

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
HUMAN RIGHTS DIVISION
HUMAN RIGHTS LIST

VCAT Reference: H330/2021

APPLICANT: Seeing Machines Limited
WHERE HELD: Melbourne via teleconference
BEFORE: Member C. Thwaites
HEARING TYPE: Directions Hearing
DATE OF HEARING: 23 November 2021
DATE OF ORDER: 23 November 2021

BACKGROUND

Seeing Machines Limited has applied to VCAT for an exemption from the *Equal Opportunity Act 2010*, to enable it to undertake the following activity:

- (a) Identify the citizenship, previous citizenships, race or nationality, and substantive contacts where such contacts are affiliated with countries proscribed in section 126.1 of ITAR ('citizenship information') of all Seeing Machines personnel who are likely to require access to Controlled Material or comply with Security Requirements.
- (b) Request citizenship information from prospective employees and contractors who perform work on Seeing Machines' premises and who are subject to Seeing Machines' control and direction in roles which are likely to require access to Controlled Material or comply with Security Requirements.
- (c) Maintain records of the citizenship information of employees who are likely to require access to Controlled Material or comply with Security Requirements.
- (d) Establish security measures and access protocols to prevent unauthorised access to Controlled Material or comply with Security Requirements.
- (e) Limit or prohibit persons of certain nationalities/citizenships access to Controlled Material as per ITAR and EAR controls.
- (f) Advise applicants for employment in roles which are likely to require access to Controlled Material or compliance with Security Requirements that they may be adversely affected by ITAR and EAR controls or Security Requirements if they are not an Australian citizen or if they hold dual citizenship from countries proscribed as applicable.
- (g) Impose a condition on offers of employment in roles which are likely to require access to Controlled Material or comply with Security Requirements that the person must, pursuant to applicable controls, be authorised to access that material, whether pursuant to an

individual approval obtained from the United States' Department of State or Commonwealth of Australia or otherwise.

- (h) Reject applications for positions requiring access to the Controlled Material or compliance with Security Requirements based on the job applicant's citizenship, and taking into account a person's citizenship in determining who should be offered employment or contract work requiring access to Controlled Material or compliance with Security Requirements.
- (i) Transfer employees and contractors from positions with access to Controlled Material or requirement to comply with Security Requirements to positions without access to Controlled Material or compliance with Security Requirements, based on their citizenship.
- (j) Terminate the employment or engagement of employees or contractors on the basis that:
 - (i) due to their citizenship, Seeing Machines may not permit them to participate in the role; and
 - (ii) it is not reasonable in all circumstances to redeploy or transfer them to another role within the Seeing Machines or Seeing Machines' affiliates.
- (k) Advertise positions as only open to Australian citizens who can obtain the necessary clearances for access to Controlled Material or comply with Security Requirements.
- (l) Request current and future employees to notify Seeing Machines of changes to their citizenship information.
- (m) Require Seeing Machines employees and contractors to execute formal security agreements based on citizenship.
- (n) Restrict access to areas of Seeing Machines' facilities to employees and contractors based on their citizenship and access to Controlled Material or compliance with Security Requirements.
- (o) Disclose citizenship information, where required, to:
 - (i) the United States' Department of State;
 - (ii) the United States' Department of Commerce;
 - (iii) the Australian Department of Defence; and
 - (iv) other organisations for which, or on whose behalf, or at whose request Seeing Machines undertakes work in respect of which Seeing Machines has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities or comply with Security Requirements.

DIRECTIONS

1. By **7 December 2021**, the Applicant must provide a copy of the attached Notice of the exemption application to each of its Victorian employees and contractors.
2. By **7 December 2021**, the Applicant must send a complete copy of the application, this order, and the attached Notice to each union that represent its Victorian employees and contractors.
3. By **7 December 2021**, the Applicant must place the attached Notice on its website. The Notice must remain on the website until and including **4 February 2022**.
4. By **28 December 2021**, the Victorian Equal Opportunity and Human Rights Commission must notify VCAT and the Applicant whether it will seek leave to intervene in the exemption application.
5. The principal registrar is directed to send to the Applicant copies of any submissions or comments received in respect of the application.
6. By **18 January 2022**, the Applicant must send to the Tribunal any further material upon which it intends to rely, together with evidence that it has complied with the directions noted above, and any comments received.
7. This matter is listed for hearing commencing at **10.00 am on 4 February 2022**.
8. Parties have leave to apply for a further directions hearing if required.



MEMBER C. THWAITES

APPEARANCES:

For the Applicant:

Ms S. Dalliston, General Counsel



IMPORTANT NOTICE

Seeing Machines Limited has applied to the Victorian Civil and Administrative Tribunal for an exemption from the *Equal Opportunity Act 2010*, to enable it to undertake the following activity:

- (a) Identify the citizenship, previous citizenships, race or nationality, and substantive contacts where such contacts are affiliated with countries proscribed in section 126.1 of ITAR ('citizenship information') of all Seeing Machines personnel who are likely to require access to Controlled Material or comply with Security Requirements.
- (b) Request citizenship information from prospective employees and contractors who perform work on Seeing Machines' premises and who are subject to Seeing Machines' control and direction in roles which are likely to require access to Controlled Material or comply with Security Requirements.
- (c) Maintain records of the citizenship information of employees who are likely to require access to Controlled Material or comply with Security Requirements.
- (d) Establish security measures and access protocols to prevent unauthorised access to Controlled Material or comply with Security Requirements.
- (e) Limit or prohibit persons of certain nationalities/citizenships access to Controlled

Material as per ITAR and EAR controls.

- (f) Advise applicants for employment in roles which are likely to require access to Controlled Material or compliance with Security Requirements that they may be adversely affected by ITAR and EAR controls or Security Requirements if they are not an Australian citizen or if they hold dual citizenship from countries proscribed as applicable.
- (g) Impose a condition on offers of employment in roles which are likely to require access to Controlled Material or comply with Security Requirements that the person must, pursuant to applicable controls, be authorised to access that material, whether pursuant to an individual approval obtained from the United States' Department of State or Commonwealth of Australia or otherwise.
- (h) Reject applications for positions requiring access to the Controlled Material or compliance with Security Requirements based on the job applicant's citizenship, and taking into account a person's citizenship in determining who should be offered employment or contract work requiring access to Controlled Material or compliance with Security Requirements.
- (i) Transfer employees and contractors from positions with access to Controlled Material or requirement to comply with Security Requirements to positions without access to Controlled Material or compliance

with Security Requirements, based on their citizenship.

- (j) Terminate the employment or engagement of employees or contractors on the basis that:
 - (i) due to their citizenship, Seeing Machines may not permit them to participate in the role; and
 - (ii) it is not reasonable in all circumstances to redeploy or transfer them to another role within the Seeing Machines or Seeing Machines' affiliates.
- (k) Advertise positions as only open to Australian citizens who can obtain the necessary clearances for access to Controlled Material or comply with Security Requirements.
- (l) Request current and future employees to notify Seeing Machines of changes to their citizenship information.
- (m) Require Seeing Machines employees and contractors to execute formal security agreements based on citizenship.
- (n) Restrict access to areas of Seeing Machines' facilities to employees and contractors based on their citizenship and access to Controlled Material or compliance with Security Requirements.
- (o) Disclose citizenship information, where required, to:

- (i) the United States' Department of State;
- (ii) the United States' Department of Commerce;
- (iii) the Australian Department of Defence; and
- (iv) other organisations for which, or on whose behalf, or at whose request Seeing Machines undertakes work in respect of which Seeing Machines has directly or indirectly an obligation not to transfer Controlled Material to persons of certain nationalities or comply with Security Requirements.

The Tribunal will hear the application at **10:00 AM** on
4 February 2022 by teleconference.

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

If you want to make a submission to the Tribunal either
for or against the application, you must send it in
writing to humanrights@vcat.vic.gov.au . Please quote
reference H330/2021.

The closing date for submissions is 4 January 2022

