



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

Please note: This information is intended to be general in nature and only used as a guide. Each individual's circumstances will be different. For specific questions that are not covered in the following pages please contact sams.info@defence.gov.au or call 1800 DEFENCE (1800 333 362).

Alternative arrangements are also in place for those with accessibility requirements.

Please contact 1800 DEFENCE (1800 333 362) for support.

Please note: This document will be updated on a regular basis in response to stakeholder feedback.

The version of the document is located on the bottom right hand side of each page.



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

General information	3
What factors are considered when refusing the Foreign Work Authorisation?	6
Companies	10
Individuals	12
Reservists	12
Defence Industry Security Program (DISP)	13



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

General information

What is the Safeguarding Australia's Military Secrets (SAMS) legislation?

- The Safeguarding Australia's Military Secrets (SAMS) legislation is designed to discourage former Australians undertaking employment in support of foreign powers with interests inconsistent with those of Australia.
- The Safeguarding Australia's Military Secrets Act 2024 (Cth) (the SAMS Act), commenced on 6 May 2024 and has amended the Defence Act 1903 (Cth) (the Defence Act) to create a Foreign Work Authorisation framework in Part IXAA.
- For ease of reference in this document, the Defence Act 1903 Part IXAA is referenced as the Act.
- The provisions do not apply to the countries listed in the Defence (Non-relevant foreign country) Determination 2024 of 01 May 2024, which includes Canada, New Zealand, United Kingdom and the United States



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

To whom does it apply?

The definition of Foreign Work Restricted individuals (FWRI) as per Part 112 of *the Act* is as follows:

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;

Does a valid export permit meet the requirements of "authorised by Commonwealth written agreement" i.e. do you need to get a Foreign Work Authorisation if you have a valid export permit?

- Defence is working on ways to streamline this process.

Who is the 'approving' authority for a Foreign Work Authorisation?

- The Minister for Defence has the authority to grant or refuse Foreign Work Authorisations under the Defence Act 1903.

Who are the delegates for a Foreign Work Authorisation, including review?

- The Minister for Defence has delegated some of his functions and powers under Part IXAA of the Defence Act 1903, including the power to grant or refuse a Foreign Work Authorisations request, to the following positions:
 - Deputy Secretary Security and Estate;
 - First Assistant Secretary Defence Security;



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

- First Assistant Secretary Defence Industry Policy;
- Assistant Secretary Security Policy and Services; and
- Assistant Secretary – Vetting.
- This delegation was signed by the Deputy Prime Minister on 01 May 2024 and covers sections 115C (granting), 115E (cancellation of authorisation), 115F (suspension of authorisation), 115G (Variation – Minister's initiative), 115H (variation – on request), 115J (notice before decision about authorisation) and 115K (Internal review of decision)

Who can refuse a Foreign Work Authorisations request?

- The Minister for Defence has delegated some of his functions and powers under Part IXAA of the Defence Act 1903, including the power to grant or refuse a Foreign Work Authorisations request, to the following positions:
 - Deputy Secretary Security and Estate;
 - First Assistant Secretary Defence Security;
 - First Assistant Secretary Defence Industry Policy;
 - Assistant Secretary Security Policy and Services; and
 - Assistant Secretary – Vetting.
- This delegation was signed by the Deputy Prime Minister on 01 May 2024 and covers sections 115C (granting), 115E (cancellation of authorisation), 115F (suspension of authorisation), 115G (Variation – Minister's initiative), 115H (variation – on request), 115J (notice before decision about authorisation) and 115K (Internal review of decision).

What factors are considered when granting or denying the foreign work authorisation?

- Each Foreign Work Authorisation application will be treated on its merits on a case-by-case basis subject to the requirements of s115C (5)-(7) of the Act.
 - (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;*



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

(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.*

What factors are considered when refusing the Foreign Work Authorisation?

- In considering refusal of a Foreign Work Authorisation application will be treated on its merits on a case by case basis subject to the requirements of s115C (8) and (9) of the Act.

(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.*



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

How long does a Foreign Work Authorisation last? Is it the whole exclusion period (per role) or do you need to apply for a renewal or continuation.

- The maximum period for a foreign work authorisation is three years. Individuals requiring a longer period of authorisation need to request a new foreign work authorisation before their previous authorisation expires.
- Refer s115 (C) (10) (a)
- If the basis or conditions on which the Foreign Work Authorisation was granted change in this period then the individual will need to assess their requirement to request a variation to their Foreign Work Authorisation.

How will information submitted or used in assessing a Foreign Work Authorisation be protected?

- The information submitted and accessed as part of a Foreign Work Authorisation application will be stored on the Defence Protected Environment Network with all appropriate classifications and handling requirements.

Work Definition

The Act defines work as:

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*

For the purposes of the Act, work applies to foreign restricted individuals i.e. former Defence staff which includes 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;*



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

(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*

This aspect of 'Class' of individual does not apply to the wider Australian population.

Examples not requiring a Foreign Work Authorisation

My company conducts maintenance on aircraft engines in different countries. None of my staff are former Defence personnel. We only maintain the engines and do not provide training to any personnel in any other country. Do my staff need a Foreign Work Authorisation?

- This activity is not covered by the scope of the Act
- (s115A and s115B do not apply)

I work for a foreign government providing business consulting services (general governance and business practices – not training) and am not a former Defence staff member, do I need a Foreign Work Authorisation?

- This activity (business consulting services (general governance and business practices – not training) is not covered by the scope of the Act.

Training Definition

The definition of training as per the Act is as follows:

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



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

- (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.
- The definition is intentionally broad as the nature of training activities can also be very broad.
- The principle being that the scope captures activities that enhance or improved the knowledge, skills, capabilities or competencies of a foreign military or foreign government.

Will an individual providing training in generic publically available content such as food preparation require a Foreign Work Authorisation?

- Subject to the individual's former employment (i.e. former Defence staff member) the provision of training in non-Defence and Strategic Goods List Part 1 or military tactics, techniques or procedures, would not require a Foreign Work Authorisation.
- If the individual is a foreign work restricted individual, they may require a Foreign Work Authorisation.



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

Companies

Why can't Defence provide a single Foreign Work Authorisation for everyone in my company?

- Foreign Work Authorisations are issued to individuals not companies. Assessments undertaken through the Foreign Work Authorisation process include assessment of the individual (history), the nature of their proposed activity, and the employer and beneficiary (foreign military or government). A full list of the considerations associated with a Foreign Work Authorisation are contained in s115C (5).

Are office staff working in an organisation providing training to a foreign military or government required to apply for a Foreign Work Authorisation?

- The requirement for a Foreign Work Authorisation would depend on the country involved, the specific activities of office staff and whether they are a former Defence staff member. If they are a former Defence member, they may fall within the scope of the Act depending on their individual circumstances. If they are not a former Defence member, and not involved in the provision of training (as defined in the Act) then they would not fall within the scope of the Act.
- An individual will also not need a Foreign Work Authorisation when working for, or on behalf of a foreign country's military organisation, government body, and foreign company 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; or
 - the work is humanitarian aid performed for the United Nations, a United Nations agency, of the International Committee of the Red Cross.
- The definition of a foreign company under the Act is clear and based on several specific ownership and control tests, which will exclude the many foreign companies in Australia that do not meet these criterion. Individuals working for these companies will not require a Foreign Work Authorisation.

Definition of 'Public Enterprise'

The definition of a Public Enterprise includes: (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; as all companies are expected to act in accordance with government direction, is it to be taken that the Act relates to any work with any company, regardless of their known association with government entities?



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

- We expect companies to align with the laws pertinent to the country in which it is registered and those in which it operates. Directors are responsible for ensuring this occurs.
- *The Act* relates to former Defence staff working for, and For 'other persons' (not Foreign Work Restricted Individual) the training must also be captured by 115B(c) and (d) - the training relates to goods, software or the technology within scope of Pt 1 DSGI or relates to military tactics, military techniques or military procedures, a foreign military organisation or government body.
- If these settings do not apply to a company then the offences are also not applicable.

Does 'work' being conducted in a capacity other than a personal one mean that company owners/officers and senior management who have a tangential relationship with multi projects will require a permit for any/all work their organisation is doing, even if they are not directly involved in that work?

- If this relates to individuals that are working on activities that fall within the scope of the Act, they may subject to the nature of the work, need to apply for a Foreign Work Authorisation.
- Simply put, if a senior management member was a former Defence staff member and is involved in an activity (working) on multiple projects for foreign militaries or governments they would require a Foreign Work Authorisation unless the work is covered by an exception (as listed in s115A (2) – (6).
- If they are not a former Defence staff member, then the check would be against the provision of training (s115B) i.e. Defence and Strategic Goods List, Part 1 or military tactics, military techniques or military procedures.
- If neither of these provisions apply, then a Foreign Work Authorisation would not be required.



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

Individuals

Can I have more than one Foreign Work Authorisation?

- It is possible that an individual may have multiple Foreign Work Authorisations if they are involved in different activities with different employers and beneficiaries that are in scope of the Act.

Reservists

Does an ADF Reservist providing training in an official (ADF capacity) through an excluded country's Defence force (i.e. FVEY) to a non-excluded country's military e.g. PNG, will they require a Foreign Work Authorisation?

- An ADF Reservist rendering service or providing training in their official capacity as a member of the ADF, on the premise that the activity has been formally approved by the ADF, would be excepted to (s115A (3),(5), s115B(3), (5)) – (written agreement with the Commonwealth (3) and course of employment with the Commonwealth (5)).
- If a Reservist provides training whilst undertaking period of Continuous Full Time Service (CFTS) (SERVOP C), would then be considered a foreign work restricted individual under the Act and will require a Foreign Work Authorisation for work covered by s115A of the Act.



Safeguarding Australia's Military Secrets (SAMS)

Frequently Asked Questions

Defence Industry Security Program (DISP)

The [Defence Industry Security Program](#) is a membership-based program that sets baseline security requirements for industry entities wishing to engage in Defence projects, contracts and tenders. DISP is one control in a layered approach to security that helps protect Defence capability. DISP membership supports industry to identify security risks and to understand and apply security controls across the domains of governance, personnel security, physical security, and information and cyber security.

As at 14 May 2024, the Defence Industry Security Program has 1450 members.

[As a DISP member, will we be required to record Foreign Work Authorisation applications/approvals into our Security Register?](#)

- Foreign Work Authorisations are issued to individuals not entities or employers. If an employer requires a copy of a Foreign Work Authorisation they should seek this from their employee.
- Defence does not require Foreign Work Authorisations to be stored in an entities' Security Register.