

Export Finance and Insurance Corporation Act 1991

No. 148, 1991

**Compilation No. 23**

**Compilation date:** 28 October 2021

**Includes amendments up to:** Act No. 114, 2021

**Registered:** 17 November 2021

**About this compilation**

**This compilation**

This is a compilation of the *Export Finance and Insurance Corporation Act 1991* that shows the text of the law as amended and in force on 28 October 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 1

1 Short title 1

2 Commencement 1

3 Interpretation 1

3A Meaning of *large business* 6

4 Extension to Territories 6

5 Application of Act outside Australia 7

5A Application of the *Criminal Code* 7

Part 2—Establishment and functions of Export Finance and Insurance Corporation 8

6 Establishment of EFIC 8

7 Functions of EFIC 8

8 Primary duties of EFIC 10

9 Ministerial directions to EFIC 11

10 Reimbursement of cost of complying with directions 12

Part 3—General powers and duties of EFIC 13

11 General powers of EFIC 13

12 Offices of EFIC 14

13 Formation of companies, partnerships etc. 14

Part 4—Insurance and financial services and products 15

14 Export payments insurance contracts 15

15 Reinsurance etc. in relation to business of EFIC 15

16 Guarantees and subsidies in relation to loans to Australian suppliers 15

17 Guarantees and subsidies in relation to loans to overseas buyers etc. 17

18 Guarantees to co‑lenders in relation to export transactions 17

18A Guarantees in relation to overseas infrastructure development 18

19 Tender guarantees and performance guarantees 18

20 Reinsurance of guarantees, insurance etc. relating to export business etc. 18

21 Approved causes of loss 20

22 Insurance in respect of overseas investment transactions 20

23 Loans to finance eligible export transactions 21

23A Loans to support overseas infrastructure development 22

Part 5—National interest transactions 24

24 Interpretation 24

25 Reference of applications to Minister 24

26 Ministerial directions regarding reference of applications 24

27 Approval of EFIC entering into contracts etc. 25

28 Conditional approvals 26

29 Ministerial directions regarding entry into national interest contracts etc. 27

30 Gazettal of national interest contracts etc. 28

31 Reinsurance etc. in relation to EFIC business under Part 5 29

Part 6—Board 30

32 Establishment of the Board 30

33 Functions of the Board 30

34 Membership of the Board 30

35 Term of office and conditions of office of members 31

36 Terms and conditions of appointment 31

37 Remuneration etc. of appointed members 31

38 Acting Chairperson and acting Deputy Chairperson 32

39 Acting members 32

40 Leave of absence of appointed members 33

41 Resignation of appointed members 33

42 General provision for termination of appointment of appointed members 33

43 Termination of appointment of appointed members at instance of Board or for non‑performance etc. 34

44 Meetings of the Board 34

46 Resolutions without meetings 35

47 Committees 36

Part 7—Corporate plans 37

49 Matters to be included in corporate plans 37

Part 8—Finance 38

52 Capital of EFIC 38

53 Transfers to capital from reserves 38

54 Callable capital of EFIC 38

55 Payment of annual dividends to the Commonwealth 40

55A Payment of additional dividends to the Commonwealth 41

56 Maintenance of adequate capital and reserves 42

58 Borrowings from the Commonwealth 43

59 Other borrowings 43

60 Security 44

61 Limitation on borrowing etc. 44

61A Debt neutrality charge 45

62 Guarantee by Commonwealth 45

62A Guarantee fees 45

63 Exemptions from taxation 46

63A Tax‑equivalent payments 46

64 Transactions in the national interest: EFIC share of liability 47

65 Contracts and guarantees in the national interest 47

66 Loans made in the national interest 49

66A DIFF loans—assumption of risk by the Commonwealth 51

67 Subsidy to EFIC 53

68 Maximum contingent liability under Part 4 53

69 Limit of total amount of loans under Part 4 54

70 Annual report 54

Part 9—Managing Director and Deputy Managing Director 55

71 Appointment of Managing Director and Deputy Managing Director 55

72 Appointments to be full‑time and at Board’s pleasure 55

73 Terms and conditions of appointment 55

74 Disclosure of interests 56

75 Exclusion from certain Board deliberations 56

77 Duties of Managing Director and Deputy Managing Director 56

78 Outside employment 56

79 Acting Managing Director and acting Deputy Managing Director 57

80 Resignation 57

Part 10—Miscellaneous 58

81 Use of name of Corporation 58

82 Application of the *Lands Acquisition Act 1989* 59

83 Delegations by Minister and Managing Director 59

84 Delegation by the Board 59

84A EFIC must charge for certain services 60

85 Annual reports 60

87 Secrecy 61

88 Offences 62

89 Effectiveness of acts of EFIC 63

90 Staff 64

91 Regulations 64

Endnotes 65

Endnote 1—About the endnotes 65

Endnote 2—Abbreviation key 67

Endnote 3—Legislation history 68

Endnote 4—Amendment history 72

An Act to establish an Export Finance and Insurance Corporation for the purpose of facilitating and encouraging Australian export trade and overseas infrastructure development, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Export Finance and Insurance Corporation Act 1991*.

2 Commencement

This Act commences on 1 November 1991.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

***ADI*** has the same meaning as in the *Banking Act 1959*.

Note: ADI is short for authorised deposit‑taking institution.

***appointed member*** means a member, other than the Managing Director of EFIC.

***Australian benefit*** means a benefit that flows (whether directly or indirectly) from overseas to:

(a) Australia; or

(b) a person carrying on business or other activities in Australia.

***Board*** means the Export Finance and Insurance Corporation Board.

***called capital***, in relation to EFIC at a particular time, means the total amount paid by the Commonwealth to EFIC under subsection 54(4), less any amounts paid by EFIC to the Commonwealth under subsection 54(6).

***Chairperson*** includes a person acting as Chairperson.

***Commonwealth company*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***Commonwealth entity*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***Deputy Chairperson*** includes a person acting as Deputy Chairperson.

***Deputy Managing Director*** includes a person acting as Deputy Managing Director.

***EFIC*** means the Export Finance and Insurance Corporation.

***EFIC’s Commonwealth entities function*** means the function set out in paragraph 7(1)(dc).

***EFIC’s Northern Australia economic infrastructure functions*** means the functions set out in paragraphs 7(1)(da) and (db).

***EFIC’s overseas infrastructure financing functions*** means the functions set out in paragraphs 7(1)(dd) and (de).

***export contract*** means a contract or arrangement:

(a) for the export of goods produced or manufactured wholly or in part in Australia; or

(b) for the rendering (whether inside or outside Australia) of a service to a person outside Australia.

***Finance Minister*** means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

***guarantee*** includes the provision of stand‑by credit and any other form of monetary commitment supporting the performance of an obligation.

***large business***: see section 3A.

***Managing Director*** includes a person acting as Managing Director.

***member*** means a member of the Board, and includes the Chairperson, the Deputy Chairperson and a person acting as a member of the Board.

***Northern Australia economic infrastructure*** has the same meaning as in the *Northern Australia Infrastructure Facility Act 2016*.

***overseas infrastructure development*** means the development or enhancement of infrastructure that will be, or is, located or used wholly or substantially outside Australia.

***overseas infrastructure financing*** means lending money to support overseas infrastructure development, if EFIC reasonably believes that lending the money is likely to result in an Australian benefit.

Note: Lending money includes providing finance, providing a financial accommodation or making an equity investment, in any form: see subsection (2).

***overseas investment transaction*** means:

(a) the acquisition of shares or stock, or of any other interest, in a corporation incorporated in a foreign country, being a corporation:

(i) that, either alone or with other persons, carries on, or proposes to carry on, a business in a foreign country; or

(ii) that has a substantial shareholding in another corporation that, either alone or with other persons, carries on, or proposes to carry on, a business in a foreign country; or

(b) the acquisition of a right to share in the income or assets, or the income and assets, of a business carried on, or proposed to be carried on, in a foreign country, whether as a partnership or otherwise; or

(c) the lending of money to a person for use by that person in, or in connection with, a business carried on, or proposed to be carried on, by the person in a foreign country or the guaranteeing of, or the provision of other support for, the repayment of money so lent and the payment of interest or other charges that may become payable in respect of money so lent; or

(d) the transferring of money to, or the importing of equipment or other goods into, a foreign country for use in, or in connection with, a business carried on, or proposed to be carried on, in a foreign country by the person transferring the money or importing the equipment or other goods; or

(e) the transferring of money, or the supply of equipment or other goods, by a corporation to another corporation in which that first‑mentioned corporation has a substantial shareholding, being money, equipment or goods for use in, or in connection with, a business carried on, or proposed to be carried on, by that other corporation in a foreign country.

***related party***, for a business, has the meaning given by section 228 of the *Corporations Act 2001*.

***short‑term insurance contract*** means an export payments insurance contract under section 14 that covers a loss or detriment arising out of a contract or arrangement whose initial payment term is no longer than 360 days, but does not include an export payments insurance contract that EFIC has entered into, whether wholly or partly, in accordance with an approval or direction under Part 5.

***substantial part of a business*** means a part of a business that is substantial and not minor or insignificant.

Loans and lending of money

(2) In this Act, a reference to a loan or to the lending of money includes a reference to the provision of finance, the provision of a financial accommodation or the making of equity investments, in any form.

Eligible export transactions

(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

(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; or

(e) the supply to persons who are not ordinarily resident in Australia of services relating to tourism; or

(f) the conduct of an online business with customers outside Australia; or

(g) the sale or licensing of intellectual property and related rights to persons outside Australia; or

(h) direct investment outside Australia where a benefit flows back to Australia (whether directly or indirectly).

Australian export trade

(5) In this Act, a reference to Australian export trade includes a reference 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.

3A Meaning of *large business*

(1) A business is a ***large business*** at a particular time in a financial year (the ***current financial year***) if:

(a) its revenue for the previous financial year is $150,000,000 or more; or

(b) if there was no time in the previous financial year when the business was carried on—its revenue for the current financial year is as at that time $150,000,000 or more.

(2) Revenue is to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time.

4 Extension to Territories

(1) Subject to subsection (2), this Act extends to all the Territories.

(2) The Minister may, by notice published in the *Gazette*, declare that, on a specified day, this Act is to cease to extend to a specified external Territory.

(3) On and from the day specified in the notice:

(a) this Act does not extend to the specified Territory; and

(b) a reference in this Act to a Territory does not include the specified Territory; and

(c) this Act has effect as if the specified Territory were a foreign country.

5 Application of Act outside Australia

This Act applies both within and outside Australia.

5A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—Establishment and functions of Export Finance and Insurance Corporation

6 Establishment of EFIC

(1) There is established by this Act a corporation called the Export Finance and Insurance Corporation.

(2) EFIC:

(a) is a body corporate; and

(b) is to have a seal; and

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to EFIC. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

(3) The seal of EFIC is to be kept in such custody as the Board directs, and must not be used except as authorised by the Board.

(4) All courts, judges and persons acting judicially are to take judicial notice of the imprint of the seal of EFIC appearing on a document and are to presume that the document was duly sealed.

7 Functions of EFIC

(1) The functions of EFIC are as follows:

(a) to facilitate and encourage Australian export trade by providing insurance and financial services and products to persons involved directly or indirectly in such trade;

(b) to encourage ADIs, and other financial institutions, carrying on business in Australia to finance, or assist in financing, export contracts or eligible export transactions;

(c) in relation to overseas aid projects that involve the making of payments under export contracts out of money made available by the Commonwealth or a Commonwealth instrumentality, on behalf of the Commonwealth or that instrumentality, as the case may be:

(i) to manage the application of money made available by the Commonwealth or the Commonwealth instrumentality; and

(ii) to ensure that payments under those contracts are properly authorised; and

(iii) to attend to payments out of that money;

(d) to provide information and advice to any person regarding insurance or financial arrangements available to support Australian export trade;

(da) to assist the Northern Australia Infrastructure Facility in the performance of the functions of the Facility;

(db) as agreed between EFIC and the States and Territories, to provide incidental assistance to the States and Territories in relation to financial arrangements and agreements related to the terms and conditions of grants of financial assistance for the construction of Northern Australia economic infrastructure;

(dc) as directed by the Minister, to assist Commonwealth entities and Commonwealth companies in performing their functions or achieving their purposes by providing services in relation to financial arrangements and agreements;

(dd) to engage in overseas infrastructure financing under section 23A;

(de) to encourage and facilitate overseas infrastructure financing by:

(i) giving guarantees under section 18A; and

(ii) encouraging ADIs, and other financial institutions, carrying on business in Australia to engage in, or assist in, overseas infrastructure financing; and

(iii) providing information and advice to any person regarding overseas infrastructure financing;

(e) to do any other act or thing required by or under this or any other Act to be done by EFIC.

(2) For the purposes of paragraph (1)(c), an overseas aid project is a project under which the Commonwealth, or an instrumentality of the Commonwealth, proposes to provide funds to assist in the social and economic development of a foreign country.

(3) The reference in paragraph (1)(dc) to providing services in relation to financial arrangements and agreements does not include the provision of loans, insurance or guarantees.

Note: The provision of loans includes providing finance, providing a financial accommodation or making an equity investment, in any form: see subsection 3(2).

8 Primary duties of EFIC

(1) EFIC is to perform its functions in such a manner as will best assist the development of Australian export trade.

(2) In performing its functions, EFIC must:

(a) comply with any directions given under section 9; and

(b) have regard to:

(i) the desirability of improving and extending the range of insurance and other financial services and products available (whether from EFIC or otherwise) to persons involved, or likely to be involved, directly or indirectly, in Australian export trade; and

(ii) the need to provide its services and products as efficiently and economically as possible; and

(iii) Australia’s obligations under international agreements.

(3) Subsection (1) and subparagraphs (2)(b)(i) and (iii) do not apply in relation to:

(a) EFIC’s Northern Australia economic infrastructure functions; or

(b) EFIC’s Commonwealth entities function.

EFIC’s overseas infrastructure financing functions

(4) EFIC is to perform EFIC’s overseas infrastructure financing functions in such a manner as EFIC reasonably believes is likely to result in the maximum Australian benefits.

(5) Subsection (1) and subparagraph (2)(b)(i) do not apply in relation to EFIC’s overseas infrastructure financing functions.

9 Ministerial directions to EFIC

(1) Except as expressly provided by this Act, EFIC is not subject to direction by the Minister.

(2) The Minister may give written directions to EFIC with respect to the performance of its functions or the exercise of its powers if the Minister is satisfied that it is desirable in the public interest that the directions be given.

(3) EFIC must comply with any direction under subsection (2).

(4) Particulars of directions under subsection (2) are to be included in the annual report of EFIC in accordance with subsection 85(2).

(5) Subsection (2) is not intended to authorise a direction:

(a) requiring the Minister’s approval of the entry by EFIC into a particular contract or the giving by EFIC of a particular guarantee or the making of a particular loan; or

(b) giving the Minister power to determine that EFIC is or is not to enter into a particular contract, give a particular guarantee or make a particular loan.

(6) Subsection (5) does not apply in relation to:

(a) EFIC’s Northern Australia economic infrastructure functions; or

(b) EFIC’s Commonwealth entities function.

10 Reimbursement of cost of complying with directions

(1) Where the Minister is satisfied that, during a particular period, EFIC has suffered financial detriment as a result of complying with a direction under section 9, EFIC is entitled to be reimbursed by the Commonwealth the amount of the detriment as determined in writing by the Minister.

(2) The reference in subsection (1) to EFIC suffering financial detriment as a result of complying with a direction includes a reference to EFIC:

(a) suffering a loss in complying with the direction; or

(b) incurring costs in complying with the direction that EFIC would not otherwise have incurred; or

(c) incurring costs in complying with the direction that are greater than the costs EFIC would otherwise have incurred; or

(d) in complying with the direction, forgoing revenue that EFIC could otherwise have received.

(3) This section does not apply to a direction expressed to be given in accordance with the general policy of the Commonwealth Government.

Part 3—General powers and duties of EFIC

11 General powers of EFIC

(1) EFIC has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.

(2) In particular, EFIC may:

(a) enter into contracts; and

(b) appoint agents and attorneys, and act as agent for other persons; and

(c) engage persons to perform services for EFIC; and

(d) enter into:

(i) arrangements known as swaps, foreign exchange agreements, forward rate agreements, options or hedge agreements; or

(ii) arrangements having a similar purpose or effect; and

(e) accept gifts, grants, bequests and devises made to it, and act as trustee of money or other property vested in it on trust; and

(f) do anything incidental to any of its powers or the exercise of any of those powers.

Note: Section 59 of the *Public Governance, Performance and Accountability Act 2013* also gives EFIC the power to invest money that is not immediately required for the purposes of EFIC.

(3) A power conferred by subsection (1) is not to be taken to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on EFIC.

(4) So far as practicable, EFIC must exercise its powers in a way that will give effect to the corporate plan in force at the time.

(5) EFIC may provide insurance or financial services or products, information or advice for reward.

(6) EFIC’s powers may be exercised within or outside Australia.

12 Offices of EFIC

EFIC may have offices in such places, whether in Australia or elsewhere, as the Board thinks appropriate to further the efficient performance of EFIC’s functions.

13 Formation of companies, partnerships etc.

(1) EFIC may:

(a) arrange for the formation of a company; or

(b) join in the formation of a company, partnership, joint venture or other business association;

for any purpose connected with, or incidental to, EFIC’s functions.

(2) EFIC may only exercise a power under subsection (1) if:

(a) the exercise of the power would be consistent with the achievement of the objectives of EFIC as set out in the corporate plan in force at the time; and

(b) the power is exercised on terms and conditions approved in writing by the Minister.

Part 4—Insurance and financial services and products

14 Export payments insurance contracts

(1) EFIC may enter into export payments insurance contracts with, or for the benefit of, persons carrying on business or other activities in Australia.

(2) An export payments insurance contract is a contract of insurance against risk of direct or indirect monetary loss or other detriment resulting from failure to receive payment in connection with, or otherwise arising out of, acts or transactions in the course of, or for the purposes of, Australian export trade.

15 Reinsurance etc. in relation to business of EFIC

(1) EFIC may enter into a contract of insurance or indemnity, take a guarantee or take security to cover any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, under this Part.

(2) EFIC may enter into any other contract in order to reduce or reschedule any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, under this Part.

16 Guarantees and subsidies in relation to loans to Australian suppliers

(1) Where:

(a) a person (in this section called ***the lender***) has lent, or proposes to lend, other than in the form of an equity investment, money to a person who is carrying on business in Australia; and

(b) the purpose of the loan or proposed loan is the financing, in whole or in part, of Australian export trade;

EFIC may guarantee to the lender the repayment of the whole, or any part, of the money lent, or proposed to be lent, and the payment of the whole, or a part, of any interest or other charges that may become payable to the lender in respect of the money lent.

(2) Where EFIC has given, or proposes to give, a guarantee to the lender, EFIC may enter into a contract with the lender under which, in consideration of the lender making or agreeing to make the loan, EFIC agrees to pay the lender, in specified circumstances, an amount ascertained in accordance with the contract.

(3) However, EFIC must not make a guarantee or enter into a contract under this section in relation to a loan or a proposed loan that is to be used for the dominant purpose of direct investment outside Australia unless the requirements in subsection (4) are satisfied.

(4) For the purposes of subsection (3), the requirements are the following:

(a) the person who carries on the business must certify, by writing given to EFIC, that the person reasonably believes that the loan will result in a net increase in the number of people employed in Australia by the business, or a related party of the business, during the term of the loan;

(b) at the completion of the loan, the person carrying on the business must certify to EFIC whether the loan has resulted in a net increase in the number of people employed in Australia by the business, or a related party of the business;

(c) if the business is a large business—the person who carries on the business must certify, by writing given to EFIC, that the loan will not be used to move the whole or a substantial part of the business, or of a related party of the business, overseas; and

(d) EFIC must ensure that it publicly discloses copies of the certification it receives under subsection (4)(b).

17 Guarantees and subsidies in relation to loans to overseas buyers etc.

(1) Where a person (in this section called ***the lender***) has lent, or proposes to lend, other than in the form of an equity investment, money to a person for the purpose of financing, in whole or in part, the making of payments under:

(a) an export contract; or

(b) a contract for the sale of goods, or for the performance of works or services outside Australia, for the purpose of performing which a party to the contract has entered into an export contract;

EFIC may guarantee to the lender the repayment of the whole, or any part, of the money lent, or proposed to be lent, and the payment of the whole or a part of any interest or other charges that may become payable to the lender in respect of the money lent.

(2) Where EFIC has given, or proposes to give, a guarantee to the lender, EFIC may enter into a contract with the lender under which, in consideration of the lender making or agreeing to make the loan, EFIC agrees to pay the lender, in specified circumstances, an amount ascertained in accordance with the contract.

18 Guarantees to co‑lenders in relation to export transactions

Where, for the purpose of financing, in whole or in part, an eligible export transaction:

(a) EFIC has lent, or proposes to lend, other than in the form of an equity investment, money under section 23 to a person; and

(b) another person (in this section called ***the co‑lender***), by arrangement with EFIC, has also lent, or proposes to lend, other than in the form of an equity investment, money to that person, or to another person;

EFIC may guarantee to the co‑lender the repayment of the whole or any part of the money lent, or to be lent, by the co‑lender and the payment of the whole or a part of any interest or other charges that may become payable to the co‑lender in respect of the money lent, or to be lent, by the co‑lender.

18A Guarantees in relation to overseas infrastructure development

If a person (in this section called ***the lender***) has lent, or proposes to lend (other than in the form of an equity investment) money to a person for the purpose of supporting overseas infrastructure development, EFIC may guarantee to the lender:

(a) the repayment of the whole, or any part, of the money lent, or to be lent; and

(b) the payment of the whole or a part of any interest or other charges that may become payable to the lender in respect of the money lent, or to be lent.

19 Tender guarantees and performance guarantees

(1) EFIC may enter into a contract under which an indemnity or guarantee is given to a person in relation to a tender or proposed tender for, or in relation to the performance of, a contract or proposed contract that is, or will be:

(a) an export contract; or

(b) either in whole or in part, an eligible export transaction; or

(c) a contract associated with such a transaction.

(2) Subsection (1) applies to a contract which, however expressed and in whatever form, is in substance an indemnity or guarantee.

20 Reinsurance of guarantees, insurance etc. relating to export business etc.

(1) EFIC may enter into a contract under which it gives an indemnity or guarantee to a person in respect of a liability to which this section applies.

(2) The liabilities to which this section applies are as follows:

(a) the liability of an insurer under a contract, whether entered into in Australia or elsewhere, to give an indemnity or guarantee in respect of monetary loss or other detriment suffered in connection with a transaction involving:

(i) goods exported, or to be exported, under an export contract; or

(ii) goods in the production or treatment of which goods referred to in subparagraph (i) have been, or are to be, used; or

(iii) services rendered, or to be rendered, under an export contract;

(b) the liability of a person under a contract under which the person has given a guarantee in respect of the loan, or proposed loan, of moneys for the purpose of financing, in whole or in part, the making of payments under a contract referred to in subsection 17(1);

(c) the liability of a person under an indemnity or guarantee given, or proposed to be given, by the person in relation to a tender or proposed tender of a kind referred to in subsection 19(1).

(3) An indemnity or guarantee given in respect of a liability referred to in paragraph (2)(a) must relate only to such part of the liability as may reasonably be regarded as related to the goods or services referred to in subsection (2).

(4) An indemnity or guarantee given in relation to a liability referred to in paragraph (2)(b) must relate only to so much of the liability as does not exceed:

(a) where the indemnity or guarantee under which the liability arises relates to money lent, or proposed to be lent, for the purpose of financing payments under an export contract—the amount, or the total of the amounts, payable under that contract in respect of goods or services to which that export contract relates; or

(b) where the indemnity or guarantee under which the liability arises relates to money lent, or proposed to be lent, for the purpose of financing payments under a contract for the purpose of performing which a party to that contract has entered into an export contract—the amount, or the total of the amounts, payable under that export contract in respect of goods or services to which that export contract relates.

(5) A reference in this section to a contract under which an indemnity or guarantee is given is a reference to a contract which, however expressed and in whatever form, is in substance a contract for the giving of an indemnity or guarantee.

21 Approved causes of loss

(1) EFIC may declare a specified cause of loss to be an approved cause of loss for the purposes of this Part.

(2) A declaration under subsection (1):

(a) must be in writing; and

(b) takes effect on the day specified in the declaration.

(3) As soon as practicable after making or revoking a declaration, EFIC must cause a copy of the declaration or the instrument of revocation to be published in the *Gazette*.

22 Insurance in respect of overseas investment transactions

(1) This section applies to:

(a) a person who carries on business in Australia; and

(b) any corporation in which such a person has a substantial shareholding.

(2) A person to whom this section applies who proposes to enter into an overseas investment transaction may apply to EFIC to enter into a contract of insurance insuring the person against risk of direct or indirect monetary loss or other detriment in respect of the transaction arising out of an approved cause of loss specified in the application.

(3) A person to whom this section applies who has entered into an overseas investment transaction may apply to EFIC to enter into a contract of insurance insuring the person against risk of direct or indirect monetary loss in respect of payments generated by the transaction where the loss or detriment arises out of an approved cause of loss specified in the application.

(4) The reference in subsection (3) to payments generated by a transaction is a reference to payments generated after the application is made to EFIC.

(5) An application must be in writing.

(6) On receipt of an application, EFIC may enter into a contract of insurance of the kind referred to in subsection (2) or (3), as the case may be, in respect of the whole or a part of the overseas investment transaction to which the application relates.

(7) EFIC must not enter into a contract of insurance under which a person is insured against loss or detriment attributable to circumstances within the control of the person.

23 Loans to finance eligible export transactions

(1) Where an eligible export transaction has been entered into, or is proposed to be entered into, EFIC may lend money for the purpose of financing the transaction in whole or in part.

Note: EFIC’s power under subsection (1) to lend money includes the power to provide finance, to provide a financial accommodation or to make an equity investment, in any form: see subsection 3(2).

(2) The money may be lent to such person or persons as EFIC thinks appropriate, whether or not the person or persons are, or will be, party to the transaction or proposed transaction.

(3) However, EFIC must not lend money (other than in the form of an equity investment) under this section for the purpose of financing a transaction whose dominant purpose is direct investment outside Australia by a person carrying on business in Australia unless the requirements in subsection (4) are satisfied.

(4) For the purposes of subsection (3), the requirements are the following:

(a) a person to whom the money is lent must certify, by writing given to EFIC, that the person reasonably believes that the loan will result in a net increase in the number of people employed in Australia by the business, or a related party of the business, during the term of the loan;

(b) at the completion of the loan, the person carrying on the business must certify to EFIC whether the loan has resulted in a net increase in the number of people employed in Australia by the business, or a related party of the business;

(c) if the business is a large business—the person who carries on the business must certify, by writing given to EFIC, that the loan will not be used to move the whole or a substantial part of the business, or of a related party of the business, overseas; and

(d) EFIC must ensure that it publicly discloses copies of the certification it receives under subsection (4)(b).

(5) In addition, EFIC must not lend money in the form of an equity investment under this section unless an application for the loan has been referred to the Minister under section 25.

Note: A direction under section 26 may prevent such applications from being referred to the Minister. EFIC cannot lend money under this section in those circumstances.

23A Loans to support overseas infrastructure development

(1) EFIC may lend money for the purpose of supporting overseas infrastructure development.

Note: EFIC’s power under subsection (1) to lend money includes the power to provide finance, to provide a financial accommodation or to make an equity investment, in any form: see subsection 3(2).

(2) The money may be lent to such person or persons as EFIC thinks appropriate.

(3) However, EFIC must not lend money under this section unless EFIC reasonably believes that lending the money is likely to result in an Australian benefit.

Note: See also subsection 8(4).

(4) In addition, EFIC must not lend money in the form of an equity investment under this section unless the application for the loan has been referred to the Minister under section 25.

Note: A direction under section 26 may prevent such applications from being referred to the Minister. EFIC cannot lend money under this section in those circumstances.

Part 5—National interest transactions

24 Interpretation

In this Part, ***referred application*** means an application that has been referred to the Minister under section 25.

25 Reference of applications to Minister

(1) Subject to any directions under section 26, EFIC may refer to the Minister an application for EFIC to:

(a) enter into a contract of insurance or indemnity under Part 4; or

(b) give a guarantee under Part 4; or

(c) make a loan under Part 4.

(2) An application relating to a proposed contract or a proposed guarantee may be referred to the Minister whether or not EFIC is authorised to enter into the contract or give the guarantee and whether or not it would do so in the ordinary course of business.

(3) An application relating to a proposed loan may be referred to the Minister:

(a) whether or not EFIC is authorised to make the loan, or to make the loan on the terms and conditions proposed; and

(b) whether or not EFIC would make the loan, or would make the loan on the terms and conditions proposed, in the ordinary course of business.

26 Ministerial directions regarding reference of applications

(1) The Minister may give EFIC written directions regarding the circumstances in which applications are, or are not, to be referred to the Minister.

(2) EFIC must comply with the Minister’s directions.

27 Approval of EFIC entering into contracts etc.

(1) The Minister may approve of EFIC entering into a contract of insurance or indemnity (other than a contract under section 22) if the Minister is satisfied that it is in the national interest for EFIC to enter into the contract.

(2) The Minister may approve of EFIC giving a guarantee if the Minister is satisfied that it is in the national interest for EFIC to give the guarantee.

(3) The Minister may approve of EFIC entering into a contract of insurance under section 22 if the Minister is satisfied that:

(a) an overseas investment transaction to which the contract will relate will assist in the social and economic development of a foreign country; and

(b) it is in the national interest that EFIC enter into the contract in respect of the whole or a part of that transaction.

(4) The Minister may approve of EFIC making a loan under section 23 in respect of an eligible export transaction if the Minister is satisfied that it is in the national interest that EFIC make the loan in respect of the transaction.

Note: The provision of loans includes providing finance, providing a financial accommodation or making an equity investment, in any form: see subsection 3(2).

(4A) The Minister may approve of EFIC making a loan under section 23A in respect of overseas infrastructure development if the Minister is satisfied that it is in the national interest that EFIC make the loan in respect of the development.

Note: The provision of loans includes providing finance, providing a financial accommodation or making an equity investment, in any form: see subsection 3(2).

(5) The Minister’s approval of entry into a contract of insurance under section 22 may be an approval of entry into the contract in relation to the whole or a specified part of the overseas investment transaction concerned.

(6) The Minister must not approve the entry by EFIC into a contract of insurance under section 22 under which a person would be insured against loss or detriment attributable to circumstances within the control of the person.

(7) The Minister’s approval is to be in writing.

(8) EFIC has power to enter into a contract, give a guarantee, or make a loan in accordance with an approval under this section.

(9) While an approval under this section remains in force, EFIC must not decline a request that it enter into a contract, give a guarantee, or make a loan in accordance with the approval.

28 Conditional approvals

An approval under section 27 may be given subject to conditions, including:

(a) where the approval relates to a contract of insurance or indemnity under Part 4 (other than a contract of insurance under section 22) or a guarantee under Part 4—conditions relating to the amount of the premium or fee to be charged by EFIC; and

(b) where the approval relates to a contract of insurance under section 22—conditions relating to:

(i) the amount of the premium or fee to be charged by EFIC; and

(ii) the cause of the loss or detriment to which the contract may relate; and

(c) where the approval relates to a loan under Part 4—conditions relating to the amount of the loan, the rate of interest to be charged (if applicable), other terms and conditions of the loan and the security (if any) to be given.

29 Ministerial directions regarding entry into national interest contracts etc.

(1) The Minister may direct that whenever EFIC receives an application for EFIC to enter into a contract of insurance or indemnity included in a specified class of contracts of insurance or indemnity under Part 4, EFIC is to enter into the transaction, whether or not EFIC would, apart from this section, be authorised to enter into the transaction and whether or not EFIC would enter into the transaction in the ordinary course of business.

(2) The Minister may direct that whenever EFIC receives an application for EFIC to give a guarantee included in a specified class of guarantees under Part 4, EFIC is to give the guarantee, whether or not EFIC would, apart from this section, be authorised to give the guarantee or would give the guarantee in the ordinary course of business.

(3) The Minister may direct that whenever EFIC receives an application for EFIC to make a loan included in a specified class of loans under Part 4, EFIC is to make the loan, whether or not EFIC would, apart from this section, be authorised to make the loan or to make the loan on the terms and conditions proposed and whether or not EFIC would make the loan, or would make the loan on the terms and conditions proposed, in the ordinary course of business.

(4) The Minister may only give a direction if he or she considers it is in the national interest that the direction be given.

(5) A direction may include requirements relating to:

(a) where the direction relates to a contract of insurance or indemnity (other than a contract of insurance under section 22) or a guarantee—the amount of the premium or fee to be charged by EFIC; or

(b) where the direction relates to a contract of insurance under section 22:

(i) the amount of the premium to be charged by EFIC; and

(ii) the cause of the loss or detriment to which the contract may relate; or

(c) where the direction relates to a loan under Part 4—the amount of the loan, the rate of interest to be charged (if applicable), other terms and conditions of the loan and security (if any) to be given.

(6) The Minister must not direct EFIC to enter into a contract of insurance that would have the effect of a person being insured against loss or detriment attributable to circumstances within the control of the person.

(7) A direction under this section must be in writing.

(8) EFIC has power to enter into a contract, give a guarantee or make a loan, in accordance with a direction under this section.

(9) While a direction under this section remains in force, EFIC must not decline a request that it enter into a contract, give a guarantee or make a loan, in accordance with the direction.

30 Gazettal of national interest contracts etc.

(1) Where EFIC enters into a contract, gives a guarantee or makes a loan in accordance with an approval or direction under this Part, EFIC must cause notice of the contract, guarantee or loan to be published in the *Gazette*.

(2) A notice under subsection (1) must set out the following particulars:

(a) in the case of a contract of insurance or indemnity—particulars of the nature and extent of the insurance or indemnity;

(b) in the case of a guarantee—particulars of the nature and extent of the guarantee;

(c) in the case of a loan—particulars of the amount of the loan and the rate of interest to be charged (if applicable) on the money lent.

(3) A notice under subsection (1) must also set out particulars of:

(a) in the case of a contract or guarantee—the proportion of the liability under the contract or guarantee that is to be borne by the Commonwealth; or

(b) in the case of a loan—the proportion (if any) of the risk associated with the loan that is to be borne by the Commonwealth.

(4) A notice under subsection (1) must not state the name of any of the parties to a contract or of any person in respect of whom a guarantee has been given by EFIC.

31 Reinsurance etc. in relation to EFIC business under Part 5

(1) EFIC may, with the written approval of the Minister, enter into a contract of insurance or indemnity, take a guarantee or take security to cover any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, in accordance with an approval or direction under this Part.

(2) EFIC may, with the written approval of the Minister, enter into any other contract in order to reduce or reschedule any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, in accordance with an approval or direction under this Part.

(3) The Minister may, in writing, direct EFIC to exercise its power under subsection (1) or (2) in respect of a contract entered into, or a guarantee given, in accordance with an approval or direction under this Part.

(4) EFIC must comply with a direction.

Part 6—Board

32 Establishment of the Board

There is established an Export Finance and Insurance Corporation Board.

33 Functions of the Board

(1) It is the function of the Board to manage the affairs of EFIC.

(2) The Board’s role under subsection (1) includes the determination of the policy to be followed in the conduct of the affairs of EFIC.

(3) A decision of the Board is not invalid merely because the Board has limited the exercise of its discretion in the particular case and made the decision in accordance with a general policy determined by the Board.

(4) Anything done by the Board in the name of, or on behalf of, EFIC for the purposes of this Act or any other Act that confers powers or functions on EFIC is taken to have been done by EFIC.

34 Membership of the Board

(1) The Board consists of the following members:

(a) the Chairperson;

(b) the Deputy Chairperson;

(c) the Managing Director;

(e) the government member;

(f) as many other members, not fewer than 2 nor more than 5, as the Minister determines in writing to be appropriate.

(2) The members of the Board, other than the Managing Director of EFIC, are appointed by the Minister.

(3) Appointed members are to be appointed on a part‑time basis.

(4) The exercise of a power, or the performance of a function, of the Board is not affected merely because of a vacancy or vacancies in the membership of the Board or because the number of appointed members referred to in paragraph (1)(f) falls below 2 for not longer than 6 months.

35 Term of office and conditions of office of members

(1) An appointed member, other than the government member, must be appointed for a term of 3 years.

(1A) An appointed member, other than the government member, is eligible for reappointment but must not hold office as a member of the Board for a total of more than:

(a) 2 terms; or

(b) if the member has been appointed at any time as the Chairperson—3 terms.

(2) The government member holds office during the Minister’s pleasure.

36 Terms and conditions of appointment

Appointed members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

37 Remuneration etc. of appointed members

(1) An appointed member (other than the government member) is to be paid:

(a) such remuneration as is determined by the Remuneration Tribunal; and

(b) such allowances as are prescribed.

(2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

38 Acting Chairperson and acting Deputy Chairperson

(1) Whenever:

(a) there is a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or

(b) the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;

the Deputy Chairperson is to act as Chairperson.

Note: For rules that apply to persons acting as the Chairperson, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Minister may appoint a person to act as Deputy Chairperson:

(a) during a vacancy in the office of Deputy Chairperson (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Deputy Chairperson is absent from Australia or is, for any other reason (including the reason that the Deputy Chairperson is acting as Chairperson) unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(3) The Managing Director or Deputy Managing Director is not entitled to any remuneration or allowances in relation to an appointment under this section.

39 Acting members

(1) The Minister may appoint a person to act as a member of the Board referred to in paragraph 34(1)(f):

(a) during a vacancy in the office of such a member (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when such a member is acting as Chairperson or Deputy Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Minister may appoint a person to act as the government member during any period, or during all periods, when the government member is unable, for any reason, to attend meetings of the Board.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

40 Leave of absence of appointed members

(1) The Minister may give leave of absence to the Chairperson on such terms and conditions as the Minister determines.

(2) The Chairperson may give any other appointed member leave of absence from a meeting.

41 Resignation of appointed members

An appointed member may resign by giving a signed notice of resignation to the Minister.

42 General provision for termination of appointment of appointed members

(1) This section only applies to members referred to in paragraphs 34(1)(a), (b) and (f).

(2) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(3) The Minister must terminate the appointment of an appointed member who:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) is absent, except on leave of absence, from 3 consecutive meetings of the Board.

Note: The appointment of an appointed member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

43 Termination of appointment of appointed members at instance of Board or for non‑performance etc.

(1) This section only applies to members referred to in paragraphs 34(1)(a), (b) and (f).

(2) The Minister may terminate the appointment of a member if:

(a) the Board has resolved that the appointment of the member be terminated; and

(b) the resolution was passed at a meeting of the Board convened for the purpose of considering a motion that the appointment of the member be terminated; and

(c) the resolution was passed by not less than a two‑thirds majority of the members present, excluding the member to whom the resolution relates.

(3) The Minister may terminate the appointment of a member if the Minister is satisfied:

(a) that it is not in the best interests of EFIC that the member continue in office; or

(b) that the performance of the member has been unsatisfactory for a significant period.

44 Meetings of the Board

(1) The Board is to hold such meetings as are necessary for the performance of its functions.

(2) The Minister or the Chairperson may at any time convene a meeting of the Board.

(3) The Chairperson must convene a meeting of the Board on the written request of 2 or more members.

(4) The Chairperson is to preside at all meetings of the Board at which he or she is present.

(5) If the Chairperson is not present at a meeting of the Board, the Deputy Chairperson, if present, is to preside.

(6) If neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Board, the members present may elect one of their number to preside.

(7) At a meeting of the Board, a quorum consists of 3 members.

(8) A question arising at a meeting of the Board is to be decided by a majority of the votes of the members present and voting.

(9) The member presiding at a meeting of the Board has a deliberative vote and, if the votes are equal, also has a casting vote.

46 Resolutions without meetings

(1) Where a majority of the members (being a majority that includes the Chairperson) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a duly constituted meeting of the Board held on the day the document was signed, or, if the members sign the document on different days, on the last of those days.

(2) For the purpose of subsection (1), 2 or more documents containing statements in identical terms each of which is signed by one or more members are together taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the documents.

(3) A member must not sign a document containing a statement in favour of a resolution if the resolution is in respect of a matter in which the member has a material personal interest.

47 Committees

(1) The Board may appoint committees to assist the Board in relation to the performance of any of its functions.

(2) At least one member of a committee must be a member of the Board.

(3) The Board may give such directions as it thinks fit regarding the procedure to be followed at, and in relation to, meetings of a committee.

Part 7—Corporate plans

49 Matters to be included in corporate plans

In determining or revising a financial target to be included in a corporate plan, the Board must have regard to:

(a) the need for EFIC to generate reserves sufficient to support expansion of its operations; and

(b) the adequacy of EFIC’s capital, having regard to any determinations made by the Board for the purposes of section 56; and

(c) any direction by the Minister under subsection 55(2) for the payment of a dividend by EFIC in respect of the financial year to which the target relates; and

(d) any direction by the Minister under subsection 55A(2) for the payment of a dividend by EFIC in the financial year to which the target relates.

Note: Section 35 of the *Public Governance, Performance and Accountability Act 2013* requires the Board to prepare corporate plans.

Part 8—Finance

52 Capital of EFIC

The capital of EFIC at any time consists of:

(a) the amount paid to EFIC as a result of the determination by the Minister under section 19 of the *Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991*; and

(b) the called capital (if any) of EFIC at that time; and

(c) amounts transferred to capital from reserves under section 53.

53 Transfers to capital from reserves

EFIC may transfer from its reserves to the capital of EFIC such amounts as the Board determines.

54 Callable capital of EFIC

(1) The Board may, after consultation with the Finance Minister, determine that the money and other assets of EFIC are, or within the current or next financial year are likely to become, inadequate to meet the expected liabilities, losses and claims of or against EFIC and may determine the amount of capital required to overcome the inadequacy.

(2) A determination under subsection (1) must be made according to sound commercial principles.

(3) The Chairperson must give notice of a determination under subsection (1) to the Finance Minister, the Treasurer and the Minister not later than the day after the determination is made.

(4) Where notice has been given in accordance with subsection (3):

(a) there is payable by the Commonwealth to EFIC an amount equal to the amount of capital determined by the Board as necessary to overcome the inadequacy mentioned in subsection (1); and

(b) the amount is to be paid within 5 working days after the day on which it becomes payable.

(5) Where:

(a) the capital of EFIC includes called capital; and

(b) the Board determines that the money and other assets of EFIC are excessive, having regard to the expected liabilities, losses and claims of and against EFIC;

the Board may determine the amount representing the extent to which the money and assets are excessive.

(6) Where a determination is made under subsection (5), there is payable by EFIC to the Commonwealth:

(a) the amount equal to EFIC’s called capital at the time when the determination was made; or

(b) the amount determined by the Board under subsection (5);

whichever is the lesser.

(7) An amount payable under subsection (6) is to be paid within 28 days after the making of the determination.

(8) EFIC’s called capital at any time must not exceed:

(a) $1,200,000,000; or

(b) if a greater amount is specified in a legislative instrument made by the Minister—that greater amount.

(9) For the purposes of subsections (1) and (5):

(a) an expected liability of EFIC under a contract entered into, or a guarantee given, in accordance with an approval or direction under Part 5 is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 65 in relation to the contract or guarantee; and

(b) an expected loss by EFIC under a loan made in accordance with an approval or direction under Part 5 is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 66 in relation to the loan; and

(c) an expected loss by, or liability of, EFIC under or in relation to a DIFF loan, as defined in section 66A, is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under that section in relation to the loss or liability.

(10) Payments by the Commonwealth to EFIC under this section are to be made out of the Consolidated Revenue Fund which is appropriated accordingly.

55 Payment of annual dividends to the Commonwealth

(1) The Board must, within 4 months after the end of each financial year, by written notice given to the Minister, recommend that EFIC pay a specified dividend, or not pay a dividend, to the Commonwealth for that financial year.

(2) The Minister must, within 30 days after receiving the recommendation, by written notice given to EFIC:

(a) approve the recommendation; or

(b) where the Board has recommended the payment of a dividend—direct the payment of a different specified dividend; or

(c) where the Board has recommended that no dividend be paid—direct the payment of a specified dividend.

(3) Subject to subsections (4) and (5), in performing their functions under subsections (1) and (2), the Board and the Minister must have regard to:

(a) the policies of the Commonwealth Government, and the general policy of EFIC in relation to the performance of its functions; and

(b) such commercial considerations as the Board or the Minister, as the case may be, considers appropriate.

(4) EFIC’s dividend for a financial year must not exceed its profit for that year.

(5) For each financial year in relation to which the Minister has approved a recommendation that a dividend be paid or has directed the payment of a dividend, EFIC must pay to the Commonwealth:

(a) if the Minister has approved a recommendation that a dividend be paid—the dividend specified in the recommendation; or

(b) if the Minister has directed that a dividend be paid or that a different dividend be paid—the dividend specified in the direction.

(6) For the purposes of this section, the period beginning on the commencement of this Act and ending on 30 June 1992 is to be taken to be a financial year.

55A Payment of additional dividends to the Commonwealth

One‑off dividend

(1) EFIC must pay the Commonwealth a dividend of $200,000,000 before 30 June 2013.

Minister may direct payment of a specified dividend

(2) The Minister may, in writing, direct EFIC to pay the Commonwealth a specified dividend within a specified period.

(3) In giving a direction under subsection (2), the Minister must:

(a) have regard to:

(i) the policies of the Commonwealth Government; and

(ii) the general policy of EFIC in relation to the performance of its functions; and

(iii) such commercial considerations as the Minister considers appropriate; and

(b) be satisfied that the specified dividend is reasonable having regard to:

(i) the likely capital and reserves of EFIC at the time the direction is given; and

(ii) the expected liabilities, losses and claims of and against EFIC at that time.

(4) Before the Minister gives a direction under subsection (2), the Minister must:

(a) consult the Board about the matters referred to in subparagraphs (3)(a)(ii) and (b)(i) and (ii); and

(b) obtain the agreement of the Prime Minister, Treasurer and Finance Minister to the direction.

(5) EFIC must comply with a direction given under subsection (2).

56 Maintenance of adequate capital and reserves

(1) The Board is required to ensure, according to sound commercial principles, that the capital and reserves of EFIC at any time are sufficient:

(a) to meet the likely liabilities of EFIC, having regard to the estimated contingent liability at that time of EFIC under Part 4; and

(b) to make adequate provision for default in the repayment of principal, or in the payment of interest or other charges, in connection with loans made by EFIC; and

(c) to make adequate provision for losses in relation to loans made in the form of equity investments made by EFIC.

(2) For the purposes of subsection (1):

(a) the value of the capital and reserves of EFIC is to be assessed on the assumption that the whole of the amount specified in subsection 54(8) had been paid to EFIC under section 54; and

(b) a likely liability of EFIC in relation to anything done by EFIC, or a likely default of a kind referred to in paragraph (1)(b) in relation to a loan made by EFIC, or a likely loss of a kind referred to in paragraph (1)(c) to a loan made by EFIC in the form of an equity investment, in accordance with an approval or direction under Part 5 is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 65 or 66 in relation to the same matter; and

(c) a likely liability of EFIC in relation to a DIFF loan, as defined in section 66A, or a likely default of a kind referred to in paragraph (1)(b) in relation to such a loan, is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 66A in relation to the same matter.

(3) In this section, a reference to the estimated contingent liability of EFIC under Part 4 at any time is a reference to the amount that EFIC estimates to be, at that time, the total contingent liability of EFIC under all contracts of insurance or indemnity entered into, and all guarantees given, by EFIC under Part 4.

(4) If, at any time, the Board determines:

(a) that the capital and reserves of EFIC are not sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1); or

(b) that there are reasonable grounds for believing that, at a time in the future, the capital and reserves of EFIC may not be sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1);

the Board must, as soon as practicable, cause the Minister to be informed in writing of its determination and the reasons for that determination.

58 Borrowings from the Commonwealth

The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to EFIC on such terms and conditions as the Finance Minister determines.

59 Other borrowings

(1) EFIC may, with the written approval of the Finance Minister:

(a) borrow money otherwise than from the Commonwealth; or

(b) raise money otherwise than by borrowing;

on such terms and conditions as are specified in the approval.

(2) One of the ways in which EFIC may borrow or raise money under subsection (1) is by dealing with securities.

(3) An approval under subsection (1) may relate to:

(a) a particular transaction; or

(b) a class of transactions.

(4) The Finance Minister may, by written instrument, delegate any of the Finance Minister’s powers or functions under this section to an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a non‑corporate Commonwealth entity (within the meaning of that Act). In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

60 Security

EFIC may give security over all or any of its assets:

(a) for the repayment by EFIC of money borrowed under section 58 or paragraph 59(1)(a) and the payment of interest on money so borrowed; or

(b) for the payment by EFIC of money (including interest) that EFIC is liable to pay in respect of money raised under paragraph 59(1)(b).

61 Limitation on borrowing etc.

EFIC must not borrow or raise money except under section 58 or 59.

61A Debt neutrality charge

(1) The Minister may inform EFIC in writing of arrangements that are to apply to EFIC in relation to a debt neutrality charge to be paid by EFIC to the Commonwealth.

(2) The arrangements may specify:

(a) the period in respect of which a debt neutrality charge is payable; and

(b) the amount of the charge, or the way in which it is to be worked out; and

(c) the period within which the amount must be paid by EFIC to the Commonwealth.

(3) EFIC must pay a debt neutrality charge to the Commonwealth in accordance with the arrangements.

(4) The Minister may at any time, in writing, vary or revoke arrangements made under this section.

62 Guarantee by Commonwealth

By force of this section, the due payment by EFIC of any money that becomes payable by EFIC to a person other than the Commonwealth is guaranteed by the Commonwealth.

62A Guarantee fees

(1) The Minister may inform EFIC in writing of arrangements that are to apply to EFIC in relation to guarantee fees to be paid by EFIC to the Commonwealth.

(2) The arrangements may specify:

(a) the period in respect of which a guarantee fee is payable; and

(b) the amount of the fee, or the way in which it is to be worked out; and

(c) the period within which the amount must be paid by EFIC to the Commonwealth.

(3) EFIC must pay guarantee fees to the Commonwealth in accordance with the arrangements.

(4) The Minister may at any time, in writing, vary or revoke arrangements made under this section.

63 Exemptions from taxation

(1) Subject to subsection (3), EFIC is not subject to taxation under any law of the Commonwealth or of a State or Territory.

(2) The exemption conferred by subsection (1) does not extend to a company, partnership, joint venture or other business association in the formation of which EFIC was involved merely because of that involvement.

(3) The regulations may provide that subsection (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory or to a specified class of such laws.

(4) If regulations made for the purpose of subsection (3) provide that subsection (1) does not apply in relation to laws of the Commonwealth that impose income tax, EFIC is to be taken not to be a public authority for the purposes of section 50‑25 of the *Income Tax Assessment Act 1997*.

63A Tax‑equivalent payments

(1) EFIC must pay to the Commonwealth a tax‑equivalent payment in respect of each financial year.

(2) The amount of the tax‑equivalent payment to be made in respect of a financial year is to be determined in writing by the Minister, having regard to the purpose of ensuring that EFIC does not enjoy a net competitive advantage, because of the operation of section 63, over other persons or bodies who provide insurance or financial services or products that EFIC may provide.

(3) The amount determined under subsection (2) in respect of a financial year must not be greater than the amount, or the sum of the amounts, of tax that EFIC would, but for section 63, have been liable to pay in respect of that year.

(4) EFIC must pay to the Commonwealth the amount determined under subsection (2) in respect of a financial year in accordance with the written directions of the Minister.

64 Transactions in the national interest: EFIC share of liability

(1) Before it enters into a contract or gives a guarantee in accordance with an approval or direction under Part 5, EFIC may give the Minister written notice that EFIC will meet the whole, or a specified proportion, of the liability of EFIC under the contract or guarantee, as the case may be.

(2) Before it makes a loan in accordance with an approval or direction under Part 5, EFIC may give the Minister written notice that EFIC will bear the whole, or a specified proportion, of the risk associated with the loan.

65 Contracts and guarantees in the national interest

(1) Subject to subsection (2), this section applies to contracts entered into, and guarantees given, by EFIC in accordance with approvals or directions under Part 5.

(2) This section does not apply to a contract or guarantee in relation to which EFIC has given the Minister notice, under section 64, that EFIC will bear the whole of the liability of EFIC under the contract or guarantee.

(3) EFIC is required to keep separate accounts of so much of its receipts and disbursements relating to contracts and guarantees to which this section applies as relates to the proportion of the liability under those contracts and guarantees that is to be borne by the Commonwealth.

(4) Subject to subsections (9) and (10), EFIC is required to pay to the Commonwealth, from time to time, as directed by the Finance Minister, so much of the receipts by EFIC from contracts and guarantees to which this section applies as relates to the proportion of the liability under those contracts and guarantees that is to be borne by the Commonwealth.

(5) For the purpose of subsection (4), the receipts from a contract or guarantee are calculated by deducting from the total of the amounts received by EFIC in relation to the contract or guarantee all amounts paid or payable by EFIC in relation to the contract or guarantee.

(6) Subject to subsections (8) and (9), the Commonwealth is liable to pay to EFIC the amount needed to discharge any liability of EFIC under a contract or guarantee to which this section applies.

(7) Instead of the Commonwealth paying the amount due under subsection (6) when the liability of the Commonwealth arises, the Minister may, on behalf of the Commonwealth, direct EFIC to seek approval under section 59 for EFIC to borrow the amount necessary to discharge its liability under the contract or guarantee.

(8) If the Finance Minister gives approval under section 59, the Commonwealth’s liability under subsection (6) is replaced by a liability to pay EFIC the amount needed to discharge the borrowing by EFIC and to pay all costs (including interest) incurred by EFIC in connection with the borrowing.

(9) Where EFIC has given the Minister notice, under section 64, that EFIC will bear a specified proportion of the liability of EFIC under a contract or guarantee to which this section applies:

(a) if EFIC would be required by subsection (4) to pay an amount to the Commonwealth in respect of the contract or guarantee—EFIC may deduct from the amount the proportion of the amount that equals the proportion specified in the notice; and

(b) the liability of the Commonwealth to EFIC under subsection (6) or (8), as the case may be, in relation to the contract or guarantee is reduced by the proportion specified in the notice.

(10) EFIC may deduct from any amount that it is required to pay under subsection (4) an administration fee, to be ascertained in such manner as the Finance Minister directs in writing, in relation to contracts and guarantees to which this section applies.

66 Loans made in the national interest

(1) Subject to subsection (2), this section applies to loans made by EFIC in accordance with approvals under section 27 or directions under section 29.

(2) This section does not apply to a loan in relation to which EFIC has given the Minister notice, under section 64, that EFIC will bear the whole of the risk associated with the loan.

(3) EFIC is required to keep separate accounts of so much of its receipts and disbursements relating to loans to which this section applies as relates to the proportion of the risk associated with such loans that is to be borne by the Commonwealth.

(4) Subject to subsections (9) and (10), EFIC is required to pay to the Commonwealth, from time to time, as directed by the Finance Minister, so much of the receipts by EFIC from loans to which this section applies as relates to the proportion of the risk associated with those loans that is to be borne by the Commonwealth.

(5) For the purpose of subsection (4), net receipts from a loan are calculated by deducting from the total of the amounts received by EFIC in relation to the loan all amounts paid or payable by EFIC in relation to the loan, including amounts payable in respect of borrowings made by EFIC to enable it to make the loan.

(6) Subject to subsections (8) and (9), the Commonwealth is liable:

(a) to reimburse EFIC the amount of all costs (including interest) incurred by EFIC in connection with the borrowing of money needed to finance a loan to which this section applies; and

(b) to pay to EFIC an amount equal to any amount in respect of which default or loss is made under a loan to which this section applies.

(7) Instead of the Commonwealth paying the amount due under subsection (6) when the liability of the Commonwealth arises, the Minister may, on behalf of the Commonwealth, direct EFIC to seek approval under section 59 for EFIC to borrow an amount equal to the amount due by the Commonwealth.

(8) If the Finance Minister gives approval under section 59, the Commonwealth’s liability under subsection (6) is replaced by a liability to pay EFIC the amount needed to discharge the borrowing by EFIC and to pay all costs (including interest) incurred by EFIC in connection with the borrowing.

(9) Where EFIC has given the Minister notice, under section 64, that EFIC will bear a proportion of the risk associated with a loan to which this section applies:

(a) if EFIC would be required by subsection (4) to pay an amount to the Commonwealth in respect of the loan—EFIC may deduct from the amount the proportion of the amount that equals the proportion specified in the notice; and

(b) the liability of the Commonwealth to EFIC under subsection (6) or (8), as the case may be, in relation to the loan is reduced by the proportion specified in the notice.

(10) EFIC may deduct from any amount that it is required to pay under subsection (4) a reasonable amount, to be ascertained in such manner as the Finance Minister directs, in respect of the expenses of EFIC in relation to the making of loans to which this section applies.

(10A) For the purpose of subsection (10), the expenses of EFIC in relation to a loan made in the form of an equity investment include expenses incurred by EFIC in relation to the acquisition, management or sale of its equity interest.

(11) On the commencement of section 66A, this section ceases to apply to a loan to which that section applies. This does not affect any liability incurred under this section before the commencement of section 66A.

66A DIFF loans—assumption of risk by the Commonwealth

Purpose of section

(1) The purpose of this section is to provide for the Commonwealth to assume the risk associated with DIFF loans. A ***DIFF loan*** is a loan with the following characteristics:

(a) the loan was made under this Act, the *Australian Trade and Investment Commission Act 1985* or the *Export Finance and Insurance Corporation Act 1974* before the commencement of this section; and

(b) the borrower’s liability in relation to the loan has not been fully discharged before the commencement of this section; and

(c) either:

(i) the loan funds included money made available by the Commonwealth as part of an overseas aid project (as defined in subsection 7(2)); or

(ii) the loan was made in conjunction with a grant of aid by the Commonwealth, or a Commonwealth instrumentality, as part of such an overseas aid project.

Note: The abbreviation “DIFF” stands for “Development Import Finance Facility”.

Commonwealth assumption of risk on DIFF loans

(2) If, after the commencement of this section, there is a default in payment of an amount due under a DIFF loan:

(a) the Commonwealth must pay to EFIC an amount equal to the default amount; and

(b) the Commonwealth must indemnify EFIC for:

(i) any other loss (including damages) suffered by EFIC because of the default; and

(ii) any costs incurred by EFIC in attempting to recover the default amount; and

(c) if EFIC recovers the whole or part of the default amount or a loss or cost referred to in paragraph (b), EFIC must pay to the Commonwealth an amount equal to the amount recovered.

Note: The obligation in paragraph (b) applies whether or not the Commonwealth’s liability has been replaced as mentioned in subsection (4).

Commonwealth may instead direct EFIC to borrow money

(3) The Minister may, on behalf of the Commonwealth, direct EFIC to seek approval under section 59 to borrow an amount equal to an amount payable by the Commonwealth under subsection (2).

Commonwealth liability if it directs EFIC to borrow money

(4) If:

(a) the Minister gives EFIC a direction under subsection (3) to borrow an amount; and

(b) the Finance Minister approves the borrowing under section 59;

the Commonwealth’s liability under subsection (2) is replaced by a liability to pay to EFIC the amount needed to discharge the borrowing by EFIC and to pay all costs (including interest) incurred by EFIC in connection with the borrowing.

EFIC to make payment to Commonwealth

(5) EFIC must pay $40,000,000 from its reserves to the Commonwealth.

EFIC may also have to pay Commonwealth a proportion of DIFF loan risk premiums

(6) The Finance Minister may direct EFIC to pay to the Commonwealth a specified amount representing part of the risk premiums paid in relation to the DIFF loans. The amount must not exceed what is necessary to give the Commonwealth an appropriate proportion of the risk premiums.

Commonwealth to pay EFIC a fee for administering DIFF loans

(7) The Commonwealth is liable to pay to EFIC an administration fee in respect of EFIC’s costs in administering the DIFF loans after the commencement of this section. The amount of the administration fee, and how and when it is to be paid, are to be as directed by the Finance Minister.

Commonwealth and EFIC may set off amounts owed

(8) Amounts that the Commonwealth and EFIC owe to each other under this section may be set off.

Directions under this section

(9) A direction under this section is to be in writing.

67 Subsidy to EFIC

(1) The Minister may determine in writing principles according to which the Commonwealth will pay to EFIC a subsidy in respect of contracts entered into, guarantees given, or loans made by EFIC in relation to eligible export transactions or in relation to overseas infrastructure development.

(2) Where a contract has been entered into, a guarantee given, or a loan made, by EFIC in connection with an eligible export transaction or in connection with overseas infrastructure development, EFIC is entitled to be paid by the Commonwealth such amount (if any) by way of subsidy as is payable according to the principles in force under subsection (1).

68 Maximum contingent liability under Part 4

(1) EFIC is to carry on its operations so that:

(a) its total contingent liability at any time under contracts entered into, and guarantees given, under Part 4 (other than contracts of insurance entered into under section 22) does not exceed the amount prescribed for the purposes of this paragraph; and

(b) its total contingent liability at any time under contracts of insurance entered into under section 22 does not exceed the amount prescribed for the purposes of this paragraph.

(2) A contingent liability under a contract entered into, or a guarantee given, in accordance with an approval or direction under Part 5 is to be disregarded for the purposes of subsection (1) to the extent that the liability would be borne by the Commonwealth.

69 Limit of total amount of loans under Part 4

(1) EFIC is to carry on its operations so that the total amount of money at any time lent by EFIC under Part 4 and not repaid or written off does not exceed the amount prescribed for the purpose of this subsection.

(2) A loan made in accordance with an approval or direction under Part 5 is to be disregarded for the purposes of subsection (1) to the extent that the risk associated with the loan is to be borne by the Commonwealth.

(2A) A DIFF loan, as defined in section 66A, is to be disregarded for the purposes of subsection (1).

(3) In calculating the total amount of money lent by EFIC under Part 4 and not repaid or written off, there is to be included the amount of any contingent liability of EFIC under the terms of any loan made by EFIC under that Part.

70 Annual report

Each annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must show separately the financial effect on the operations of EFIC of each direction given to it by the Minister under subsection 9(2) and in force at any time during that period.

Part 9—Managing Director and Deputy Managing Director

71 Appointment of Managing Director and Deputy Managing Director

(1) There is to be a Managing Director of EFIC.

(2) The Managing Director is to be appointed by the Board after the Board has consulted with the Minister in relation to the appointment.

(3) The Board may appoint a Deputy Managing Director of EFIC after the Board has consulted with the Minister in relation to the appointment.

(4) A member of the Board cannot be appointed as Managing Director or Deputy Managing Director.

(5) An appointment under this section is not ineffective merely because of a defect or irregularity in relation to the appointment.

72 Appointments to be full‑time and at Board’s pleasure

The Managing Director and Deputy Managing Director hold office:

(a) on a full‑time basis; and

(b) at the pleasure of the Board.

73 Terms and conditions of appointment

The Managing Director and Deputy Managing Director hold office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board.

74 Disclosure of interests

(1) The Managing Director and Deputy Managing Director must give written notice to the Chairperson of all direct or indirect pecuniary interests that they have or acquire in any business or in any body corporate that carries on a business.

(2) Subsection (1) applies in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

75 Exclusion from certain Board deliberations

A person holding office as Managing Director or Deputy Managing Director must not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

(a) the appointment of a Managing Director or Deputy Managing Director; or

(b) the determination or application of any terms or conditions on which the person holds office; or

(c) the termination of the person’s appointment.

77 Duties of Managing Director and Deputy Managing Director

(1) The Managing Director has the duty, under the Board, of conducting the operations of EFIC.

(2) In conducting the operations of EFIC, the Managing Director must act according to the policy of the Board.

(3) The Deputy Managing Director has such duties as are allotted to him or her by the Managing Director.

78 Outside employment

The Managing Director and Deputy Managing Director are not to engage in paid employment outside the duties of their respective offices except with the approval of the Board.

79 Acting Managing Director and acting Deputy Managing Director

(1) Whenever:

(a) there is a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office); or

(b) the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;

then:

(c) if there is a Deputy Managing Director—the Deputy Managing Director is to act as Managing Director; or

(d) if there is no Deputy Managing Director—the Board may appoint a person to act as Managing Director.

Note: For rules that apply to persons acting as the Managing Director, see section 33A of the *Acts Interpretation Act 1901*.

(2) The Board may appoint a person to act as Deputy Managing Director:

(a) during a vacancy in the office of Deputy Managing Director (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Deputy Managing Director is absent from duty or from Australia or is, for any other reason (including the reason that the Deputy Managing Director is acting as Managing Director), unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

80 Resignation

The Managing Director or Deputy Managing Director may resign by giving the Chairperson a signed notice of resignation.

Part 10—Miscellaneous

81 Use of name of Corporation

(1) The corporation established by this Act may conduct its operations under its full name, under the acronym EFIC or under the name “Export Finance Australia”.

(2) A person other than EFIC must not:

(a) use in connection with a business, trade, profession or occupation; or

(b) use as the name, or as part of the name, of any firm, body corporate or institution; or

(c) use in relation to:

(i) services or products; or

(ii) the promotion, by any means, of the supply of services or products;

the name of EFIC, the acronym EFIC, the name “Export Finance Australia” or a name or acronym so closely resembling the name of EFIC, the acronym EFIC or the name “Export Finance Australia” as to be likely to be mistaken for it.

Penalty: 10 penalty units.

(3) Nothing in subsection (2) applies to the use of a name or acronym (the ***protected name or acronym***) by a person in a particular manner if:

(a) to the extent that subsection (2) applies in relation to the name of EFIC or the acronym EFIC—immediately before the commencement of this Act, the person was using the protected name or acronym in good faith in that manner; or

(b) to the extent that subsection (2) applies in relation to the name “Export Finance Australia”—immediately before the commencement of this paragraph, the person was using the protected name or acronym in good faith in that manner.

(4) Nothing in subsection (2) affects rights conferred by law in relation to the use of a name or acronym, or the use of the name or acronym in pursuance of such a right, if:

(a) to the extent that subsection (2) applies in relation to the name of EFIC or the acronym EFIC—the rights were in existence immediately before the commencement of this Act; or

(b) to the extent that subsection (2) applies in relation to the name “Export Finance Australia”—the rights were in existence immediately before the commencement of this paragraph.

82 Application of the *Lands Acquisition Act 1989*

(1) The *Lands Acquisition Act 1989* does not apply in relation to the acquisition of land, or an interest in land, by EFIC.

(2) In subsection (1), ***interest***, in relation to land, means:

(a) a legal or equitable estate or interest in the land; or

(b) a right, power or privilege over, or in relation to, the land.

83 Delegations by Minister and Managing Director

(1) The Minister may, in writing, delegate to the Board all or any of the powers of the Minister under this Act, other than the Minister’s powers under section 9, Part 5 and subsection 84(3).

(2) The Managing Director may, in writing, delegate to the Deputy Managing Director or any person employed under section 90 all or any of the Managing Director’s powers under this Act.

84 Delegation by the Board

(1) The Board may delegate all or any of its powers and functions under this Act, other than powers and functions under sections 48, 54, 71 and 72, to:

(a) a committee appointed under section 47; or

(b) the Managing Director; or

(c) the Deputy Managing Director; or

(d) a person employed by EFIC under section 90.

(2) In the exercise of a delegated power, the delegate is subject to the directions of the Board.

(3) The Minister may, if he or she thinks it appropriate to do so, give directions to the Board regarding the exercise of its powers under subsection (1).

84A EFIC must charge for certain services

(1) EFIC must charge fees for services it provides in performing the following:

(a) EFIC’s Northern Australia economic infrastructure functions;

(b) EFIC’s Commonwealth entities function.

(2) The fees:

(a) must be sufficient to compensate EFIC for the services it provides in relation to those functions; but

(b) must not be such as to amount to taxation.

85 Annual reports

(2) Subject to subsection (3), each annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include:

(a) particulars of every direction given by the Minister to EFIC under section 9 during the period; and

(b) a statement of the principal objectives of EFIC for the period; and

(c) an assessment of the extent to which EFIC has achieved its principal objectives for the period.

(3) Particulars of a direction under section 9 are not to be included in an annual report if the direction includes a statement that it is not to be disclosed for reasons of national security or because its disclosure would have an adverse effect on the financial interests or property interests of the Commonwealth or of an instrumentality of the Commonwealth.

87 Secrecy

(1) This section applies to the following persons:

(a) a person holding an appointment as Chairperson or Deputy Chairperson;

(b) a person acting as Deputy Chairperson;

(c) a person holding an appointment as Managing Director or Deputy Managing Director;

(d) a person acting as Deputy Managing Director;

(e) a member of the Board referred to in paragraph 34(1)(e) or (f);

(f) a person employed by EFIC.

(2) A person to whom this section applies is authorised:

(a) to disclose information concerning the affairs of another person acquired by the first‑mentioned person because of his or her duties under this Act; or

(b) to produce a document containing such information;

to the Minister, to the Secretary of the Department, or to an officer of the Department designated by the Secretary.

(3) A person to whom this section applies is authorised to disclose information, or produce a document, referred to in subsection (2) to another person if the disclosure or production is for the purposes of this Act.

(4) Subject to subsections (2) and (3), it is the duty of a person to whom this section applies not to publish or communicate any information of the kind referred to in paragraph (2)(a) or a document containing any such information.

(5) A person to whom this section applies must not make a record of any information of the kind referred to in paragraph (2)(a) except for the purposes of this Act.

Penalty: Imprisonment for 6 months.

(6) This section does not prevent EFIC from communicating to another person particulars of:

(a) a guarantee given, or proposed to be given, under this Act; or

(b) a contract entered into, or proposed to be entered into, under this Act; or

(c) a loan made, or proposed to be made, under this Act.

(7) In this section:

***produce*** includes permit access to.

88 Offences

(1) In this section:

***application*** means:

(a) an application to EFIC to enter into a contract of insurance or indemnity; or

(b) an application to EFIC for the giving of a guarantee by EFIC; or

(c) an application to EFIC for the making of a loan by EFIC.

***claim*** means:

(a) a claim under a contract of insurance or indemnity entered into by EFIC; or

(b) a claim under a guarantee given by EFIC; or

(c) a claim for payment under a loan made by EFIC.

(2) A person must not, in, or for the purposes of, a claim, make a statement to EFIC, or give to EFIC a document, that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 5 years.

(3) A person must not, in, or for the purposes of, an application, make a statement to EFIC, or give to EFIC a document, that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 5 years.

(4) Subsections (2) and (3) do not apply to a document that is false or misleading in a material particular if, when the person gives it to EFIC, the person informs EFIC that it is, to the person’s knowledge, false or misleading in a material particular and identifies to EFIC that particular.

89 Effectiveness of acts of EFIC

(1) In this section, ***transaction entered into by EFIC*** means:

(a) a contract entered into by EFIC; or

(b) a guarantee given by EFIC; or

(c) a loan made by EFIC.

(2) The effect of a transaction entered into by EFIC may not be called in question merely because:

(a) a provision of this Act has been contravened in relation to the transaction; or

(b) the transaction is not within the limits of EFIC’s powers.

(3) Subsection (1) does not affect the duty of EFIC to comply with this Act and to observe the limits of its powers under this Act.

(4) In favour of a person dealing in good faith with EFIC:

(a) a document that purports to bear the imprint of the seal of EFIC and to have been sealed under the authority of the Board is to be taken to have been so sealed with the seal of EFIC; and

(b) a person held out by EFIC as a person authorised to act on behalf of EFIC is to be taken to have authority to exercise, on behalf of EFIC, the powers usually exercisable by a person of similar status, or a person occupying a similar position, in relation to a corporation.

90 Staff

(1) EFIC may employ such persons as the Board thinks necessary for the performance of the functions and duties, and the exercise of the powers, of EFIC.

(2) A person employed under subsection (1) is to be employed on such terms and conditions as are determined by the Board.

91 Regulations

(1) The Governor‑General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The provision that may be made by regulations under subsection (1) includes, but is not limited to, provision prescribing penalties, not exceeding a fine of 5 penalty units, for offences against the regulations.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Export Finance and Insurance Corporation Act 1991 | 148, 1991 | 21 Oct 1991 | 1 Nov 1991 (s 2) |  |
| Export Finance and Insurance Corporation Amendment Act 1997 | 65, 1997 | 30 May 1997 | 30 June 1997 (s 2(1) and gaz 1997, No S222) | — |
| Tax Law Improvement Act 1997 | 121, 1997 | 8 July 1997 | Sch 3 (item 68): 1 July 1997 (s 2(2), (3)) | s 4 |
| Audit (Transitional and Miscellaneous) Amendment Act 1997 | 152, 1997 | 24 Oct 1997 | Sch 2 (items 736–750): 1 Jan 1998 (s 2(2) and gaz 1997, No GN49) | — |
| Corporate Law Economic Reform Program Act 1999 | 156, 1999 | 24 Nov 1999 | Sch 10 (item 82): 13 Mar 2000 (s 2(2)(c) and gaz 2000, No S114) | — |
| Export Finance and Insurance Corporation Amendment Act 2000 | 11, 2000 | 15 Mar 2000 | Sch 1 (items 1–3): 15 Mar 2000 (s 2(1)) Sch 1 (item 4): 1 July 1998 (s 2(2)) | — |
| Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Act 2001 | 35, 2001 | 28 Apr 2001 | 26 May 2001 (s 2) | s 4 |
| Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 | 159, 2001 | 1 Oct 2001 | 29 Oct 2001 (s 2) | Sch 1 (item 97) |
| Financial Framework Legislation Amendment Act 2005 | 8, 2005 | 22 Feb 2005 | Sch 2 (items 98–112, 174): 22 Feb 2005 (s 2(1) item 12) | Sch 2 (item 174) |
| Australian Trade Commission Legislation Amendment Act 2006 | 56, 2006 | 21 June 2006 | Sch 3 (items 2–5): 1 July 2006 (s 2(1) item 7) | — |
| Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006 | 101, 2006 | 14 Sept 2006 | Sch 2 (item 49) and Sch 6 (items 1, 6–11): 14 Sept 2006 (s 2(1) items 2, 4) | Sch 6 (items 1, 6–11) |
| Export Finance and Insurance Corporation Amendment Act 2007 | 6, 2007 | 19 Feb 2007 | Sch 1: 1 July 2007 (s 2(1) item 2) | Sch 1 (items 8, 12) |
| Statute Law Revision Act 2011 | 5, 2011 | 22 Mar 2011 | Sch 7 (item 56): 19 Apr 2011 (s 2(1) item 18) | — |
| Acts Interpretation Amendment Act 2011 | 46, 2011 | 27 June 2011 | Sch 2 (items 570–577) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12) | Sch 3 (items 10, 11) |
| Export Finance and Insurance Corporation Amendment (Finance) Act 2013 | 30, 2013 | 30 Mar 2013 | 31 Mar 2013 (s 2) | — |
| Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014 | 62, 2014 | 30 June 2014 | Sch 8 (items 159–172) and Sch 14: 1 July 2014 (s 2(1) items 6, 14) | Sch 14 |
| as amended by |  |  |  |  |
| Public Governance and Resources Legislation Amendment Act (No. 1) 2015 | 36, 2015 | 13 Apr 2015 | Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2) | Sch 7 |
| as amended by |  |  |  |  |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2) | — |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2) | — |
| Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Act 2015 | 18, 2015 | 19 Mar 2015 | 20 Mar 2015 (s 2) | Sch 1 (items 6, 7) and Sch 2 (items 4, 5) |
| Trade Legislation Amendment Act (No. 1) 2016 | 31, 2016 | 23 Mar 2016 | Sch 2 (item 14): 1 May 2016 (s 2(1) item 3) | — |
| Northern Australia Infrastructure Facility (Consequential Amendments) Act 2016 | 42, 2016 | 4 May 2016 | Sch 1: 1 July 2016 (s 2(1) item 2) | — |
| Statute Update Act 2016 | 61, 2016 | 23 Sept 2016 | Sch 1 (items 235, 236): 21 Oct 2016 (s 2(1) item 1) | — |
| Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Act 2017 | 100, 2017 | 14 Sept 2017 | 15 Sept 2017 (s 2(1) item 1) | — |
| Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Act 2019 | 33, 2019 | 5 Apr 2019 | 6 Apr 2019 (s 2(1) item 1) | — |
| Treasury Laws Amendment (2019 Measures No. 3) Act 2020 | 64, 2020 | 22 June 2020 | Sch 3 (items 169, 325, 326): 1 Oct 2020 (s 2(1) item 6) | Sch 3 (items 325, 326) |
| Export Finance and Insurance Corporation Amendment (Equity Investments and Other Measures) Act 2021 | 114, 2021 | 28 Oct 2021 | 28 Oct 2021 (s 2(1) item 1) | Sch 1 (item 22) |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| Title | am No 33, 2019 |
| **Part 1** |  |
| s 3 | am No 11, 2000; No 8, 2005; No 56, 2006; No 6, 2007; No 62, 2014; No 18, 2015; No 42, 2016; No 100, 2017; No 33, 2019; No 114, 2021 |
| s 3A | ad No 100, 2017 |
| s 5A | ad No 35, 2001 |
| **Part 2** |  |
| s 6 | am No 152, 1997; No 62, 2014 |
| s 7 | am No 42, 2016; No 100, 2017; No 33, 2019; No 114, 2021 |
| s 8 | am No 42, 2016; No 100, 2017; No 33, 2019 |
| s 9 | am No 42, 2016; No 100, 2017 |
| **Part 3** |  |
| s 11 | am No 152, 1997; No 62, 2014 |
| **Part 4** |  |
| s 16 | am No 100, 2017; No 114, 2021 |
| s 17 | am No 114, 2021 |
| s 18 | am No 114, 2021 |
| s 18A | ad No 33, 2019 |
|  | rs No 114, 2021 |
| s 23 | am No 100, 2017; No 33, 2019; No 114, 2021 |
| s 23A | ad No 33, 2019 |
|  | am No 114, 2021 |
| **Part 5** |  |
| s 27 | am No 33, 2019; No 114, 2021 |
| s 28 | am No 114, 2021 |
| s 29 | am No 114, 2021 |
| s 30 | am No 114, 2021 |
| **Part 6** |  |
| s 34 | am No 56, 2006; No 6, 2007 |
| s 35 | am No 159, 2001; No 6, 2007 |
| s 36 | am No 159, 2001; No 30, 2013 |
| s 38 | am No 56, 2006; No 6, 2007; No 46, 2011 |
| s 39 | am No 46, 2011 |
| s 42 | am No 152, 1997; No 156, 1999; No 62, 2014 |
| s 44 | am No 6, 2007 |
| s 45 | rep No 152, 1997 |
| s 46 | am No 152, 1997 |
| **Part 7** |  |
| s 48 | rep No 152, 1997 |
| s 49 | am No 152, 1997; No 30, 2013; No 62, 2014 |
| s 50 | rep No 152, 1997 |
| s 51 | rep No 152, 1997 |
| **Part 8** |  |
| s 54 | am No 65, 1997; No 8, 2005; No 30, 2013; No 33, 2019 |
| s 55 | am No 30, 2013 |
| s 55A | ad No 30, 2013 |
| s 56 | am No 65, 1997; No 114, 2021 |
| s 57 | rep No 152, 1997 |
| s 58 | am No 8, 2005 |
| s 59 | am No 8, 2005; No 62, 2014 |
| s 61A | ad No 11, 2000 |
|  | am No 18, 2015 |
| s 62A | ad No 11, 2000 |
|  | am No 18, 2015 |
| s 63 | am No 121, 1997; No 101, 2006; No 64, 2020 |
| s 63A | ad No 11, 2000 |
|  | am No 18, 2015 |
| s 65 | am No 8, 2005 |
| s 66 | am No 65, 1997; No 8, 2005; No 114, 2021 |
| s 66A | ad No 65, 1997 |
|  | am No 8, 2005; No 31, 2016 |
| s 67 | am No 33, 2019 |
| s 69 | am No 65, 1997 |
| s 70 | am No 152, 1997 |
|  | rs No 62, 2014 |
| **Part 9** |  |
| s 71 | am No 6, 2007 |
| s 74 | am No 62, 2014 |
| s 76 | rep No 159, 2001 |
| s 79 | am No 46, 2011 |
| **Part 10** |  |
| s 81 | am No 61, 2016; No 33, 2019 |
| s 84A | ad No 42, 2016 |
|  | rs No 100, 2017 |
| s 85 | am No 152, 1997; No 62, 2014 |
| s 86 | rep No 152, 1997 |
| s 87 | am No 5, 2011 |
| s 91 | am No 61, 2016 |