



Australian Government

Department of Foreign Affairs and Trade



**DFAT responses to recommendations – Jubilee Australia,
ACF and ActionAid Australia submission**

**Inquiry into the Export Finance and Insurance Corporation
Amendment (Equity Investments and Other Measures) Bill
2021**

**Senate Foreign Affairs, Defence and Trade
Legislation Committee**

17 August 2021

The Department of Foreign Affairs and Trade (DFAT) thanks Jubilee Australia, ACF and ActionAid Australia for their joint submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the Committee) inquiry into the Export Finance and Insurance Corporation Amendment (Equity Investments and Other Measures) Bill 2021. At the request of the Committee, DFAT provides the following responses to the recommendations made in the joint submission. This is supplementary to the joint submission made to the inquiry by DFAT and EFA on 12 August 2021.

Recommendation 1

Insert a new Schedule 3 into the Bill to introduce a requirement to consider Australia’s commitments relating to climate change:

1. Division 10 (Miscellaneous) Prohibition on financing of fossil fuels

(1) Assistance must not be provided under this Act if the assistance is for purposes relating to, or is expected to result in, the extraction or use of fossil fuels.

(2) It must be a condition of any assistance provided under this Act that the assistance not be used (whether directly or indirectly) for the extraction or use of fossil fuels.

(3) Assistance includes a guarantee, indemnity, loan, insurance, reinsurance, financial service, financial product, subsidy or investment

Response

Export Finance Australia (EFA) assesses requests for its financing support on a case-by-case basis, consistent with its mandate to support Australian export-related businesses and overseas infrastructure development that delivers benefits to Australia. There are a range of policies and directives that EFA must take into account when assessing fossil fuel-related transactions and projects. These include its Ministerial Statement of Expectations, as well as international standards and benchmarks EFA is required to have regard to, such as the OECD Arrangement on Officially Supported Export Credits, the World Bank’s International Finance Corporation (IFC) Performance Standards and the OECD Common Approaches. In addition, EFA is a signatory to the Equator Principles, a risk management framework for determining, assessing and managing environmental and social risk in projects.

EFA will assess equity investments by conducting appropriate due diligence. This includes due diligence on environmental and social issues, which includes consideration of climate-related risks.

Recommendation 2

Additionally, insert the following in Schedule 3:

1. Section 8

At the end of the section, add: “(6) EFIC is to perform its functions in a way that contributes to Australia’s implementation of the Paris Agreement

Response

Export Finance Australia is already required by law to have regard to Australia’s obligations under international agreements and will continue to support projects on a case-by-case basis that are consistent with Australia’s international obligations. The Australian Government is responsible for Australia’s Paris Agreement implementation and commitments.

Recommendation 3

EFA’s Statement of Expectations should be amended to require EFA to consider whether a project to be financed (including where the financing is an equity investment) delivers benefits for the recipient nation.

The Minister’s Statement of Expectations requires EFA to “reasonably satisfy itself through due diligence... [that] the infrastructure project is appropriate for the relevant nation and the governance surrounding project procurement is sound”. EFA’s due diligence processes include debt sustainability analysis and compliance with a range of international economic, financial, environmental and social risk standards.

The Statement of Expectations also requires EFA to apply international standards for the assessment of projects and make public its *Policy and procedures for environmental and social review of transactions* (the Policy).

The Statement of Expectations requires EFA’s Policy to be consistent with international best-practice environmental and social standards, including the:

- IFC Performance Standards, which define responsibilities for managing environmental and social risks;
- OECD Guidelines for Multinational Enterprises, a comprehensive set of recommendations on responsible business conduct;
- Equator Principles, a risk management framework adopted by financial institutions for determining, assessing and managing environmental and social risk in projects; and
- OECD Common Approaches, which seeks to align OECD export credit agencies’ environmental and social due diligence practices through information sharing and monitoring of projects.

Recommendation 4

The Bill should be accompanied by an amendment to the Freedom of Information Act 1982 (Cth) to revoke EFA's partial exemption (provided in Schedule 2).

Response

EFA, as a corporate Commonwealth entity governed by the *Public Governance, Performance and Accountability Act 2013*, is subject to a range of transparency and governance requirements. EFA is also accountable to the Minister for Trade, Tourism and Investment and to the Australian Parliament.

Within eight weeks of a transaction being signed, EFA is required to publish detailed information on its website about each transaction. These details include the name of the client, the sector, the goods/services or overseas infrastructure involved, the country, the type of facility and the value of the facility of the export of overseas infrastructure support.

EFA also publishes an annual report, which provides details on the transactions EFA finances. EFA discloses its proposed involvement in transactions with the potential for significant environmental and/or social impacts on its website prior to making a decision on the provision of finance.

Like other financial institutions – including banks, export credit agencies and multilateral development finance institutions – EFA must respect the commercial-in-confidence information of its customers. This means it is not always able to disclose details of transactions under consideration. EFA is obliged to safeguard its customers' legitimate financial or business interests. Without the ability to protect commercial-in-confidence information, EFA would not be able to operate.

Recommendation 5

A condition of granting of the new powers should be that EFA strengthens its Environmental and Social Review Policy and Procedures, with a focus on:

- **Complying with more robust international standards**
- **Applying those standards to all transactions financed by EFA**
- **Significantly improving disclosure regarding environmental and social review of transactions**
- **Strengthening technical expertise to ensure that gender analysis is embedded across all aspects of EFA's work, and**
- **Developing a more transparent and independent complaints mechanism.**

Response

As DFAT has noted in our response to 'Recommendation 3', the Minister's Statement of Expectations requires EFA to apply a range of international standards and benchmarks for the assessment of projects and to make public its *Policy and procedures for environmental and social review of transactions* (the Policy). EFA's Policy is reviewed at a minimum of every five years with feedback sought from interested parties as part of the review process.