



ActionAid Australia  
Level 2, Suite 2, 10 Mallett St  
Camperdown NSW 2050

## **Inquiry into the provisions of the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016**

### **Submission to Senate Foreign Affairs, Defence and Trade Legislation Committee**

**13 January 2017**

#### **Introduction**

ActionAid Australia welcomes the opportunity to make a submission to the inquiry into the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016 (the Bill).

ActionAid supports women living in poverty to stand up and claim their human rights by collectively confronting the injustices they face. In more than 45 countries, it supports women to understand their rights, reflect on the people and systems that affect them, and harness their power to act with others to change their lives and positions in society. This work includes supporting women from mining-affected communities in their efforts to ensure equal benefits from natural resources and to influence relevant government policies.

Our understanding of the purpose of the Bill is to amend the *Export Finance and Insurance Corporation Act 1991* (Efic Act) to expand the functions of the Export Finance and Insurance Corporation (Efic) to include the provision of services to Commonwealth entities and companies, subject to ministerial approval; and expand Efic's powers to enable direct lending to a wider range of small to medium sized enterprises (SMEs).

ActionAid recommends that prior to considering expanding the functions and remit of Efic, the Government should first address serious concerns regarding Efic's insufficient transparency and environmental and social policies. These issues have been raised repeatedly by civil society organisations, and were recognised by the Productivity Commission in 2012,<sup>1</sup> but have not yet been adequately addressed. ActionAid sees the current Bill as an opportunity to address these problems through additional amendments to the Efic Act.

#### **Summary of recommendations**

In order to ensure Efic's decision making is guided by the Australian Government's international obligations and domestic policies, ActionAid recommends that the Bill is expanded to require Efic to:

1. Meet regularly with the National Contact Point to review any human rights concerns that may be relevant to Efic's investments, and publish minutes of these meetings publicly (the National Contact Point should separately be adequately resourced to ensure an effective grievance mechanism for men and women suffering human rights violations due to the actions of Australian businesses operating overseas).

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<sup>1</sup> Productivity Commission (2012), *Inquiry into Australia's Export Credit Arrangements*, <http://www.pc.gov.au/inquiries/completed/export-credit/report>



2. Conduct specific due diligence to ensure promotion of gender equality in all potential transactions, in line with the gender and women's empowerment strategy under DFAT's Strategic Framework 2015-2019.
3. Conduct specific due diligence to ensure respect for human rights in all potential transactions, in line with Australia's international human rights obligations outlined below, including the UN Declaration of the Rights of Indigenous people and the requirement of free, prior and informed consent therein.
4. Proactively inform businesses applying for loans and guarantees of requirements under the OECD Guidelines for Multinational Enterprises including OECD-FAO Guidance for Responsible Agricultural Supply Chains (which incorporate the Voluntary Guidelines for the Governance of Tenure) and OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.
5. Adhere to and conduct due diligence in line with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), consistent with Australia's aid investments.
6. Reject subsidising fossil fuel projects in future transactions in line with Australia's global commitments to reducing carbon emissions.
7. Conduct due diligence on the potential carbon emissions associated with all potential transactions.
8. Publish due diligence assessments publicly and be subjected to the *Freedom of Information Act 1982*.

### **Efic and Australia's international human rights obligations**

As noted by the Human Rights Law Centre in 2011 in their submission to the Productivity Commission's review of Australia's export credit arrangements, Efic is an organ of the state and as such is bound by Australia's international human rights obligations.<sup>2</sup> This includes all of the human rights treaties to which Australia is a signatory, as well as the Common Approaches set out by the OECD Working Group on Export Credit, the Equator Principles, and the UN Guiding Principles on Business and Human Rights.

As previously identified by civil society organisations such as Jubilee Australia, serious human rights concerns have emerged from Efic's activities, such as the PNG LNG Project.<sup>3</sup> Although Efic recently adopted a short Human Rights Statement, it is ActionAid's view that this is insufficient to ensure compliance with Australia's full human rights obligations and to prevent further violations through Efic's activities.

ActionAid notes that the Bill in its current form would expand Efic's remit to work with Commonwealth entities, already bound by Australia's international human rights obligations, which makes it logical for Efic to be governed by the same obligations. Additionally, expanding Efic's role in the global supply chain as currently proposed would also increase the risk of Efic's involvement, directly or indirectly, in human rights abuses which can occur throughout the supply chain.

Given that this Bill may increase the risk of human rights violations through Efic's expanded role, ActionAid recommends including amendments in the Bill to ensure Efic upholds human rights

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<sup>2</sup> Human Rights Law Centre (2011) *Submission to the Productivity Commission's Inquiry into the Export Finance and Insurance Corporation*, <http://www.pc.gov.au/inquiries/completed/export-credit/submissions/sub013.pdf>

<sup>3</sup> Jubilee Australia (2012) *Pipe Dreams: The PNG LNG Project and the Future Hopes of a Nation*, <http://www.jubileeaustralia.org/page/work/pipe-dreams-report>



through comprehensive and transparent due diligence in assessing environmental and social consequences of potential investments. In particular, Efic should be required to:

- **Meet regularly with the National Contact Point to review any human rights concerns that may be relevant to Efic’s investments, and publish minutes of these meetings publicly (the National Contact Point should separately be adequately resourced to ensure an effective grievance mechanism for men and women suffering human rights violations due to the actions of Australian businesses operating overseas).**
- **Conduct specific due diligence to ensure promotion of gender equality in all potential transactions, in line with the gender and women’s empowerment strategy under DFAT’s Strategic Framework 2015-2019.**
- **Conduct specific due diligence to ensure respect for human rights in all potential transactions, in line with Australia’s international human rights obligations outlined above, including the UN Declaration of the Rights of Indigenous people and the requirement of free, prior and informed consent therein.**
- **Proactively inform businesses applying for loans and guarantees of requirements under the OECD Guidelines for Multinational Enterprises including OECD-FAO Guidance for Responsible Agricultural Supply Chains (which incorporate the Voluntary Guidelines for the Governance of Tenure) and OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.**
- **Adhere to and conduct due diligence in line with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), consistent with Australia’s aid investments.**

#### **Efic and Australia’s international climate change obligations**

As the world moves to address the crisis posed by climate change, and especially with the Paris Agreement having come into force in 2016, the role of fossil fuel subsidies in contributing to carbon emissions is increasingly under international scrutiny. It is well established that export credit agency funding for fossil fuel developments should be considered a fossil fuel subsidy due to loans being backed by governments. The OECD Export Credits Working Group has already agreed to stop funding coal-fired power stations,<sup>4</sup> and various international frameworks including the Sustainable Development Goals<sup>5</sup> and the G20 Toronto and Pittsburgh commitments outline the importance of phasing out fossil fuel subsidies.<sup>6</sup>

Despite international standards for climate policy and fossil fuel subsidies, Efic currently lacks policy guidance in these areas and is therefore not required to consider the carbon emissions associated with investments that it supports. ActionAid also notes that with an increased focus on SMEs, there is an opportunity for Efic to explicitly move beyond its past role in financing large fossil fuel companies, to instead invest in renewable energy and non-carbon intensive industries.

ActionAid recommends that the Bill addresses these issues by requiring Efic to:

- **Reject subsidising fossil fuel projects in future transactions.**
- **Conduct due diligence on the carbon emissions associated with all potential transactions.**

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<sup>4</sup> OECD (2015) *Sector Understanding on export credits for coal-fired electricity generation projects (CFSU)*, <http://www.oecd.org/tad/xcred/cfsu.htm>

<sup>5</sup> Sustainable Development Goal 12, <https://sustainabledevelopment.un.org/sdg12>

<sup>6</sup> G20 (2009) *The Pittsburgh Summit commitments*, <http://www.g20.utoronto.ca/analysis/commitments-09-pittsburgh.html>



### **Transparency of Efic's transactions and due diligence**

The Australian public have the right to access information about taxpayer backed investments in Efic and to assess their resulting value for money and adherence to global obligations and national policies. Accordingly ActionAid recommends that **Efic should be required to publish due diligence assessments and be bound by the *Freedom of Information Act 1982*.**

### **Conclusion**

ActionAid recommends that the Government does not expand the functions and remit of Efic without first addressing Efic's insufficient transparency and environmental and social policies. We see the current Bill as an opportunity to address these problems through additional amendments to the Efic Act that would ensure Efic meets Australia's international obligations on human rights, gender equality and climate change, and to improve transparency of Efic's decision making to the Australian public.

### **Submitted by:**

Michelle Higelin  
Deputy Director, ActionAid Australia  
[Michelle.higelin@actionaid.org](mailto:Michelle.higelin@actionaid.org) | 0426 588 002