

2019

Submission to the Foreign Affairs, Defence and Trade Legislation
Committee on the Export Finance and Insurance Corporation
Amendment (Support for Infrastructure Financing) Bill 2019

SUBMISSION

About Jubilee Australia

Jubilee Australia engages in research and advocacy to promote *economic justice* for communities in the Asia-Pacific region and *accountability* for Australian corporations and government agencies operating abroad. Its work focuses on three areas: (1) sustainable economies, (2) the right of affected communities for justice and consent, and (3) policy reform in Australia to ensure that Australian government and corporate practices support community wellbeing and a just and sustainable global economy. Jubilee's work on extractives has mainly focussed on the impact of Australian companies in PNG and Bougainville in recent years.

About Caritas

Caritas Australia is the Catholic agency for international aid and development and, as an integral part of the Church, lives out the mission of Jesus in all that we do. With love and compassion, Caritas Australia works alongside the poorest and most marginalised people, accompanying them as they help themselves out of poverty and take greater control of their lives. We are a member of Caritas Internationalis, one of the world's largest humanitarian networks with 165 national Caritas agencies operating in over 200 countries and territories.

Introduction – summary

Jubilee Australia Research Centre (JARC) and Caritas welcome this opportunity to provide comments to the Foreign Affairs, Defence and Trade Legislation Committee for the *Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019*.

We understand that the primary intention of this act is to increase Efic's callable capital from \$200 million to \$1.2 billion, hence the primary focus of this submission is about the call for a capital increase. We understand however, that the secondary goal is for Efic to potentially be involved with the Australian Infrastructure Financing Facility for the Pacific (AIFFP). We will not go into detail about this in this submission, as Jubilee Australia is currently writing a paper investigating the AIFFP as well as making an independent submission to the DFAT consultation on the AIPP.

We are concerned that if allowed, the Bill will give Efic the power to provide finance to fossil fuel projects in the region, which not only would be inconsistent with the Paris Agreement but would push for an unsustainable development model. Other concerns relate to Efic's poor accountability and transparency and the lack of details about the purpose and function of the AIFFP.

Based on this, we recommend:

- (1) A moratorium to be put in place on Efic investments in fossil fuel projects of any type, including all fossil fuel extractive projects and pipelines (coal, LNG and oil), as well as any transport or infrastructure, supporting fossil fuel projects.
- (2) The Government to support a moratorium on financing for fossil fuel projects for all Export Credit Agencies as part of its participation in the OECD Working Group on Export Credit.
- (3) A removal of Efic's exemption from the Freedom of Information Act, and the following documents should at a minimum be available on Fol request:
 - a. Project assessments undertaken during due diligence;
 - b. Modification and mitigation measures required by Efic, and;
 - c. Project monitoring and evaluation documents generated by Efic project proponents and consultants throughout project implementations.
- (4) A requirement that Efic publicly release its benchmarking against the IFC Performance Standards (and any other standards being used such as the Equator Principles) for scrutiny before approving any Category A project.
- (5) Reform of the Efic complaints mechanism to ensure that the mechanism is independent, that the investigator has full access to all documentation and that the findings are made public.
- (6) Increased scrutiny of the National Interest Account in alignment with the recommendations from the Productivity Commission's 2012 Report.
- (7) The appointment of Efic's as administering agency for the AIFFP should be taken out of the bill
- (8) A proper examination and public discussion of the aims and purposes of the AIFFP should be done before an alternative mechanism is proposed.

SECTION A: THE CALL FOR CAPITAL INCREASE

1: CLIMATE CHANGE

1.1: Export Credit Agencies and Fossil Fuels

It is clear that one of the primary intentions of this Bill is to facilitate the development of fossil fuel projects overseas with implicit Australian taxpayer backing from Efic. During the second reading of the *Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019*, the Assistant Minister for Trade, Tourism and Investment, Mark Coulton, referenced ExxonMobil and OilSearch's PNG LNG as a model project that this Bill would allow Efic to do more of (see section 1.3 below for more on this project). Moreover on several occasions Mr Coulton specifically emphasised that if the Bill is passed, Efic's new power will enable them to finance more new LNG projects.¹ The submission by Australian-based company OilSearch, which is one of the major oil companies operating in the Pacific (mainly PNG), makes clear that it intends to benefit from these changes to Efic's capacity.² It is therefore clear that the bill is specifically designed to support fossil fuel projects in the region.

The magnitude of the threat of climate change to the planet and all living beings on it, especially the most marginalised and vulnerable communities, is now universally accepted. In the meantime, renewable energy is getting cheaper and fossil fuels more expensive. As a result of these commercial realities, as well as campaigning from civil society, private sources of finance for fossil fuel projects have dried up, as has the support from multilateral development banks.³ But Export Credit Agencies (ECAs) have stepped into the breach: from 2007-2015, amounts provided by G7 ECAs to new coal plants amounted to US\$29 billion dollars.⁴ Support for oil and gas is also significantly higher.⁵ ECAs have helped financed some of the world's most controversial fossil fuel projects, including Russia's Sakhalin II Oil and Gas project and the Chad-Cameroon Oil development, just to name a few. Efic is no exemption to this, and has a long history of involvement with oil, gas and coal projects, perhaps the most contentious being the PNG LNG project to which they loaned AUD\$350 towards (see section 1.3).

1.2: The Paris Agreement

We have only reached a little over 1C above pre-industrial levels and are already witnessing climate change-related catastrophes around the world – from shifting weather patterns that threaten food

¹ Mark Coulton (2019) Efic (Support for Infrastructure Financing) Bill 2019, Second Reading, https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/f45cf053-d00c-473b-88ab-ac7ccd4b00ec/0073/hansard_frag.pdf;fileType=application%2Fpdf

² Nicole Hasham, 'Foreign Energy Giant Wants Australia to Foot the Bill for Fossil Fuel Projects' The Sydney Morning Herald <https://www.smh.com.au/politics/federal/foreign-energy-giant-wants-australia-to-foot-bill-for-fossil-fuel-projects-20190228-p510vf.html>

³ ECA Watch (2014) *Activists demand end of massive OECD support for fossil fuels*, <https://odg.cat/en/blog/activists-demand-end-of-massive-oecd-support-for-fossil-fuels-2/>

⁴ Han Chen et al. (2016) *Swept under the rug: How G7 Nations Conceal Public Financing for Coal Around the World*, p. 7, <https://www.nrdc.org/sites/default/files/swept-under-rug-coal-financing-report.pdf>

⁵ Kate DeAngelis and Alex Doukas (2017) *Financing Climate Disaster*, Friends of the Earth U.S. Oil Change International and WWF, https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/2017.10.16_FinancingClimateDisaster_final.pdf

production, to sea level rise driving the extinction of low-lying islands. The impacts of climate change know no borders, and cost people, communities and countries dearly today, and even more tomorrow.

The Paris Agreement, to which Australia is a signatory, agrees to limit global temperature rise to well below 2C, and more importantly, to pursue efforts to limit the temperature increase even further to 1.5C. Notably, a 1.5C limit to warming is not safe for all, as significant climate change impacts already occur at this stage. Poor and minority groups are the most vulnerable to these impacts due to loss of livelihood, displacement of people and food insecurity.

However, half a degree is still a world apart as there are there are substantially lower risks associated with a 1.5C scenario. To demonstrate, at 1.5C we would likely see the summertime arctic sea disappear once per century, coral reefs to decline by 80% and 14% of the world's population to be exposed to severe heat waves once in five years. At a 2C scenario, however, we would likely see the summertime arctic sea disappear once per decade, coral reefs to decline by 99%, and 37% of the world's population to be exposed to severe heat waves once in five years. Additionally, the species loss for vertebrates and plant would double, as would the decline in marine fisheries.⁶

The newly published IPCC report looked at what must be done to avoid above 1.5C warming. The good news is that this can be done, the bad news is that it will require an immediate and major systemic change at a pace the world has never before seen. The upside is that it is technically possible, economically viable and environmentally sound.⁷

To achieve this goal, anthropogenic CO2 emissions must decline by 45% by 2030. This means that we have 12 years to limit further climate change catastrophes, and there is no room for new fossil fuel projects or the expansion of existing ones.

1.3: The push for an unsustainable development model

The Bill also represents a push for low- and middle-income countries to pursue a fossil-fuel based development model.

Mr. Coulton's remarks during the second reading speech follow this line of argument while justifying the need for Efic's involvement:

When projects have strong commercial prospects, they should be funded commercially. Efic has a track record of supporting infrastructure projects on its commercial account⁸, like the US\$19 billion PNG LNG project that is the largest ever private sector investment in PNG and will bring significant economic benefit to PNG and provincial governments via tax and royalties, local landholders and local business.⁹

⁶ Kelly Levin (2018) *Half a Degree and a World Apart*, World Resources Institute, <https://www.wri.org/blog/2018/10/half-degree-and-world-apart-difference-climate-impacts-between-15-c-and-2-c-warming>

⁷ Intergovernmental Panel on Climate Change (IPCC) (2018) *Global Warming of 1.5C*, <https://www.ipcc.ch/sr15/>

⁸ Jubilee Australia would like to note that \$400 of the \$500 million loan Efic provided to the PNG LNG project came from the National Interest account, not the Commercial Account.

⁹ Mark Coulton (2019) *Efic (Support for Infrastructure Financing) Bill 2019, second reading*, https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/f45cf053-d00c-473b-88ab-ac7ccd4b00ec/0073/hansard_frag.pdf;fileType=application%2Fpdf, p. 17

As pointed out by Mr. Coulton, Efic's loan to the PNG LNG project was crucial to enable financing from the private sector.¹⁰ If the Bill passes, the project is likely to work as a model of the type of investments that Efic will prioritise with their increased capital. It is also likely that most of the financing will go to PNG as it is the largest nation in the Pacific and has significant gas reserves. A continuation of financing fossil fuel projects as this one is clearly not in line with the goal of a 1.5C warming, however, putting climate change aside, could fossil fuels be good for the economy?

Case Study: the PNG LNG project

In the early 2000s, PNG was trying to rebuild from the impact of earlier resource curses.^{11 12} In 2010 however, the PNG LNG project – a massive development project located in the Southern Highlands of PNG, started construction. In 2014, the gas started flowing. Notably, Efic played an important role in this as they lent \$350 million to the project in 2009 (initially the loan was to be \$500 million)..

Recent research by Jubilee Australia shows that the PNG LNG project contributed to a decline for PNG on most measures of economic welfare.¹³ The project also saw undelivered development promises and an increased risk of violence.¹⁴ In this sense, the project has allowed PNG to fall yet again into the resource curse – and the people are suffering because of it.¹⁵ These consequences should come as no surprise as Jubilee Australia warned Efic and the then Trade Minister of this likelihood 2009, as Australia was considering whether to support the project with an Efic loan.¹⁶

As the example of the PNG LNG project clearly shows, the argument that fossil fuels are necessary for successful development is a flawed one. Despite this, a plan to expand the PNG LNG project is in the works. If developed, PNG would become the world's 6th largest LNG exporter in the world, right behind Indonesia. Such an expansion would not only keep pushing PNG unsustainable development path defined by the paradox of plenty, it would also contribute significantly to climate change.

1.4: The need for reform of Export Credit Agencies

It is widely recognised that ECA funding for fossil fuel projects are to be considered as subsidising the industry because the loans are backed by governments. The OECD Export Credits Working Groups announced an agreement on restrictions on the finance for new coal plants in 2015.¹⁷ The

¹⁰ *ibid*, p. 19

¹¹ Resource curse: situation mainly occurring in developing countries with an abundance of natural resources (i.e. fossil fuels, minerals), whereby large-scale resource projects generally struggle to make effective use of these and therefore suffer poor development outcomes.

¹² Paul Flanagan (2018), 'The Distorting Effects of the Resources Sector on National Economies: A Case Study from Papua New Guinea', *Growing Bougainville's Future*, Jubilee Australia Research Centre, 42-49.

¹³ Paul Flanagan and Luke Fletcher (2018) *Double or Nothing: The Broken Economic Promises of PNG LNG*, Jubilee Australia Research Centre, <https://www.jubileeaustralia.org/LiteratureRetrieve.aspx?ID=162637>

¹⁴ Michael Main and Luke Fletcher (2018) *On Shaky Ground: PNG LNG and the consequences of development failure*, Jubilee Australia Research Centre, [https://www.jubileeaustralia.org/literature/162799/On Shaky Ground Report](https://www.jubileeaustralia.org/literature/162799/On-Shaky-Ground-Report)

¹⁵ Flanagan & Fletcher, *Double or Nothing*.

¹⁶ Luke Fletcher, Scott Hickie and Adele Webb (2009) *Risky Business*, Jubilee Australia Research Centre, <https://www.jubileeaustralia.org/LiteratureRetrieve.aspx?ID=60529>

Luke Fletcher and Adele Webb (2012), *Pipe Dreams*, Jubilee Australia Research Centre, <https://www.jubileeaustralia.org/LiteratureRetrieve.aspx?ID=112463>

Jubilee Australia (2009) *Open letter to Minister for Trade, Simon Crean*, 27.10.2009 <https://www.jubileeaustralia.org/latest-news/open-letter-to-minister-for-trade-simon-crean>

¹⁷ Nichole Ghio (2015) *New Report Sheds Light on Overseas Coal Financing by Export Credit Agencies*, Huffington Post, https://www.huffingtonpost.com/nicole-ghio/new-report-sheds-light-on_b_6849222.html

importance of phasing out fossil fuel subsidies is also emphasised in a number of international frameworks, including the Sustainable Development Goals¹⁸ and G20 Toronto and Pittsburgh commitments¹⁹. Despite these international standards, Efic is yet to adopt a climate policy that takes carbon emissions associated with their investments into account.

Adding to this, Australia has long led the international resistance to implement a ban on export credit financing for fossil fuels.²⁰ Combined pressure from Australia and South Korea saw the watering down of the OECD agreement, which although symbolically important, is largely insufficient. First, it only covers coal-fired power plants and no other fossil fuels such as gas which is a significant driver of climate change.²¹ Research shows that even if coal is taken out of the equation, burning oil and gas from already operating fields will take us above 1.5.²² Second, the agreement has other loopholes as it leaves out financing for mining, transport and coal related infrastructure.²³

Based on the significant concerns outlined above, we contend that any financing for fossil fuels projects would be inconsistent with Australia's obligations under international law, the Paris Agreement and other international agreements. Clearly, there exists a need for a reform of ECAs to avoid letting government subsidies add to the world's unhealthy addiction to fossil fuels.

We therefore recommend:

- (1) A moratorium to be put in place on Efic investments in fossil fuel projects of any type, including all fossil fuel extractive projects and pipelines (coal, LNG and oil), as well as any transport or infrastructure, supporting fossil fuel projects
- (2) The Government to support a moratorium on financing for fossil fuel projects for all Export Credit Agencies as part of its participation in the OECD Working Group on Export Credit.

2: Efic'S LACK OF ACCOUNTABILITY AND TRANSPARENCY

Like other ECAs, Efic operates in an environment of very limited transparency. Legislative and policy provisions governing the release of information by Efic includes a presumption against public disclosure.

It seems likely that this is a major reason why Efic has a history of supporting massive extractives projects with large loans and insurance policies, that often are designated category A projects. This

¹⁸ United Nations (UN) (n.d.) *Sustainable Development Goal 12*, <https://sustainabledevelopment.un.org/sdg12>

¹⁹ G20 (2009) *The Pittsburgh Summit Commitments*, <http://www.g20.utoronto.ca/analysis/commitments-09-pittsburgh.html>

²⁰ Lisa Cox and Mark Kenny (2015), *Abbott government resists US moves against coal power*, Sydney Morning Herald, <https://www.smh.com.au/politics/federal/abbott-government-resists-us-moves-against-coal-power-20150325-1m7mxr.html>

²¹ Friends of the Earth (n.d.), *Deal to curb coal financing has more holes than a sieve*, <https://foe.org/news/2015-11-deal-to-curb-coal-financing-has-more-holes-than-a-sieve/>

²² Greg Muttit (2016), *The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production*, http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf

²³ Friends of the Earth, *Deal to curb coal financing*.

raises serious concerns about their accountability to Australians and other of the world's inhabitants, especially with regard to their protection of human rights, and environmental and social safeguards.

Jubilee Australia has on several occasions argued for a reform of Efic to improve its transparency and accountability.²⁴ Continued pressure from Jubilee and other advocates lead the Australian Government to establish a Productivity Commission inquiry into Australia's export credit arrangements in November 2011.²⁵ In its 2012 report, the Commission suggested extensive amendments to the Efic Act, with an emphasis on improved accountability and transparency.²⁶ Many of the key recommendations, however, are yet to be implemented.

2.1 Freedom of Information Act Exemption

All organs of the Commonwealth Government should be subject to the the Freedom of Information Act (FOIA). However, under FOIA 1982 (Cth) Schedule 2, all documents relating to anything done by Efic under part 4 (Insurance and Financial Service Products) or Part 5 (National Interest Transactions) of the Efic Act are exempt from public disclosure.

The Federal Government has the ultimate fiscal responsibility for the operation of Efic. Not only is the government the financial guarantor of Efic, currently providing a \$200m in callable credit, which would increase to \$1.2 bn if the Bill passes, the government is also the sole shareholder and beneficiary of Efic, with the Commonwealth receiving an annual dividend payment. This makes Efic a *de facto*, if not *de jure*, organ of government. As such it should be subject to the same transparency and accountability mechanisms as other state bodies.

Jubilee Australia has long maintained that Efic's exemption is inappropriate. In its 2012 review, Productivity Commission agreed:

The Australian Government should remove Efic's special exemption in relation to matters done under part 4 and 5 of the Export Finance and Insurance Corporation Act 1991 from *Freedom of Information Act 1982* (while retaining protection for Cabinet and commercial in confidence material).²⁷

Efic has publicly justified its FOIA exemption on the basis that its clients do not want their financial statements, cash flow, and internal reports in the public arena.²⁸ This deliberately blurs the distinction between commercial information and information pertaining to social and environmental issue, and was, in any case, rejected by the Productivity Commission, which concluded:

"If Efic were subject to the FoI Act, exemption provision under the legislation would apply to information in its possession, including those related to the Cabinet and commercial-in-confidence material. This would maintain the confidentiality of Efic's client commercially

²⁴ See Jubilee Australia's submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee reviewing the Efic (New Mandate and Other Measures) Bill 2013, and

²⁵ Hereby the Commission

²⁶ Productivity Commission Report on Australia's Export Credit Arrangements (2012), <https://www.pc.gov.au/inquiries/completed/export-credit/report/export-credit.pdf>

²⁷ Productivity Commission Report, p. 299

²⁸ Public statement to the parliamentary inquiry into Australia's relationship with the countries of Africa, 7 December 2010 in Jubilee Australia's submission to the Productivity Commission on Australia's Export Credit Arrangements, p. 13

[https://www.jubileeaustralia.org/literature_112325/\(2012\)_Productivity_Commission_Inquiry_into_Australia's_Export_Credit_Arrangements_-_Jubilee_Austral](https://www.jubileeaustralia.org/literature_112325/(2012)_Productivity_Commission_Inquiry_into_Australia's_Export_Credit_Arrangements_-_Jubilee_Austral)

valuable information while also providing scope for enhanced transparency of Efic's operations on the Commercial Account."²⁹

The Productivity Commission went on to state that since public sector entities rely on public funds, a higher standard of operational accountability is to be expected, and that the cost of releasing material that may compromise a firm's commercial advantage must be weighed against the reputational risk to the Australian Government of supporting projects with potentially serious environmental and social impacts.

The removal of Efic's FOIA exemption is also consistent with the UN Guiding Principles, as they emphasise the need for transparent operations and public reporting on how human rights issues are addressed. Furthermore, Efic's exemption stands in stark contrast to its international peers. In the European Union, public participation in decision making and access to justice in environmental matters have been incorporated into European law and is binding for EU institutions and member state public authorities, including export credit agencies. In the UK and the US, the export credit agencies are covered under their respective countries' freedom of information laws and they do not enjoy blanket exemptions, although they do have specific exemptions in discrete categories.³⁰

We therefore recommend:

(3) Removal of Efic's exemption from the Freedom of Information Act, and the following documents should at a minimum be available on Fol request:

- d. Project assessments undertaken during due diligence;
- e. Modification and mitigation measures required by Efic, and;
- f. Project monitoring and evaluation documents generated by Efic project proponents and consultants throughout project implementations.³¹

2.2: Efic's environmental and social policies and procedures

Another concern adding to their lack of accountability is Efic's procedures pertaining to risk evaluation, reporting and complaint mechanism. Efic's current policies and procedures relating to environmental and social transactions of Category A projects is to analyse the given project against appropriate benchmarks. The IFC Performance Standards are generally the most pertinent, but the Equator Principles, and any pertinent national guidelines in the target country are also reportedly consulted.

However, despite repeated attempts for the release of these due diligence operations of Efic with respect to some of its major Category A projects, both from Jubilee Australia and from Senators asking for their release during Senate Estimates hearings, Efic has never released any of its due diligence benchmarking.

This is concerning because analysis done by Jubilee Australia show that projects applying for financial support for category A projects in the extractive industries, have not always not met the IFC

²⁹ Productivity Commission Report , p. 298

³⁰ Jubilee Australia's submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee reviewing the Efic (New Mandate and Other Measures) Bill 2013, p.4-5, [https://www.jubileeaustralia.org/literature_118303/\(2013\)_Export_Finance_and_Insurance_Corporation_Bill_2013](https://www.jubileeaustralia.org/literature_118303/(2013)_Export_Finance_and_Insurance_Corporation_Bill_2013)

³¹ As recommended by Jubilee Australia previous submission on Efic reform: <https://www.jubileeaustralia.org/helpful-resources/submissions>

Performance Standard Requirements. Jubilee Australia's assessment is that on some occasions, Efic does not investigate claims in a meaningful way; instead, they have relied on good faith assurances of project proponents that the safeguards are met.

This has been the case with both the Oyu Tolgoi mine and the PNG LNG project, as neither meet the IFC performance standard 7 which relates to the Free, Prior and Informed Consent by Indigenous Peoples. With the former, meaningful participatory and culturally appropriate public consultations with affected communities were not arranged (i.e. consultations were announced two days ahead which prohibited attendance by communities living far away, lack of translations of the Environmental and Social Impact Assessments). With the latter, there is an ongoing problem with mapping and identifying communities that are supposed to receive benefits. Efic granted the loan in 2009, the construction started in 2010, and 9 years later, these communities are yet to be identified. This has led to an increase in violent conflicts in the project area as outlined in Jubilee's 2018 publication 'On Shaky Ground'.³²

Recommendation 9.6 of the Productivity Commission's report says the following:

Information relating to the environmental and social classification of projects and the reasons for their approval should be predictable and disclosed in the annual report and on Efic's website. This information should include assessment benchmarking and processes, conditions of approval and consequences for non-compliance. Information that is relevant to Efic's assessment of environmental and social impacts should be made public.³³

We therefore recommend:

- (4) Efic should be required to publicly release its benchmarking against the IFC Performance Standards (and any other standards being used) for scrutiny before approving a Category A project.

2.3: Efic's Complaint Mechanism

In terms of Efic's complaint procedures, it established a complaint mechanism in 2015. Only one project has attempted to make use of the grievance mechanism - the proposed Boikarabelo coal mine in South Africa, which Action Aid alleged was likely to increase human rights abuses of the sort common in the coal industry in South Africa and the region involved. The same year, ActionAid in collaboration with local communities, sent a complaint to Efic via their complaint mechanism outlining these concerns. The detailed complaint included multiple interviews and photos from the local community with specific concerns related to the IFC standards. The response from Efic has not been adequate, and to this day, Efic has yet to engage in meaningful dialogue with relevant stakeholders.

Better models for grievance mechanisms do exist. One example is the Asian Development Bank's (ADB) complaints mechanism - the Accountability Mechanism (AM). Through the AM, impacted people can raise concerns an ADB-financed project which has caused them direct, material and

³² Michal Main and Luke Fletcher (2018), *On Shaky Ground: The PNG LNG Project and the Consequences of Development Failure*, Jubilee Australia, https://www.jubileeaustralia.org/literature_162799/On_Shaky_Ground_Report

³³ Productivity Commission Report, p. 288.

adverse harm. When submitting a complaint, the impacted peoples can either seek problem-solving with the company and/or member government, and/or a compliance review which investigates if ADB has complied with its own policies and procedures, and whether non-compliance was the reason for the peoples direct, material and adverse harm. The latter is primarily implemented by an independent panel.³⁴

There are also international standards for grievance mechanisms, including the UN Guiding Principles which outlines effectiveness criteria for non-judicial complaint mechanisms (in particular principle 31), both state and non-state based. These criteria include expectations that the mechanism is legitimate, accessible, predictable, equitable, transparent, rights compatible, a source of continuous learning and based on engagement and dialogue with stakeholder groups. With regard to the latter, the commentary emphasises the need for a legitimate, independent, third-party mechanism where adjudication is needed.³⁵

We therefore recommend:

- (5) Reform of the Efic complaints mechanism to ensure that the mechanism is independent, that the investigator has full access to all documentation and that the findings are made public.

2.4 National Interest Account Reform

Although we acknowledge that the National Interest Account (NIA) is not expected to be the main recipient of the callable capital increase proposed by this bill, any legislative reform of Efic would not be complete without reform of that facility.

The National Interest Account is operated with substantial government involvement when the size or risk of a deal is beyond the commercial parameters of Efic. Efic refers the deal to the Minister of Trade for consideration on the National Interest Account. The Minister can in turn direct Efic to arrange funding if they deem the arrangement to be of “national interest”.³⁶ The aforementioned PNG LNG project mentioned in section 1.3 is the most significant example of this.³⁷ The Minister is not required to disclose the rationale for potential approvals nor how the decision-making process behind it came about. A ministerial direction to apply taxpayer funds for finance or insurance of risky business overseas could be as simple as a minute from a confidential Cabinet meeting. Any substantive information used to justify this decision is protected by cabinet-in-confidence and the validity of the decision is not open for debate by elected members of Federal Parliament.

Effectively, the National Interest Account lacks proper public and parliamentary scrutiny. This major transparency deficiency may lead to intended or unintended policy abuses that can go undetected.

In its 2012 report, the Productivity Commission’s recommendation 9.5. states:

³⁴ Asian Development Bank (n.d.) *Accountability Mechanism*, <https://www.adb.org/site/accoPrincipleuntability-mechanism/overview>

³⁵ NAPS (n.d.) UN Guiding Principle 31, <https://globalnaps.org/ungp/guiding-principle-31/>

³⁶ Efic Act, s29.

³⁷ The Efic Act does not stipulate a process by which the Minister must justify the national interest decision, it only requires that such a direction from the Minister to Efic is in writing, and that the basic particulars (i.e. nature and extent) are published in the Gazette.

Proposed facilities with national interest objectives should only be considered in the context of the national interest account.

The Australian Government's assessment of national interest account facilities should include analysis of whether the proposal is the most cost-effective way of achieving intended outcomes.

The Australian Government should clearly and publicly articulate the justification for a national interest account facility after it has been approved by the Minister.

Information on the performance of national interest account facilities should be collated and publicly reported by the Australian Government.³⁸

We therefore recommend:

- (6) To increase scrutiny of the National Interest Account in alignment with the recommendations from the Productivity Commission's 2012 report.

SECTION B: Efic and Australian Infrastructure Financing Facility for the Pacific (AIFFP)

Jubilee Australia and Caristas are currently preparing a paper investigating the AIFFP in detail, as well as making an independent submission to the DFAT consultation on the AIFFP. Given the main purpose of the Efic legislation is not related to the AIFFP but the callable capital increase, we will not recapitulate these arguments in full, but will simply provide a summary here of our concerns about the AIFFP as it relates to Efic's potential involvement and this Bill.

1.1: Lack of Details about Purpose and Function of the AIFFP

There are a number of models that could be used to develop a concessional loan-based facility for Pacific infrastructure. In short, however, the facility could operate either with loans to governments and government agencies, or with loans to private actors (it is possible, but seems unlikely and complex that the new program would do both at once). However, there are complications and complexities with both approaches.

Loans to Government Agencies: This is a model whereby the AIFFP would disburse concessional loans (or loans blended with grants) to Pacific government agencies in response to development programs pursued by those agencies. Australia had a program that operated very much like this running from 1984 to 1996 called the Development Import Finance Facility, or DIFF scheme. It has been said that this program would operate very differently to DIFF, but unless the plan is to loan directly to commercial enterprises (see below) it is unclear how the AIFFP would indeed operate very differently to DIFF. Would Efic always have to apply its national content requirements to participate in AIFFP commercial loans? Or would the loans be on Efic's National Interest Account nullify the national content requirements that operate for Commercial Account transactions? If not, what exactly would

³⁸ Productivity Commission Report, p. 286.

be the 'national interest' that the Cabinet would be identifying in order for the loans to operate from Efic's National Interest Account?

The dangers of this model is that a loan to Pacific countries will risk causing a sovereign debt crisis in the region much like the one that has gripped the Caribbean, the other part of the world with a large number of small island states. In fact, of the 15 countries eligible for the AIFFP, six are already at high level of debt distress according to the IMF (Kiribati, Marshall Islands, Micronesia, Samoa, Tonga and Tuvalu). Four are at a moderate debt distress (PNG, Solomon Islands, Timor Leste & Vanuatu). Moreover, the trend over the last few years is that debt levels of Pacific are increasing.³⁹

As Stephen Howes has pointed out, if the loans are to government agencies, the commercial viability test that Efic does apply (whether the loans will be repaid), does not take into consideration the fact that loans can be commercially viable but not suitable for the country's long run development.⁴⁰

Loans to Commercial Enterprises: If, on the other hand, the AIFFP was set up to give loans to commercial enterprises, this would essentially mean that the Australian Government was setting up its own Development Finance Institution (DFI). The DFI model is seen in multilateral institutions such as the World Bank's IFC. Many OECD countries also have DFIs, such as the British CDC and FinDev Canada. DFIs often also invest directly in private equity funds. If governments are not the recipient of these loans, and if the loans are not guaranteed by the government, then there is much less risk of these projects leading to sovereign debt distress.

Nevertheless, the DFIs have other issues. Prominent Brussels-based think-tank the European Network on Debt and Development (EURODAD) has outlines a range of problematic impacts that DFIs have caused in the countries that they operate in. First, the databases which track DFI operations are poor, making it unclear and unprovable that DFIs have had positive development outcomes. Secondly, the nature of DFI ownership and voting power means that their agenda is driven by developed and not developing countries. Thirdly, although the IFC has relative robust transparency and accountability mechanisms, bilateral DFIs rarely do. Fourthly, because of the need for bankable projects, DFIs tend to focus on countries and sectors where private capital is relatively abundant already and thus do not tend to provide good service to poorer countries. Finally, DFIs have a tendency to be associated with industries that are associated with natural resource extraction, profit repatriation and tax evasion, and preferential conditions for foreign companies.⁴¹

All of these issues raise many more questions than answers about the AIFFP; answers which must be forthcoming before the government grants Efic the power to administer the fund.

1.2 Institutional Considerations

Any new infrastructure program for the Pacific, Including PNG and Timor Leste:

- Should not increase sovereign debt;
- Should be grounded in infrastructure needs of Pacific nations;
- Should be gender-sensitive;

³⁹ Rohan Fox & Matthew Dornan (2009), China in the Pacific: Is China Engaged in "Debt Trap Diplomacy?". Dev Policy Blog, <http://www.devpolicy.org/is-china-engaged-in-debt-trap-diplomacy-20181108/>

⁴⁰ Stephen Howes (2019), *Efic Reform is A Bad Idea*, DevPolicy Blog <http://www.devpolicy.org/efic-reform-a-bad-idea-20190213/>

⁴¹ Maria Jose Romero (2014), *A Private Affair*, European Network on Debt and Development (EURODAD), <https://eurodad.org/aprivateaffair>

- should be focused on the most vulnerable groups in the region and take into account the principles of sustainable development.

Efic's prime purpose is to promote Australian exports and Australian business overseas. It does not have the capacity or the know-how in the complex and sophisticated area of international development. Nor does it have particular familiarity with the Pacific island nations except PNG, where, we would argue, Efic has contributed to an extractives-led development model that has been problematic for the country. Moreover, the most important indicator of the success or failure of a development project is the domestic policy context (again, both these points were made in the Howes essay).⁴²

Although DFAT expertise could be involved in incorporating some of the above considerations into the choice of AIFFP projects, it is not then clear why Efic should be involved. Efic is a financial institution, not a development agency. If the purpose of the program is for development in the Pacific, it is not clear to us that Efic has any expertise in this area. It is because Jubilee Australia is the leading Australian Civil Society Organisation that has monitored Efic's development impact in the region over last decade, our observations must carry particular weight.

In summary:

- (1) Not enough time or thought has gone into the AIFFP and the rationale for it. Therefore, a longer period of consideration is needed to consider the grounds for this type of facility and identify the needs of the Pacific;
- (2) It is impossible to comment on the appropriateness of Efic as a vehicle for the AIFFP until more details about the AIFFP are forthcoming;
- (3) Efic simply does not have the expertise to make decisions about sustainable development that would be required to administer the AIFFP.

We therefore recommend:

- (7) The appointment of Efic's as administering agency for the AIFFP should be withdrawn from the bill;
- (8) A proper examination and public discussion of the aims and purposes of the AIFFP should be done before an alternative mechanism is proposed.

⁴² Howes, *Efic Reform is a Bad Idea*.

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