

Australian Capital Territory

Discrimination (CEA Research and Development) Exemption 2022 (No 1)

Notifiable instrument NI2022-621

made under the

Discrimination Act 1991, s 109 (Grant of exemptions)

1 Name of instrument

This instrument is the *Discrimination (CEA Research and Development) Exemption 2022 (No 1)*.

2 Commencement

This instrument commences on the day after it is notified.

3 Exemption decision—Discrimination Act, s 109

The Human Rights Commission exempts CEA Research and Development Pty Ltd 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: 11 November 2022

Schedule 1

Pursuant to section 109 of the *Discrimination Act 1991* (ACT) (**Act**), the Human Rights Commission grants CEA Research and Development Pty Ltd (**CEA Research and Development**) an exemption from the operation of sections 10, 13, 20, 23 and 69 of the Act subject to the following terms:

CONDUCT

CEA Research and Development may engage in the following conduct in the Australian Capital Territory:

1. Request nationality and citizenship information from any employee of CEA Research and Development requiring access to *International Traffic in Arms Regulations* (ITAR) Controlled Material within CEA Research and Development.
2. Require any person requiring access to ITAR Controlled Material within CEA Technologies to be free of dual citizenship from a country proscribed in section 126.1 of the ITAR.
3. Request nationality or citizenship information from any person holding or applying to hold the positions of Security Officer or Assistant Security Officer (as defined in the Australian Defence Security Manual) within CEA Research and Development.
4. Require any person holding the positions of Security Officer or Assistant Security Officer within CEA Research and Development to be an Australian citizen.
5. Record information relating to security clearances granted to employees of CEA Research and Development and employees of contractors who perform work on CEA Research and Development's premises and who are subject to CEA Research and Development's control and direction.
6. Impose a condition on offers of employment in roles which are likely to require access to Controlled Material that the person must, pursuant to ITAR and EAR controls, be authorised to access that material, whether pursuant to an individual approval obtained from the United States' Department of State or otherwise.
7. Consider the nationality-related information pertaining to an employee when determining whether that person may be offered a role or allocated work that involves access to ITAR Controlled Material.
8. Request nationality-related information from, and maintain records of, the nationalities of employees of CEA Research and Development and employees of contractors who have or may have access to ITAR Controlled Material.
9. Implement systems designed to ensure that ITAR Controlled material is disclosed only to persons who are authorised by ITAR Controls to receive it.

10. Impose limitations or prohibitions on access to ITAR Controlled Material on persons not authorised to access that material.
11. Establish security systems that are designed to prevent the unauthorised re-export or re-transfer of ITAR Controlled Material.
12. If and when required by ITAR, disclose to:
 - a. other parties with which CEA Research and Development works or proposed to work under contract, whether that work requires access to ITAR Controlled Material;
 - b. the United States Department of State;
 - c. the United States Department of Commerce; and
 - d. the United States Department of Defence;the nationality-related information of all employees who have or are likely to have access to ITAR Controlled Materials in the performance of its contracted work.

CONDITIONS

1. The exemption applies only to CEA Research and Development's conduct where it is necessary to enable it to obtain and manage ITAR and EAR export licensing or to perform contractual obligations which involve access to Controlled Material.
2. Other than the particular exemption referred to above at paragraph 4 (Request for information about nationality), the remaining exemptions apply only to CEA Research and Development's conduct where:
 - (a) 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 employee or contractor is a national or dual national of a country not approved for access to Controlled Material, then CEA Research and Development will either request the United States Government, or request the relevant export license holder(s) to request the United States Government, to amend the relevant export licenses to enable the person to have access to Controlled Material, unless CEA Research and Development, on reasonable grounds, determines 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;

and

- (iii) in the event that the United States Government requires CEA Research and Development to provide further information specific to the person, then with the consent of that person, CEA Research and Development will work with the person to supply (or request that the relevant export license holder(s) supply) all relevant information to the United States Government so that an application for approval may be made in relation to that person.

- 3. Where, pursuant to this exemption, CEA Research and Development wishes to reserve the right to make a conditional offer of employment or contract for services 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 person occupying the position must be able to satisfy ITAR and EAR controls which may require specific authorisation for that person to access Controlled Material; 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 CEA Research and Development who is able to provide relevant information, including information set out in Condition 4 below.

- 4. CEA Research and Development must specifically communicate to job candidates for roles, and existing employees and contractors in roles, whether currently or in the future, requiring access to Controlled Material:
 - (a) express notice that they may be adversely affected by the ITAR and EAR controls 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 CEA Research and Development has an exemption under the Act to enable it to take steps to prevent access to Controlled Material;
 - (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 Material would be made by CEA Research and Development, 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.

CEA Research and Development may comply with this Condition 4 through a range of alternatives, including individual written notices, published policy statements, web-based posting or other similar means.

5. Where, pursuant to this exemption, an employee or contractor who is not authorised pursuant to ITAR and EAR controls to have access to Controlled Material (including pursuant to any individual approval), is moved from a project involving access to Controlled Material to any other work or has their employment terminated in circumstances where there is no other work the employee or contractor can perform at CEA Research and Development, CEA Research and Development must, through a duly authorised officer, explain to the person why he or she is being transferred or terminated and must otherwise take all reasonable steps to avoid or limit harm or loss to that person.
6. Where CEA Research and Development uses a system of security passes to reflect the fact of access to Controlled Material 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.
7. All information relating to security passes, security clearance levels and access to Controlled Material shall be restricted to:
 - (a) relevant personnel of CEA Research and Development; and
 - (b) relevant personnel of United States Government agencies and Australian Government agencies pursuant to which CEA Research and Development has an obligation, and to their properly appointed nominees on a "need to know" basis.
8. CEA Research and Development's 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 CEA Research and Development's 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.
9. CEA Research and Development is required to provide a written report to the ACT Human Rights Commission by 31 January 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 CEA Research and Development; 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 11 November 2022