

The Senate

Foreign Affairs, Defence and Trade
Legislation Committee

Export Finance and Insurance Corporation
Amendment (Support for Commonwealth
Entities) Bill 2016 [Provisions]

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Table of Contents

Committee Membership	iii
Chapter 1	1
Introduction	1
Referral of inquiry	1
Conduct of inquiry.....	1
Scrutiny by other committees	1
Purpose of the bill.....	1
Financial Impact	2
Structure of report.....	2
Acknowledgements	2
Chapter 2	3
Issues raised in evidence	3
Introduction	3
First amendment	3
Second amendment.....	7
Committee view.....	16
Dissenting report by Labor senators	19
Dissenting report by the Australian Greens	21
Dissenting report by Senator Nick Xenophon	23
First Amendment.....	23
Second Amendment.....	24
Appendix 1	27
Submissions	27

Chapter 1

Introduction

Referral of inquiry

1.1 On 9 November 2016, the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016 (the bill) was introduced in the House of Representatives by the Minister for Trade, Tourism and Investment, the Hon Steven Ciobo MP.¹ On 24 November 2016, the Senate referred the provisions of the bill to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 7 February 2017.² The reasons for the referral, as cited by the Selection of Bills Committee, were to:

- investigate whether there are unintended negative consequences of allowing the Export Finance and Insurance Corporation (Efic) to provide loans to projects which are not located in Australia; and
- establish whether accompanying checks and balances should be legislated.³

Conduct of inquiry

1.2 The committee advertised the inquiry on its website, calling for submissions to be lodged by 13 January 2017. The committee also wrote directly to a range of individuals and organisations likely to have an interest in the bill, drew their attention to the inquiry and invited them to make written submissions.

1.3 The committee received 12 submissions to the inquiry. These submissions are listed at Appendix A and are published on the committee's website.

Scrutiny by other committees

1.4 The Scrutiny of Bills Committee considered the bill according to its usual scrutiny process and did not have any comments in relation to the scrutiny principles outlined in Senate Standing Order 24.⁴

1.5 The Parliamentary Joint Committee on Human Rights examined the bill and considered that the bill does not raise any human rights concerns.⁵

Purpose of the bill

1.6 The bill gives effect to two main amendments. The first amendment will allow Efic, subject to ministerial approval, to offer its financial capabilities in the

1 The Hon Steven Ciobo MP, Minister for Trade, Tourism and Investment, *House of Representatives Hansard*, 9 November 2016, p. 3281.

2 *Journals of the Senate*, No. 19, 24 November 2016, p. 590.

3 Selection of Bills Committee, *Report No. 9 of 2016*, p. 3.

4 Scrutiny of Bills Committee, *Alert Digest No. 9 of 2016*, 23 November 2016, p. 3.

5 Parliamentary Joint Committee on Human Rights, *Report 9 of 2016*, p. 39.

operation and administration of Commonwealth financing programs where there is no connection to exports. Efic will not be able to provide loans or guarantees to support Commonwealth financing programs, however it will be able to provide advice on the structure of a loan and manage the loan on behalf of the Commonwealth entity or company. The amendment is expected to lower government service delivery costs by leveraging existing resources.⁶

1.7 The second amendment will enable Efic to better support Australian small to medium-sized enterprises (SMEs) access global markets. The amendment will align the current definition of an 'eligible export transaction' for loans to the broader definition of 'Australian export trade' for guarantees. The amendment does not change Efic's restriction of operating only in the market gap where banks are unable to help, and any support must still be attached to exports. As the value of Australian exports is being increasingly derived from innovation, design and intellectual property, rather than traditional assembly, this would allow Efic to support a wider range of SME exporters.⁷

Financial Impact

1.8 While the Explanatory Memorandum states that the bill 'will have no direct financial impact', it may have indirect implications for the Commonwealth. The Commonwealth Government funds Efic directly through providing capital and guaranteeing its borrowings. Changes to Efic's operations may impact on Efic's costs or profits, in turn impacting on the costs or benefits it provides to the Commonwealth.

Structure of report

1.9 Chapter 2 of this report provides an overview of the matters raised in evidence and contains the committee's view and recommendation.

Acknowledgements

1.10 The committee acknowledges the short period of time available for those who made submissions. The committee thanks all those who assisted with the inquiry.

6 Explanatory Memorandum, *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016*, p. 2.

7 Explanatory Memorandum, *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016*, pp 2–3.

Chapter 2

Issues raised in evidence

Introduction

2.1 This chapter considers the first and second amendments proposed by the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016 (the bill). It examines the main issues raised by submitters during the committee's inquiry as well as arguments presented in favour of the bill. The chapter concludes with the committee's view and recommendation.

First amendment

Background

2.2 The Export Finance and Insurance Corporation (Efic) was established under the *Export Finance and Insurance Corporation Act 1991* (Efic Act) to assist the development of Australian export trade by providing financial support to Australian businesses in their international operations when the private market is unwilling or unable to help.¹ Under the Efic Act, Efic is mandated to:

- facilitate and encourage Australian export trade;
- encourage banks and other financial institutions to finance exports; and
- provide information and advice on financing and insuring Australian exports.²

2.3 In March 2016, Parliament passed a specific amendment to enable Efic to work outside its remit and assist the Northern Australia Infrastructure Facility (the Facility) with financial arrangements for the construction of economic infrastructure in northern Australia. The amendment ensured that the Facility has the option to use Efic's services without placing Efic in conflict with its primary duty, and allowed Efic to charge fees to the Facility for its services.³

2.4 In order to allow other Commonwealth companies and entities to similarly access Efic's services in the future, the government introduced the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016. The bill will enable Efic to assist in the operation and administration of Commonwealth financing programs where there is no connection to exports, subject to the approval of the Minister for Trade, Tourism and Investment.⁴

1 Export Finance and Insurance Corporation, *Efic Act*, <https://www.efic.gov.au/about-efic/our-governance/efic-act/> (accessed 18 January 2017).

2 Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

3 Explanatory Memorandum, *Northern Australia Infrastructure Facility (Consequential Amendments) Bill 2016*, p. 2.

4 Explanatory Memorandum, *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016*, p. 2.

Support for change

2.5 According to the Minister for Trade, Tourism and Investment, the bill's proposed first amendment will reduce red tape that currently restricts Commonwealth companies and entities from accessing Efic's specialist expertise when required. The change will unlock the potential for Efic to share its financing expertise with the Commonwealth and allow the Australian Public Service to access Efic's existing resources.⁵ The Minister emphasised that 'the amendment is in line with government policy to reduce duplication across government and the implementation of our Smaller Government agenda', and highlighted that access to Efic's services will be subject to ministerial approval to ensure there are checks and balances.⁶

2.6 In its submission to the inquiry, the Department of Foreign Affairs and Trade (DFAT) strongly supported the bill and argued that the amendment would lower government service delivery costs by leveraging existing resources from within the Commonwealth. It noted that Efic would still not be able to provide loans or guarantees to support Commonwealth financing programs, but it could advise on the appropriate structure of a loan and manage the loan on behalf of the Commonwealth entity. The department highlighted that the bill averts the need to establish new institutions for each future government financing program, as was the case for Efic's assistance to the Facility.⁷

Issues raised by submitters

Efic's inability to assess the impact of its investments

2.7 A number of submitters raised concerns that Efic has previously demonstrated an inability to assess the impacts of its investments, in particular the risk of human rights violations on projects which are not located in Australia.⁸ Submitters argued that Efic's accountability processes should be strengthened before expanding its powers.

2.8 According to the joint submission from Jubilee Australia Research Centre and The Australia Institute (Jubilee), Efic's track record demonstrates a failure to conduct due diligence. It provided a range of examples where Efic failed to identify economic, environmental and social risks related to its projects, including:

- assistance to expand the Panguna mine and the resulting exploitation which led to the Bougainville Civil War;
- assistance to develop the Ok Tedi mine where irresponsible dumping led to the environmental destruction of the Fly River; and

5 The Hon Steven Ciobo MP, Minister for Trade, Tourism and Investment, *House of Representatives Hansard*, 9 November 2016, p. 3281.

6 The Hon Steven Ciobo MP, Minister for Trade, Tourism and Investment, *House of Representatives Hansard*, 9 November 2016, p. 3281.

7 Department of Foreign Affairs and Trade, *Submission 1*, p. 2.

8 For example: Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 5; and Australian Council of Trade Unions, *Submission 11*, p. 5.

- assistance to develop the Porgera Mine which resulted in human rights abuses by security services associated with the mining company including the rape of local women.⁹

2.9 In particular, the submission drew attention to Efic's failure on the ExxonMobil-led PNG LNG project which led to the PNG Government dispatching military personnel to secure the project following low-level conflict as a result of landowner discontent. Jubilee argued that Efic was 'grossly incompetent at assessing social, economic and political risks related to this project and must bear some responsibility for a downturn in the PNG economy and the current conflict in Hela Province.'¹⁰

2.10 Concerns with Efic's lack of transparency and accountability were identified during the Productivity Commission's 2012 inquiry into Australia's Export Credit Arrangements.¹¹ According to Jubilee, the Productivity Commission endorsed the essence of Jubilee's concerns and agreed on a number of suggestions, including:

- that Efic's exemption from the Freedom of Information Act should be removed; and
- that Efic should be required to release more information about social and environmental impact assessments.¹²

Efic's assistance to the Facility remains unassessed

2.11 Jubilee pointed out that evaluation of the success of Efic's services to the Facility has not yet occurred, which may be due to the ongoing nature of Efic's arrangement with the Facility. It argued that the bill's first amendment will open up Efic's support to assist other programs even though Efic's ability to provide assistance outside its core purpose remains unassessed.¹³

2.12 Jubilee argued that Efic is unsuitable to provide support for programs that are unrelated to exports, stating that:

Given Efic's specialisation is supposed to be in assisting exporters, it is unusual that its operations would be redirected to areas with no connection to exports. Efic's involvement in the NAIF is also surprising. Assessing domestic infrastructure projects involves skills in economic, environmental and social impact analysis. It is not clear that Efic has these skills in any depth.¹⁴

9 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 6.

10 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 6.

11 Productivity Commission, *Australia's Export Arrangements*, <http://www.pc.gov.au/inquiries/completed/export-credit> (accessed 27 January 2017).

12 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 6.

13 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 7.

14 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 5.

2.13 Jubilee also expressed concern with reports that suggest the Facility may be considering a loan for the Adani coal project or its related infrastructure. It argued that the government should be required to disclose which Commonwealth agencies are interested in accessing Efic's services and for what purposes. It recommended the bill not be passed until a regulatory impact statement had been conducted to allow for informed debate of the bill's impacts.¹⁵

Diversion of resources away from Efic's core purpose

2.14 Concerns were raised that allowing Efic to assist Commonwealth programs will divert resources away from its core purpose of encouraging export trade.¹⁶

2.15 The Export Council of Australia noted that Efic is a small organisation that is not funded by the government. It suggested that the bill put measures in place to ensure that Efic's core role will not be adversely affected by taking on Commonwealth burdens unrelated to exports. It argued:

Time spent supporting Commonwealth entities is time Efic cannot spend fulfilling its core mandate: facilitating and encouraging Australian export trade. Resources Efic commits to supporting Commonwealth entities, if not fully cost recovered, would effectively be subsidies from exporters to these entities.

The Explanatory Memorandum to the Bill (page 2) states that Efic *may* charge a fee for any assistance it provides. At a minimum, it should be mandatory for Commonwealth entities to cover all Efic's costs (including management time) in relation to proposed financing programs, whether they are implemented or not. (In the same way that businesses must pay an application fee to cover the costs to Efic in assessing applications for loans or guarantees.)¹⁷

2.16 Jubilee pointed out that Efic has previously been criticised for not focusing on Australian exporters. It highlighted that the Productivity Commission was particularly critical of Efic's provision of finance to resource projects in Australia such as rail lines, terminals and bus routes.¹⁸

2.17 The Export Council of Australia suggested that Efic should only be able to provide support to Commonwealth entities if there is no impact on its capacity to support Australian export trade and all of Efic's associated costs are fully recovered from these entities.¹⁹

15 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 7.

16 For example: Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 4; Export Council of Australia, *Submission 12*, p. 1.

17 Export Council of Australia, *Submission 12*, p. 3.

18 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 4.

19 Export Council of Australia, *Submission 12*, p. 3.

Second amendment

Background

2.18 The level of Australian content in an export contract currently determines the amount of financial support Efic can provide to an SME. Efic can only provide support for export contracts or purchase orders that have at least one third Australian content, which means costs that are incurred in Australia. This includes costs of raw materials, employees, and intellectual property.²⁰

2.19 Eligibility to access a loan from Efic is considered more restrictive than that required to access a guarantee. Under the Efic Act, loans are subject to the narrower 'eligible export transaction' definition, whereas the broader definition of 'Australian export trade' is used for guarantees. The bill's second amendment aims to remove the definition of 'eligible export transaction' and replace it with 'Australia export trade' to apply consistency across the legislation.

2.20 Currently, under subsection 3(3) of the Efic Act, an 'eligible export transaction' is a transaction related to the export of goods produced or manufactured in Australia.²¹ Under subsection 3(5) of the Efic Act 'Australian export trade' is defined as any transaction that involves a benefit flowing from overseas back to a person carrying on business in Australia.²²

2.21 The bill's Explanatory Memorandum noted that the broader 'Australian export trade' definition 'more appropriately focuses on the actual benefits flowing back to Australia, rather than the place of manufacture or purchase'.²³ It also pointed out that the amendment does not change Efic's restriction of operating only in the market gap where banks are unable to help, and any support must still be attached to exports.

Support for the changes

2.22 Many submissions supported the bill's proposed second amendment.²⁴ The amendment is expected to enable Efic to better support SMEs in seizing export opportunities abroad by reducing restrictions on the place of manufacture. Submitters expected this will help businesses maximise e-commerce opportunities, unlock assistance to expand offshore and ensure Australian businesses can remain competitive in a global market.

20 Export Finance and Insurance Corporation, *Small Business Export Loan - Efic's Criteria*, <https://www.efic.gov.au/business-solutions/small-to-medium-sized-business/small-business-export-loan/efics-criteria/> (accessed 17 January 2017).

21 *Export Finance and Insurance Corporation Act 1991*, ss. 3(3).

22 *Export Finance and Insurance Corporation Act 1991*, ss. 3(5).

23 Explanatory Memorandum, *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016*, p. 2.

24 For example: Department of Foreign Affairs and Trade, *Submission 1*; Australian Grape and Wine Authority, *Submission 2*; Australian Advanced Manufacturing Council, *Submission 3*; Advanced Manufacturing Growth Centre, *Submission 4*; Austmine Ltd, *Submission 5*; Mr Graham Poon, *Submission 6*; Export Council of Australia, *Submission 12*.

Maximises e-commerce and growing Asian middle class opportunities

2.23 Submitters argued that the bill will help businesses maximise opportunities offered by improvements in technology, the rise of e-commerce and a large and growing Asian middle class.²⁵

2.24 According to Minister Ciobo, the bill's second amendment will update the Efic Act and enable Efic to better assist Australian businesses to make the most of this changing environment. He noted that improvements in technology have put Australian businesses in direct contact with customers from around the world:

This was simply not possible 25 years ago when the act was drafted. We need to ensure the act responds to the modern-day reality of Australian services companies selling directly to households in China, the United States or indeed anywhere in the world. By extending Efic's lending flexibility to cover this emerging opportunity, more Australian SME services companies—such as providers of information technology, consulting, education and tourism providers—will now be able to access finance to export and seize the opportunities replete in the global marketplace.²⁶

2.25 According to the Export Council of Australia, the rise of the Asian middle class presents a substantial and expanding market for Australian products and services. Whether by selling directly to tourists who visit Australia or via e-commerce, it argued:

This growing market is opening up major commercial opportunities, particularly for small businesses. But small businesses often need to invest to take advantage of these opportunities; and because they are selling to consumers, not entering into business-to-business contracts, Efic cannot lend to them. And it is these businesses that find it most difficult to deal with the financial and administrative burden of entering a tripartite loan between themselves, Efic and their bank.²⁷

2.26 Submitters argued that the bill will help ensure that SMEs are able to capitalise on the growing numbers of foreign tourists by giving them access to Efic's support.²⁸ The importance of supporting the tourism sector was emphasised by Mr Graham Poon's submission, which noted:

- Australia is increasingly changing into a service economy with a large portion of GDP now derived from the delivery of services instead of the sale of physical goods or products; and

25 For example: Mr Graham Poon, *Submission 6*, p. 1; Export Council of Australia, *Submission 12*, p. 2.

26 The Hon Steven Ciobo MP, Minister for Trade, Tourism and Investment, *House of Representatives Hansard*, 9 November 2016, p. 3281.

27 Export Council of Australia, *Submission 12*, p. 2.

28 Department of Foreign Affairs and Trade, *Submission 1*, p. 5; Mr Graham Poon, *Submission 6*, p. 2.

- tourism is forming a larger proportion of income derived from services. It has become one of the largest export earners for Australia and Tourism Australia and Austrade project that this trend will continue.²⁹

2.27 Mr Poon argued that the amendment will help support the critical tourism sector by giving it access to Efic's additional funding and valuable financial advice.³⁰

2.28 The Department of Foreign Affairs and Trade also supported Efic's ability to assist Australian tourism operators who provide services directly to tourists. As an example, the department described a small charter company operating whale-watching tours in Queensland. The company wanted to increase its capacity to meet the growing number of Chinese visitors, however Efic could not assist because under existing legislation Efic can only provide a loan if the company is providing services to a business, not directly to retail customers. The department argued the bill will enable Efic to assist companies regardless of who they are providing services to, and has the potential to boost Australian jobs.³¹

Allows exporters to access assistance to expand offshore

2.29 Submitters in favour of the bill argued that the amendments will enable Efic to assist exporters set up foreign sales offices which are essential to engage directly with international customers.³² Research commissioned by the Export Council of Australia found that:

...indirect export channels were important for 55 per cent of service exporters and 40 per cent of goods exporters. These 'indirect export' channels—overseas sales branches, subsidiaries or joint ventures—fit within the definition of 'export trade' but not 'export transaction'.

Setting up overseas is particularly important in the ICT, and the professional, scientific and technical services sectors. AIBS2016 found that one quarter and one fifth of exporters in these sectors (respectively) used overseas sales branches, subsidiaries or joint ventures as their main sales channels.³³

2.30 The Export Council of Australia also noted that 'in some markets, businesses operating in certain service and technology sectors may be required by regulation to set up an on-the-ground presence'.³⁴

2.31 The Australian Grape and Wine Authority provided an example of how the bill would help Australian wine companies. It explained that while Efic can already assist Australian wine companies involved in the supply chain of an export contract, it

29 Mr Graham Poon, *Submission 6*, p. 1.

30 Mr Graham Poon, *Submission 6*, p. 2.

31 Department of Foreign Affairs and Trade, *Submission 1*, p. 5.

32 For example: Australian Grape and Wine Authority, *Submission 2*, p. 2; Export Council of Australia, *Submission 12*, p. 2.

33 Export Council of Australia, *Submission 12*, p. 2.

34 Export Council of Australia, *Submission 12*, p. 2.

cannot assist companies involved in the promotion of wine unless they require funding for an export contract and their bank cannot assist. Therefore, companies which promote export sales through investing in wine tourism in Australia are not eligible for Efic support. It argued:

The change in legislation would enable Efic to support wine companies looking to expand offshore, for example through a sales office, via a direct loan. In addition the change would allow Efic to provide assistance to companies involved in wine tourism which would help to drive wine exports.³⁵

Helps Australian businesses remain competitive

2.32 Submitters argued that the bill's second amendment will help businesses remain competitive by updating the Efic Act to reflect modern business tactics employed by Australian businesses.³⁶

2.33 According to the Export Council of Australia, even small manufacturers operate across global production networks with few products manufactured entirely in Australia. It argued that 'making Efic loans conditional on where final production takes place is based on an outdated view of manufacturing'.³⁷

2.34 Similarly, Austmine Ltd argued that the broader definition of 'Australian export trade' recognises the competitive nature of international business in general and that sophisticated global business networks are necessary in order to compete:

[M]any of our members are sourcing inputs offshore and/or assembling their products or equipment in other countries. The driver for this is not only to bring down costs, but can be required by customers to enable quicker delivery, provide after sales servicing and foster strategic partnerships.³⁸

2.35 The Export Council of Australia noted that in the manufacturing sector, the highest value stage along the chain is ownership and management, followed by research and design, and sales and servicing, while the lowest value stage is manufacturing. It argued that the objective of the amendment is not to support businesses to manufacture offshore but to help businesses establish international sales offices or sell directly to customers.³⁹

2.36 According to the Advanced Manufacturing Growth Centre (AMGC), analysis of the Australian manufacturing sector has demonstrated that customers buy from Australian manufacturers as opposed to cheaper competitors because of their

35 Australian Grape and Wine Authority, *Submission 2*, p. 2.

36 For example: Austmine Ltd, *Submission 5*, p. 2; Export Council of Australia, *Submission 12*, p. 2.

37 Export Council of Australia, *Submission 12*, p. 2.

38 Austmine Ltd, *Submission 5*, p. 2.

39 Export Council of Australia, *Submission 12*, pp 1– 2.

innovative design or exceptional reputation.⁴⁰ The AMGC noted that it is therefore critical to lift Australia's manufacturing competitiveness by focusing on value rather than cost. It argued that the bill will enable Australian manufacturers to keep pace with global developments and transition into a highly sophisticated industry.⁴¹

2.37 The AMGC argued that Australia should not continue to use a system that honours where manufacturing takes place over where the intellectual property resides. It argued this is detrimental to Australian businesses that focus on innovation, research and design, and intellectual property. It noted:

With this trend moving away from production and to strongly embrace the full value chain of manufacturing, the industry and its associated ecosystem of supporting partners, including financial systems and services, must also adapt to the new way of operating.⁴²

Simplifies applications and increases consistency of assessments

2.38 The DFAT submission argued that the bill will simplify applications for Efic's support by making available a loan for the same purpose as a guarantee. It will also increase the consistency in Efic's approach to assessing whether an SME is eligible to receive Efic support.⁴³

2.39 According to the department, simplifying the process will not only improve Efic's efficiency and flexibility, the amendment could also significantly reduce costs to businesses. It noted that 'SMEs that apply for and receive a loan, rather than a guarantee, could save up to an estimated \$12 000 per application, given the relative ease of providing a loan compared to a guarantee'.⁴⁴

2.40 In an example of how the bill will help simplify processes, the department described a Western Australian company which installs geoscience hardware. It explained that:

This SME was awarded a contract to install computer hardware onto six vessels and onto one land-based location in the UAE. It needed additional working capital to expand its offices in the UK, US and Malaysia. Given the offshore challenges associated with its expansion, the company had to approach both its bank and Efic for support. Efic was able to provide funding support, via the provision of two separate guarantee facilities with the company's bank. However, this process could have been made simpler, quicker and more efficient, had Efic been able to provide a single loan.⁴⁵

40 Advanced Manufacturing Growth Centre, *Submission 4*, pp 2–3.

41 Advanced Manufacturing Growth Centre, *Submission 4*, p. 3.

42 Advanced Manufacturing Growth Centre, *Submission 4*, p. 2.

43 Department of Foreign Affairs and Trade, *Submission 1*, p. 3.

44 Department of Foreign Affairs and Trade, *Submission 1*, p. 4.

45 Department of Foreign Affairs and Trade, *Submission 1*, p. 4.

Issues raised by submitters

2.41 The bill's second amendment aims to expand the scope of Efic's loans to businesses by changing the definition of an 'eligible export transaction'. Under the proposed amendments, Efic will be able to provide loans to businesses, when their banks are unable to help, for 'any transaction that involves a benefit flowing from overseas back to a person carrying on business in Australia'. This is in contrast to the previous definition of 'eligible export transaction' which specified that loans could only be given if the transaction was 'related to the export of goods produced or manufactured in Australia'.

2.42 The department provided assurance that Efic will only provide support where it has been determined that the transaction will not result in any net job losses for Australia and that the implementation of a 'benefits test' for loans will ensure that the export results in a benefit flowing back to Australia:

A 'benefit' can extend beyond the flow of profits back to Australia from the overseas sales to include the benefits of opening up new export markets or requiring additional Australian goods or services in order to deliver on the export.⁴⁶

2.43 However, the department did not address whether Efic should be required to determine if there are concerns which might outweigh the project's benefits to Australia.

Removal of local content requirement

2.44 Submitters raised concerns that removal of the local content requirement will cause a number of negative consequences, including:

- offshoring of Australian jobs;⁴⁷
- removal of incentives to produce or manufacture in Australia;⁴⁸
- deprive companies who produce in Australia of financial assistance;⁴⁹
- provide advantages to overseas competitors of Australian companies;⁵⁰ and
- allow companies that are only nominally Australian to access financial assistance from the Australian Government.⁵¹

46 Department of Foreign Affairs and Trade, *Submission 1*, p. 4.

47 For example: Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 8; Australian Council of Trade Unions, *Submission 11*, pp 3–4.

48 Australian Fair Trade and Investment Network, *Submission 7*, p. 3.

49 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 9.

50 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 9.

51 Australian Fair Trade and Investment Network, *Submission 7*, p. 4; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 8; Australian Council of Trade Unions, *Submission 11*, p. 1.

2.45 Submitters expressed concerns that the bill will enable businesses that provide no local employment to have access to Efic support. This could mean that Efic's loans to businesses will be used to move jobs that could be done in Australia offshore.⁵²

2.46 Submitters pointed out that in theory, a business could conduct all of its production, design, manufacturing and development overseas but still be eligible for a loan from the Australian Government. Potentially, this could reduce local jobs by removing the focus on products produced in Australia and move more Australian manufacturing offshore.⁵³

2.47 The Australian Fair Trade and Investment Network argued that the Efic Act currently provides a 'reasonable and modest requirement' that businesses receiving support from the Australian Government actually produce goods or services in Australia and employ Australians. It argued that the legislation already provides flexibility for businesses to conduct offshore operations where required.⁵⁴ Similarly, the Australian Council of Trade Unions argued:

It is in the national interest that companies which receive government loans are required to use that money in a way which benefits Australian employment. The removal of these provisions will be yet another blow to the Australian manufacturing and services sectors.⁵⁵

2.48 Concerns were raised that the change would mean that 'export earnings flowing to Australia could be the sole criteria for Efic support, without the current requirements for production of goods or services in Australia and other Australian inputs'.⁵⁶ It was highlighted that the bill removes incentives for businesses to produce or manufacture in Australia and has the potential to deprive finance to companies which produce or manufacture in Australia.⁵⁷

2.49 According to Jubilee, the amendment also has the potential to have the perverse effect of advantaging foreign competitors.⁵⁸ As an example, it pointed to Efic's current proposal to fund a coal mine in South Africa which will be in direct competition to Australian thermal coal mines, particularly in the Indian market. Jubilee highlighted that Efic had not conducted any public analysis of how the South African mine project could affect Australian exports of coal.⁵⁹

52 For example: Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 8; Australian Council of Trade Unions, *Submission 11*, pp 3–4.

53 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 8; Australian Council of Trade Unions, *Submission 11*, p. 3.

54 Australian Fair Trade and Investment Network, *Submission 7*, p. 3.

55 Australian Council of Trade Unions, *Submission 11*, p. 3.

56 Australian Fair Trade and Investment Network, *Submission 7*, pp 3–4.

57 Australian Fair Trade and Investment Network, *Submission 7*, pp 3–4; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 9.

58 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 9.

59 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 8.

Efic's inadequate due diligence process

2.50 A number of submitters raised concerns that, based on Efic's track record, there is a high risk of unintended negative consequences if Efic provides loans to projects which are not located in Australia. Many expressed unease that the bill will expand Efic's powers to provide financial support to a wider range of businesses but do nothing to strengthen Efic's due diligence, accountability, and disclosure processes.⁶⁰

2.51 In light of Efic's history with PNG LNG and other projects, submitters argued there is a high risk of Efic providing loans to businesses that support human rights abuses along global supply chains or engage in poor environmental practices. It was pointed out that the risk-assessments conducted by Efic do not adequately capture the extent to which projects could negatively affect workers and their communities as they have previously resulted in human rights violations.⁶¹

2.52 Submitters were concerned that the bill will increase the risk of Efic's involvement in human rights abuses as it expands Efic's role in the global supply chain. They noted that offshore manufacturing reduces transparency and standards in supply chains as production moves into jurisdictions with lower environmental and labour standards.⁶²

2.53 The Australian Council of Trade Unions highlighted that, as a government entity, Efic should be even more compliant with relevant standards such as the UN Guiding Principles on Business and Human Rights. It argued that:

As a Federal Government taxpayer-funded agency Efic has responsibility to ensure that the support that it provides does not result in human rights abuses and hence that adequate steps are taken to evaluate the risks before funding is granted.⁶³

2.54 Submitters were also concerned that Efic's recently adopted Human Rights Statement is insufficient to ensure compliance with Australia's human rights obligations. It was noted that the existing policy is weak, benchmarking is not disclosed, and major issues with Efic's transparency remain.⁶⁴ According to the Australian Council of Trade Unions:

60 For example: ActionAid Australia, *Submission 8*, p. 2; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 5; Australian Council of Trade Unions, *Submission 11*, p. 5.

61 For example: ActionAid Australia, *Submission 8*, p. 2; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 5; Australian Council of Trade Unions, *Submission 11*, p. 5.

62 For example: ActionAid Australia, *Submission 8*, p. 2; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 9.

63 Australian Council of Trade Unions, *Submission 11*, p. 5.

64 For example: ActionAid Australia, *Submission 8*, p. 2; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 7. Australian Council of Trade Unions, *Submission 11*, p. 6.

...the current EFIC Act which requires EFIC to 'have regard to' Australia's international human rights obligations should be changed to 'comply'. This will send a clear message to investors and companies that Australia intends to honour its commitments.⁶⁵

2.55 According to ActionAid Australia, Efic also lacks policy guidance with regards to climate change and fossil fuel subsidies. It argued that Efic does not adequately consider whether its investments engage in intensive carbon emission practices and noted that Efic has a unique opportunity to 'move beyond its past role in financing large fossil fuel companies, to instead invest in renewable energy and non-carbon industries'.⁶⁶ ActionAid suggested that the bill be amended to require Efic to:

- reject subsidising fossil fuel projects; and
- conduct due diligence on carbon emissions associated with potential transactions.⁶⁷

2.56 Submitters argued that Efic's functions should not be expanded until Efic is required to conduct due diligence of potential projects for environmental and social violations.⁶⁸ ActionAid Australia suggested that Efic should be required to:

- meet regularly with the National Contact Point to review human rights concerns relevant to Efic's investments;
- conduct due diligence to ensure promotion of gender equality in potential transactions;
- proactively inform businesses applying for loans and guarantees of OECD Guidelines; and
- conduct due diligence in line with the *Environment Protection and Biodiversity Conservation Act 1999*.⁶⁹

2.57 Submitters also noted that Efic has a blanket exemption from the *Freedom of Information Act 1982* which prevents proper public scrutiny as well as limiting its accountability to Australian taxpayers. It was suggested that Efic should be required to publish its due diligence assessments and be bound by the *Freedom of Information Act 1982*.⁷⁰

65 Australian Council of Trade Unions, *Submission 11*, p. 7.

66 ActionAid Australia, *Submission 8*, p. 3.

67 ActionAid Australia, *Submission 8*, p. 3.

68 ActionAid Australia, *Submission 8*, pp 1–2.

69 ActionAid Australia, *Submission 8*, p. 3.

70 For example: ActionAid Australia, *Submission 8*, p. 4; Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 6; Australian Council of Trade Unions, *Submission 11*, p. 6.

Committee view

2.58 The committee has considered whether there are any unintended negative consequences of allowing Efic to provide loans to projects which are not located in Australia or whether additional checks and balances should be legislated. The committee is satisfied that Efic has adequate arrangements in place to ensure that it upholds operational, social and environmental obligations in its transactions.

2.59 With regards to the bill's first amendment, the committee acknowledges concerns raised in evidence that Efic, as an organisation with finite resources, may potentially be diverted from its core role to facilitate and encourage Australian export trade. The committee however, is satisfied that Efic is aware of its primary purpose and will take steps to minimise the impact of work it performs for the Commonwealth on its capacity to assist exporters.

2.60 The committee endorses the view of the Export Council of Australia that it should be mandatory for Commonwealth entities to cover Efic's costs in relation to assistance and support, consistent with the obligations on industry and business which pay an application fee to cover Efic's costs in assessing applications for loans or guarantees. The committee therefore encourages the Minister for Trade, Tourism and Investment to give consideration to this proposal for possible inclusion in the bill.

2.61 The committee is satisfied that approval for entities to access Efic's support will be determined by the Minister for Trade, Tourism and Investment and that this safeguard provides an additional balance to protect Efic's commitment to its primary duties. The committee anticipates the bill will help reduce duplication across government by allowing the Commonwealth to leverage existing expertise and resources, and have the added benefit of reducing service delivery costs.

2.62 The committee acknowledges concerns regarding Efic's due diligence on previous overseas projects, in particular where human rights violations have been reported. However, the committee is satisfied that Efic has a sound framework in place to ensure it upholds best-practice environmental and social standards in its transactions, which is discussed more fully in the Government Response to the Productivity Commission's inquiry.⁷¹

2.63 The committee acknowledges concerns that the bill's second amendment will remove the current local content requirement. However, the committee considers that the Efic Act currently reflects an outdated view of manufacturing and supports bringing the government's export credit agency into the modern age. The committee notes that many Australian companies already operate global networks in order to remain competitive. The committee agrees with submitters that keeping high value components of the network in Australia—such as intellectual property and research and design—is of greater importance than controlling low value components.

71 Department of Foreign Affairs and Trade, *Australian Government's Response to the Productivity Commission Review in Australia's Export Credit Arrangements*, <http://webarchive.nla.gov.au/gov/20140801082010/http://www.dfat.gov.au/publications/efic/> (accessed 27 January 2017).

2.64 The committee believes the bill will greatly increase Efic's scope to assist Australian businesses, as well as capture those who currently and unnecessarily fall through the gaps. The committee expects that the bill will also reduce costs to Australian businesses by improving Efic's efficiency and consistency.

2.65 The committee commends the bill to the Senate.

Recommendation 1

2.66 The committee recommends that the bill be passed.

**Senator Chris Back
Chair**

Dissenting report by Labor senators

1.1 Labor Senators support the role of the Export Finance and Insurance Corporation (Efic) and the importance of providing financial support to Australian businesses in their endeavour to export their goods and services.

1.2 While the Export and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016 (the bill) seeks to provide greater assistance to Australian businesses, certain changes to the second amendment have raised major concerns of negative consequences.

1.3 These changes are specific to the definition of an 'eligible export transaction', in particular removing the local content requirement clause.

1.4 The chair's report highlights a number of the negative consequences addressed by the submitters and these include:

- offshoring of Australian jobs;
- removal of incentives to produce or manufacture in Australia;
- deprive companies who produce in Australia of financial assistance;
- provide advantages to overseas competitors of Australian companies; and
- allow companies that are only nominally Australian to access financial assistance from the Australian Government.

1.5 However the Chair's report ignores this evidence and does not offer any solutions to the problems identified.

1.6 Given the below evidence submitted to the Committee, Labor Senators do not agree with the recommendation contained within the report.

1.7 AFTINET:

It is a reasonable and in fact modest requirement that firms receiving support from Efic actually produce goods and/or services in Australia and employ Australians. It provides ample flexibility for firms to have offshore operations where required.

In the absence of such a requirement, there would be no incentive for firms receiving Efic loans to have any Australian content. This would lead to the perverse situation of an Australian government institution being able to provide support for firms providing no employment in Australia.

The removal of local content requirements from the legislation would enable firms based in Australia but providing no local employment to have access to Efic support. It would provide no incentive for firms to continue to conduct operations in Australia and provide local employment.¹

1.8 The Australia Institute:

¹ Australian Fair Trade and Investment Network, *Submission 7*, pp 3–5.

While the change to specifically recognise service exports may be desirable, the current proposed amendment seems to remove any focus on products that are produced in Australia. The effect of this could be the further offshoring of Australian manufacturing. For example, a garment company based in Australia could move all production offshore, but still be eligible for Efic's services.

This has the potential to not only deprive finance to companies that produce in Australia, but also to give advantage to their competition in other countries.²

1.9 ACTU:

It is in the national interest that companies which receive government loans are required to use that money in a way which benefits Australian employment. The removal of these provisions will be yet another blow to the Australian manufacturing and services sectors. It could potentially lead to jobs being offshored.³

Recommendation 1

1.10 Any company wishing to access a loan or guarantee from Efic for an overseas project must demonstrate that the loan or guarantee will result in a growth of jobs in Australia. Such a test should be legislated in the Act.

Senator Alex Gallacher

Senator Claire Moore

2 Jubilee Australia Research Centre and The Australia Institute, *Submission 9*, p. 8.

3 Australian Council of Trade Unions, *Submission 11*, p. 3.

Dissenting report by the Australian Greens

1.1 The Australian Greens have significant issues with this bill, and believe the Government has missed an important opportunity to progress meaningful reform of the Export Finance and Insurance Corporation (Efic). These issues were addressed during the inquiry but not reflected in the Chair's recommendation to pass the bill in its current form.

1.2 Chief among the Greens' concern is Efic's inability to assess the impact of its investments. As a number of submitters pointed out, Efic must strengthen its accountability practices before it contemplates expanding its powers by sharing financing expertise with other Commonwealth entities, and by lowering the local content threshold for loans.

1.3 Efic has repeatedly demonstrated a failure to conduct due diligence, evidenced by human rights violations at Efic-sponsored projects overseas. These violations are set out in multiple submissions to the inquiry, including the egregious examples referenced in the Chair's report of the Panguna, Ok Tedi and Porgera mines, as well as support for ExxonMobil's LNG project in Papua New Guinea's Hela province, which led to conflict in that region.

1.4 As noted in the Chair's report, these concerns about Efic's lack of transparency and accountability were identified during the Productivity Commission's 2012 inquiry into Australia's Export Credit Arrangements, which found that Efic's exemption from the *Freedom of Information Act 1982* should be removed and that Efic should be required to release more information about social and environmental impact assessment. Efic has failed to meaningfully improve its transparency and accountability mechanisms since the Productivity Commission's report, having only adopted a grievance mechanism and introduced a weak and secretive Human Rights Policy. According to Efic, it holds itself to the International Finance Corporation's Performance Standards, which the IFI Network has consistently found to be problematic.

1.5 This bill also misses the opportunity to remove one of the many subsidies provided to the fossil fuel industry by the Australian Government. These fossil fuel subsidies are estimated to amount to \$7.7 billion of taxpayer funds in the 2016-17 financial year alone.

1.6 As noted by ActionAid in its submission, it is well established that export credit agency funding for fossil fuel developments should be considered a fossil fuel subsidy, as that funding is provided by Government. Various international frameworks have called for the removal of fossil fuel subsidies, including the Sustainable Development Goals and the G20.

1.7 Efic has funded and proposes to fund many fossil-fuel projects, which will drive dangerous global warming. One example is the proposed financing of ASX-listed company Resource Generation's Boikarabelo coal mine in South Africa, which, as Jubilee and the Australia Institute note in their submission, has approval to produce 32 million tonnes per year of unprocessed coal – more than the coal mines in

Australia's Hunter Valley combined. This development will also facilitate infrastructure for other mines in the Waterberg coal basin.

1.8 The Greens are disappointed, but unsurprised, that this bill fails to rule out support to fossil fuel projects. We are concerned that the expansion in Efic's mandate to provide advice to Commonwealth entities such as the Northern Australia Infrastructure Fund (NAIF) will provide yet another avenue for the Australian Government to support domestic fossil fuel projects like the proposed Adani coal mine.

1.9 The Greens are also concerned that this bill will result in the further offshoring of Australian manufacturing, depriving companies that produce in Australia, and in some cases, giving advantage to their competition in other countries.

1.10 For the reasons listed above, The Greens cannot support the Chair's recommendation that the bill be passed in its current form.

Senator Scott Ludlam

Dissenting report by Senator Nick Xenophon

'UN-Efic-AL': Using an Arm of the Australian Government to Give a Leg up to Foreign Manufacturing – at the Expense of Aussie Jobs

1.1 At a point in time when manufacturing in Australia as a percentage of GDP has plunged by half in the last decade, and more than 200 000 local manufacturing jobs lost, this bill seeks to introduce provisions that would see the Australian Government's Export Finance and Insurance Corporation (Efic) able to support Australian companies set up manufacturing facilities offshore, in preference to here at home. This bill seeks to introduce bad law and must be opposed.

1.2 Whilst the Committee Report fairly draws out both the pros and cons of the impact that this legislative would have, it has grossly underestimated the risks of this legislation in the context of an economic sector in a perilous condition.

First Amendment

1.3 The first amendment seeks, in the words contained in the explanatory memorandum, 'to allow Efic to offer its specialist financial capabilities in the operation and administration of Commonwealth financing programs, where there is no connection to exports. Following Efic's provision of services to the Northern Australian Infrastructure Facility (the NAIF), Commonwealth Departments have expressed interest in leveraging Efic's expertise'.¹

1.4 On the face of it this seems sensible until the points raised by Jubilee Research and The Australia Institute in their submissions are considered, particularly those in relation to dilution of focus.

1.5 Efic's annual report states that 'Efic's primary purpose is to facilitate and encourage Australian export trade on a commercial basis. We provide financial support to Australian-based companies that are exporting, integral to a global supply chain or seeking to grow internationally'.² The report also points out that the organisation comprises about 100 people.

1.6 Any diversion of resource and function in such a small and focused organisation could only reasonably be expected to distract and prevent the organisation in respect of encouraging export trade.

1 Explanatory Memorandum, *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016*, p. 2.

2 Export Finance and Insurance Corporation, *Annual Report 2015–16*, p. 8.

Recommendation 1

1.8 In the context of Australia's balance of trade deficit, Efic should and needs to remain tightly focussed on facilitating export trade, and the first amendment should be opposed.

Second Amendment

1.9 Under the current legislation, for a company to receive financial support from Efic it needs to demonstrate that there is some element (labour, goods and materials) of Australian content. The level of Australian content in an export contract is an important factor in determining the amount of financial that Efic provides – in essence, the higher the level of Australian content, the more financial support Efic can provide.

1.10 The proposed changes to the legislation seek to remove the local content requirements that invoke Efic's support and replace it with the need only for 'benefit' flowing back to Australia to be present.

1.11 This creates a situation where Efic funding could be used to offshore a new manufacturing capability – at the cost of Australian jobs.

1.12 Indeed this bill could facilitate the absurd scenario that money could be loaned to an organisation to set up a manufacturing facility overseas that produces a product that in turn is exported back into Australia to compete against products produced locally by Australian workers.

1.13 Australia's manufacturing sector has been in broad decline since 2008, with real output have contracted every quarter since September 2011. Over 200 000 manufacturing jobs have disappeared since 2008, and the rate of job loss is accelerating: employment in manufacturing fell six per cent in 2015 alone.

1.14 This is an unacceptable situation. As is known from the experience with the mining boom, Australia must have a diverse and robust economy. Manufacturing cannot be ignored; it is the engine room of innovation and export. Manufactured goods account for over two-thirds of world merchandise trade. A country that cannot successfully export manufactures will be shut out of most trade.

1.15 Whilst other countries are developing and implementing manufacturing growth policies, successive Australian Governments has been asleep at the 'mining truck' wheel. This bill is worse than that – it is akin to waking the driver up and specifically directing him to steer the truck off a cliff.

1.16 Some of the submitters made the point that the loosening of the Efic reins may assist companies set up marketing and promotion facilities offshore. Whilst these sorts of initiatives must be encouraged and supported by Government, there are other programs better suited to marketing; programs such as the Export Marketing Development Grant (EMDG) scheme. To pull the Efic lever to facilitate promotion is to pull the wrong lever.

1.17 The Parliament must reject this bill – it is not in the national interest to have the Australian Government facilitate loans that set up manufacturing plants and the like on foreign soil.

Recommendation 2

1.18 Removing the local content requirements attached to Efic support is not in the national interest and the second amendment should be opposed.

Senator Nick Xenophon

Appendix 1

Submissions

- 1 Department of Foreign Affairs and Trade
- 2 Australian Grape and Wine Authority
- 3 Australian Advanced Manufacturing Council
- 4 Advanced Manufacturing Growth Centre
- 5 Austmine Limited
- 6 Mr Graham Poon
- 7 Australian Fair Trade and Investment Network
- 8 ActionAid Australia
- 9 Jubilee Australia Research Centre and The Australia Institute
- 10 The GDK Group
- 11 Australian Council of Trade Unions
- 12 Export Council of Australia

