

IMPORTANT NOTICE

BAE Systems Australia Limited, BAE Systems Australia Defence Pty Ltd, and ASC Shipbuilding Pty Limited (**the Applicants**) have applied to the Victorian Civil and Administrative Tribunal (VCAT) for exemption from the *Equal Opportunity Act 2010* (Vic) (**EO Act**) to allow each of the Applicants to undertake the following activity:

- (a) requiring members or potential members of the Applicant's Victorian workforce (employees and contract workers) to provide details of their nationality and country of origin to enable the Applicant to determine whether they are permitted under the security requirements to work on certain defence-related projects or to have access to controlled material or controlled information;
- (b) identifying (by means of a badge, maintenance of a list or otherwise) those in its Victorian workforce permitted by virtue of their nationality to work on certain defence-related projects or have access to related controlled material or controlled information so as to distinguish them from those not so permitted;
- (c) preventing the release of controlled material or controlled information to members of that workforce on the basis of their nationality;
- (d) requiring members of that workforce to execute formal security agreements based on nationality;
- (e) restricting access to controlled material and controlled information connected with certain defence-related projects to particular members of that workforce based on their nationality;
- (f) restricting access to areas of its facilities connected with certain defence-related projects to particular members of its Victorian workforce based on their nationality;
- (g) rejecting applications to join its Victorian workforce in positions relating to certain defence-related projects based on the Applicant's nationality, and taking into account a person's nationality in determining who should be offered employment or contract work requiring access to controlled material or controlled information;
- (h) transferring members of its Victorian workforce from certain defence-related projects on the basis that, due to their nationality, the Applicant may not permit them to work on those projects, whether that transfer takes into account existing or changed nationality;
- (i) disclosing information about the nationality of members of its Victorian workforce to:
 - (i) the US Department of State;
 - (ii) the US Department of Commerce;
 - (iii) the US Federal Aviation Authority;
 - (iv) the Australian Department of Defence; and/or
 - (v) any other organisation for which or on whose behalf or at whose request the Applicant undertakes work in respect of which the Applicant has (directly or

indirectly) an obligation not to transfer defence-related information to non-Australian citizens.

The Applicants have suggested the following conditions apply to any exemption granted:

SCHEDULE OF CONDITIONS TO EXEMPTION

1. This exemption applies only to conduct by the Applicant where it has taken all steps reasonably available (including steps that might be taken in negotiating or performing any contract) to avoid the necessity to engage in the specified conduct.
2. Where the specified conduct involves moving a member of the Applicant's Victorian workforce from one project, area or facility to another, the Applicant must, through a duly authorised officer, explain to the person why he or she is being transferred and must otherwise take all reasonable steps to avoid or limit harm or loss to that person which might arise from the transfer.
3. Where the Applicant has a system of badges or security passes to identify those in its Victorian workforce permitted by virtue of their nationality to work on certain defence-related projects or to access related controlled material or controlled information, or levels of access to that material or information, the pass or badge may show a code that indicates the holder's nationality, but not in such a way that a person unfamiliar with the code would be able to identify that nationality.
4. All information relating to security passes or badges, security clearance levels, or access to controlled material or controlled information, must be restricted to the Applicant's Manager of Security and Human Resources Manager and their properly appointed nominees on a 'need to know' basis.
5. The Applicant's employment policies must be amended as soon as reasonably possible so as to refer to the terms and conditions of this exemption, and to make it clear that the purpose of requiring information regarding nationality is solely to enable compliance with the security requirements.
6. The Applicant must provide a copy of this exemption to:
 - (a) existing contractors who supply it with contract workers, as soon as is reasonably possible after this exemption commences; and
 - (b) any new contractors who supply it with contract workers, as soon as is reasonably possible after the relevant contract is entered into.
7. The Applicant must report in writing to the Victorian Human Rights and Equal Opportunity Commission and the Tribunal every 12 months 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 the Applicant to comply with the EO Act and the terms and conditions of this exemption, including training and education given to its Victorian workforce, compliance audits, and any complaints made under the EO Act;

- (b) the number of applications to join its Victorian 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 Victorian workforce moved to other projects, areas or facilities under the exemption, and any steps taken to minimise harm or loss to those people arising from the transfers; and
 - (d) the number of Victorian workforce vacancies advertised or offered under the exemption.
8. The Tribunal, in determining whether to renew or revoke this exemption, may (as well as other factors) take into account any breach of these conditions and anything in any report under condition 7.

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 H71/2022.

If you would like the Tribunal to hold a hearing and hear oral submissions, please contact the Tribunal in writing to humanrights@vcat.vic.gov.au or on 1300 018 228 asking for a hearing to be listed. Please quote reference H71/2022.

The closing date for submissions and requests for a hearing is 14 June 2022.