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Anti-Discrimination Act 1977

EXEMPTION ORDER

- A. Under the provisions of section 126 of the *Anti-Discrimination Act 1977* (NSW), but for the purposes only of meeting the Applicants' legal obligations pursuant to agreements made and licences issued under the United States International Traffic in Arms Regulations (**ITAR**) and Export Administration Regulations (**EAR**), as amended from time to time, (together, **the US Regulations**), the Applicants is granted an exemption from the provisions of sections 8, 10, 51 and 52 of the *Anti-Discrimination Act 1977* to the extent necessary to permit the Applicants to do the following:
- a) ask present and future employees, contractors and contract workers to disclose their full names;
 - b) ask present and future employees, contractors and contract workers to declare their exact citizenship (including any dual citizenship) and their country of birth;
 - c) require present and future employees, contractors and contract workers to produce a photocopy of their passport(s);
 - d) require present and future employees and contractors to wear a badge confirming their right to access EAR and ITAR Controlled Material or their level of access to any EAR and ITAR Controlled Material. Such badges may be coded but not in such a way as to identify the citizenship, as declared, or country of birth of the person, or the reasons for that person's level of access;
 - e) require present and future employees, contractors and contract workers involved in projects which use ITAR Controlled Material, to notify the Applicants of any change to their citizenship or residency status, to the best of their knowledge and belief;
 - f) restrict access, by means of transfer if necessary, to controlled technology to particular members of the Applicants' workforce, based on their citizenship or country of birth;
 - g) reject applications from prospective employees, contractors and contract workers for positions related to projects which use ITAR Controlled Material, based on the prospective employee, contractor or contract worker's:

- i. citizenship, as declared;
- ii. country of birth; or
- iii. substantive contacts, where such contacts objectively create an unacceptable risk of diversion of ITAR Controlled Material or technology;

but not on the basis of the prospective employee, contractor or contract worker's descent, or ethnic or ethno-religious or national origin;

- h) advertise controlled positions with the Applicants as being subject to the Exemption Order;
- i) record and maintain a register of those employees, contractors and contract workers that are permitted to access ITAR Controlled Material or work on controlled projects due to citizenship, or country of birth status. Access to the register to be limited to only those employees, contractors, contract workers and agents of the Applicants with a need to know;
- j) ask present and future employees, contractors and contract workers to execute a non-disclosure agreement in accordance with the license or technical assistance agreement required by the Department of State, United States of America, in the event they are authorised to have access to ITAR Controlled Material;
- k) ask present and future employees, contractors and contract workers to disclose their substantive contacts with individuals from restricted or prohibited countries listed in the ITAR; and
- l) restrict access, by means of transfer if necessary, to controlled technology to particular members of the Applicants' workforce, based on their substantive contacts, where such contacts objectively create an unacceptable risk of diversion of ITAR Controlled Material or technology; and
- m) record and maintain a register of those employees, contractors and contract workers that are permitted to access ITAR Controlled Material or work on controlled projects due to substantive contacts. Access to the register to be limited to only those employees, contractors, contract workers and agents of the Applicants with a need to know.

B. This Exemption Order does not extend to any other identification, collection, storage or use of information in relation to any employee in respect of that employee's race, colour, nationality, descent or ethnic, ethno-religious or national origin. Except to the extent expressly provided for herein, this Exemption Order does not excuse, or purport to excuse, the Applicants from complying with its obligations pursuant to the *Anti-Discrimination Act 1977* (NSW) or any other legislation or at common law.

C. The Applicants are required, prior to taking any action permitted by this Exemption Order, to provide all employees, contractors and contract workers, and prospective employees, contractors and contract workers with:

- i. express notice that they may be adversely affected by this exemption if they are not an Australian citizen or if they hold dual citizenship;

- ii. a reasonable explanation in plain English of the nature of any adverse effects of such action to them; and
- iii. information (at the time of recruitment in the case of prospective employees, contractors or contract workers) about how they can apply for Australian citizenship.

D. In addition to the above conditions the Applicants are required to:

1. produce comprehensive anti-discrimination policies governing all aspects of the work and workforce, including management, and with particular regard to race discrimination, vilification and harassment and victimisation;
2. 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 and harassment and victimisation;
3. implement training programs, including at induction, to ensure that all members of the Applicants' 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;
4. 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;
5. take steps to fully inform the workforce, including management, of their rights under the *Anti-Discrimination Act 1977 (NSW)* and, in particular, but not limited to, the complaints procedure under the *Anti-Discrimination Act 1977 (NSW)* and to ensure that all members of the workforce, including management, are aware of the rights of aggrieved persons to take their complaints to Anti-Discrimination NSW and through the New South Wales Civil and Administrative Tribunal;
6. take steps to fully inform the workforce, including management, of the requirements of, and their rights and obligations under, the *Racial Discrimination Act 1975 (Cth)*;
7. notify Anti-Discrimination NSW if the discriminatory terms and provisions of the relevant US legislation and/or Regulations are repealed or become inoperative, so that this Exemption Order may be revoked or amended.

E. The Applicants are required to advise Anti-Discrimination NSW, every 12 months from the date of this Exemption Order, over the period specified in this Order, of:

1. The steps they have taken to comply with all the above conditions, including:
 - a) the number of job applicants rejected for ITAR purposes, including those subsequently appointed to other roles within each reporting period;

- b) the number of employees retrenched or redeployed due to ITAR requirements and any steps taken to minimise retrenchment or redeployment, and any steps taken generally to mitigate the impact of the Applicants' responsibility under ITAR on the deployment of its workforce within each reporting period;
- c) the number of vacancies advertised within each reporting period, including the number of such vacancies where candidates were required to satisfy ITAR related requirements.

2. The implementation and compliance generally with the terms of this Exemption Order.

F. The Applicants are required to take all reasonable steps to ensure that any employees adversely affected by this Exemption Order, retain employment with the Applicants, and do not suffer a reduction in wages, salary or opportunity for advancement.

If the Applicants, in order to enable it to comply with the US Regulations or related contractual obligations associated with the US Regulations, moves a member of the workforce from one project to another, the Applicants must take reasonable steps both to explain to that person why the transfer has occurred and to avoid any race-based hostility that might result from the transfer.

Where prospective employees adversely affected by this Exemption Order would otherwise have been acceptable to the Applicants as employees, the Applicants are required to consider and, if feasible, implement reasonable and practicable alternatives to rejection, such as employment in other work or obtaining the necessary approvals under the US Regulations.

In this Exemption Order:

- the expression "Applicants" means together, BAE Systems Australia Pty Limited and ASC Shipbuilding Pty Limited; and
- the expression "ITAR Controlled Material" means controlled defence articles, technical data and defence services which are the subject of export controls under US Export Regulations.
- 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 from time to time, so far as they apply to US Export Controlled Material used in the Applicants' operations.

This Exemption is granted for a period of **5** years.

Date: 16 December 2024



Helen McKenzie
President
Anti-Discrimination NSW