

NOTICE

Jet Aviation Australia Pty Ltd has applied to the State Administrative Tribunal (**SAT**) for a limited exemption from the *Equal Opportunity Act 1984* (WA) (**EO Act**) so that it can comply with its obligations under international export laws. The exemption is sought in the following terms:

1. Pursuant to section 135(1) of the *Equal Opportunity Act 1984* (WA) (the **EO Act**), Jet Aviation Australia Pty Ltd (**Jet Aviation**) is granted an exemption from compliance with the provisions of sections 37, 39, and 49 of the EO Act for a period of 5 years, insofar as those sections relate to the 'race' (as defined in section 4 of the EO Act) of applicants for employment, employees and contract workers to the extent that it may:
 - (a) request information relating to the nationality, country of birth and current and past citizenship from existing and potential employees and contractors;
 - (b) take a person's nationality, country of birth and current and past citizenship into account in determining who should be offered employment or contract work in areas requiring access to ITAR and/or EAR-controlled items and when making decisions as to the participation of employees or contractors in such work;
 - (c) maintain records of the nationality, country of birth and current and past citizenship of all employees and contractors who have or may have access to ITAR and/or EAR-controlled items in the performance of their work;
 - (d) advertise positions and/or otherwise inform applicants for employment in roles which require access to ITAR-controlled items 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 countries other than the US or Australia; or
 - (iii) hold permanent residency in a country or countries other than the US or Australia; or
 - (iv) have substantive contacts with countries proscribed by section 126.1 of ITAR or the EAR.
 - (e) ensure that ITAR and/or EAR-controlled items are disclosed only to persons who are not prohibited from receiving a disclosure in accordance with applicable United States laws;
 - (f) impose limitations or prohibitions on persons of particular nationalities, countries of origin and current and past citizenship having access to ITAR and/or EAR-controlled items in the performance of their work;
 - (g) to the extent necessary to comply with its legal obligations to the Commonwealth, disclose to the Commonwealth the nationality, country of birth and current and past citizenship of all employees and contractors who require access to ITAR and/or EAR-controlled items in the performance of their work;

- (h) disclose to US Contractors with whom any of Jet Aviation is party to a US Export Authorisation and to the US Department of State, the nationality, country of birth and current and past citizenship of all employees and contractors who will have access to ITAR and/or EAR-controlled items in the performance of their work; and
 - (i) establish security systems which will prevent the unauthorised reexport or retransfer of ITAR and/or EAR-controlled items.
2. The exemption applies subject to the following conditions:
- (a) It will only apply to conduct by Jet Aviation where:
 - (i) that conduct is necessary to enable Jet Aviation to enter into and/or perform contractual undertakings requiring access to ITAR and/or EAR-controlled items; and
 - (ii) Jet Aviation has taken all steps that are reasonably available (including steps that might be taken in negotiating and performing the terms of their agreements with US Contractors) to avoid the necessity of engaging in conduct that would otherwise be in breach of sections 37, 39, 49 and 68 of the EO Act.
 - (b) Where, in the exercise of this exemption, an employee or contract worker is moved from a project involving the use of ITAR and/or EAR-controlled items to any other work controlled by Jet Aviation or any of their related entities, Jet Aviation must explain to the person through a duly authorised officer why they are being transferred and must otherwise take all reasonable steps to avoid or limit harm or loss to that person.
 - (c) Where Jet Aviation uses a system of security passes to reflect the fact of access to ITAR and/or EAR-controlled items or levels of access to any security-sensitive material by employees and contract workers, the passes may be coded but not in such a way as to identify the nationality, country of birth and current and past citizenship of the person or the reasons for that person's level of access.
 - (d) All information relating to nationality, country of birth and current and past citizenship and access to ITAR and/or EAR-controlled items shall be restricted to technology control officers, export control officers, security officers, legal officers and human resources officers of Jet Aviation or its properly appointed nominees on a 'need-to-know' basis.
 - (e) Jet Aviation's employment 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 it clear that the purpose of the request for information regarding nationality, country of birth and current and past citizenship is made solely for the purposes of compliance with United States laws.
 - (f) ITAR exemptions, exceptions or other provisions, including section 126.18 of ITAR, is not applicable.
3. Jet Aviation must prepare and retain records, and report annually to the Commissioner for Equal Opportunity on [MONTH AND DATE TO BE DETERMINED BY THE TRIBUNAL] for the duration of the exemption, on the compliance with the exemption

requirements and changes in its procedures to reflect amendments to the *International Traffic in Arms Regulations* 22 CFR 120 (2003) (USA), and as to how its employees and contractors are affected.

If you want to make a submission to the SAT either for or against the application, you must send it in writing to Level 6, State Administrative Tribunal Building, 565 Hay Street, PERTH WA 6000 by post, fax (08 9325 5099) or email (sat@justice.wa.gov.au). Please quote reference EOA 25/2024.

If you would like the SAT to hold a hearing or hear oral submissions, please contact the SAT by writing to Level 6, State Administrative Tribunal Building, 565 Hay Street, PERTH WA 6000 by post, fax (08 9325 5099) or email (sat@justice.wa.gov.au) asking for a hearing to be listed. Please quote reference EOA 25/2024.

The closing date for submission and requests for hearing is 1 August 2024.