



# Fundamental Research and Nationality Deep Dive – Responses to Questions

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These responses are designed to assist you in understanding Defence Export Control's regulatory framework. It is not legal advice nor intended to be legal advice and it may therefore include some generalisations about the law. Some provisions of the law referred to have exceptions or prerequisites, not all of which may be described here. Defence does not guarantee the accuracy, currency or completeness of any information contained in this document. Your particular circumstances and activities must be taken into account when determining how the law applies to you. These responses are therefore not a substitute for obtaining your own legal advice and does not imply that other regulatory obligations would not be applicable to certain activities

## How do you determine if a body corporate is Australian?

A body corporate will be considered an 'Australian person' for the purposes of the *Defence Trade Controls Act 2012* if it is incorporated by or under a law of the Commonwealth or of a State or Territory.

## Is there a simple test for Fundamental Research in the MADE portal?

The MADE portal's self-help tool is currently orientated towards guiding users through the offences, exemptions and exceptions contained in Australia's defence export controls legislative framework, rather than providing a test for Fundamental Research. However, a simplified test for Fundamental Research (set out in the deep dive) is to see if your research activity satisfies the following three elements:

- 1) It is basic or applied research (per OECD definition);
- 2) The results of the research are intended for public disclosure (or ordinarily would be published); and
- 3) It is not otherwise subject to disclosure restrictions (for security or defence reasons).

If you are still unclear whether the activity would satisfy these elements of Fundamental Research, consult your internal compliance officer or contact Defence Export Controls.

## If the company is Australian, does their employees' nationality matter?

*Note: For the purposes of answering this question, the below response assumes that the 'company' being referred to in this question is the recipient/end-user of DSGT technology being supplied from another company within Australia (i.e. a supply under section 10A of the DTC Act).*

In short, yes.

A person who is supplying DSGL technology to another person, and that other person is a company (whether that company is incorporated in Australia or not), will need to ensure they have the required permits to conduct the supply to the 'foreign person'.

In general, it is open to applicants to either apply for a permit to supply DSGL technology to individuals or corporate entities, or both if required in a particular situation. In regards to the application of section 10A to supplies to companies, if a person is supplying DSGL technology to an individual who is an employee of a company, and is receiving that DSGL technology in the course of their employment/on behalf of their employer, that supply may be to both the individual employee and their employer entity. In the scenario described, the supplier will still need to ensure that they have the required permits if supplying to a foreign employee of that Australian company.

See section 10A(3) of the DTC Act for further information as to how this offence applies to employees of companies as well as an explanation as to why a permit may be required if the officer or employee is a non-exempt foreign person.

**Can a permanent resident in Australia (e.g. New Zealand national) apply for a security clearance, or be eligible to use the AUKUS licence-free environment?**

An 'Australian person' under the DTC Act includes Australian citizens and permanent residents (as well as other Australian corporate and government entities). The AUKUS exemption (licence-free environment) can be used for exports or supplies of DSGL goods or technology to an Australian person, as long as all other requirements of the AUKUS exemption are met (including registration, locational and restricted goods/technology requirements). Please refer to page 17 of the [DEC Guidance and Examples](#) for further information.

Any questions regarding security clearances should be directed to AGSVA. Further information can be found [here](#).