



# **Defence Amendment (Safeguarding Australia's Military Secrets) Act 2024**

**No. 20, 2024**

**An Act to amend the law relating to defence, and  
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Defence Amendment (Safeguarding Australia's Military Secrets) Act 2024

No. 20, 2024

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## An Act to amend the law relating to defence, and for related purposes

[Assented to 8 April 2024]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Defence Amendment (Safeguarding Australia's  
Military Secrets) Act 2024*.

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No. 20, 2024    *Defence Amendment (Safeguarding Australia's Military Secrets) Act*    1  
2024

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The 28th day after this Act receives the Royal Assent.	6 May 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Defence Act 1903*

#### 1 After Part IX

Insert:

### **Part IXAA—Performing work for or providing training to a foreign military organisation or government body**

#### **Division 1—Introduction**

##### **112 Simplified outline of this Part**

*Foreign work restricted individuals*

This Part regulates the work that former defence staff members may perform. They are called foreign work restricted individuals.

A foreign work restricted individual must not perform work for, or on behalf of, a military organisation, or government body, of a relevant foreign country if the individual does not hold a foreign work authorisation for the work and no other exception applies.

*Other individuals*

An individual, other than a foreign work restricted individual, must not provide training of the following kind to, or on behalf of, a military organisation, or government body, of a relevant foreign country if the individual does not hold a foreign work authorisation for the training and no other exception applies:

- (a) training relating to goods, software or technology within the scope of Part 1 of the Defence and Strategic Goods List;

- (b) training relating to military tactics, military techniques or military procedures.

*Relevant foreign countries*

The Minister may make a legislative instrument to exclude a foreign country from being a relevant foreign country.

*Foreign work authorisations*

An individual may request a foreign work authorisation. The Minister must grant or refuse the authorisation. The Minister must refuse the authorisation if the Minister reasonably believes that the work or training by the individual would prejudice the security, defence or international relations of Australia.

If a foreign work authorisation is granted to an individual, the authorisation may be granted subject to conditions and may be cancelled, suspended or varied.

An individual must be given an opportunity to make a written statement before the Minister makes certain adverse decisions about foreign work authorisations.

An individual may seek merits review of certain decisions made under this Part.

### 113 Definitions

In this Part:

***control***, over a company, body or association, includes control as a result of, or by means of, trusts, agreements, arrangements, understandings or practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

***Defence and Strategic Goods List*** has the same meaning as in the *Defence Trade Controls Act 2012*.

***defence staff member*** means:



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- (a) one of the following:
    - (i) the Chief of the Defence Force or the Vice Chief of the Defence Force;
    - (ii) the Chief of Navy, the Chief of Army or the Chief of Air Force;
    - (iii) a member of the Permanent Forces;
    - (iv) a member of the Reserves who is rendering continuous full-time service; or
  - (b) the Secretary of the Department or an APS employee in the Department; or
  - (c) the Head of the Australian Submarine Agency or an APS employee in the Australian Submarine Agency.

***foreign work authorisation*** means an authorisation granted to an individual under section 115C.

***foreign work restricted individual*** has the meaning given by section 114.

***government*** of a foreign country or a part of a foreign country means the authority exercising effective governmental control in that foreign country or that part of that foreign country.

***government body*** of a foreign country means:

- (a) the government of the foreign country or of part of the foreign country; or
- (b) an authority of the government of the foreign country; or
- (c) an authority of the government of part of the foreign country; or
- (d) a local government body or regional government body of the foreign country; or
- (e) a public enterprise of the foreign country.

***military organisation*** of a foreign country means:

- (a) the armed forces of the government of the foreign country; or
- (b) the civilian component of:
  - (i) the Department of State of the foreign country; or
  - (ii) a government agency in the foreign country; that is responsible for the defence of that country.

***permanent resident of Australia*** means a person who is a permanent resident within the meaning of the *Australian Citizenship Act 2007*.

***public enterprise*** of a foreign country means a company or any other body or association where:

- (a) in the case of a company—one or more of the following apply:
  - (i) the government of the foreign country or of part of the foreign country holds more than 50% of the issued share capital of the company;
  - (ii) the government of the foreign country or of part of the foreign country holds more than 50% of the voting power in the company;
  - (iii) the government of the foreign country or of part of the foreign country is in a position to appoint more than 50% of the company's board of directors;
  - (iv) the directors (however described) of the company are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of the foreign country or of part of the foreign country;
  - (v) the government of the foreign country or of part of the foreign country is in a position to exercise control over the company; and
- (b) in the case of any other body or association—either or both of the following apply:
  - (i) the members of the executive committee (however described) of the body or association are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of the foreign country or of part of the foreign country;
  - (ii) the government of the foreign country or of part of the foreign country is in a position to exercise control over the body or association; and
- (c) the company, body or association:

- (i) enjoys special legal rights or a special legal status under a law of the foreign country or of part of the foreign country; or
- (ii) enjoys special benefits or privileges under a law of the foreign country or of part of the foreign country; because of the relationship of the company, body or association with the government of the foreign country or of the part of the foreign country, as the case may be.

**relevant foreign country** means a foreign country other than a foreign country covered by an instrument in force under subsection 115(3).

**reviewable decision**: see subsection 115K(9).

**training** means any training:

- (a) whether for reward or otherwise; and
- (b) whether provided in a personal capacity or in any other capacity, including:
  - (i) as an agent, officer or employee of a body corporate incorporated within or outside Australia; or
  - (ii) in, or with, any partnership, trust, association, organisation or other body established, formed or created within or outside Australia; and
- (c) whether regular or irregular training; and
- (d) whether formal or informal instruction.

**work** means any work (including the provision of training):

- (a) whether for reward or otherwise; and
- (b) whether performed in a personal capacity or in any other capacity, including:
  - (i) as an agent, officer or employee of a body corporate incorporated within or outside Australia; or
  - (ii) in, or with, any partnership, trust, association, organisation or other body established, formed or created within or outside Australia.

### **114 Definition of *foreign work restricted individual***

- (1) A *foreign work restricted individual* is an individual who was, but is not currently, a defence staff member.
- (2) Despite subsection (1), an individual is not a foreign work restricted individual if the individual is included in a class of individuals covered by an instrument in force under subsection 115(1).

### **115 Ministerial legislative instruments**

#### *Individuals who are not foreign work restricted individuals*

- (1) The Minister may, by legislative instrument, determine a class of individuals for the purposes of subsection 114(2).
- (2) Without limiting subsection (1), the class may be determined by reference to the following:
  - (a) particular kinds of work performed by defence staff members;
  - (b) the period of time that has elapsed since the performance of particular kinds of work by defence staff members.

#### *Countries that are not relevant foreign countries*

- (3) The Minister may, by legislative instrument, determine a foreign country not to be a relevant foreign country for the purposes of the definition of *relevant foreign country* in section 113.

## **Division 2—Foreign work restricted individuals working for a foreign military organisation or government body**

### **115A Offence—foreign work restricted individuals working for a foreign military organisation or government body**

#### *Offence*

- (1) An individual commits an offence if:
    - (a) the individual is a foreign work restricted individual; and
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- (b) the individual performs work; and
- (c) the work is performed for, or on behalf of:
  - (i) a military organisation of a foreign country; or
  - (ii) a government body of a foreign country; and
- (d) the foreign country is a relevant foreign country.

Penalty: Imprisonment for 20 years.

*Exceptions*

- (2) Subsection (1) does not apply if a foreign work authorisation is in force that authorises the individual to perform the work for, or on behalf of, the military organisation, or the government body, of the relevant foreign country.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply if the work performed by the individual is authorised by a written agreement to which the Commonwealth is a party.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) does not apply if:
  - (a) the work performed by the individual is solely in the course of, and as part of, the individual's service in any capacity in or with any armed force; and
  - (b) a declaration under subsection 119.8(1) of the *Criminal Code* covers the individual and the circumstances of the individual's service in or with the armed force.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (1) does not apply if the work performed by the individual is in the course of, and as part of, the individual's employment or engagement by the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (1) does not apply if the work performed by the individual is solely or primarily for either or both of the following purposes:
- (a) providing aid of a humanitarian nature;
  - (b) performing an official duty for:
    - (i) the United Nations or an agency of the United Nations; or
    - (ii) the International Committee of the Red Cross.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Geographical jurisdiction*

- (7) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this section.

**Division 3—Other individuals providing training to a foreign military organisation or government body**

**115B Offence—other individuals providing training to a foreign military organisation or government body**

*Offence*

- (1) An individual commits an offence if:
- (a) the individual is an Australian citizen or a permanent resident of Australia; and
  - (b) the individual is not a foreign work restricted individual; and
  - (c) the individual provides training to, or on behalf of:
    - (i) a military organisation of a foreign country; or
    - (ii) a government body of a foreign country; and
  - (d) either:
    - (i) the training relates to goods, software or technology within the scope of Part 1 of the Defence and Strategic Goods List; or
    - (ii) the training relates to military tactics, military techniques or military procedures; and
  - (e) the foreign country is a relevant foreign country.

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Penalty: Imprisonment for 20 years.

*Exceptions*

- (2) Subsection (1) does not apply if a foreign work authorisation is in force that authorises the individual to provide the training to, or on behalf of, the military organisation, or the government body, of the relevant foreign country.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply if the training provided by the individual is authorised by a written agreement to which the Commonwealth is a party.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) does not apply if:

- (a) the training provided by the individual is solely in the course of, and as part of, the individual's service in any capacity in or with any armed force; and
- (b) a declaration under subsection 119.8(1) of the *Criminal Code* covers the individual and the circumstances of the individual's service in or with the armed force.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (1) does not apply if the training provided by the individual is in the course of, and as part of, the individual's employment or engagement by the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (1) does not apply if the training provided by the individual is solely or primarily for either or both of the following purposes:

- (a) providing aid of a humanitarian nature;
- (b) performing an official duty for:
  - (i) the United Nations or an agency of the United Nations;  
or
  - (ii) the International Committee of the Red Cross.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

*Geographical jurisdiction*

- (7) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this section.

## **Division 4—Foreign work authorisations**

### **115C Grant of foreign work authorisation**

*Request for authorisation*

- (1) An individual may make a request to the Minister for an authorisation under this section.
- (2) However, an individual cannot make a request for an authorisation if:
- (a) in relation to Division 2—the individual made, within the last 12 months, a request for an authorisation to perform the same work for, or on behalf of, the same military organisation, or government body, of a relevant foreign country; or
  - (b) in relation to Division 3—the individual made, within the last 12 months, a request for an authorisation to provide the same training to, or on behalf of, the same military organisation, or government body, of a relevant foreign country.
- (3) A request made under subsection (1) must:
- (a) be in writing; and
  - (b) be in the form approved by the Secretary under subsection (13); and
  - (c) contain the information, and be accompanied by any documents, that the form requires.

Note: An individual may commit an offence if the individual provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).



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*Granting, or refusing to grant, an authorisation*

- (4) The Minister must, in writing and as soon as reasonably practicable after an individual makes a request under subsection (1):
- (a) grant the individual an authorisation (a ***foreign work authorisation***) to:
    - (i) perform specified work for, or on behalf of, a specified military organisation, or a specified government body, of a specified relevant foreign country; or
    - (ii) provide specified training to, or on behalf of, a specified military organisation, or a specified government body, of a specified relevant foreign country; or
  - (b) refuse to grant the individual an authorisation under this section.

Note: The Minister must give the individual written notice before refusing to grant the individual an authorisation or before granting an authorisation that is different from the authorisation requested (see section 115J).

- (5) In deciding whether to grant the individual a foreign work authorisation under this section for the purposes of Division 2, the Minister must consider the following:
- (a) the kind of work, and the role, performed by the individual as a defence staff member;
  - (b) any other kind of work, that the Minister is aware of, performed by the individual other than as a defence staff member;
  - (c) the length of time that the individual was a defence staff member;
  - (d) the kind of information accessed by the individual while a defence staff member;
  - (e) the kind of work the individual would perform if the authorisation were granted;
  - (f) the military organisation, or the government body, of the foreign country for which, or on behalf of which, the individual would perform that work if the authorisation were granted.

- (6) In deciding whether to grant the individual a foreign work authorisation under this section for the purposes of Division 3, the Minister must consider the following:
- (a) the kind of training the individual would provide if the authorisation were granted;
  - (b) the military organisation, or the government body, of the foreign country to which, or on behalf of which, the individual would provide that training if the authorisation were granted.
- (7) Subsection (5) or (6) does not limit the matters the Minister may consider in deciding whether to grant an authorisation under this section.
- (8) The Minister must refuse to grant the individual an authorisation under this section if the Minister reasonably believes that the performance of the work, or the provision of the training, by the individual would prejudice the security, defence or international relations of Australia.
- (9) Subsection (8) does not limit the grounds on which the Minister may refuse to grant an authorisation under this section.

*Notice*

- (10) If the Minister grants an individual an authorisation under this section:
- (a) the Minister must give the individual a copy of the authorisation, which must specify the period the authorisation is in force (which must be no longer than 3 years); and
  - (b) if the authorisation is different from the authorisation requested by the individual or is granted subject to conditions—the Minister must give the individual written notice setting out the reasons for this and the individual’s review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

- (11) If the Minister refuses to grant an individual an authorisation under this section, the Minister must give the individual written notice of the refusal. The notice must:
- (a) include the reasons for the refusal; and

- (b) set out the individual's review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

*Conditions*

- (12) The Minister may grant an individual an authorisation under this section subject to any conditions specified in the authorisation.

Note: The Minister must give the individual written notice before granting an authorisation subject to conditions (see section 115J).

*Approved form*

- (13) The Secretary may, in writing, approve a form for the purposes of paragraph (3)(b). The Secretary must cause the form to be published on the Department's website.

**115D Offence for failing to comply with a condition of an authorisation**

*Offence*

- (1) An individual commits an offence if:
  - (a) a foreign work authorisation granted to the individual is in force; and
  - (b) the authorisation is subject to a condition; and
  - (c) the individual does an act or omits to do an act; and
  - (d) the act or omission contravenes the condition.

Penalty: Imprisonment for 5 years.

*Geographical jurisdiction*

- (2) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this section.

## 115E Cancellation of authorisation

### *Mandatory cancellation*

- (1) The Minister must, in writing, cancel a foreign work authorisation granted to an individual if:
  - (a) the Minister reasonably believes, as a result of a change in circumstances, that the individual's performance of work or provision of training, as specified in the authorisation, would prejudice the security, defence or international relations of Australia; or
  - (b) the individual requests the Minister to cancel the authorisation.
- (2) The Minister is not required to observe any requirements of the natural justice hearing rule in relation to cancelling a foreign work authorisation under subsection (1).

### *Discretionary cancellation*

- (3) The Minister may, in writing, cancel a foreign work authorisation granted to an individual if the Minister is satisfied that:
  - (a) the individual has contravened a condition specified in the authorisation; or
  - (b) the individual knowingly provided information or a document that was false or misleading in a material particular:
    - (i) in making the request for the authorisation; or
    - (ii) in making a request for a variation of the authorisation; or
    - (iii) in providing a written statement in response to a notice of a proposed decision in relation to the authorisation; or
  - (c) it would be appropriate in all the circumstances to cancel the authorisation.

Note: The Minister must give the individual written notice before cancelling the authorisation under this subsection (see section 115J).

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*Notice*

- (4) The Minister must give written notice to the individual of the cancellation of the authorisation as soon as reasonably practicable after making the decision.
- (5) The notice must:
  - (a) include the reasons for the decision; and
  - (b) specify the day the cancellation takes effect (which must not be earlier than the day after the notice is given to the individual); and
  - (c) set out the individual's review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

**115F Suspension of authorisation***Suspension*

- (1) The Minister may, in writing, suspend a foreign work authorisation granted to an individual if the Minister is satisfied that:
  - (a) the individual has contravened a condition specified in the authorisation; or
  - (b) it would be appropriate in all the circumstances to suspend the authorisation.

Note: The Minister must give the individual written notice before suspending the authorisation (see section 115J).

- (2) The Minister must give written notice to the individual of the suspension of the authorisation as soon as reasonably practicable after making the decision.
- (3) The notice must:
  - (a) include the reasons for the decision; and
  - (b) specify the period of suspension (which must not start earlier than the day after the notice is given to the individual); and
  - (c) set out the individual's review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

- (4) A foreign work authorisation granted to an individual is not in force while suspended, but the period specified in the authorisation continues to run despite the suspension.
- (5) The suspension of a foreign work authorisation under this section does not prevent the Minister from cancelling it under section 115E or varying it under section 115G or 115H.

*Lifting of suspension*

- (6) If a foreign work authorisation granted to an individual is suspended under this section, the Minister may lift the suspension by written notice given to the individual if the Minister is satisfied that it would be appropriate in all the circumstances to do so.
- (7) The notice must specify the day the suspension is lifted.

**115G Variation of authorisation—on Minister’s own initiative**

*Variation on own initiative*

- (1) The Minister may, on the Minister’s own initiative and in writing, vary a foreign work authorisation granted to an individual if the Minister is satisfied that:
  - (a) the individual has contravened a condition specified in the authorisation; or
  - (b) it would be appropriate in all the circumstances to vary the authorisation.

Note: The Minister must give the individual written notice before deciding to vary the authorisation (see section 115J).

*Notice*

- (2) If the Minister varies the authorisation, the Minister must as soon as reasonably practicable after making the decision:
  - (a) give the individual a copy of the variation, which must specify the day the variation takes effect (which must not be earlier than the day after the copy is given to the individual); and

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- (b) give the individual written notice setting out the reasons for the decision and the individual's review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

## **115H Variation of authorisation—on request**

### *Request for variation*

- (1) An individual may request the Minister to vary a foreign work authorisation granted to the individual.
- (2) The request must:
- (a) be in writing; and
  - (b) be in the form approved by the Secretary under subsection (6); and
  - (c) contain the information, and be accompanied by any documents, that the form requires.

Note: An individual may commit an offence if the individual provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

### *Decision to vary, or to refuse to vary, authorisation*

- (3) The Minister must, in writing and as soon as reasonably practicable after the request is made, vary the authorisation in a specified way or refuse to vary the authorisation.

Note: The Minister must give the individual written notice before varying the authorisation in a way that is different from the variation requested or before refusing to vary the authorisation (see section 115J).

### *Notice*

- (4) If the Minister varies the authorisation, the Minister must, as soon as reasonably practicable after making the decision:
- (a) give the individual a copy of the variation, which must specify the day the variation takes effect (which must not be earlier than the day after the copy is given to the individual); and
  - (b) if the variation is different from the variation requested by the individual (including because one or more conditions for

the authorisation are varied or imposed)—give the individual written notice setting out the reasons for the decision and the individual’s review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

- (5) If the Minister refuses to vary the authorisation, the Minister must, as soon as reasonably practicable after making the decision, give written notice to the individual of the refusal. The notice must:
- (a) include the reasons for the refusal; and
  - (b) set out the individual’s review rights under sections 115K and 115L.

Note: Section 115M deals with disclosing reasons for decisions.

*Approved form*

- (6) The Secretary may, in writing, approve a form for the purposes of paragraph (2)(b). The Secretary must cause the form to be published on the Department’s website.

**115J Notice before decision about authorisation**

- (1) The Minister must not make a decision covered by subsection (5) in relation to an individual unless the Minister has given the individual written notice of the proposed decision.
- (2) The notice must:
- (a) state the proposed decision; and
  - (b) include the reasons for the proposed decision; and
  - (c) invite the individual to give to the Minister, within the period specified in the notice, a written statement relating to the proposed decision.

Note: Section 115M deals with disclosing reasons for proposed decisions.

- (3) The period specified in the notice must not be less than 14 days beginning on the day the notice is given to the individual.
- (4) The Minister must, before making a decision covered by subsection (5), consider any written statement that is given to the Minister within the period specified in the notice.
- (5) The following decisions are covered by this subsection:



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- (a) a decision under section 115C to refuse to grant an individual an authorisation;
  - (b) a decision under section 115C to grant an individual a foreign work authorisation that is different from the authorisation requested;
  - (c) a decision under section 115C to grant an individual a foreign work authorisation subject to one or more conditions;
  - (d) a decision under subsection 115E(3) to cancel a foreign work authorisation;
  - (e) a decision under section 115F to suspend a foreign work authorisation;
  - (f) a decision under section 115G to vary a foreign work authorisation on the Minister's own initiative;
  - (g) a decision under section 115H to refuse to vary a foreign work authorisation;
  - (h) a decision under section 115H to vary a foreign work authorisation granted to an individual in a way that is different from the variation requested (including because one or more conditions for the authorisation are varied or imposed).
- (6) This section is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

### **115K Internal review of decisions**

#### *Application for internal review*

- (1) A person whose interests are affected by a reviewable decision may apply to the Minister for a review of the decision within 28 days after the person is notified of the decision.
- Note: For **reviewable decision**, see subsection (9).
- (2) The application must:
- (a) be in writing; and
  - (b) be in the form approved by the Secretary under subsection (8); and

- (c) contain the information, and be accompanied by any documents, that the form requires.
- (3) Subsection (1) does not apply to a reviewable decision that is made by the Minister personally.

*Review of decision*

- (4) On application for review of a reviewable decision, the Minister must:
  - (a) review the decision; and
  - (b) affirm, vary or revoke the decision.
- (5) The Minister must give the applicant written notice of the Minister's decision to affirm, vary or revoke the reviewable decision within 90 days after receiving the application.
- (6) The notice must:
  - (a) include the reasons for the decision; and
  - (b) set out the applicant's review rights under section 115L.

Note: Section 115M deals with disclosing reasons for decisions.

- (7) The Minister is taken to have decided to affirm the reviewable decision if the Minister does not give the applicant such a notice within that period.

*Approved form*

- (8) The Secretary may, in writing, approve a form for the purposes of paragraph (2)(b). The Secretary must cause the form to be published on the Department's website.

*Reviewable decision*

- (9) Each of the following decisions is a **reviewable decision**:
  - (a) a decision under section 115C to refuse to grant an individual an authorisation;
  - (b) a decision under section 115C to grant an individual a foreign work authorisation that is different from the authorisation requested;

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- (c) a decision under section 115C to grant an individual a foreign work authorisation subject to one or more conditions;
  - (d) a decision under section 115E to cancel a foreign work authorisation, except at the request of an individual;
  - (e) a decision under section 115F to suspend a foreign work authorisation;
  - (f) a decision under section 115G to vary a foreign work authorisation on the Minister's own initiative;
  - (g) a decision under section 115H to refuse to vary a foreign work authorisation;
  - (h) a decision under section 115H to vary a foreign work authorisation granted to an individual in a way that is different from the variation requested (including because one or more conditions for the authorisation are varied or imposed).

### **115L AAT review of decisions**

Applications may be made to the AAT for review of the following decisions:

- (a) a reviewable decision that is made by the Minister personally;
- (b) a decision of the Minister made under section 115K to affirm, vary or revoke a reviewable decision.

Note: The Minister may be taken to have affirmed a reviewable decision: see subsection 115K(7).

### **115M Disclosure of reasons for decisions**

- (1) If:
  - (a) the Minister:
    - (i) proposes to make a decision covered by subsection 115J(5); or
    - (ii) makes a reviewable decision; or
    - (iii) makes a decision under section 115K to affirm, vary or revoke a reviewable decision; and
  - (b) reasons for the proposed decision, or the decision, must be given in a notice under this Part;

the notice must not disclose any reasons whose disclosure the Minister reasonably believes would prejudice the security, defence or international relations of Australia.

- (2) If reasons are not disclosed in a notice under this Part because of subsection (1), that fact must be stated in the notice.

## **Division 5—Other matters**

### **115N Delegation by Minister**

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under this Part to:
- (a) an SES employee in the Department; or
  - (b) an officer of the Navy who holds the rank of Commodore or a higher rank; or
  - (c) an officer of the Army who holds the rank of Brigadier or a higher rank; or
  - (d) an officer of the Air Force who holds the rank of Air Commodore or a higher rank.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) However, the Minister must not delegate the Minister's power to make an instrument under subsection 115(1) or (3).

### **115P Review of this Part**

- (1) The Minister must cause an independent review to be conducted of the operation of this Part and any legislative instrument in force under section 115.
- (2) The review must commence as soon as practicable after the end of 5 years after this Part commences.
- (3) The persons who conduct the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

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## 2 Application of amendments—performing work for a foreign military organisation or government body

- (1) Section 115A of the *Defence Act 1903*, as inserted by this Schedule, applies in relation to an individual who performs work on or after the start day, whether the individual ceased to be a defence staff member before, on or after that day.
- (2) The **start day** is the day after the end of the period of 3 months beginning on the day this item commences.
- (3) However, for an individual:
  - (a) who:
    - (i) immediately before the commencement of this item, is performing work for, or on behalf of, a military organisation, or government body, of a relevant foreign country; or
    - (ii) starts to perform such work after that commencement and before the end of the period of 3 months beginning on the day this item commences; and
  - (b) who, on or after that commencement and before the end of that 3-month period, makes a request under section 115C of the *Defence Act 1903* for a foreign work authorisation for that work;the **start day** is:
  - (c) if, in response to that request, the Minister grants a foreign work authorisation under that section—the day after the individual is given a copy of the authorisation; or
  - (d) if, in response to that request, the Minister refuses to grant the individual a foreign work authorisation for that work—the day after the Minister gives the individual written notice of the refusal.

## 3 Application of amendments—providing training to a foreign military organisation or government body

- (1) Section 115B of the *Defence Act 1903*, as inserted by this Schedule, applies in relation to an individual who provides training on or after the start day.

- (2) The **start day** is the day after the end of the period of 3 months beginning on the day this item commences.
- (3) However, for an individual:
- (a) who:
    - (i) immediately before the commencement of this item, is providing training to, or on behalf of, a military organisation, or government body, of a relevant foreign country, being training of a kind covered by paragraph 115B(1)(d) of the *Defence Act 1903*; or
    - (ii) starts to provide such training after that commencement and before the end of the period of 3 months beginning on the day this item commences; and
  - (b) who, on or after that commencement and before the end of that 3-month period, makes a request under section 115C of that Act for a foreign work authorisation for that training;
- the **start day** is:
- (c) if, in response to that request, the Minister grants a foreign work authorisation under that section—the day after the individual is given a copy of the authorisation; or
  - (d) if, in response to that request, the Minister refuses to grant the individual a foreign work authorisation for that training—the day after the Minister gives the individual written notice of the refusal.

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## Schedule 2—Other amendments

### *Criminal Code Act 1995*

#### **1 After subsection 83.3(1) of the *Criminal Code***

Insert:

*Defence—foreign work authorisation under the Defence Act 1903*

- (1A) Subsection (1) does not apply to an individual in relation to conduct engaged in by the individual as part of work (within the meaning of Part IXAA of the *Defence Act 1903*) or training (within the meaning of that Part) that is authorised by a foreign work authorisation granted to the individual under section 115C of that Act and that is in force at the time the individual engages in the conduct.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

*Defence—class of individuals who are not foreign work restricted individuals*

- (1B) Subsection (1) does not apply to an individual if:
- (a) the individual provides training (within the meaning of Part IXAA of the *Defence Act 1903*); and
  - (b) the individual is included in a class of individuals covered by an instrument in force under subsection 115(1) of that Act at the time the individual provides the training; and
  - (c) neither of the following apply:
    - (i) the training relates to goods, software or technology within the scope of Part 1 of the Defence and Strategic Goods List (within the meaning of the *Defence Trade Controls Act 2012*);
    - (ii) the training relates to military tactics, military techniques or military procedures; and
  - (d) the training is provided to, or on behalf of:
    - (i) a government body (within the meaning of Part IXAA of the *Defence Act 1903*) of a foreign country; or

- (ii) a military organisation (within the meaning of Part IXAA of the *Defence Act 1903*) of a foreign country; and
- (e) the foreign country is a relevant foreign country (within the meaning of Part IXAA of the *Defence Act 1903*).

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

*Defences—countries that are not relevant foreign countries*

- (1C) Subsection (1) does not apply to an individual if:
- (a) the individual is a foreign work restricted individual (within the meaning of Part IXAA of the *Defence Act 1903*); and
  - (b) the individual provides training (within the meaning of that Part); and
  - (c) the training is provided to, or on behalf of:
    - (i) a government body (within the meaning of that Part) of a foreign country; or
    - (ii) a military organisation (within the meaning of that Part) of a foreign country; and
  - (d) the foreign country is covered by an instrument in force under subsection 115(3) of that Act at the time the individual provides the training.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

- (1D) Subsection (1) does not apply to an individual if:
- (a) the individual is not a foreign work restricted individual (within the meaning of Part IXAA of the *Defence Act 1903*); and
  - (b) the individual is:
    - (i) an Australian citizen; or
    - (ii) a permanent resident of Australia (within the meaning of that Part); and
  - (c) the individual provides training (within the meaning of that Part); and
  - (d) either:
    - (i) the training relates to goods, software or technology within the scope of Part 1 of the Defence and Strategic



- Goods List (within the meaning of the *Defence Trade Controls Act 2012*); or
- (ii) the training relates to military tactics, military techniques or military procedures; and
- (e) the training is provided to, or on behalf of:
- (i) a government body (within the meaning of Part IXAA of the *Defence Act 1903*) of a foreign country; or
  - (ii) a military organisation (within the meaning of Part IXAA of the *Defence Act 1903*) of a foreign country; and
- (f) the foreign country is covered by an instrument in force under subsection 115(3) of the *Defence Act 1903* at the time the individual provides the training.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

**2 Subsection 83.3(3) of the *Criminal Code* (heading)**

Omit “*other than terrorist organisation*”.

**3 Before subsection 83.3(4) of the *Criminal Code***

Insert:

*Exception to subsection (1B) or (3)—terrorist organisation*

**4 Subsection 83.3(4) of the *Criminal Code***

Omit “However, subsection (3)”, substitute “Subsection (1B) or (3)”.

**5 Paragraph 83.5(4)(a) of the *Criminal Code***

Omit “subsection 83.3(2), (3) or (4A)”, substitute “subsection 83.3(1A), (1B), (1C), (1D), (2), (3) or (4A)”.

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[*Minister’s second reading speech made in—  
House of Representatives on 14 September 2023  
Senate on 21 March 2024*]

(118/23)

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