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# In-Focus Sessions – Q&A Chat Transcript

## 14 & 17 February 2025

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

| Question | Response |
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| Can you please confirm that we only need to provide a pre-notification when we are using the LFE, not when we are relying on an exception / exemption? | Yes. The only obligation when using an exception is maintaining the appropriate records. |
| Is there any liability on the exporter in Australia under 10B? | There is no liability for the original Australian exporter, but it may impact risk assessments for future permit applications made by that Australian exporter. |
| How do we evidence someone is a resident or citizen of the US or UK, to ensure we meet requirements of AUKUS license free? Are there specific documents that are accepted as evidence? | Passport or visa status are the best way to confirm this information. |
| If the non-exempted FCL person working for the same company access controlled technology as part of their routine job to develop or modify the source code, do they need to have a permit? | If they are not an exempt person (i.e. FCL for regular goods/tech, any foreign person for EGTL/AMSP goods/tech), a 10A permit will be needed to cover the original provision of access. Subsequent uses / access would then be covered by this 10A permit. |
| Would it still be good practice to keep our own records to show the FundRes justification | Yes, but those records would not be subject to the legal requirements about being held for 5 years or being produced when requested |
| To confirm... the FCL recipient exception therefore needs record keeping as per your previous slide (description of the DSGL Techology and the country) | Correct - just the limited record-keeping requirements (i.e. description of DSGL good/tech/service + country where received, which would always be Australia for 10A) |

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| Under 10A, assuming the exemption doesn't apply, does that mean you could require a permit to provide access to technology by your own employees? | Correct - if you are making a 10A supply of DSGL technology to a non-exempt foreign employee (non-FCL normally, or any foreign person for EGTL/AMSP tech), then you would require a permit. However remember 10A does not apply to supplies to Australian persons (e.g. Aus citizens, permanent residents, body corporates) |
| With 10A, would you still need a permit if the employee had dual citizenship eg., foreign not on FCL and australian? | Section 10A does not apply to DSGT tech supplies with Australia to Australian persons - Australian persons include citizens, permanent residents, body corporates, governments/authorities. Additional (dual) citizenship is not considered by s10A |
| Sorry under s10A, earlier it was said that this would include 'access', but the slide on page 24 suggests that if it is just being accessed, it doesn't fall under s10A. Please confirm | The provision of access is considered a s10A supply, but each subsequent access is not |
| Regarding 10B exceptions, if the foreign person re-export to FCL countries, he/she does not need a permit ? Please confirm. | The 10B exception for involvement of FCL countries only applies to DSGL Part 2 goods/tech. It does not apply to DSGL Part 1 goods (i.e. a 10B permit would be required). |
| Does the AUKUS agreement (and the pre-notifications) apply to our company employees who are in the US/UK and are citizens of the US or UK, but work for our organization or its subsidiaries? | Yes the AUKUS licence-free environment can be used by those US and UK citizens - find the full eligibility criteria here: https://www.defence.gov.au/business-industry/exporting/applications-pre-notifications/licence-free-environment |
| Apologies, does that mean, for our own employees, that are in US/UK, we have to do the pre-notifications (AUKUS pre-notification). And if yes, is that one general notification for all their upcoming related projects/work ? | DSGL tech supplies to employees in the US and UK would require a s10 permit if no other exception applied. You are right that you could use the licence-free environment as an exception, and the pre-notification provided could be a general one (i.e. covering the scope/duration of the project) |
| Does the DSGL definition and it doesn't include operation/maintenance imply that Managed Service Providers (MSPs) and other technicians accessing the data do not need 10A permits if they are not in the Foreign Country List (FCL)?" | You'd have to consider if the definition of DSGL tech is met in case-by-case. The installation / operation / maintenance / repair clause is only for non-DSGL goods or DSGL goods whose export has already been authorised. |
| Apologies, I am not sure if I misheard it or not, so just confirming here. Is it the case that you not need a s10B permit if the original supplier/exporter is resupplying/reexporting? | The overseas re-supplier/exporter needs to apply for and hold a 10B permit (if 10B applies) - not the Australian exporter |
| Thank you for the explanation. May I ask where in DTCA clarifies this point? I can only see the subsection 10B(1)(e) but still appears unclear in completely answering this point. Your help is much appreciated. | Check out the latest version of the Defence Trade Controls Act 2012: https://www.legislation.gov.au/C2012A00153/latest/text. ss10B(d) indicates that 10B only applies to supplies outside of Australia (i.e. not the Australian exporter/supplier) |

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| To confirm, an Australian APS employee who supplies ETL technology to an Australian APS employee based overseas will need to obtain a s 10 permit as the ETL by and large is an exclusion to the exceptions? | In the circumstances of an APS to APS s10 supply, check the exception in ss10(3)<br>(3) Subsection (1) does not apply if:<br>(a) the DSGL technology is supplied by or on behalf of a person or body to an officer or employee of the person or body; and<br>(b) the officer or employee is:<br>(i) an Australian citizen or permanent resident of Australia; or<br>(ii) a citizen or permanent resident of a foreign country that is specified in an instrument under subsection 15(4A); and<br>(c) the supply occurs in the course of the officer or employee's duties as an officer or employee. |
| Similarly, if US technology is sent to Australia (e.g. under an FMS case) and is on the ETL, then a US person in Australia will need a s 10A permit to access that US ETL technology, and would need a s 10 permit to engage with the US regarding that technology? | Keep in mind a s10 or s10A permit is only required if a supply (or provision of access) is provided to a new person. It is not required if DSGL tech that a person already has access to is being used/accessed. |
| Is there an exemption which applies to operational requirements? For example, if a US ship containing ETL goods transits through Australian territory, would the US need to obtain a permit for the 'export' of those ETL goods once the ship leaves Australian territory, or for US personnel to access those ETL goods within Australian territory? | No operational exception per se, but the key thing will be whether a 13E export or a 10 / 10A supply actually occurred (this tends to involve the transfer from one person to another) |
| Do you need to become an AUKUS authorised user before applying for Australian Authorized User? | You can enrol for both at the same time, although you will always receive AUKUS Authorised User certification first (as the US certifies Australian Authorized Users) |
| I would like to confirm, this is referring to the transfer of data only? Would it apply to granting of personnel to Objective? E.g a USA personnel without Australian Citizenship, who is requiring access to data in our MIWS Objective space. | You would have to look closely at whether a s10A supply actually occurred. Provision of access is considered a s10A supply, however also consider if the supply involves DSGL technology by its definition in the DSGL. But if the answer to both of these is yes (and in the case of US/FCL citizen the tech was on the ETGL/AMSP), then a 10A permit may be required |

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