Export Finance and Insurance Corporation Amendment (Equity Investments and Other Measures) Bill 2021

Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee

Jubilee Australia Research Centre (Jubilee Australia) is a not-for-profit organisation that 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 there. Since 2009, Jubilee Australia has been advocating for Export Finance Australia to adopt stronger environmental and social policies and practices.

The Australian Conservation Foundation (ACF) is Australia's national environmental organisation. We are 700,000 people who speak out for the air we breathe, the water we drink and the places and wildlife we love. We are proudly independent, non-partisan and funded by donations from our community.

ActionAid Australia is part of a global federation working in 45 countries working to advance women's rights and end poverty and inequality. More than 65,000 Australians support our efforts to advance economic and climate justice for women and their rights in emergencies.

Jubilee Australia, ACF and ActionAid thank the Senate Standing Committee of Foreign Affairs, Defence and Trade for the opportunity to make this submission regarding the equity investment amendment to the *Export Finance and Insurance Corporation Act 1991* (EFIC Act).

Climate change and financial risks associated with the amendments

The risk of stranded assets from over-investment in fossil projects both domestically and globally cannot be understated. Global Energy Monitor estimates over $100 Billion USD could be lost in stranded assets for gas alone,[1] which sets out a bleak picture for any purported long-term benefits of a 'gas-fired recovery' and does not speak to Australia's economic and environmental risk from over-investment in coal.

Australia is a country that unfortunately contributes more than its fair share of global carbon emissions, despite being extremely well-placed to benefit from the economic and job

[1] Rachel Morison, "Gas Is the New Coal With Risk of $100 Billion in Stranded Assets", *Bloomberg,* 17 April 2021 https://www.bloomberg.com/news/articles/2021-04-17/gas-is-the-new-coal-with-risk-of-100-billion-in-stranded-assets

opportunities afforded by the global transition to clean energy. An estimated 4.4% of global carbon emissions originate in Australia.[2]

Unfortunately, EFA and other public finance mechanisms are, even in 2021, still very much a part of this story.

Jubilee Australia's July 2021 report showed that from 2009-2020, EFA provided around 80 times more finance to fossil projects than to clean energy projects.[3] Over that time, EFA invested between $1.57 and $1.69 billion in financing to coal, oil and gas projects, including refinancing. This continued overinvestment in fossil projects means that Australia's public coffers are becoming increasingly exposed to unacceptable levels of risk.

In May 2021 the International Energy Agency (IEA) released the landmark report 'Net Zero by 2050: A Roadmap For the Global Energy Sector' where it stated there can be no new coal, oil or gas projects from 2021 onwards if the world is to keep warming beneath 1.5 degrees.[4] It is in this context that we are seeing government working to increase powers for public finance mechanisms (notably ARENA, the NAIF and CEFC) to enable increased funding of, and investment in fossil projects.

While it is our understanding that the equity finance amendment to EFA is not designed with increased fossil investment in mind, issues with EFA's transparency and track record on financing fossil projects mean that amending the Act to include a trigger that relates to climate change and financial risk is vital to ensuring that a) public reserves are not exposed to risk of stranded fossil assets and b) the tax dollars of everyday Australians are not inadvertently being used to worsen an already accelerating climate emergency.

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.

[2] ABC Fact Check, 20 November 2019, https://www.abc.net.au/news/2019-11-20/fact-check-australia-carbon-emissions-fossil-fuel-exports/11645670
[3] Jubilee Australia (2021) *Hot Money: Australian taxpayers financing fossil fuels*, https://www.jubileeaustralia.org/resources/publications/hot-money-2021
[4] International Energy Agency, 'Net Zero by 2050: A Roadmap For The Global Energy Sector', IEA (Report, May 2021) https://www.iea.org/reports/net-zero-by-2050

Note: relevant definition sections will also need to be updated to ensure fossil fuels are defined to include coal, oil and gas and the products, by-products and wastes from extracting or processing fossil fuels.

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"

Infrastructure in the Indo-Pacific Region

The Assistant Treasurer's Second Reading Speech provides that one of the objectives of the Bill is to support infrastructure development in the Indo Pacific region. An independent review of EFA's infrastructure financing powers is currently underway, commissioned by the Government and being undertaken by Stephen Sedgwick AO. It would be appropriate to consider the outcomes of this review before enacting amendments that extend EFA's infrastructure financing powers.

In relation to EFA's new equity power, the Assistant Treasurer's Second Reading speech clarifies that "Following the passage of this bill, the government will instruct Export Finance Australia to ensure equity investments are only considered for significant transactions that support Australia's national interests."

Infrastructure investments in the Indo-Pacific region should be led by the priorities of the relevant country, not by the national interest of Australia or the commercial interests of Australian businesses. Australia's Pacific neighbours have clear priorities for infrastructure investment, and supporting these initiatives should be prioritised. For example, in May 2021, the Pacific Islands Forum launched the Pacific Resilience Facility (PRF), a "Pacific-owned, Pacific-led solution" to make investments to "reduce the vulnerability and exposure of Pacific communities to disaster risks, from climate change and other hazards", including in soft infrastructure.[5] EFA should give consideration to these priorities alongside Australia's national interest.

Financing decisions should also prioritise investments that are gender-responsive and reflect the priorities and needs of women and their communities. This includes prioritising initiatives that support women to reduce the unpaid work burden they experience; improve their access to health care and other facilities; and increase their equitable access to markets through a reliable transport system and appropriate water, sanitation and hygiene (WASH) facilities that

[5] Pacific Islands Forum, 'Prospectus: The Pacific Resilience Facility', at p 4, https://www.forumsec.org/wp-content/uploads/2021/03/PRF-Prospectus.pdf

uphold women's safety and dignity. As part of meeting the needs of diverse women, there is also an opportunity to make strategic investments in disability inclusive infrastructure.

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.

Transparency and accountability

As detailed above, in increasing EFA's powers, the Bill will increase EFA's exposure to new risks. As EFA's $1.2 billion in callable capital is backed by the Australian Government, and by extension, the Australian taxpayer, there is a public interest in ensuring that Australian citizens are well informed about EFA's investments and activities. The government is also EFA's sole shareholder and beneficiary, with the Commonwealth receiving an annual dividend payment.

The new equity powers provided by the Bill will also enable EFA to make large equity investments in the Indo-Pacific region, with the new equity power also made available to the AIFFP. As a result, EFA will have enhanced ability to invest in large infrastructure projects that may have tangible (and potentially harmful) impacts on local communities in Asia and the Pacific.

It is therefore appropriate that the enhancement of EFA's powers comes with an enhancement of EFA's transparency and accountability, both to Australian taxpayers and to communities overseas.

Freedom of information

One simple area where EFA's transparency could be improved is by removing its partial exemption from the freedom of information regime. Under Schedule 2, Part II of the *Freedom of Information Act 1982* (Cth) (FOI Act), documents relating to anything done by EFA under part 4 (Insurance and Financial Service Products) or Part 5 (National Interest Transactions) of the EFIC Act are exempt from public disclosure. In practice, this would make much of the information regarding the exercise of EFA's new equity power exempt from FOI.

Removal of EFA's FOI exemption was a recommendation of the 2012 Productivity Commission review of EFA's operations, but this recommendation was not adopted.[6] EFA's exemption is out of step with its international peers. In the UK and the US, for example, 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.[7] The FOI Act already includes a wide range of exemptions designed to ensure that documents that could impact on national security or contain commercially valuable

[6] Productivity Commission (2012) Inquiry Report: Australia's Export Credit Arrangements, https://www.pc.gov.au/inquiries/completed/export-credit/report Report, p. 299
[7] See US Exim, "Freedom of Information Act", https://www.exim.gov/about/foia (accessed 30 June 2021); UK Export Finance, 'Publication Scheme', https://www.gov.uk/government/organisations/uk-export-finance/about/publication-scheme (accessed 9 July 2021).

information are not required to be disclosed. The additional partial exemption for EFA is therefore not required to protect Australia's interests.

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).

Environmental and Social Review

The Assistant Treasurer's Second Reading Speech for this Bill notes that "Export Finance Australia will continue to conduct rigorous due diligence for equity investments in the same manner as other transactions. This includes robust environmental and social risk assessments."[8]

Civil society organisations, including Jubilee Australia, ACF and ActionAid, have raised a number of concerns regarding EFA's approach to environmental and social review of transactions.[9] In general, while there are positive elements of EFA's approach, it has a number of weaknesses compared to the environmental and social review approaches of other ECAs and development finance institutions. In particular:

- EFA's Environmental and Social Review Policy relies on relatively weak international standards (the OECD Common Approaches and the Equator Principles), while several other ECAs rely on more robust standards, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises.
- The due diligence and risk assessment requirements in international standards such as the Equator Principles only apply to a small subset of EFA's projects, with the majority of projects subject to a less stringent process.
- There is very limited disclosure of information relating to EFA's environmental and social review. While EFA discloses its potential investment in large Category A projects (projects with potential for significant adverse environmental or social impacts), it does not otherwise disclose detail on the process it uses to screen and classify projects or the information considered when deciding to invest in Category A or B projects.
- EFA's Environmental and Social Review Policy and Procedures do not refer to climate change or require an assessment of the carbon emissions of proposed projects (except in the very limited circumstances in which this is required by one of the international standards EFA has adopted).
- It is unclear how gender analysis is embedded across EFA's work, given the weaknesses in the international standards employed within EFA's Environmental and Social Review Policy and the organisations limited technical expertise in relation to gender equality.

[8] Minister Sukkar, Second Reading Speech, 4 August 2021
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F4ba00b00-44f7-4ae0-9206-674b6482ffa9%2F0012%22
[9] For more detail, see the submission to EFA's Environmental and Social Review Policy, currently under review, which will be made available at: https://www.jubileeaustralia.org/resources/submissions on 13 August 2021.

- EFA has an internal complaints mechanism, however there is no provision for complaints to be assessed by an independent assessor, or overseen by an independent advisory group. Information about complaints and EFA's response to the complaint is not made public.

EFA's Environmental and Social Review policy is currently under review.

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.