing, not be a particular nationality and not be born in a particular country. It was found that it was necessary to know these matters before entering into any employment contract.

[79] Following the 2008 Boeing decision, there have been no applications of this type made in Queensland. However, other jurisdictions within Australia have continued to grant

[27] [2019] QCAT 290, [151].
[28] [2003] QADT 21.
[29] Ibid, [13.3] – [14].
[30] Ibid, [37].

exemptions of a similar nature.[31] Relevantly, Leidos has been granted exemptions in similar terms as it seeks in this application in the Australian Capital Territory, New South Wales and Victoria.[32]

[80] The QHRC submits that one of the reasons for this may be because that the exemption for genuine occupational requirements in the *Equal Opportunity Act 2010* (Vic) differs in that it is more limited to the exemption for genuine occupational requirements in s 25 of the AD Act. The QHRC submits that the Victorian exemption only allows a person to limit the offering of employment on the basis of race where it is necessary to do so for reasons of authenticity or credibility,[33] whereas the terms of the Queensland exemption are broader and allow a person to impose genuine occupational requirements for a position.

[81] Accordingly, whilst Leidos has been granted exemptions in similar terms in other jurisdictions, those decisions have not dealt with whether an exemption in the terms of s 25 of the AD Act applies.

[82] Leidos submits that the apparent purpose of the conduct which was sought to be covered by the proposed exemption in the 2008 Boeing decision was "to identify people born in particular countries – and then not to employ those people in restricted areas within the applicant's business".[34] Leidos submits that the 2008 Boeing decision can be distinguished on several basis including that the nature of Boeing's business makes it more able to anticipate from project to project what material an employee will require access to.

[83] Leidos contrasts that purpose for the purpose in which it seeks the proposed exemption as being one which may allow particular personnel to access "Controlled Material" that is "US classified". It submits that it does not need to take these steps in relation to permitting personnel access to "US unclassified" Controlled Material, nor to other material.

[84] Leidos submits that it is difficult for it to anticipate if a worker will require access to Controlled Material during the life of particular projects as such projects may evolve during the life of the project. Further, Ms McPheat's evidence was that workers engaged in the Brisbane office, at least initially, will not be required to access Controlled Material when working in Brisbane but may be required to access such material if they are required to perform work in the ACT and Victoria.

[85] In this regard, Leidos submits that the ITAR requirements are an administrative requirement designed by the US government to ensure the secure access to certain defence related technology and data (the Controlled Material). The positions of Leidos' personnel, including the terms of their employment contract and functions required to be performed, remain essentially the same regardless of the ITAR requirements.

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[31] *BAE Systems Australia Limited* [2012] VCAT 349; *Raytheon Australia Pty Ltd (Human Rights)* [2014] VCAT 1370; *Thales Australia Limited and ADI Munitions Pty Ltd Exemption (Human Rights)* [2014] VCAT 1441; *Linfox Australia Pty Ltd – Exemption (Human Rights)* [2015] VCAT 528; *BAE Systems Australia Defence Pty Ltd – Exemption (Human Rights)* [2015] VCAT 230.
[32] Affidavit of Alison McPheat filed 29 June 2020, annexure AM1-AM43.
[33] *Equal Opportunity Act 2010* (Vic), s 26.
[34] *Exemption application re Boeing Australia Holdings Pty Ltd and Ors (No. 3)* [2008] QADT 34, [15].

[86] On the material before me, I am not satisfied that it is an inherent requirement of the position and consequently, a genuine occupational requirement, that workers at Leidos access Controlled Materials. Relevantly, Leidos seeks the exemption only insofar as some of its personnel may, at times, be required to access Controlled Material, when working on a particular project or part of a project or program. Not all work undertaken by personnel engaged by Leidos requires access to Controlled Material. Leidos argues that given the nature of the work it performs, including in designing software, it is difficult to predict with certainty, what information an employee will need to have access to at the commencement of a project and further at the time the worker is engaged. It states that it might be the case that for several stages of a project, that it would not be necessary for a worker to access Controlled Material, and accordingly, it would not be an inherent requirement of the position. Alternatively, a worker might be engaged to work on one project where access to Controlled Material is not necessary and then transition into a different project where such access was necessary.

[87] I accept that the evidence relied on by Leidos as to how it operates its business and how it manages personnel. On that evidence, it is not essential to the position to, at all times, have access to Controlled Material. Accordingly, it is not essential to the position and does not form a genuine operational requirement.

[88] On the information before me, I am unable to conclude that s 25 of the AD Act applies.

[89] Further, the QHRC's submissions note that the ITAR was amended in 2011. The QHRC helpfully refers to several decisions considering the effect of those amendments.

[90] In *BAE systems Australia Limited (Anti-Discrimination Exemption)*,[35] Member Dea noted as follows:

> The effect of the ITAR amendments is that a company such as the applicant may request that its workforce obtain a Personnel Security Clearance or it can undertake an internal screening process in relation to a person without such a Clearance. The screening process is used to determine the person's substantive contacts with proscribed countries or persons referred to in the amendment. Where the person has a Personnel Security Clearance or passes the screening process, he or she may have access to Controlled Material.

[91] In *BAE systems Australia Defence Pty Ltd – Exemption (Human Rights)*,[36] Member Dea relevantly noted[37] as follows:

> … I concluded that the 2011 amendments were not sufficient to conclude that an exemption was no longer necessary under section 90 of the EO Act. That was because, the 2011 amendments still required the relevant company to seek nationality or national origin information. While the 2011 amendments might well mean that potential workforce members may more readily be employed in roles which require access to controlled materials by undertaking the screening process, that screening process of itself may be regarded as more intrusive than seeking only nationality and national origin information.
>
> As discussed in Thales, it is apparent that, although there have been changes to the US export laws and efforts are being made to ameliorate their effects on employment practices in Australia (and so

[35] [2012] VCAT 349, [27].
[36] [2015] VCAT 230.
[37] Ibid, [32]-[33]

> in Victoria), they are yet to obviate the need for an exemption. That is because, in respect of some workforce members and some controlled materials, there will continue to be a need to make decisions partly or entirely based on workforce members' nationality or national origin. Neither the 2011 amendment nor the other measures discussed above cover the field.

[92] The QHRC submits that notwithstanding the view expressed in the 2012 BAE systems decision and the 2015 Defence decision, that the 2011 ITAR amendments do not distinguish the findings in the 2008 Boeing decision in relation to the application of the exemption that allows the imposition of genuine occupational requirements.

[93] Leidos responds to the submissions by identifying that, in its view, the effect of the 2011 ITAR amendments did not amend the requirement for the exemption. Relevantly, it noted that in the 2012 BAE systems decision, it was concluded that the 2011 amendments did not present a reasonably available alternative to the exemption and exemption was still necessary for the applicant to lawfully engage in the conduct.[38]

[94] Leidos refers to the 2015 BAE systems decision where it was noted that the 2011 amendments did not overcome the need for the companies to make inquiries about nationality and place of birth to make decisions partly or entirely based on workforce members nationality or national origin.[39]

[95] As noted in the *Thales Australia Limited and ADI Munitions Pty Ltd Exemption (Human Rights)*[40] ("Thales"), although the 2011 amendments have sought to ameliorate their effects on employment practices, they do not remove the need for an exemption. There is still a requirement, that in respect of some of the workforce and some Controlled Material, that decisions will continue to be made based partly or entirely on the workforce members nationality or national origin. I respectfully adopt the reasoning in Thales.

Application of the HR Act to this matter

What human rights may be affected by the granting of the exemption? – s13(2)

[96] Whether a person's human rights may be affected by the granting of an exemption under s 113(1) of the AD Act, can be determined by reference to the effect of the exemption if it is to be granted.[41]

[97] In the present case, the effect of the exemption would be to allow Leidos to seek and use personal information including with respect to a person's nationality, citizenship and place of birth when engaging a person to work in aspects of its business. Relevantly, the effect of the exemption would be to permit Leidos to lawfully discriminate on the basis of race in pre-work and work area, and, specifically, to be exempt from the application of s 124 of the AD Act, in respect of unlawful requests for information and to be exempt from the application of s 127 of the AD Act, in respect of its commentary in advertisements.

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[38] At [111].
[39] At [32] – [33].
[40] [2014] VCAT 1441, [24]-[26]
[41] *Lifestyle Communities Ltd (No 3) (Anti-Discrimination)* [2009] VCAT 1869.

[98] As referred to above, the QHRC submits that the application made by Leidos "engages" the rights to privacy and the right to equality and to the equal protection of law without and against discrimination.

[99] The right to privacy, in the HR Act,[42] mirrors the right to privacy in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ("the Victorian Charter").[43] The right to recognition equality[44] before the law is also expressed in similar terms to the right in the Victorian Charter.

[100] Section 25(a) of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. I accept that the right to privacy might arise because Leidos seeks to use personal information including place of birth, nationality and citizenship details which may intrude on a person's privacy. However, consideration must be given as to whether such interference is arbitrary.

[101] There has been a range of opinions expressed in the Victorian jurisdiction regarding the concept of arbitrariness as it appears in s 43 of the Victorian Charter.

[102] In *Director of Housing v Sudi (Residential Tenancies)*,[45] Bell J adopted an approach whereby the meaning was informed by international and comparative human rights cases. Bell J concluded that the meaning encompassed a lack of proportionality or justification and objective unreasonableness.

[103] In *WBM v Chief Commissioner of Police*,[46] a narrow approach was taken by the court and the term "arbitrary" was determined[47] to mean conduct not based on any identifiable criteria, but which stems from an act of caprice or whim.

[104] In obiter statements in the appeal from the decision,[48] Warren CJ indicated[49] a preference for the approach taken by the UK courts as guidance on how to determine "what amounts to 'arbitrary interference' with privacy where arbitrariness is concerned with capriciousness, unpredictability, injustice and unreasonableness – in the sense of it not being proportionate to the legitimate aim sought".

[105] In the federal jurisdiction, in *Wotton v State of Queensland (No 5)*,[50] Mortimer J, after considering, inter alia, the above authorities, indicated a preference[51] for a construction of arbitrariness to include, at least, a "… lack of proportionality to the ends sought, and lack of justification." She continued by stating that "[s]uch a construction gives independent operation to arbitrariness in contrast to unlawfulness."

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[42] *Human Rights Act 2019* (Qld), s 25.
[43] Section 13.
[44] Ibid, s 15.
[45] [2010] VCAT 328; 33 VR 139, [63] – [64] (this decision was overturned on appeal but this reasoning was not the subject of a ground of appeal).
[46] [2010] VSC 219; 27 VR 409.
[47] Ibid, [51] and [56].
[48] *WBM v Chief Commissioner of Police* [2012] VSCA 159; 43 VR44.
[49] Ibid, [114].
[50] [2016] FCA 1457.
[51] Ibid, [716].

[106] Having regard to these matters, I do not consider that the possible interference with privacy raised by the exemption application could be regarded as arbitrary. It could not be said that by seeking the information in accordance with its obligations to act in compliance with the US export control laws, that Leidos is acting in a capricious or unpredictable way. Further, given the interference is directly aligned with Leidos' attempts to comply with the US export control laws and its contractual obligations, I do not consider that such conduct lacks proportionality to the end sought or was without justification.

[107] For these reasons, I consider the right to privacy is not engaged in the circumstances of this matter.

[108] I have referred to s 15 of the HR Act in full above. I consider that the right to recognition and equality before the law is engaged in this matter.

[109] I am satisfied, on the material before me that the human rights contained in ss 15(3) and 15(4) of the HR Act, would be effected by the granting of the exemption sought by Leidos in that it would allow discriminatory activity to take place which would effect a person's right to equal protection of the law without discrimination and a person's right to equal and effective protection against discrimination.

[110] Section 15(5) of the HR Act provides that measures taken for the purpose of assisting or advancing person's or groups of person's disadvantaged because of discrimination do not constitute discrimination. It could not be said that the activities sought to be protected by Leidos fall into the categories of measures described under s 15(5) of the HR Act.

[111] Accordingly, the right to equal recognition and equality before the law will be limited. As such, s 13 of the HR Act will need to be considered in order to determine whether the limitations proposed by Leidos may be reasonable and justifiable.

[112] I will consider the factors listed in s 13(2) of the HR Act in deciding whether the limitations on the human rights identified are reasonable and justifiable.

The nature of the human right – s 13(2)(a) of the HR Act

[113] As noted above, the human rights engaged in this matter are the rights to equal protection of the law without discrimination and the right to equal and effective protection from discrimination.

[114] The equivalent right in the Victorian Charter was considered in *Lifestyle Communities Ltd (No 3) (Anti-Discrimination)*[52] ("Lifestyle Communities") as follows:

> Equality before the law is the principle of the general application of the law and the equal treatment of all persons who come before the law, whether that is before a court or tribunal applying the law or before someone administering the law. It is directed to the application and administration of the law, not to the content of the law. Equality before the law is procedural, not substantive, in character. It gives no entitlement to laws of a particular content. It is a principle of universal application. Unlike the other components of s 8(3), it is not limited to unequal treatment that constitutes discrimination. Equality before the law proscribes arbitrary treatment, ie treatment devoid of objective justification, in the application and administration of the law.

[52] [2009] VCAT 1869, [285] – [287].

> The human right to equality before the law requires the tribunal to apply and administer the laws within its responsibility equally towards every person. In doing so it must not treat people arbitrarily (without objective justification).
>
> The human right to equal protection of the law without and against discrimination expresses the fundamental value of substantive equality in the content and operation of the law. It protects the interests that all people have, as of right, in being equally protected by the law from discrimination, including protection from laws that are discriminatory in nature.

[115] In Lifestyle Communities,[53] it was considered that it was a common feature of exemption applications is that there is no particular "victim" of the intended discrimination. It was recognised that such applications are usually undefended and not opposed by the relevant human rights and equal opportunity commission. Further it was noted that such applications are often routine, and it is rare for someone to appear in a hearing to oppose such an application.

[116] Yet, it was further discussed that exemptions of this nature have far reaching consequences and that it is important for a tribunal to take the nature of the right being limited into proper account.[54] Further it was noted that the tribunal in such a circumstance, is the guardian of the human rights of the community in these applications.

The nature of the purpose of the limitation – s 13(2)(b) of the HR Act

[117] Section 13(2)(b) of the HR provides that the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom is a matter that must be considered when determining whether the limitation on a human right is reasonable and justifiable.

[118] The means by which the purpose is to be achieved includes utilising nationality and national origin information to make determinations about the engagement of Leidos' workforce. There is no doubt that such a limitation is undesirable and inconsistent with a free and democratic society based on human dignity, equality and freedom.

[119] These considerations must be weighed with respect to the purpose of the exemption. In this matter the purpose of the exemption is in order for Leidos to comply with US export control laws which will permit it to access to Controlled Materials in the operation of its business. Leidos submits that the exemption is essential to achieving the purpose. It is further noted that the purpose is of importance as it will enable Leidos to provide infrastructure to Defence, which Leidos submits is critical in ensuring Australia's defence and national security interests are met.

[120] I recognise that Leidos must comply with the US export control laws in order to perform some of its contracted work with Defence and other Commonwealth agencies. I further accept Leidos' submissions with respect to the importance of the purpose of the limitation. If the exemption was not granted to Leidos, then it would not be able to perform work, some of which relates to national security, required under its contracts (and future contracts) with Defence and other Commonwealth agencies.

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[53] Ibid, [390].
[54] Ibid, [392].

The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose – s 13(2)(c) of the HR Act

[121] There is a clear relationship between the terms of the limitation and its purpose. On the material before me, I am satisfied that the limitation helps to achieve the purpose for which it is sought.

[122] Having regard to the purpose of the limitation as outlined above, in order that Leidos may comply with the US export control laws in order to have access to Controlled Material, I consider that the terms of the proposed exemption are connected to and provide a means by which the purpose can be achieved.

[123] I do not consider that the terms of the exemption go beyond the purpose of the exemption.

[124] In this regard, I note that in Leidos' submissions that the exemption is only sought to the extent needed to meet its compliance with the US export control laws. This submission is reflected in the conditions attached to the terms of the draft exemption which include a condition that the exemption applies only to Leidos' conduct where it is necessary to enable Leidos to obtain and maintain US export licenses and approvals or to perform contractual obligations, which involve access to Controlled Material. The conditions also provide that Leidos will take all steps reasonably available to it to avoid conduct which would otherwise be in breach of ss 14, 15, 15A, 124 and 127 of the AD Act.

Whether there are any less restrictive and reasonably available ways to achieve the purpose – s 13(2)(d) of the HR Act

[125] Limitations will not be reasonable or justifiable if they go further than is necessary or if there are less restrictive alternatives available.

[126] Leidos contends that there are no alternative or less restrictive means to achieve compliance with the US export control laws and to provide the contracted services to Defence.

[127] The 2011 amendments to the ITAR, whilst broadening the pool of potential workers Leidos may engage, does not eliminate the need for Leidos to require nationality, citizenship and national origin information and potentially use that information.

[128] In Thales,[55] when considering the effects of the 2011 amendments to the ITAR in an exemption application, it was concluded that there was an absence of less restrictive means to achieve the purpose, as the amendments to the US export control laws and other developments had not eliminated the need for the applicant to seek nationality origin information from its workforce from time to time.

[129] I note that the scope of the exemption is such that it is only applied in circumstances where Leidos must comply with the US export control laws and in order for it to meet its' contractual obligations. On the material before me, I am not satisfied that there is any less restrictive and reasonable available way to achieve the purpose.

[55] *Thales Australia Limited and ADI Munitions Pty Ltd Exemption (Human Rights)* [2014] VCAT 1441, [47].

The importance of the purpose of the limitation, the importance of preserving the human right and finding a balance between the two – s 13(2)(e)-(g) of the HR Act

[130] It has been held[56] that the purpose of the right to recognition and equality before the law, specifically the right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination is to protect the values of substantive equality, the universal humanity, autonomy and worth of the individual and their protection for personal and social development.

[131] Further, it has been held[57] that the interests protected by the 'equality rights' are the rights of every person to be treated equally before the law and to have the law applied to them in a way that is equal in law and in fact. Clearly, such important rights must not be limited without good reason.

[132] The evidence adduced by Leidos supports its submission that it provides fundamental services and support to Australia's defence and national security interests through its contracted work with the Commonwealth of Australia, in particular, Defence.

[133] I have had regard to the fact that Leidos only seeks the limitation on the rights in order to comply with the US export control laws when it undertakes its business which includes providing services to the Commonwealth of Australia, including Defence. When considering a similar application for exemption in Victoria,[58] it was held that the concerns of the Australian and US governments about who ought and ought not have access to Controlled Material is clear and they are not matters that should be disregarded.

[134] I consider the limitation in the circumstances of this matter to be legitimate and of sufficient importance to limit the human rights affected. For the reasons referred to above, I also consider the limitations to be consistent with the purpose for which they are sought and to be proportionate to and appropriate for achieving that purpose.

[135] For these reasons, I am satisfied that the limitation on human rights is reasonable and justifiable.

The exemption power

[136] Section 113(1) of the AD Act confers a broad and unfettered discretion upon the Commission to grant an exemption of specified provisions of the AD Act. It is has been held that the purpose of s 113 of the AD Act is to allow persons the protection and security of the shield against complaints of unlawful discrimination and circumstances where their proposed actions constitute a prima facie case of unlawful discrimination, but when they are not inherently inconsistent with the AD Act.[59]

[137] Section 48 of the HR Act must be considered when considering the application of s 113 of the AD Act.

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[56] *Lifestyle Communities Ltd (No 3) (Anti-Discrimination)* [2009] VCAT 1869, [312].
[57] Ibid.
[58] *Raytheon Australia Pty Ltd (Human Rights)* [2014] VCAT 1370, [130].
[59] *Anglo Coal (Moranbah North Management) Pty Ltd* [2018] QIRC 52, [9] per DP Swan.

[138] Section 48(1) of the HR Act does not authorise an interpretation of statutory provisions which is inconsistent with their purpose, rather, the provisions must be interpreted to the extent possible that is consistent with their purpose, in a way that is "compatible with human rights".[60]

[139] Accordingly, the next step is to consider the matters that have traditionally been considered when granting an exemption pursuant to s 113(1) of the AD Act.

Is the exemption necessary?

[140] The proposed exemption is necessary to permit Leidos to lawfully perform its activities in Queensland, some of which require it to comply with the US export control laws. The effect of such compliance would amount to unlawful discrimination in so far as information about a person's nationality, citizenship or national origin is used to determine whether a person is permitted access to Controlled Materials.

[141] As noted above, no other exemptions, including the exemption contained in s 25 of the AD Act apply.

[142] I consider the exemption is necessary to permit Leidos to lawfully perform its activities in Queensland.

Whether there are any non-discriminatory ways for achieving the objects or purposes for which the exemption is sought?

[143] Leidos submits that seeking the exemption is the only means by which it may simultaneously undertake its business in Queensland, provide critical services concerning the security of Australia and avoid engaging in prohibited discrimination.

[144] It submits that where possible, it intends to utilise the exemptions available under ITAR, so that the activities are only performed where absolutely necessary. It submits however that those such exemptions may not be available in all cases.

[145] If the exemption is granted, it will be on the condition that Leidos will take all steps reasonably available to avoid conduct which would otherwise be in breach of ss 14, 15, 15A, 124 and 127 of the AD Act. I am, however, satisfied that, given the nature of the purpose for the exemption, that there are not any non-discriminatory ways available to achieve that purpose.

Whether the exemption is in the community interest

[146] Leidos submits that the purpose of the exemption will be to allow it to comply with US export control laws which neither it, nor the Australian Government, have the power to amend, enabling Leidos to perform contracted works for Defence. Such work is critical to the capabilities of Defence and the Australian Defence Force in meeting Australian security interests.

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[60] *The Australian Institute for Progress Ltd v The Electoral Commission of Queensland* [2020] QSC 54, [117] per Applegarth J.

[147] I consider that granting the exemption will permit Leidos to lawfully conduct its activities which concern matters of national security. It is in the community's interest that such activities be performed.

[148] The QHRC submitted that Leidos' application did not show the extent to which work in Queensland is relevant to Leidos' contracts or the extent to which it provides employment opportunities in Queensland.

[149] In response, Leidos adduced further evidence[61] which indicated that Leidos intends to open an office in Queensland and that it was operating on the basis that Leidos would employ approximately 30 employees in Queensland within 2 years of operations commencing. Ms McPheat's evidence was that while the workers in Queensland may not be required to access Controlled Material in the Brisbane office (at least, in the short term) those workers may be required to access it when they are working in the ACT or Victorian offices.

[150] Ms McPheat gave evidence[62] to the effect that Leidos would be securing premises in Queensland imminently.

[151] I consider it is in the local community interest for businesses to commence operating in Queensland with the intent of creating new and specialised employment opportunities for Queenslanders.

Whether any other persons or bodies other than the Applicant support the application

[152] There is no evidence before me that any other person or body, other than the Applicant, support the application.

[153] I have however, had regard to the fact that, as noted above, Leidos has been granted similar exemptions in the Australian Capital Territory, New South Wales and Victoria. I consider it appropriate to give weight to the fact that tribunals in other jurisdiction have reached the view that the exemptions are, under the terms of similar legislation, appropriate.

The effect of not granting the exemption

[154] To access the Controlled Material, Leidos must comply with US export control laws, which entails performing the proposed exempt activities. Non-compliance with such laws can have a number of significant consequences including the following:

(a) significant financial and other penalties, including imprisonment, may be imposed on Leidos and on the US exporter of Controlled Materials to Leidos;

(b) in addition to imposing financial penalties, the US Department of State also has the power of "statutory debarment" under the *US Arms Export Control Act* for non-compliance with ITAR. Statutory debarment would prohibit Leidos from accessing Controlled Material for a specified period should it be found to be in

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[61] Affidavit of Alison McPheat, filed 14 October 2019, [6].

[62] T1-11 L44-46.

breach of ITAR, which in turn, would prevent Leidos from performing the contracted works for defence.

[155] I accept that if the exemption is not granted, Leidos would be unable to lawfully conduct its activities in Queensland in order to comply with the US export control laws. I further accept that without access to Controlled Material, Leidos will be unable to discharge its contractual obligations with Defence, and, will therefore not be able to provide critical services and support which form part of Australia's Defence and national security interests.

[156] For these reasons, I am of the opinion that it would be appropriate and reasonable to grant the exemption sought by Leidos in the terms as set out in [32] herein.

Term of the exemption sought

[157] Section 113(6)(c) of the AD Act provides that an exemption is to be granted for a specified period of not more than 5 years. I will grant the exemption for a period of 5 years from the date of the order.

Conclusion

[158] For the forgoing reasons, I grant the exemption sought by Leidos.

Order

[159] I will make an order in terms of Schedule A of this decision.

Schedule 1

It is ordered that:

1. Pursuant to section 113 of the Act and subject to the conditions contained in the Schedule, an exemption is granted to the Applicant from the operation of sections 14, 15, 15A, 124 and 127 of the Act for the period from 28 June 2021 to 27 June 2026.

2. The exemption is granted in respect of the operation of sections 14, 15, 15A, 124 and 127 of the Act insofar as those sections relate to the 'race' (as that attribute is defined in section 4 of the Act) of the Applicant's workforce.

3. The exemption permits the Applicant to engage in the following activities:

Applicants for employment

(a) Inform applicants for employment or contract work in roles which require access to Controlled Material and are subject to permits, licenses, approvals or agreements made under US and Australian import and export control laws that they may be adversely affected by ITAR and EAR controls if they:
   (i) are not an Australian citizen; or
   (ii) hold, or have held, dual nationality and/or citizenship from countries other than the US or Australia; or
   (iii) hold permanent residency in a country or countries other than the US or Australia;
   (iv) have substantive contacts with countries proscribed by section 126.1 or ITAR;

Request for information about nationality

(b) Request and maintain records of information from Personnel who perform or may perform work on the Applicant's premises or offsite and who are subject to the Applicant's control and direction for positions related to projects which use Controlled Material, in relation to current citizenship, prospective citizenship, previous citizenships, permanent residency, race or nationalities, or substantiative contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, provided the request for information is limited to information for the purposes of paragraphs (c) to (l) below:

Use of nationality information

(c) Impose a condition of any offer of employment in roles which are likely to require access to Controlled Material that an applicant for those roles must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approved obtained from the US Department of State or otherwise;

(d) Take into account current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities, or substantive contacts of personnel where such contacts are affiliated with countries proscribed by section 126.1 of ITAR in determining whether those personnel may be offered a role or allocated work that involves access to Controlled Material;

(e) Maintain records of the current citizenships, prospective citizenships, previous citizenships, permanent residency, race and nationalities and substantive contacts of personnel who have or may have access to Controlled Material;

(f) Require personnel involved in projects which access Controlled Material to notify the Applicant of any change to their citizenship or permanent residency status, nationalities or substantive contacts;

(g) Restrict access to Controlled Material to particular personnel based on their current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

(h) Record information relating to security clearances granted to personnel who are under the control and the direction of the Applicant in relation to work requiring access to Controlled Material;

(i) Impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material;

(j) Maintain records of the current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement.

(k) Establish security systems and access protocols that will prevent the unauthorised export or transfer (including re-export or re-transfer) of Controlled Material;

(l) Disclose, if and when required, current citizenships, prospective citizenships, previous citizenships, permanent residency, race or nationalities, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, of the Applicant's personnel in Queensland to:
   (i) the US Department of State;
   (ii) the US Department of Commerce;
   (iii) the Australian Department of Defence; and
   (iv) any other person or organisation for which, or on whose behalf, or at whose request the Applicant undertakes work in respect of which the Applicant has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities.

4. In this exemption:
(a) "**Act**" means the *Anti-Discrimination Act 1991*;
(b) "**Applicant**" means Leidos Australia Pty Ltd (ACN 612 590 155)

(c) "**Controlled material**" means material (including equipment, technology, articles and services) and information (including classified or sensitive information and technical data) to which the security requirements apply;
(d) "**EAR**" means the *Export Administration Regulations* of the US;
(e) "**ITAR**" means the *International Trafficking in Arms Regulations of the US*;
(f) "**Personnel**" means the current and prospective workforce of the Applicant, including employees, contract workers, employees of contractors and candidates or applicants for these roles;
(g) "**Security requirements**" means any of the following:
  (i) requirements of Australian or US laws, including but not limited to ITAR and EAR, including requirements of any permit, licence or approval granted, or agreement made, under those laws;
  (ii) contractual requirements applying to the Applicant and relating to any of the requirements mentioned in subparagraph (i) above.
(h) "**US**" means United States of America.

Schedule: Conditions

1. This exemption applies only to the Applicant's conduct where:

(a) it is necessary to enable the Applicant to obtain and maintain US export licenses and approvals or to perform contractual obligations which involve access to Controlled Material;

(b) the Applicant has taken all steps reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 14, 15, 15A, 124 and 127 of the Act, including:
  (i) reliance of ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR, where applicable;
  (ii) where personnel are nationals or dual nationals of a country not approved for access to Controlled Material, then the Applicant will either request the US Department of State, or request the relevant export license holders to request the US Department of State to amend the relevant export licenses to enable those personnel to have access to Controlled Material, unless the Applicant, on reasonable grounds, determines that either:
    (A) the personnel are not the best candidate for the relevant position; or
    (B) such an application does not have significant prospects of success,
  (iii) in the event the US Department of State requires the Applicant to provide further information specific to an individual, then with the consent of the individual, the Applicant will work with the individual to supply all relevant information to the US Department of State so than an application for approval may be made in relation to that individual.

2. Where, pursuant to this exemption, the Applicant wishes to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled 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 that any individual occupying the position must be able to satisfy the ITAR-based requirements which may require specific authorisation for that individual to access Controlled Material; and

(b) if a candidate for the position is concerned as to whether or not they will satisfy the requirement in (a) above, the candidate should contact a nominated member of the Applicant's personnel who is able to provide relevant information, including information about the scope of the exemption and the candidate's individual rights.

3. The applicant must provide to the Queensland Human Rights Commission a written report for every 12-month period from the date of this exemption order. Each report must be provided within 21 days from the end of the relevant reporting period. Each report must detail:

(a) the steps it has taken to comply with the terms of the exemption;

(b) the number of persons affected by the exemption, the nature of the effects and the steps taken to redress any adverse effects; and

(c) the implementation of and compliance generally with the terms of the exemption.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Matter No:
/ /

Form 21 – Certificate of Exhibit to Affidavit

Industrial Relations Act 2016, s 989
Industrial Relations (Tribunals) Rules 2011, r 53

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- For further information please refer to the website www.qirc.qld.gov.au or contact the Industrial Registry on 1300 592 987 or via email at qirc.registry@qirc.qld.gov.au.

Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-2
Marked:	Management of Dual and Third Country Nationals Procedure
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

LA-PR-TC-0008 Management of Dual and Third Country Nationals

Process Details	
Process: LA-PR-TC-0008: Management of Dual and Third Country Nationals	Revision No.: 6
Owner and Approved By: Legal and Compliance	Effective Date: 26 October 2021
Point of Contact: Trade Compliance	

Table of Contents

1 Purpose

This process applies to all employees of Leidos Australia and its Related Companies (Leidos AU) to protect U.S. Export Controlled technology and goods from diversion to non-authorised third parties or destinations. To ensure consistency with Export Control regulations, the Leidos AU International Trade Compliance (AU ITC) Office will undertake vetting for all dual national employees to authorise access to unclassified ITAR material on 'need to know' basis and when necessary.

2 Classified Programs

The AU ITC Office will apply the Australian Department of Defence (ADoD) Security Clearance Clause under the DDTC Guidelines for Preparing Agreements to all dual national employees (who are eligible to be treated as Regular Employees) and who require access to U.S. classified technology.

The ADoD Security Clearance Clause authorises the transfer of U.S. Classified ITAR technology to Leidos AU dual-national Regular Employees who have a current Australian security clearance and who were not born nor have obtained citizenship or residency of an ITAR §126.1 country.

If an employee needs access to Classified ITAR technology, the Project Manager or Project Responsible Person must request approval from AU ITC through utilising the U.S. Classified ITAR Access form.

3 Intracompany Transfers

Any existing employees who have previously been cleared, and who need to be transferred to another program within Leidos AU, do not need to undertake any further clearance. However, if the transferring employees need access to U.S. classified material, they must follow Section 6.2 below.

Employees transferring from Leidos U.S. or UK must be treated as 'new employees' and managed per this process.

4 Denied Party Screening

A 'denied party screening' must be completed on all new employees before engagement regardless of place of birth. A restricted party screening means running the candidate through the Descartes Visual Compliance tool, to ensure the individual is not identified in a government-restricted party listing.

5 Definitions

Definitions specific to this document are noted below:

Term	Definition
§126.1 Countries	These countries are subject to change – check the U.S. Department of State website for updates.
Authorisations	An authorisation can consist of a licence, an agreement (such as a TAA) or a Third Party Retransfer approval.
Dual National	A dual national is a person who is a national (born overseas), citizen or permanent resident of another country and is also an Australian citizen. *Eg. Born in the UK, working in Australia and a citizen or permanent resident of Australia.*
AU ITC	Australian International Trade Compliance Office is contactable at AU-Trade-Compliance@au.leidos.com

Term	Definition
NATO +	NATO and European Union Countries, Japan, New Zealand or Switzerland
Third Country National	A third country national is a person who is a national (born overseas), citizen or permanent resident of a country other than the country of his or her employer or Australia. *Eg. Born in the UK, working in Australia, but not a citizen or permanent resident of Australia.*
Related Companies	A 'related body corporate' as defined in the Corporations Act 2001(Cth), but for the purpose of this process does not include any related company incorporated in the U.S.
TA	Talent Acquisition

6 Process

This process is separated into two categories, and it is essential that the correct process is followed.

A. Regular Employees for U.S. Unclassified ITAR Programs

This applies to prospective <u>dual national</u> employees engaged directly through Leidos AU or engaged via legitimate labour-hire companies.

B. Regular Employees for U.S. Classified ITAR Programs

This applies to prospective and regular employees engaged directly through Leidos AU who require access to U.S. classified material.

6.1 Regular Employee Accessing Unclassified ITAR Data

This process applies to prospective employees engaged directly through Leidos AU as a regular employee.

Responsible Party		Process
1	TA Co-ordinators	When candidates have been shortlisted. 1. Send the LA-F-TC-0017 ITC Screening Form and LA-F-TC-0019 ITC Non-Disclosure Agreement to prospective employees and ask them to complete, sign and return. 2. Seek confirmation from the LA Security Team if a security clearance is active and current. 3. Forward the completed LA-F-TC-0017 ITC Screening Form and LA-F-TC-0019 ITC Non-Disclosure Agreement to the AU ITC Office. <u>Note</u>: any employee who was born in or has resident status or citizenship of a proscribed §126.1 country (see Definitions) cannot be engaged for a program that is U.S. ITAR Classified. If you are unsure if the program is classified, contact the AU ITC Office at AU-Trade-Compliance@au.leidos.com.

2	AU ITC Office	1. Create ITC portal entry. 2. Conduct a Denied Party Screening and save the results within the ITC Portal entry. 3. Review the ITC Screening Form: i. One positive answer – AU ITC Analyst approval is required. ii. Two to three positive answers – AU ITC Manager approval is required. iii. If more than four positive answers, seek Leidos AU General Counsel input. iv. Denials must be coordinated with the Legal Department 4. Approval Mechanism: i. If the prospective employee is AU/US born with no other citizenship/permanent residence, approve by selecting AU/US born. ii. For all other employees: a. If they have a security clearance confirmation, approve by selecting Security clearance. b. If no security clearance, and were born in NATO+, approve by selecting NATO+ countries. c. If no security clearance and were born in any other country (not NATO+) approve by selecting Internal Vetting. 5. Once the candidate is approved or denied, an automatic email response will be returned to the HR contact.

6.2 Regular Employee Accessing Classified ITAR Data

This process applies to prospective and regular employees engaged directly through Leidos AU who require access to U.S. classified material or to current employees moving to another program that is U.S. classified.

For access to U.S. ITAR classified material, an employee must have a current Australian Department of Defence Security Clearance and were not born nor have obtained citizenship or residency of a §126.1 country.

The below process applies to employees engaged for programs that have U.S. Classified ITAR material:

Responsible Party		Process
1	Project Manager or Responsible Person	Obtain security clearance confirmation from LA Security Team for the employee and provide it with an overview of the program / project and the role description to the AU ITC Office.

2	AU ITC Office	1. Ensure that the ADoD Security Clearance Clause is listed on the relevant authorisation. 2. Check employee ITC screening has been done and ascertain the risk of diversion to §126.1 countries. NOTE: If an employee was born or has obtained citizenship or residency in a §126.1 proscribed country, they cannot have access to U.S. ITAR classified material regardless of the level of security clearance. 3. Approve or deny employees access and finalise the entry. 4. The PM and/or Responsible Person will receive an AU ITC determination email.

7 Roles and Responsibilities

Role	Responsibility
AU ITC Office	• Maintain record-keeping requirements as detailed in Section 9. • Support TA, Project Management Office and Hiring Manager as required. • Determine if Regular Employees are allowed to have access to classified ITAR-controlled technology.
ITC Manager	• Assess the ITC Screening Form to determine the associated risk of diversion and decision escalation. • Review ITC screening forms that have up to four (4) positive answers or as determined by AU ITC. • Escalate ITAR Screening form to General Counsel that has over four (4) positive answers or as deemed necessary.
General Counsel	• Review ITC Screening forms that have scored more than four (4) positive answers and engage with U.S. legal and relevant stakeholders to determine the next steps.
Prospective / Current Regular Employee	• Complete LA-F-TC-0019 Non-Disclosure Agreement as required. • Complete LA-F-TC-0017 ITC Screening as required.
Project Manager / Responsible Person	• Provide relevant security clearance information and project information as required for access to classified programs. • Maintain records in accordance Section 8 of this process.
Security	• Confirm the existence of security clearance and update ITC Screening form.
Talent Acquisition	• Liaise with the AU Leidos Security Team to confirm security clearance. • Obtain signed LA-F-TC-0019 Non-Disclosure Agreement and LA-F-TC-0017 ITC Screening Form and provide them to AU ITC Office.

8 Record Keeping

All records must be retained for five (5) years from the expiration of the licence or other approval associated with the activity.

Version #	Date	Author	Description of Change
1	26 Oct 2021	Julia Reed	Initial Release
2	2 Mar 2022	Julia Reed	Change of process as per HR request.
3	13 Oct 2022	Naomi Jeffs	Change of number from LA-PR-LEG-0012
4	11 Jan 2024	ITC Office	Major Re-write to align with LA-PLN-TC-0020 Leidos AU Technology Control Plan V1
5	15 Apr 2024	ITC Office	Updates in accordance with the current TCP
6	4 Oct 2024	ITC Office	Admin update

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-3
Marked:	NSW Exemption
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]**:**	Canberra
Date:	26/06/2026

Anti-Discrimination
New South Wales

Anti-Discrimination Act 1977

EXEMPTION ORDER

1. Under the provisions of section 126 of the Act but for the purposes only of meeting the Applicants' legal obligations pursuant to the Security Requirements, the Applicants are granted an exemption from sections 8, 10, 51 and 52 of the Act to the extent necessary to permit the Applicants to do the following:

Applicants for employment

(a) Inform applicants for employment or contract work in roles which will require access to controlled material and are subject to permits, licences, approvals or agreements made under US and Australian import and export control laws that they may be adversely affected by ITAR and EAR controls if they:

(i) are not an Australian citizen; or

(ii) hold, or have held, dual nationality and/or citizenship from proscribed countries for the purposes of Security Requirements; or

(iii) have substantive contacts with proscribed countries for the purposes of Security Requirements;

Request for information about nationality

(b) Request information from prospective personnel who perform work on the Applicants' premises or offsite and who are subject to the Applicants' control and direction for positions related to projects which use Controlled Material, in relation to prospective citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, provided the request for information is limited to information for determining whether an application for authorisation would be required to allow the prospective personnel to have access to Controlled Material and whether in the Applicants' reasonable judgment that application would have significant prospects of success;

Use of nationality information

(c) Impose a condition on any offer of employment in roles which are likely to require access to Controlled Material that an applicant for those roles must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approval obtained from the US Department of State or otherwise;

(d) Take into account citizenship, previous citizenships, race or nationality, or substantive contacts of personnel where such contacts are affiliated with countries proscribed by section 126.1 of ITAR in determining whether those personnel may be offered a role or allocated work that involves access to Controlled Material;

(e) Maintain records of the nationalities, citizenships and substantive contacts of personnel who have or may have access to Controlled Material;

(f) Require personnel involved in projects which access Controlled Material to notify the Applicants of any change to their citizenship status or substantive contacts;

(g) Restrict access to Controlled Material to particular personnel based on their citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

(h) Record information relating to security clearances granted to personnel who are under the control and direction of the Applicants in relation to work requiring access to Controlled Material;

(i) Impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material;

(j) Maintain records of the nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement;

(k) Establish security systems and access protocols that will prevent the unauthorised export or transfer (including re-export or re-transfer) of Controlled Material provided that any access protocols established should not result in the identification of a person's citizenship or country of birth;

2. This exemption applies only to the Applicants' conduct where:

(a) it is necessary to enable the Applicants to obtain and maintain US export licences and approvals or to perform contractual obligations which involve access to Controlled Material;

(b) the Applicants have taken all steps reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 8, 10, 51 and 52 of the Act, including:

(i) reliance on ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR, where applicable;

(ii) where personnel are nationals or dual nationals of a country not approved for access to Controlled Material, then the Applicants will either request the US Department of State, or request the relevant export license holders to request the US Department of State to amend the relevant export licences to enable those personnel to have access to Controlled Material, unless the Applicants, on reasonable grounds, determine that either:

(A) the personnel are not the best candidate for the relevant position; or

(B) such an application does not have significant prospects of success,

3. Where, pursuant to this exemption, the Applicants wish to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled 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 that any individual occupying the position must be able to satisfy ITAR-based requirements which may require specific authorisation for that individual to access Controlled Material; and

(b) if a candidate for the position is concerned as to whether or not they will satisfy the requirement in (a) above, the candidate should contact a nominated member of the Applicants personnel who is able to provide relevant information, including information about the scope of the exemption and the candidate's individual rights.

4. The Applicants are required to advise Anti-Discrimination NSW every 6 months over the period specified in this Order, of:

(a) The steps they have taken to comply with all the above conditions, including:

(i) the number of job applicants rejected for ITAR purposes, including those subsequently appointed to other roles within each reporting period;

(ii) the number of employees retrenched or redeployed due to ITAR requirements and any steps taken to minimise retrenchment or redeployment, and any steps taken generally to mitigate the impact of the Applicant's responsibility under ITAR on the deployment of its workforce within each reporting period;

(iii) the number of vacancies advertised within each reporting period, including the number of such vacancies where candidates were required to satisfy ITAR related requirements.

(b) The implementation and compliance generally with the terms of this Exemption Order.

5. This Exemption is granted for a period of 5 years.

6. In addition to the above conditions the Applicant is required to:

(a) produce comprehensive anti-discrimination policies governing all aspects of the work and workforce, including management, and with particular regard to race discrimination, vilification and harassment and victimisation;

(b) establish concise and comprehensive dispute resolution and grievance procedures to receive, investigate and resolve discrimination complaints and grievances and, in particular, those relating to race discrimination, vilification and harassment and victimisation;

(c) implement training programs, including at induction, to ensure that all members of the Applicant's workforce, including management, are fully informed of their rights and obligations under such policies and procedures, particularly with regard to issues of race discrimination, vilification, harassment and victimisation;

(d) ensure that all members of the workforce, including management, receive regular education and training in issues of discrimination, particularly race discrimination, vilification, harassment and victimisation;

(e) take steps to fully inform the workforce, including management, of their rights under the Anti-Discrimination Act 1977 (NSW) and, in particular, but not limited to, the complaints procedure under the Anti-Discrimination Act 1977 (NSW) and to ensure that all members of the workforce, including management, are aware of the rights of aggrieved persons to take their complaints to Anti-Discrimination NSW and through the New South Wales Civil and Administrative Tribunal;

(f) take steps to fully inform the workforce, including management, of the requirements of, and their rights and obligations under, the Racial Discrimination Act 1975 (Cth);

(g) notify Anti-Discrimination NSW if the discriminatory terms and provisions of the relevant US legislation and/or Regulations are repealed or become inoperative, so that this Exemption Order may be revoked or amended.

7. In this Exemption Order:

(a) "**Act**" means the Anti-Discrimination Act 1977;

(b) "**Applicants**" mean Leidos Australia Pty Ltd (ACN 612 590 155) and Gibbs & Cox (Australia) Pty Ltd (ACN 114 790 260), or each of them individually as the context requires;

(c) "**Controlled material**" means material (including equipment, technology, articles and services) and information (including classified or sensitive information and technical data) to which the Security Requirements apply;

(d) "**EAR**" means the Export Administration Regulations of the US;

(e) "**ITAR**" means the International Trafficking in Arms Regulations of the US;

(f) "**Personnel**" means the current and prospective workforce of the Applicants, including employees, contract workers, employees of contractors and candidates or applicants for these roles;

(g) "**Security Requirements**" means any of the following:

(i) requirements of Australian or US laws, including but not limited to ITAR and EAR, including requirements of any permit, licence or approval granted, or agreement made, under those laws;

(ii) contractual requirements applying to the Applicant and relating to any of the requirements mentioned in subparagraph (i) above;

(h) "**US**" means United States of America.

Date: 4 February 2026

[redacted]

Chris D'Aeth
Acting President
Anti-Discrimination NSW

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Matter No:
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Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-4
Marked:	VIC Exemption
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

VCAT | victorian civil & administrative tribunal

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H385/2024

Under section 89 of the *Equal Opportunity Act 2010* (Vic) **(the Act)** the applicant, Leidos Australia Pty Ltd (ACN 612 590 155) **(Leidos)**, seeks exemption from liability under sections 16, 18, 21, 105, 107 and 182 insofar as they relate to the race of present and future employees and contractors (**personnel**) for the following **proposed exempt conduct** in accordance with the conditions noted in the conduct:

Applicants for employment

(a) inform applicants for employment or contract work in roles which will require access to Controlled Material and are subject to permits, licences, approvals or agreements made under United States of America (**US**) and Australian import and export control laws that they may be adversely affected by *International Trafficking in Arms Regulations US* (**ITAR**) and *Export Administration Regulations US* (**EAR**) controls if they:

(i) are not an Australian citizen; or

(ii) hold or have held, dual nationality and/or citizenship from proscribed countries for the purposes of Security Requirements; or

(iii) have substantive contacts with proscribed countries for the purposes of Security Requirements;

Requests for information about nationality

(b) request information from prospective personnel who perform work on the applicant's premises or offsite and who are subject to the applicant's control and direction for positions related to projects which use Controlled Material, in relation to prospective citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, provided the request for information is limited to information for determining whether an application for authorisation would be required to allow the prospective personnel to have access to Controlled Material and whether in the applicant's reasonable judgment that the application would have significant prospects of success;

Use of nationality information

(c) impose a condition on any offer of employment in roles which are likely to require access to Controlled Material that an applicant for those roles must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approval obtained from the US Department of State or otherwise;

(d) take into account citizenship, previous citizenships, race or nationality, or substantive contacts of personnel where such contacts are affiliated with countries proscribed by

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section 126.1 of ITAR in determining whether those personnel may be offered a role or allocated work that involves access to Controlled Material;

(e) maintain records of the nationalities, citizenships and substantive contacts of personnel who have or may have access to Controlled Material;

(f) require personnel involved in projects which access Controlled Material to notify the applicant of any change to their citizenship status or substantive contacts;

(g) restrict access to Controlled Material to particular personnel based on their citizenship, pervious citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

(h) record information relating to security clearances granted to personnel who are under the control and direction of the applicant in relation to work requiring access to Controlled Material;

(i) impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material;

(j) maintain records of the nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement;

(k) establish security systems and access protocols that will prevent the unauthorized export or transfer (including re-export or re-transfer) of Controlled Material; and

(l) disclose, if and when required, citizenship, pervious citizenship, race or nationalities, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, or the applicant's personnel in Victoria to:

   (i) the US Department of State;

   (ii) the US Department of Commerce;

   (iii) the Australian Department of Defence; and

   (iv) any other person or organisation for which, or on whose behalf, or at whose request the applicant undertakes work in respect of which the applicant has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities.

Definitions

In this exemption:

(a) "Controlled Material" means material (including equipment, technology, articles and services) and information (including classified or sensitive information and technical data) to which the Security Requirements apply.

(b) "Personnel" means the current and prospective workforce of the applicant, including employees, contract workers, and candidates or applicants for these roles.

(c) "Security Requirements" means any of the following:

(i) requirements of Australian or US laws, including but not limited to ITAR and EAR, including requirements or any permit, licence or approval granted, or agreement made, under those laws; and

(ii) contractual requirements applying to the applicant and relating to any of the requirements mentioned in subparagraph (i) above.

Conditions in the exemption

1. This exemption applies only to the applicant's conduct where:

(a) It is necessary to enable the applicant to obtain and maintain US export licences and approvals or to perform contractual obligations which involve access to Controlled Material.

(b) The applicant has taken all steps reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 16, 18, 21, 105, 107 and 182 of the Act including:

(i) reliance on ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR where applicable;

(ii) where personnel are nationals or dual nationals of a country not approved for access to Controlled Material, then the applicant will either request the US Department of State, or request the relevant export licence holders to request the US Department of State to amend the relevant export licences to enable those personnel to have access to Controlled Material, unless the applicant, on reasonable grounds, determines that either:

(A) the personnel are not the best candidate for the relevant positions; or

(B) such an application does not have significant prospects of success; and

(iii) in the event the US Department of State requires the applicant to provide further information specific to an individual, then with the consent of that individual, the applicant will work with the individual to supply all relevant information to the US Department of State so that an application for approval may be made in relation to that individual.

2. Where, pursuant to this exemption, the applicant wishes to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled Material, any advertisement, invitation for expressions of interest, or other promotional information referring to the position must include information that:

(a) the position will or is likely to require access to Controlled Material and that any individual occupying the position must be able to satisfy ITAR-based requirements which may require specific authorisation for that individual to access Controlled Material; and

(b) if a candidate for the position is concerned as to whether or not they will satisfy the requirement in (a) above, the candidate should contact a nominated member of the applicant's personnel who is able to provide relevant information, including information about the scope of the exemption and the candidate's rights.

3. The applicant must report in writing to the Victorian Equal Opportunity and Human Rights Commission and the Tribunal a written report for every 12-month period from the date of this exemption order. Each report must be provided within 21 days from the end of the relevant reporting period. Each report must detail:

   (a) the steps it has taken to comply with the terms of the exemption;

   (b) the number of persons affected by the exemption, the nature of the effects and the steps taken to redress any adverse effects; and

   (c) the implementation of and compliance generally with the terms of the exemption.

UPON READING the material filed in support of this application, including an affidavit from Alison McPheat and Kathryn Ellis, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 16, 18, 21, 105, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption, the Tribunal noted:

- The applicant provides large-scale systems integration and information technology services predominantly to the Commonwealth of Australia, including Defence. Its current contracts with Defence are valued over $1billion AUD.

- To meet Defence contracts the applicant requires access to Controlled Material which access is subject to controls under the US export control laws including the ITAR and the EAR. Compliance with these US control laws includes, for example, requesting and storing personnel nationality information and taking into account personnel citizenship, previous citizenships held, race, nationality or substantive contacts when deciding whether a person may be offered a role or allocated work that involves access to Controlled Material. A failure to comply can result in disbarment and financial or criminal penalties by the US Department of State. Disbarment would mean it is unable to perform its contracted works which would result in significant redundancies for its personnel. An inability to operate and use the Controlled Material will have serious consequences for the applicant and for Australia's national security interests.

- The applicant has complied with directions given by me on 8 May 2024 to notify all its Victorian employees of the application and the hearing arrangements. Ms. Ellis's affidavit notes that there was no response to the notification and no requests for a hearing. This decision was made on the papers.

- I note the applicant's submissions that no current personnel will lose their position or contract as a result of the exemption being granted. The applicant operates a diversity policy, and the latest iteration of this policy was implemented in December 2018 and remains in place. The applicant promotes inclusion as a corporate value. A copy of this policy and reports regarding its application were provided.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL · VCAT

- The applicant has been the subject of similar exemptions in the Australian Capital Territory, South Australia, Queensland and New South Wales. I note the detailed decision of the Queensland Industrial Relations Commission handed down on 28 June 2021 which discussed Leidos and the similar law of Queensland. VCAT previously made an exemption order for Victoria in March 2020.

- I am satisfied that no relevant exceptions or exemptions apply under the Act to the proposed exempt conduct and that, without an exemption, the proposed exempt conduct would amount to unlawful discrimination under the Act. The proposed exemption is necessary under section 90(a) of the Act.

- When making decisions about exemptions, the Tribunal is required to give proper consideration to relevant human rights as set out in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**). Arguably, this exemption limits the right to equality and, in particular, the right to equal and effective protection against discrimination of personnel with certain nationalities and citizenship (or who have contacts with persons of certain nationalities and citizenship) who would wish to be employed or contracted by the applicant.

- The effect of the Charter on very similar exemption applications has been explored in previous VCAT decisions, including *BAE Systems Australia Limited (Anti-Discrimination Exemption)* [2012] VCAT 349, *Raytheon Australia Limited (Human Rights)* [2014] VCAT 1370, *Thales Australia Limited and ADI Munitions Pty Ltd exemption (Human Rights)* [2014] VCAT 1441, *Linfox Australia Pty Ltd - Exemption (Human Rights)* [2015] VCAT 528 and *BAE Systems Australia Defence Pty Ltd - Exemption (Human Rights)* [2015] VCAT 230. I adopt the reasoning applied by Member Dea in those cases and note that, for the purposes of the Charter, there is a direct relationship between the limitation imposed by a potential exemption and the purpose of the limitation. That is, the applicant will be unable to maintain its core business with Defence without the ability to screen personnel in relation to race, nationality and citizenship and those of close affiliates which would severely limit the numbers of personnel it could engage and would lead to loss of work.

- The applicant did not object to the imposition of reporting conditions consistent with previous exemptions granted in similar applications. With the addition of those reporting conditions (added to the proposed exempt conduct at point 3 above), I am satisfied that, in the circumstances discussed above, the limit imposed by this exemption is reasonable and justified under the Charter.

The Tribunal hereby grants an exemption from the operation of sections 16, 18, 21, 105, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

This exemption is to remain in force from the date on which it is published in the Government Gazette until 30 July 2029.

Dated 18 July 2024

Member Stuart Webb

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL · VCAT

VCAT | victorian civil & administrative tribunal

HUMAN RIGHTS LIST

EXEMPTION

APPLICATION NO H389/2024

Under section 89 of the *Equal Opportunity Act 2010* (Vic) **(the Act)** the applicant, Gibbs & Cox (Australia) Pty Ltd (**Gibbs & Cox Australia**), seeks exemption from liability under sections 16, 18, 21, 105, 107 and 182 insofar as they relate to the race of present and future employees and contractors **(personnel)** for the following **proposed exempt conduct** in accordance with the conditions noted in the conduct:

Applicants for employment

(a) inform applicants for employment or contract work in roles which will require access to Controlled Material and are subject to permits, licences, approvals or agreements made under United States of America **(US)** and Australian import and export control laws that they may be adversely affected by *International Trafficking in Arms Regulations US* **(ITAR)** and *Export Administration Regulations US* **(EAR)** controls if they:

(i) are not an Australian citizen; or

(ii) hold or have held, dual nationality and/or citizenship from proscribed countries for the purposes of Security Requirements; or

(iii) have substantive contacts with proscribed countries for the purposes of Security Requirements;

Requests for information about nationality

(b) request information from prospective personnel who perform work on the applicant's premises or offsite and who are subject to the applicant's control and direction for positions related to projects which use Controlled Material, in relation to prospective citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, provided the request for information is limited to information for determining whether an application for authorisation would be required to allow the prospective personnel to have access to Controlled Material and whether in the applicant's reasonable judgment that the application would have significant prospects of success;

Use of nationality information

(c) impose a condition on any offer of employment in roles which are likely to require access to Controlled Material that an applicant for those roles must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approval obtained from the US Department of State or otherwise;

(d) take into account citizenship, previous citizenships, race or nationality, or substantive contacts of personnel where such contacts are affiliated with countries proscribed by

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL VCAT section 126.1 of ITAR in determining whether those personnel may be offered a role or allocated work that involves access to Controlled Material;

(e) maintain records of the nationalities, citizenships and substantive contacts of personnel who have or may have access to Controlled Material;

(f) require personnel involved in projects which access Controlled Material to notify the applicant of any change to their citizenship status or substantive contacts;

(g) restrict access to Controlled Material to particular personnel based on their citizenship, pervious citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

(h) record information relating to security clearances granted to personnel who are under the control and direction of the applicant in relation to work requiring access to Controlled Material;

(i) impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material;

(j) maintain records of the nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement;

(k) establish security systems and access protocols that will prevent the unauthorized export or transfer (including re-export or re-transfer) of Controlled Material; and

(l) disclose, if and when required, citizenship, pervious citizenship, race or nationalities, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, or the applicant's personnel in Victoria to:

  (i) the US Department of State;

  (ii) the US Department of Commerce;

  (iii) the Australian Department of Defence; and

  (iv) any other person or organisation for which, or on whose behalf, or at whose request the applicant undertakes work in respect of which the applicant has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities.

Definitions

In this exemption:

(a) "Controlled Material" means material (including equipment, technology, articles and services) and information (including classified or sensitive information and technical data) to which the Security Requirements apply.

(b) "Personnel" means the current and prospective workforce of the applicant, including employees, contract workers, and candidates or applicants for these roles.

(c) "Security Requirements" means any of the following:

(i) requirements of Australian or US laws, including but not limited to ITAR and EAR, including requirements or any permit, licence or approval granted, or agreement made, under those laws; and

(ii) contractual requirements applying to the applicant and relating to any of the requirements mentioned in subparagraph (i) above.

Conditions in the exemption

1. This exemption applies only to the applicant's conduct where:

(a) It is necessary to enable the applicant to obtain and maintain US export licences and approvals or to perform contractual obligations which involve access to Controlled Material.

(b) The applicant has taken all steps reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 16, 18, 21, 105, 107 and 182 of the Act including:

(i) reliance on ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR where applicable;

(ii) where personnel are nationals or dual nationals of a country not approved for access to Controlled Material, then the applicant will either request the US Department of State, or request the relevant export licence holders to request the US Department of State to amend the relevant export licences to enable those personnel to have access to Controlled Material, unless the applicant, on reasonable grounds, determines that either:

(A) the personnel are not the best candidate for the relevant positions; or

(B) such an application does not have significant prospects of success; and

(iii) in the event the US Department of State requires the applicant to provide further information specific to an individual, then with the consent of that individual, the applicant will work with the individual to supply all relevant information to the US Department of State so that an application for approval may be made in relation to that individual.

2. Where, pursuant to this exemption, the applicant wishes to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled Material, any advertisement, invitation for expressions of interest, or other promotional information referring to the position must include information that:

(a) the position will or is likely to require access to Controlled Material and that any individual occupying the position must be able to satisfy ITAR-based requirements which may require specific authorisation for that individual to access Controlled Material; and

(b) if a candidate for the position is concerned as to whether or not they will satisfy the requirement in (a) above, the candidate should contact a nominated member of the applicant's personnel who is able to provide relevant information, including information about the scope of the exemption and the candidate's rights.

3. The applicant must report in writing to the Victorian Equal Opportunity and Human Rights Commission and the Tribunal a written report for every 12-month period from the date of this exemption order. Each report must be provided within 21 days from the end of the relevant reporting period. Each report must detail:

(a) the steps it has taken to comply with the terms of the exemption;

(b) the number of persons affected by the exemption, the nature of the effects and the steps taken to redress any adverse effects; and

(c) the implementation of and compliance generally with the terms of the exemption.

UPON READING the material filed in support of this application, including an affidavit from Alison McPheat and Kathryn Ellis, the Tribunal is satisfied that it is appropriate to grant an exemption from sections 16, 18, 21, 105, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

In granting this exemption, the Tribunal noted:

- The applicant provides engineering and design services specialising in naval architecture predominantly to the Commonwealth of Australia, including the Department of Defence (**Defence**). It has current contracts with Defence. Gibbs & Cox Australia was acquired by Leidos Inc (US) in March 2021. As a result of the acquisition, Gibbs & Cox Australia is considered part of the 'Leidos Entities'. Leidos Australia has also sought and received an exemption from the provisions of the Act in similar terms to this application.

- To meet Defence contracts the applicant requires access to Controlled Material which access is subject to controls under the US export control laws including the ITAR and the EAR. Compliance with these US control laws includes, for example, requesting and storing personnel nationality information and taking into account personnel citizenship, previous citizenships held, race, nationality or substantive contacts when deciding whether a person may be offered a role or allocated work that involves access to Controlled Material. A failure to comply can result in disbarment and financial or criminal penalties by the US Department of State. Disbarment would mean it is unable to perform its contracted works which would result in significant redundancies for its personnel. An inability to operate and use the Controlled Material will have serious consequences for the applicant and for Australia's national security interests.

- The applicant has complied with directions given by me on 8 May 2024 to notify all its Victorian employees of the application and the hearing arrangements. Ms. Ellis's affidavit notes that there was no response to the notification and no requests for a hearing. This decision was made on the papers.

- I note the applicant's submissions that no current personnel will lose their position or contract as a result of the exemption being granted. The applicant, as part of the Leidos

Entities, operates a diversity policy and the latest iteration of this policy was implemented in December 2018 and remains in place. The applicant promotes inclusion as a corporate value. A copy of this policy and reports regarding its application were provided.

- This is the first application for exemption by Gibb & Cox Australia in Victoria. The applicant has been the subject of a similar exemption in the Australian Capital Territory in January 2023. I note that Leidos Australia, an entity which Gibb & Cox Australia is closely associated with, has had similar exemptions provided in South Australia, Queensland, the Australian Capital Territory and New South Wales. VCAT previously made an exemption order for Leidos Australia in Victoria in March 2020.

- I am satisfied that no relevant exceptions or exemptions apply under the Act to the proposed exempt conduct and that, without an exemption, the proposed exempt conduct would amount to unlawful discrimination under the Act. The proposed exemption is necessary under section 90(a) of the Act.

- When making decisions about exemptions, the Tribunal is required to give proper consideration to relevant human rights as set out in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**). Arguably, this exemption limits the right to equality and, in particular, the right to equal and effective protection against discrimination of personnel with certain nationalities and citizenship (or who have contacts with persons of certain nationalities and citizenship) who would wish to be employed or contracted by the applicant.

- The effect of the Charter on very similar exemption applications has been explored in previous VCAT decisions, including *BAE Systems Australia Limited (Anti-Discrimination Exemption)* [2012] VCAT 349, *Raytheon Australia Limited (Human Rights)* [2014] VCAT 1370, *Thales Australia Limited and ADI Munitions Pty Ltd exemption (Human Rights)* [2014] VCAT 1441, *Linfox Australia Pty Ltd - Exemption (Human Rights)* [2015] VCAT 528 and *BAE Systems Australia Defence Pty Ltd - Exemption (Human Rights)* [2015] VCAT 230. I adopt the reasoning applied by Member Dea in those cases and note that, for the purposes of the Charter, there is a direct relationship between the limitation imposed by a potential exemption and the purpose of the limitation. That is, the applicant will be unable to maintain its core business with Defence without the ability to screen personnel in relation to race, nationality and citizenship and those of close affiliates which would severely limit the numbers of personnel it could engage and would lead to loss of work.

- The applicant did not object to the imposition of reporting conditions consistent with previous exemptions granted in similar applications. With the addition of those reporting conditions (added to the proposed exempt conduct at point 3 above), I am satisfied that, in the circumstances discussed above, the limit imposed by this exemption is reasonable and justified under the Charter.

The Tribunal hereby grants an exemption from the operation of sections 16, 18, 21, 105, 107 and 182 of the Act to enable the applicant to engage in the exempt conduct.

This exemption is to remain in force from the date on which it is published in the Government Gazette until 30 July 2029.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL · VCAT

Dated 18 July 2024

Member Stuart Webb

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Matter No:
/ /

Form 21 – Certificate of Exhibit to Affidavit

Industrial Relations Act 2016, s 989
Industrial Relations (Tribunals) Rules 2011, r 53

Information

- This form is to be used when attaching exhibits to an affidavit. Exhibits are documents mentioned in the affidavit and used with the affidavit. Attach one Certificate per exhibit.
- Please read this form carefully and complete all relevant sections. Information that is missing or non-compliant with the relevant section of an Act or the Rules may result in the non-acceptance of your form.
- For further information please refer to the website www.qirc.qld.gov.au or contact the Industrial Registry on 1300 592 987 or via email at qirc.registry@qirc.qld.gov.au.

Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-5
Marked:	SA Exemption
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

sacat.
South Australian
Civil and Administrative Tribunal

Order of the Tribunal

Matter number **2023/SA003008**

Applicant

Leidos Australia Pty Ltd

Regarding

Application for an Exemption from a Provision of the Equal Opportunity Act

Hearing on the papers: **10 November 2023**
Before Tribunal Member: **Mr A Reilly**

Order Renewing an Exemption from a Provision of the Equal Opportunity Act 1984
Made under the *Equal Opportunity Act*

Findings of the Tribunal

1. This is an application under s 92 of the Equal Opportunity Act 1984 (SA) (the Act) for the extension of an exemption from provisions of sections 52, 53, 54, and 103 of the Act.

2. On Thursday 12 October 2023, the Commissioner of Equal Opportunity was served with the application to ascertain whether she wished to be heard on the matter

3. A response was received from the Commissioner of Equal Opportunity on the same day advising the Tribunal that the Commissioner had no objections and does not wish to be heard in the matter.

. On 18 October 2023, a public notice was published on the SACAT website advising of the lodgement of the application and seeking any public submissions by close of business on Friday 3 November 2023 (s 92(6)(b) EO Act).

5. The Tribunal received no public submissions in relation to the application.

6. Having considered all the evidence and submissions of the applicant, and the relevant principles, the Tribunal grants the exemption in the terms set out in the Orders below for the reasons outlined in the attached Statement of Reasons.

Orders of the Tribunal

1. Pursuant to section 92 of the Act and subject to the conditions contained in the Schedule, an exemption is granted to the Applicant from the operation of sections 52, 53, 54 and 103 of the Act for the period of three years from the date of these Orders.

2. The exemption is granted in respect of the operation of sections 52, 53, 54, and 103 of the Act insofar as those sections relate to the 'nationality', 'country of birth' or 'current and past citizenship' (as attributes included within the definition of 'race' in section 5 of the Act) of the Applicant's workforce.

3. The exemption permits the Applicant to engage in the following activities:

Applicants for employment

a. Inform applicants for employment or contract work in roles which will require access to Controlled Material and are subject to permits, licences, approvals or agreements made under US and Australian import and export control laws that they may be adversely affected by ITAR and EAR controls if they:

   (i) are not an Australian citizen; or

   (ii) hold, or have held, dual nationality and/or citizenship from proscribed countries for the purposes of security requirements; or

   (iii) have substantive contacts with proscribed countries for the purposes of security requirements;

Request for information about nationality

b. Request information from prospective personnel who perform work on the Applicant's premises or offsite and who are subject to the Applicant's control and direction for positions related to projects which use Controlled Material, in relation to prospective citizenship, previous citizenships or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, provided the request for information is limited to information for determining whether an application for authorisation would be required to allow the prospective personnel to have access to Controlled Material and whether in the Applicant's reasonable judgment that application would have significant prospects of success;

Use of nationality information

c. Impose a condition on any offer of employment in roles which are likely to require access to Controlled Material that an applicant for those roles must, pursuant to ITAR, be authorised to access that Controlled Material, whether pursuant to an individual approval obtained from the US Department of State or otherwise;

d. Take into account citizenship, previous citizenships or nationality, or substantive contacts of personnel where such contacts are affiliated with countries proscribed by section 126.1 of ITAR in determining whether those personnel may be offered a role or allocated work that involves access to Controlled Material;

e. Maintain records of the nationalities, citizenships and substantive contacts of personnel who have or may have access to Controlled Material;

f. Require personnel involved in projects which access Controlled Material to notify the Applicant of any change to their citizenship status or substantive contacts;

g. Restrict access to Controlled Material to particular personnel based on their citizenship, previous citizenships or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

h. Record information relating to security clearances granted to personnel who are under the control and direction of the Applicant in relation to work requiring access to Controlled Material;

i. Impose limitations or prohibitions on access to Controlled Material on persons not authorised to access the Controlled Material;

j. Maintain records of the nationalities of persons who have or will have access to Controlled Material, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement;

k. Establish security systems and access protocols that will prevent the unauthorised export or transfer (including re-export or re-transfer) of Controlled Material;

l. Disclose, if and when required, citizenship, previous citizenships or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR, of the Applicant's personnel in South Australia to:

   (i) the US Department of State;

   (ii) the US Department of Commerce;

   (iii) the Australian Department of Defence; and

   (iv) any other person or organisation for which, or on whose behalf, or at whose request the Applicant undertakes work in respect of which the Applicant has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities.

4. In this exemption:

   a. "Act" means the Equal Opportunity Act 1984 (SA);

   b. "Applicant" means Leidos Australia Pty Ltd (ACN 612 590 155);

   c. "Controlled Material" means material (including equipment, technology, articles and services) and information (including classified or sensitive information and technical data) to which the security requirements apply;

   d. "EAR" means the Export Administration Regulations of the US;

   e. "ITAR" means the International Trafficking in Arms Regulations of the US;

   f. "Personnel" means the current and prospective workforce of the Applicant, including employees, contract workers, employees of contractors and candidates or applicants for these roles;

g. "Security requirements" means any of the following:

   i. requirements of Australian or US laws, including but not limited to ITAR and EAR, including requirements of any permit, licence or approval granted, or agreement made, under those laws;

   ii. contractual requirements applying to the Applicant and relating to any of the requirements mentioned in subparagraph (i) above;

h. "US" means United States of America.

Schedule: Conditions

1. This exemption applies only to the Applicant's conduct where:

   a. it is necessary to enable the Applicant to obtain and maintain US export licences and approvals or to perform contractual obligations which involve access to Controlled Material;

   b. the Applicant has taken all steps reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 52, 53, 54 and 103 of the Act, including:

      i. reliance on ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR, where applicable;

      ii. where personnel are nationals or dual nationals of a country not approved for access to Controlled Material, then the Applicant will either request the US Department of State, or request the relevant export license holders to request the US Department of State to amend the relevant export licences to enable those personnel to have access to Controlled Material, unless the Applicant, on reasonable grounds, determines that either:

         (A) the personnel are not the best candidate for the relevant position; or
         (B) such an application does not have significant prospects of success;

      iii. in the event the US Department of State requires the Applicant to provide further information specific to an individual, then with the consent of that individual, the Applicant will work with the individual to supply all relevant information to the US Department of State so that an application for approval may be made in relation to that individual.

2. Where, pursuant to this exemption, the Applicant wishes to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled 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 that any individual occupying the position must be able to satisfy ITAR-based requirements which may require specific authorisation for that individual to access Controlled Material; and

   b. if a candidate for the position is concerned as to whether or not they will satisfy the requirement in (a) above, the candidate should contact a nominated member of the Applicant's personnel who is able to provide relevant information, including information about the scope of the exemption and the candidate's individual rights.

3. The Applicant must provide to the Commissioner for Equal Opportunity in South Australia a written report for every 12 month period from the date of this exemption order on its compliance with the exemption requirements, any changes in its procedures to reflect amendments to the ITAR, and as to how its employees and contractors are affected. Each report must be provided within 21 days from the end of the relevant reporting period. Each report must detail:

   a. the training and education provided to new and existing employees on these Orders and their implementation;

   b. the steps taken by the Applicant to implement these Orders;

   c. how the Applicant monitors compliance with these Orders;

   d. the number of persons affected by these Orders and the nature of those effects;

   e. the steps taken by the Applicant to address any adverse effects on existing employees as a result of these Orders; and

   f. the steps taken by the Applicant to minimise the impact of these Orders on current and future employees.

[redacted]

A Reilly
Tribunal Member

10 November 2023

South Australian
Civil and Administrative Tribunal GPO Box 2361 Adelaide SA 5001 T 1800 723 767 DX 167 E sacat@sacat.sa.gov.au
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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Matter No: / /

Form 21 – Certificate of Exhibit to Affidavit

Industrial Relations Act 2016, s 989
Industrial Relations (Tribunals) Rules 2011, r 53

Information

- This form is to be used when attaching exhibits to an affidavit. Exhibits are documents mentioned in the affidavit and used with the affidavit. Attach one Certificate per exhibit.
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- For further information please refer to the website www.qirc.qld.gov.au or contact the Industrial Registry on 1300 592 987 or via email at qirc.registry@qirc.qld.gov.au.

Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-6
Marked:	ACT Exemption
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

Australian Capital Territory

Discrimination (Leidos Entities) Exemption 2026

Notifiable instrument NI2026-6

made under the

***Discrimination Act 1991*, section 109 (Grant of exemptions)**

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1 Name of instrument

This instrument is the *Discrimination (Leidos Entities) Exemption 2026*.

2 Commencement

This instrument commences on 13 January 2026.

3 Exemption decision—Discrimination Act, s 109

The Human Rights Commission exempts the Leidos Entities from the operation of sections 10, 13, 20, 23 and 69 of the *Discrimination Act 1991* for a period of 3 years.

4 Conditions on exemption

This exemption is subject to the conditions provided in the decision of the Human Rights Commission set out in Schedule 1 of this instrument.

Karen Toohey
Discrimination Commissioner

Dated: 22 December 2025

Pursuant to section 109 of the *Discrimination Act 1991* (ACT) (**Act**), the Human Rights Commission grants Leidos Australia Pty Limited and Gibbs & Cox (Australia) Pty Ltd (together, the **Leidos Entities**) an exemption from the operation of sections 10, 13, 20, 23 and 69 of the Act subject to the following terms:

CONDUCT

The Leidos Entities may engage in the following conduct in the Australian Capital Territory:

Applicants for employment

1. Inform applicants for employment in roles which will require access to Controlled Technology and are subject to permits, licences, approvals or agreements made under US and Australian import and export control laws that they may be adversely affected by the *International Traffic in Arms Regulations* (**ITAR**) and the *Export Administration Regulations* (**EAR**) controls if they:
    a. are not an Australian citizen;
    b. hold, or have held, dual nationality and/or citizenship from proscribed countries for the purposes of the Security Requirement; or
    c. have substantive contacts with proscribed countries for the purposes of Security Requirements.

Chief Security Officer and Security Officer

2. Request nationality and/or citizenship information from any person holding or applying to hold the positions of Chief Security Officer or Security Officer (as those terms are used in the Defence Security Principles Framework) at the Leidos Entities.

3. Require any person holding the positions of Chief Security Officer or Security Officer at the Leidos Entities to be an Australian citizen.

Request for information about nationality

4. Request information from personnel who perform work on the Leidos Entities' premises or offsite and who are subject to the Leidos Entities' control and direction for positions related to projects which use Controlled Material, in relation to prospective citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed

by section 126.1 of ITAR, provided the request for information is limited to information for determining whether an application for authorisation would be required to allow the prospective personnel to have access to Controlled Material and whether in the Leidos Entities' reasonable judgment that application would have significant prospects of success;

Use of nationality information

5. Impose a condition on any offer of employment or contract for services in roles which are likely to require access to Controlled Technology that the person must, pursuant to ITAR or EAR controls, be authorised to access that material whether pursuant to an individual approval obtained from the United States' Department of State or otherwise.

6. Take personnel's citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR into account in determining whether that person may be offered a role or allocated work that involves access to Controlled Technology;

7. Maintain records of the nationalities and citizenships of personnel who have or may have access to Controlled Technology;

8. Require present and future personnel involved in projects which access Controlled Technology to notify the Leidos Entities of any change to their citizenship status;

9. Restrict access to Controlled Technology to particular Leidos Entities personnel based on their citizenship, previous citizenships, race or nationality, or substantive contacts where such contacts are affiliated with countries proscribed by section 126.1 of ITAR;

10. Record information relating to security clearances granted to personnel of the Leidos Entities and personnel who are under the control and direction of the Leidos Entities in relation to work requiring access to Controlled Technology;

11. Impose limitations or prohibitions on access to Controlled Technology on persons not authorised to access that material;

12. Maintain records of the nationalities of persons who have or will have access to Controlled Technology, with distribution limited to only those persons with a need to know, for the purposes of determining their ability to participate in a particular engagement; and

13. Establish security systems and access protocols that will prevent the unauthorised re-export or re-transfer of Controlled Technology;

CONDITIONS

1. The exemption applies only to Leidos Entities' conduct where:

    a. it is necessary to enable it to obtain and manage ITAR or EAR export licensing or to perform contractual obligations which involve access to Controlled Technology;

    b. it has taken all steps that are reasonably available to avoid engaging in conduct which would otherwise be in breach of sections 10, 13, 23 and 69 of the Act, including:

        (i) reliance on ITAR exemptions, exceptions or other provisions, including clause 126.18 of ITAR, where applicable;

        (ii) where an employment job candidate, employee or contractor is a national or dual national of a country not approved for access to Controlled Technology, then the Leidos Entities will either request the United States Department of State, or request the relevant export license holder(s) to request the Department of State to amend the relevant export licenses to enable the person to have access to Controlled Technology, unless Leidos Entities, on reasonable grounds, determine that either:

            (A) the job candidate, employee or contractor is not the best candidate for the position; or

            (B) such an application does not have significant prospects of success.

2. Where, pursuant to this exemption, the Leidos Entities wish to reserve the right to make a conditional offer of employment in relation to a position which will or may involve access to Controlled Technology, 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 Technology and that any person occupying the position must be able to satisfy ITAR or EAR-based requirements which may require specific authorisation for that person to access Controlled Technology; and

    b. if a job candidate is concerned as to whether or not they will satisfy the requirement in (a), they should contact a nominated employee of Leidos who is able to provide relevant information, including information set out in condition 4 below.

3. Leidos Entities must specifically communicate to job candidates for roles, and existing personnel in roles, whether currently or in the future, requiring access to Controlled Technology:

    a. express notice that they may be adversely affected by the ITAR or EAR requirements if they are not an Australian national, if they hold dual nationality and/or citizenship from proscribed countries, or if they are not of Australian national origin;

    b. notice that the Leidos Entities have an exemption under the Discrimination Act to enable them to take steps to prevent access to Controlled Technology;

    c. a reasonable explanation in plain English of the nature of any such adverse effects;

    d. advice that any necessary application for specific authorisation for a person to access Controlled Technology would be made by Leidos Entities, in appropriate cases;

e. information about how they can apply for Australian citizenship; and

f. information regarding their rights under Australian Federal, State and Territory discrimination laws.

Leidos Entities may comply with this Condition 3 through a range of alternatives, including individual written notices, published policy statements, web-based posting or other similar means.

4. Where, pursuant to this exemption, an employee or contractor who is not authorised pursuant to ITAR or EAR controls to have access to Controlled Technology (including pursuant to any individual clearance), is moved from a job involving access to Controlled Technology to any other work performed by Leidos Entities or any of its related entities, Leidos Entities must, through a duly authorised officer, explain to the person why they are being transferred and must otherwise take all reasonable steps to avoid or limit harm or loss to that person.

5. Where Leidos Entities use a system of security passes to reflect the fact of access to Controlled Technology or levels of access to material subject to Australian security restrictions, the passes may be coded but not in such a manner that the nationality can obviously be identified from the coding.

6. All information relating to security passes, security clearance levels and access Controlled Technology shall be restricted to the Security Officer, Assistant Security Officer, export control managers, Human Resources managers, legal representatives and other senior managers and to their properly appointed nominees on a "need to know" basis.

7. Leidos Entities' employment or other relevant policies shall be amended as soon as reasonably possible so as to refer to the terms of this exemption, including all conditions attaching to it, and to make clear that the purpose of Leidos Entities' request for nationality information is made solely for the purposes of compliance with legal and regulatory obligations imposed pursuant to the defence export control laws of Australia and the United States.

8. Leidos Entities are required to provide a written report to the ACT Human Rights Commission 28 February and 31 July each year, from the date of this instrument

of exemption, over the period of the exemption, detailing:

a. the steps it has taken to comply with the above conditions;

b. the number of persons affected by this exemption, the nature of the effects, and the steps taken to address any adverse effects;

c. the anti-discrimination training of employees and contractors provided by Leidos Entities; and

d. implementation and compliance generally with the terms of this exemption order.

This decision is a notifiable instrument and must be notified under the *Legislation Act*.

SIGNED by the ACT Discrimination Commissioner

Dated 22 December 2025

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Matter details

Applicant:	Leidos Australia Pty Limited (First Applicant)

v

Respondent:	N/A

Exhibit details

Name of document:	KE-7
Marked:	Inclusion and Diversity Policy
Mentioned in the affidavit of:	Kathryn Ellis

Signature

Full name of deponent/ substitute signatory:	Kathryn Ellis
Signature of deponent/ substitute signatory:	[redacted]
Full name of witness:	Marcus Topp
Signature and type of witness:	[redacted] ☐ Justice of the Peace ☐ Commissioner for Declarations ☑ Lawyer
Sworn/Affirmed at [place]:	Canberra
Date:	26/06/2026

Procedure Number:	[PR-xx-#]	**Version:**	6.0	**Effective:**	15-10-2025
AU Doc ID#:	LA-PR-HR-0006				
Owner/Approver:	Vice President Human Resources				
Point of Contact:	HR Support Team				

Inclusion

1. Purpose

Leidos Australia Pty Ltd and its related Australian companies (together, Leidos Australia) values inclusion and diversity and recognises the benefits it brings not only to our Company's success, but in helping us achieve our goal of making Leidos "a great place to work". Diversity of thought, experience and perspectives helps us to drive innovation and provide our customers with smarter solutions. Fostering inclusion helps us create a workplace that enables success for all.

2. Scope and Applicability

The procedure is applicable to Leidos Team Members working in Australia and employed by the Specified Entities, who meet the specified eligibility criteria. This procedure supersedes any other existing US or Australian procedure for eligible Team Member of the Specified Entities.

This procedure applies to all Leidos Team Members and Contractors.

3. Definitions

Specified Entities - Leidos Australia or Company means Leidos Australia Pty Ltd *(includes all Airborne Entities),* and its Related Bodies Corporate domiciled in Australia, Gibbs & Cox Australia Pty Ltd and Leidos Security and Detection Automation Australia Pty Ltd.

Related Body Corporate - Related Body Corporate has the meaning given by Section 50 of the Corporations Act 2000 (Cth).

Contractor - Any contractor, sub-contractor, Labour hire personnel or consultants that are not Team Members of the Company.

Team Member - A person employed by the Specified Entities.

People Leader - Leidos Team Member with one or more direct reports

ELT - Executive Leadership Team – Line of Business/Functional Heads

4. Responsibilities

Executive Leadership Team (ELT)

- Actively promoting Leidos' commitment to inclusion and diversity internally and externally;
- Role modelling inclusive and respectful behaviours
- Holding self and Team Members accountable for inappropriate behaviour; and
- Monitoring diversity goals/targets through regular reporting and analysis.
- Building trust within their teams and creating a psychologically safe environment for Team Members and others.
- Making people related decisions (e.g: allocation of work, flexibility, hiring, promotion, training and remuneration) in a fair and equitable manner

People Leader

- Creating an inclusive and safe environment for all Team Members by:
    - Role modelling inclusive and respectful behaviours;
    - Holding self and Team Members accountable for inappropriate behaviour;
    - Encouraging and embracing diversity in their teams, and
    - Building trust within their teams and creating a psychologically safe environment for Team Members and others.
- Making people-related decisions (e.g: allocation of work, flexibility, hiring, promotion, training and remuneration) in a fair and equitable manner

Team Member and Contractors

- Behaving in a way that is consistent with this procedure and the Company values;
- Behaving in a way that is consistent with the Respectful Workplace Policy

Advocacy Groups

- A group of people formed around a mutual interest or connection. For example, ability/disability, ethnicity, gender, gender identity or expression, generational identity, military/veteran status, race and sexual orientation (as detailed in Advocacy Group Procedure)

HR Team

- Guiding and monitoring the inclusion strategy and associated action plans;
- Promoting diversity and inclusion initiatives; and
- Providing information, advice and support to People Leaders and Team members on inclusion and diversity

5. Procedure Statement

In striving to establish and maintain an inclusive and diverse workplace, Leidos Australia aspires to:

- Provide a work environment where different voices are respected and heard, diverse viewpoints, perspectives and approaches are valued and everyone is encouraged to make a unique and meaningful contribution;
- Respect all Team member differences including but not limited to, age, disability, gender, ethnicity, religion, sexual orientation, experience, thinking and neurodiversity;
- Maintain action plans, (e.g. Family Friendly, Reconciliation and Gender Equality), reflecting the priorities and opportunity;
- Attract, develop and support diverse workforce that reflects the community in which the company operates; and
- Strive to create a safe environment for Team members to connect and collaborate where all feel empowered and welcomed to contribute, succeed, and thrive.

5.1 Consultation

To ensure we understand the experience and sentiment of our diverse workforce, we regularly engage and consult with Team Members through a number of different channels:

- Company wide surveys (including Engagement, Ethics and Compliance, Inclusion)
- Regular engagement and consultation with our Advocacy Group leads
- Onboarding feedback
- Targeted activities (including interviews and focus groups) to understand the experiences of underrepresented groups, including women
- Exit Interviews

By better understanding our Team Members' concerns and needs, we can then take meaningful action and generate solutions that will help to create a more inclusive workplace for all.

5.2 Grievances

Leidos Australia takes its commitment to inclusion seriously. Team members may seek further support from their People Leader or Human Resources. Breaches of this procedure may result in disciplinary action as noted in the Counselling and Disciplinary Procedure. For more information, refer to the Grievance Procedure.

6. Referenced Documents

- LG-LG-1: Standards of Business Ethics and Conduct
- LA-POL-HR-0003: Respectful Workplace Policy
- LA-PR-HR-0011: Flexible Working Procedure
- LA-PR-HR-0008: Leave Procedure
- LA-PR-HR-0025: Counselling and Discipline Procedure
- LA-PR-HR-0026: Employee Grievance Procedure
- LA-PR-HR-0015: Advocacy Group Procedure

CHANGE RECORD

Version #	Date	Author	Description of Change
6.0	15-10-2025	HR Support	Update of the procedure scope. Updated definitions & changed location of the definitions.
5.0	04-10-2025	Summer Cio-Keller	Updated to Leidos Corporate template
4.0	11-03-2025	R. Stowe	Fourth Version
3.0	19-04-2023	R. Stowe	Third Version
2.0	06-12-2018	R. Stowe	Second Version
1.0	29-11-2018	R. Stowe	Initial Version