

Australian Capital Territory

Discrimination (Saab Australia Pty Ltd) Exemption 2025

Notifiable instrument NI2025-82

made under the

Discrimination Act 1991, s 109 (Grant of exemptions)

1 Name of instrument

This instrument is the *Discrimination (Saab Australia Pty Ltd) Exemption 2025*.

2 Exemption decision—Discrimination Act, s 109

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

3 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.

4 Commencement

This instrument commences on the day after it is notified.

Karen Toohey
Discrimination Commissioner

Dated: 13 February 2025

Schedule 1

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

CONDUCT

Saab may engage in the following conduct in the Australian Capital Territory:

Applicants for employment

1. Inform applicants for employment in roles which may require access to material subject to contractual and other obligations arising from the *Arms Export Control Act 22 USC § 2778* (2004), including its *International Traffic in Arms Regulations* (ITAR), the *Export Administration Regulations* (EAR) and *Defence Trade Controls Act 2012* (Cth) (DTC Act) (Controlled Material) under those laws (Controls) that they may be adversely affected by Controls if they are not an Australian citizen or permanent resident or if they hold dual nationality and / or citizenship.

Request for information about nationality

2. Request information about previous and current citizenship (including any dual citizenship), permanent residency and country of birth (Nationality Information) from applicants for employment who will be required to work with Controlled Material, providing this request for information is limited to information for determining whether the Controls allow the person to work with the Controlled Materials relevant to the role for which the person has applied.
3. Request Nationality Information from employees and contractors of Saab (employees) and employees of other organisations who will work on Saab's premises and who are subject to Saab's control and direction (contract workers) who will be required to work with Controlled Material.

Use of Nationality Information

4. Impose a condition on any offer of employment in roles which will require access to Controlled Material that the person must, pursuant to Controls, be authorised to

access that material whether pursuant to an individual clearance obtained from the United States Government or otherwise.

5. Take an employee or contract worker's Nationality Information into account when determining whether that person may be offered a role or allocated work that involves access to Controlled Material.
6. Maintain records of the Nationality Information of all persons who have or will have access to Controlled Material.
7. Ensure that Controlled Material is disclosed only to persons who are authorised by Controls to receive it.
8. Impose limitations or prohibitions on access to Controlled Material on persons not authorised to access that material.
9. Establish security systems that will prevent the unauthorised re-export or re-transfer of Controlled Material.
10. If and when required, disclose to:
 - (a) other organisations with which Saab interacts regarding the Controlled Materials, including but not limited to performing work under a contract between Saab and the other organisation;
 - (b) the United States Department of State;
 - (c) the United States Department of Commerce;
 - (d) the United States Department of Defence; and
 - (e) Government of the Commonwealth of Australia (Commonwealth), or any duly authorised agent of the Commonwealth,the Nationality Information of all employees and contract workers who have access to Controlled Material in those interactions and related work by Saab, including but not limited to the performance of work under a contract.

CONDITIONS

1. The exemption applies only to Saab's conduct where:
 - (a) it is necessary to enable it to perform contractual and other obligations which involve access to Controlled Material;

- (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, 20, 23 and 69 of the Act, including utilising any exemptions or exceptions available to Saab under the relevant Control, that allows a person to access the relevant Controlled Material.
2. Where, pursuant to this exemption, Saab wishes to reserve the right to make a conditional offer of employment in relation to a position which will 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 is subject to Controls and that any person occupying the position must be able to satisfy requirements which may require specific authorisation for that person to access Controlled Material; and
 - (b) if a person is concerned as to whether or not they will satisfy the requirement in (a), they should contact a nominated employee of Saab who is able to provide relevant information, including information set out in condition 3 below.
 3. Saab must provide in writing to any applicant for employment, employees and contract workers:
 - (a) express notice that they may be adversely affected by the Controls if they are not an Australian national, if they hold dual nationality citizenship and /or citizenship, or if they are not of Australian national origin;
 - (b) notice that Saab 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) information about how they can apply for Australian citizenship; and
 - (e) information regarding their rights under Australian Federal and Territory discrimination laws.
 4. Where, pursuant to this exemption, an employee or contract worker who is not authorised pursuant to Controls to have access to Controlled Material (including pursuant to any individual clearance), is moved from a project involving access to Controlled Material to any other work controlled by Saab or any of its related entities, Saab must, through a duly authorised officer, explain to the person why he or she is being transferred and must otherwise take all reasonable steps to avoid or limit harm or loss to that person.

5. Where Saab 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 Information can obviously be identified from the coding.
6. All information recorded relating to employees and contract workers who are permitted access to Controlled Material based on Nationality Information shall be restricted to Human Resources Officers and IT and Compliance Staff, and to their properly appointed nominees, on a "need to know" basis.
7. Saab'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 clear that the purpose of the request for Nationality Information is made solely for the purposes of compliance with contractual and other obligations imposed pursuant to laws of the United States and Australia.
8. Saab 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 three-year 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 contract workers provided by Saab; and
 - (d) implementation and compliance generally with the terms of this exemption order.

The exemption is granted for a period of three years from the commencement date.

This decision is a notifiable instrument and must be notified under the [Legislation Act](#).

SIGNED by the ACT Discrimination Commissioner

Dated 13 February 2025