



Section 10C 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

Can a permit for Section 10C exempt the need for a Foreign Work Authorisation under the Safeguarding Australia's Military Secrets amendments to the Defence Act?

No. You may still require a Foreign Work Authorisation (FWA) under the [Defence Act 1903](#) Part IXAA – Safeguarding Australia's Military Secrets (SAMS), despite having a permit for Section 10C of the DTC Act. Further information about SAMS authorisation requirements can be found [here](#).

If you already hold a FWA, then a permit may not be required for Section 10C DSGL services that you provide (see subsections 10C(2A) and (2B) of the DTC Act).

Would an Australian company still need their own DEC permit for Section 10C, even if the individuals working for the company all held the appropriate Foreign Work Authorisations?

If Section 10C services are provided in the name of an Australian company, that company would need a permit, in addition to the individual Australian employees who are providing the services.

Would a foreign company need a DEC permit for a Section 10C activity, or is it up to the Australian individual being employed to apply for a DEC permit (or FWA)?

For an activity to fall within the scope of Section 10C, the person providing the DSGL services must be an Australian person (see section 10C(1)(e) DTC Act). Therefore, Section 10C does not apply to the activities of a company registered outside Australia.

If an Australian person employed by a foreign company provides DSGL services within the scope of Section 10C, they will require a DEC permit or SAMS FWA (depending on whether any exemptions or exceptions apply).

Does the 10C(4) 'FCL intracompany' exception only relate to companies in a corporate structure located in an FCL country?

The FCL intracompany exception (for DSGI services provided by an Australian person within a company to FCL employees/officers of that company in the course of their duties) applies regardless of the geographic location of the company in question, so long as the services are received at a place outside of Australia by the FCL employee/officer.