

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

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Submission

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## **ABOUT JUBILEE AUSTRALIA**

The Jubilee Australia Research Centre protects and promotes human rights and prevents environmental destruction for impoverished individuals and groups adversely impacted by the actions of Australian companies, financial institutions and the Australian government. It engages in research exploring options for policy reform of the global economy and global financial system. It also explores new Australian frameworks for responsible international financing, global poverty reduction, ecologically sustainable development in developing countries.

In 2016, the Jubilee Australia Research Centre became an affiliated part of the Australia Institute.

# INTRODUCTION

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The Jubilee Australia Research Centre and The Australia Institute welcome the opportunity to make a submission on the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016.

The primary purpose of Efic under the original Export Finance and Insurance Corporation Act 1991 is to “assist the development of Australian export trade.” Efic was established to address the market failure of Australian exporters being unable to secure finance or insurance services from commercial suppliers for financially viable projects.

Such issues can arise for small to medium sized enterprises (SMEs), particularly those that are new to export markets. Efic can play a valuable role in assisting such firms. Our chief concern is that these amendments to the Efic Act could divert Efic’s resources away from this role towards activities that have little relation to this market failure or Australian exporters.

Efic has already been criticised for not filling this role. A 2012 Productivity Commission inquiry found that Efic has a bias towards large corporations and that Efic's services to them were not justified. The Commission was particularly critical of Efic's provision of finance to resource projects in Australia, infrastructure (e.g. rail lines and terminals) and services (bus routes). It also found that large corporate clients were often repeated beneficiaries of Efic support.<sup>1</sup>

A new Statement of Expectations, sent to Efic by then-Trade Minister Andrew Robb in 2015, appeared to be an attempt to address some of the criticisms made by the 2012 Productivity Commission Report. It directed Efic to cease its direct support of onshore resource projects, although did allow Efic to continue to provide support to SMEs supplying such projects. It allowed Efic to continue to support overseas resource projects, so long as Efic was not crowding out the private sector. It put a limit on Commercial Account facilities to the same company (maximum of three times in three years) and required Efic to seek DFAT approval if Efic gave support to more regularly than three times in three years.<sup>2</sup>

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<sup>1</sup> Productivity Commission Inquiry Report No. 58 (2012) Australia’s Export Credit Arrangements, <http://www.pc.gov.au/inquiries/completed/export-credit/report>

<sup>2</sup> Robb (2015), Statement of Expectations to Efic: [https://www.efic.gov.au/media/1541/efic\\_soe\\_february\\_2015.pdf](https://www.efic.gov.au/media/1541/efic_soe_february_2015.pdf)

We understand that Efic has attempted to respond to the new directives with a greater focus on SMEs, although more research is required to determine how successful this has been.

## FIRST AMENDMENT

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Given Efic's focus and purpose of helping SME exporters, the explanatory memorandum's discussion of the proposed first amendment is surprising:

The policy objective of the first amendment is 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 Australia Infrastructure Facility ("the NAIF"), Commonwealth departments have expressed interest in leveraging Efic's expertise.

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.

Efic's decision to support the ExxonMobil-led PNG LNG project in 2009, the largest single loan that Efic has given, is illustrative. Much of this transaction was done on its National Interest Account and thus was undertaken with the cooperation of DFAT. Nevertheless, it could not have happened without passing Efic's due diligence standards, which have clearly been found to be wanting. In 2009 and again in 2012, Jubilee Australia found two major shortcomings of the project. First, from a macroeconomic point of view, the expected financial impacts on the PNG economy were likely to be mixed; and poor governance in PNG would likely undermine any predicted widespread benefits for the ordinary people of PNG. In the last two years, PNG has fallen into financial crisis partly as a result of financial decisions taken by the Government that are linked back to the project, particularly a loan taken out to secure a PNG Government stake in the company Oil Search.<sup>3</sup>

Second, Jubilee warned that the unrealistic promises combined with inadequate landowner mapping and political pressures on the landowners to sign onto the project

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<sup>3</sup> Yala, Sanida & Makol (2014) Development Policy Blog, The Oil Search Loan: Implications for PNG, <http://devpolicy.org/the-oil-search-loan-implications-for-png-20140321-2/>

agreement would eventually lead to landowner discontent. Jubilee Australia further warned that if this discontent caused some low-level conflict, the PNG might send in the military, which could lead to escalation and bloody civil conflict in the area. This is precisely what has happened.

In the last few weeks the PNG Government has sent the military into Hela Province to secure the project. There is now a serious risk that the whole area may erupt into violence in the future couple of years. 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.<sup>4</sup>

However, PNG LNG is just one of a litany of examples where Efic has been unable to assess risks associated with large scale resource projects, many of them in PNG. In the early 1980s, Efic finance helped assist the expansion of the Rio Tinto-controlled Panguna mine. The exploitation associated with the Panguna mine led to the Bougainville Civil War, the largest and most destructive war in the South Pacific region since World War Two.

Efic also financed development of the Ok Tedi mine in PNG's Western Province, where irresponsible waste dumping by BHP resulted in the environmental destruction of the Fly River, one of PNG's most pristine river systems. In the early 1990s, Efic finance supported development of the Porgera Mine in Enga Province of PNG, a mine which has also resulted in human rights abuses by security services associated with the mining company, including the rape of over one hundred local women.<sup>5</sup>

Jubilee Australia has long highlighted that the failure of Efic's due diligence on social and environmental outcomes is a result of the lack of transparency and accountability of Efic as an institution. Our concerns are best summarised in our 2011 submission to the Productivity Commission inquiry.<sup>6</sup> Most of the seventeen recommendations made in our submission propose ways for Efic to be more transparent and accountable. The Commission endorsed the thrust of Jubilee's submission by agreeing that Efic's exemption from the Freedom of Information Act should be removed and the Efic should be required to release more information about social and environmental

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<sup>4</sup> Fletcher (2016) Jubilee Australia Statement: Concerns Raised over Militarisation of PNG LNG Project, <http://www.jubileeaustralia.org/latest-news/concerns-raised-over-militarisation-of-png-lng-project>

<sup>5</sup> Pacific Beat (2016) Compensation process for rape victims at Porgera mine in Papua New Guinea 'deeply flawed', researchers say, <http://www.abc.net.au/news/2015-12-09/porgera-rape-protocol-insulting-to-victims/7013164>

<sup>6</sup> Polce and Webb (2011) Australia's Export Credit Arrangements: Submission to the Productivity Commission, Jubilee Australia

impact assessment.<sup>7</sup> Of the seventeen recommendations, only one has been adopted: Recommendation 17 (on the adoption of a grievance mechanism). Efic have also adopted a Human Rights policy (Recommendation 8) but it is weak and the benchmarking is not disclosed.

Given this record, Efic's work with the NAIF is concerning. This is particularly the case given reports that the NAIF will be considering a large loan to the very controversial Adani coal project or related infrastructure.

As the NAIF is yet to approve any loans and seems to still lack basic governance documents such as a risk appetite statement, it is surprising that the explanatory memorandum refers to other Commonwealth departments expressing interest in Efic's services "following" its services to the NAIF. Efic's services are still ongoing and their ability to provide assessment far from the organisation's core purpose still untested. The government should disclose which Commonwealth agencies are interested in Efic's services and for what purpose.

## SECOND AMENDMENT

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The second amendment also raises issues that should be further investigated before being passed into law. This amendment would remove Efic's requirement to lend to companies that produce items that are "produced or manufactured wholly or substantially in Australia" and allow loans instead to "any transaction (including the rendering of a service) involving a benefit flowing directly or indirectly from overseas to a person carrying on business or other activities in Australia."

The intent of the original Efic Act was to assist Australian manufacturers and other types of producer to export items made in Australia. This is shown clearly in the text proposed to be deleted, which follows the words "incidental or related to":

(3) For the purposes of this Act, a transaction is an eligible export transaction if, in whole or in part, it involves, is associated with, or is incidental or related to:

(a) the export from Australia of goods produced or manufactured wholly or substantially in Australia; or

(b) the production or manufacture in Australia, wholly or substantially, of goods that are to be exported from Australia; or

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<sup>7</sup> Productivity Commission Inquiry Report No. 58 (2012) Australia's Export Credit Arrangements, <http://www.pc.gov.au/inquiries/completed/export-credit/report>

(c) the supply, installation, erection, operation, maintenance or repair of goods produced or manufactured wholly or substantially in Australia and exported from Australia; or

(d) the rendering in Australia or a foreign country:

(i) of any services in or in connection with the supply, installation, erection, operation, maintenance or repair of goods produced or manufactured wholly or substantially in Australia and exported from Australia; or

(ii) of any construction, technological, managerial or other services (whether in connection with such goods or otherwise) for a person carrying on business in a foreign country or for the government, or an agency of the government, of that country or of any political subdivision of that country.<sup>8</sup>

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. A parallel example is Efic's current proposal to fund a coal mine in South Africa, the Boikarabelo Coal Project, which will directly compete with Australian mines.

The proponent of Boikarabelo is Resource Generation, or ResGen, a company listed on both the Australian stock exchange (ASX) and South Africa's Johannesburg exchange. Despite being listed in Australia, ResGen has no Australian office and no employees in Australia. The company boasts in the South African media about the "South Africanisation" of the project.<sup>9</sup>

Boikarabelo is a large mine. It has approval to produce 32 million tonnes per year of unprocessed coal. This is larger than all Hunter Valley mines and similar in size to the giant mines proposed for the Galilee Basin. If Boikarabelo goes ahead, it will facilitate infrastructure for other mines in the enormous Waterberg coal basin. These mines will

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<sup>8</sup> [http://www.austlii.edu.au/au/legis/cth/consol\\_act/efaica1991402/s3.html](http://www.austlii.edu.au/au/legis/cth/consol_act/efaica1991402/s3.html)

<sup>9</sup> Mining Review Africa (2016) Resource Generation 'South Africanises' Boikarabelo, [https://www.miningreview.com/magazine\\_articles/resource-generation-south-africanises-boikarabelo/](https://www.miningreview.com/magazine_articles/resource-generation-south-africanises-boikarabelo/)



compete directly with Australia’s thermal coal mines, particularly in the Indian market. Efic has conducted no public analysis of how Boikarabelo and Waterberg mines would affect potential exports of Australian coal to India.<sup>10</sup>

Just as Efic proposes to fund a South African mine with minimal links to Australia, the second proposed amendment would make it easier for Efic’s resources to producers that could be nominally Australian but that perform all production, design, development and manufacturing overseas.

Contrary to the minister’s claim in the second reading speech that this would mean “more job opportunities and a better standard of living for all Australians,”<sup>11</sup> it has the potential to reduce jobs that produce goods and services in Australia.

In addition to potentially offshoring Australian production, this change could move production into jurisdictions with lower environmental and labour standards. This reduces transparency and standards in supply chains.

## CONCLUSION

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Given these potential impacts this bill should not pass in its present form. At the very least a regulation impact statement should be conducted allowing for informed debate of the bill’s impacts. No such assessment is currently present on the bill’s website.<sup>12</sup>

We look forward to seeing the contents of this bill carefully considered and possibly amended, to ensure that Efic’s services are directed towards the Australian exporters that genuinely need them.

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<sup>10</sup> For more information see Campbell and Fletcher (2016) Boikarabelo Coal Project: Submission to Efic, <http://www.jubileeaustralia.org/latest-news/jubilee-protests-again-efic-plans-to-finance-south-african-coal-mine>

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[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard\\_r%2Fe089c8c3-75b7-4858-80ac-58b4e4c6e749%2F0021%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard_r%2Fe089c8c3-75b7-4858-80ac-58b4e4c6e749%2F0021%22)

<sup>12</sup>

[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEGislation/Bills\\_Search\\_Results/Result?bId=r5758](http://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r5758)