

**IN THE STATE ADMINISTRATIVE TRIBUNAL
AT PERTH**

LINFOX AUSTRALIA PTY LTD

of 55 English Street, Essendon Fields, Victoria 3041

Applicant

COMMISSIONER FOR EQUAL OPPORTUNITY

Respondent

PROPOSED AMENDED ORDER SOUGHT

Definitions

For the purposes of this proposed order:

“Commissioner” means the Commissioner for Equal Opportunity.

“Conditions of Contract” means conditions of the 2013 contract between Linfox and the Commonwealth of Australia for the provision of the Services, including where that contract is extended, amended or replaced.

“Defence Materials” means any materials or information in relation to which access or use is regulated by the Security Requirements.

“Linfox” means Linfox Australia Pty Ltd.

“Security Requirements” means Linfox’s security requirements under and pursuant to:

- (a) Conditions of Contract;
- (b) any other contract with the Commonwealth of Australia, Australian Defence Force or United States Government (including any military departments) to which Linfox is, or during the term of the Exemption Order becomes, a direct contractor or subcontractor, and which contain security clearance and related requirements which are the same or substantially similar to the Conditions of Contract. For the avoidance of doubt, any security clearance or related requirement which is not the same or substantially similar to the Conditions of Contract does not fall within this definition of Security Requirements and is therefore not covered by the exemption;
- (c) Linfox’s Third Party Re-Transfer authorisation;

- (d) US Export Regulations;
- (e) Manufacturing licence agreements;
- (f) Technical assistance agreements;
- (g) Proprietary information agreements; and
- (h) Export licenses granted by the United States Department of Commerce and/or the United States State Department.

“Services” means the warehousing, disposal, distribution, information technology, logistics, and supply chain solutions and services which Linfox has been engaged to provide, either directly as a contractor or indirectly as a subcontractor, to the Commonwealth of Australia, the Australian Defence Force and/or the United States Government (including any military departments), to which the Security Requirements apply.

“Tribunal” means the State Administrative Tribunal.

“US Export Regulations” means the requirements of the International Traffic In Arms Regulations (22 CFR (US) §§120-130) and the Export Administration Regulations (15 CFR (US) §§730-774) or other regulation to similar effect, as amended or replaced from time to time, so far as they apply to Defence Materials used in Linfox’s operations.

“Workforce” includes Linfox’s employees, contractors and contract workers who are engaged to participate in the provision of the Services in Victoria and/or who have access to Defence Materials.

Specific exemptions sought

The Tribunal orders:

- 1 Pursuant to section 135(1) of the *Equal Opportunity Act 1984* (WA) (**EO Act**), Linfox is granted an exemption from compliance with the provisions of sections 37, 39 and 49 of the EO Act for a period of five (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 they may:
 - 1.1 Require members or potential members of the Workforce to declare their exact citizenship and provide details of their citizenship (including any changes to their citizenship) in order to enable Linfox to determine whether they are permitted under the Security Requirements to participate in the provision of the Services or to have access to Defence Materials;

- 1.2 Disclose information about the citizenship of members of the Workforce to:
- (a) the United States Department of State;
 - (b) the Australian Department of Defence; or
 - (c) any other organisation or government department for which or on whose behalf or at whose request Linfox undertakes work in respect of which Linfox has (directly or indirectly) an obligation not to transfer Defence Materials on the basis of citizenship;
- 1.3 Record and maintain a register (**Register**) of those members of the Workforce that are permitted to access Defence Materials or any facilities owned or controlled by the Australian Defence Force, the United States Government (including any military departments), or Linfox or another contractor of the Australian Defence Force or the United States Government (including any military departments), or to be involved in the provision of the Services due to citizenship. Access to the Register and any information relating to the citizenship of members or potential members of the Workforce shall be restricted to human resources officers, information technology staff and security personnel or their properly appointed nominees on a “need-to-know” basis;
- 1.4 Require members of the Workforce to wear a pass or badge confirming their right to access Defence Materials or their level of access to any Defence Materials or their right or the extent of their right to participate in the provision of the Services. Such passes or badges may be coded but not in such a way as to identify:
- (a) the citizenship of the person (including dual citizenship), as declared; or
 - (b) the reasons for that person’s level of access;
- 1.5 Restrict access to Defence Materials connected with the Services to particular members of the Workforce based on their citizenship;
- 1.6 Restrict access to areas of its facilities connected with the provision of the Services to particular members of the Workforce based on their citizenship;
- 1.7 Require Linfox’s suppliers, contractors, employees, contract workers, agents and consultants to comply with the Security Requirements, and to take all practicable steps to assist Linfox in complying with the Security Requirements;
- 1.8 Reject applications from prospective members of the Workforce for positions involving the provision of the Services or requiring access to the Defence Materials, based on the

prospective Workforce member's citizenship, and taking into account a person's citizenship in determining who should be offered employment or contract work requiring access to Defence Materials;

- 1.9 Transfer members of the Workforce from the provision of the Services to work in other parts of Linfox's business on the basis that, due to their citizenship (including a change to their citizenship), Linfox may not permit them to participate in the provision of the Services;
- 1.10 Terminate the employment or engagement of members of the Workforce on the basis that:
 - (a) due to their citizenship (including a change to their citizenship), Linfox may not permit them to participate in the provision of the Services; and
 - (b) it is not reasonable in all the circumstances to redeploy or transfer the members of the Workforce to another role within Linfox's business, or within a business operated by one of Linfox's associated entities.
- 1.11 Advertise positions with Linfox which involve the provision of the Services or access to the Defence Materials as being open only to Australian citizens who can obtain the necessary security clearances.
- 2 This exemption applies subject to the following conditions:
 - 2.1 Linfox will, prior to taking any action permitted by the exemption, provide all employees and prospective members of the Workforce with:
 - (a) express notice that they may be adversely affected by this exemption if they are not an Australian citizen or if they hold dual citizenship;
 - (b) a reasonable explanation in plain English of the nature of any adverse effects of such action to them; and
 - (c) information (at the time of recruitment in the case of prospective members of the Workforce) about how they can apply for Australian citizenship.
 - 2.2 Linfox will:
 - (a) maintain comprehensive anti-discrimination policies governing all aspects of the work and Workforce, including management, and with particular regard to race discrimination, vilification, 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, harassment and victimisation;
- (c) implement training programs, including at induction, to ensure that all members of Linfox'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 EO Act and, in particular (but not limited to) the complaints procedure under that EO Act;
- (f) notify the Tribunal if the discriminatory aspects of the relevant Security Requirements are substantially amended, repealed or become inoperative, in whole or in part, so that the exemption may be revoked or amended.

- 2.3 Linfox will take all reasonable steps to ensure that any employees adversely affected by the exemption retain employment with Linfox, and do not suffer a reduction in wages, salary or opportunity for advancement.
- 2.4 If Linfox, in order to enable it to comply with the Security Requirements, moves a member of the Workforce from one project to another, Linfox must take reasonable steps both to explain to that person why the transfer has occurred, and to avoid disclosing information about the reasons for the transfer to other staff who become aware of the transfer and do not need to know the reasons in order to perform their duties.
- 2.5 Where prospective employees adversely affected by the exemption would otherwise have been acceptable to Linfox as employees, Linfox will consider and, if feasible, implement reasonable and practicable alternatives to rejection, such as employment in other work for Linfox (whether with Linfox or one of its associated entities) or obtaining the necessary approvals under the Security Requirements.
- 2.6 Linfox must report in writing to the Commissioner twelve months after the commencement of this exemption, and every twelve months thereafter while the exemption is in force

detailing in respect of the period to which the report relates, and in respect of the matters covered by this exemption –

- (a) the steps taken by Linfox to comply with the EO Act and the terms and conditions of this exemption, including training and education given to its Workforce, compliance audits, and any complaints made under the EO Act;
- (b) the number of applications to join its Workforce rejected under the exemption and whether any (and if so, how many) were subsequently appointed to other roles;
- (c) the number of members of its Workforce redeployed or retrenched in accordance with the exemption, and any steps taken to minimise harm or loss to those people arising from the redeployment or retrenchment;
- (d) the number of Workforce vacancies advertised or offered under the exemption.

2.7 Linfox must include the reporting requirements set out at paragraph F in its annual reporting cycle and risk management program.