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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXPORT FINANCE AND INSURANCE CORPORATION AMENDMENT (FINANCE) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Trade & Competiveness,
the Honourable Dr Craig Emerson MP)

EXPORT FINANCE AND INSURANCE CORPORATION ('EFIC') AMENDMENT (FINANCE) BILL 2013

OUTLINE

Purpose/Objective

The Export Finance and Insurance Corporation Amendment (Finance) Bill 2013 (referred to in this Explanatory Memorandum as the "**Bill**") makes changes to the financial arrangements detailed in Part 8 of the *Export Finance and Insurance Corporation Act 1991* ("**Act**") which are necessary to implement a 2012-13 Budget Measure and create mechanisms to adjust EFIC's callable capital. The Bill also includes some minor amendments to correct redundant numbering.

Why the Bill is required

This Bill is required to empower the Minister to direct the payment of a special dividend in line with a 2012-13 Budget Measure, and to direct the payment of future special dividends by EFIC.

The payment of special dividends from EFIC's surplus capital is supported by the 2012 *Productivity Commission Inquiry Report* into EFIC, which found that EFIC retains capital well above its minimum requirements and that this surplus capital has an opportunity cost that is borne by the taxpayer.

This Bill also creates a new power for the Minister to prescribe through a legislative instrument an increase in EFIC's callable capital should it be necessary to help EFIC meet its future prudential requirements. This legislative instrument power should only be exercised after agreement is obtained from the Prime Minister, the Treasurer and the Minister for Finance and Deregulation. Where the intention is to increase the size of EFIC's operations through an increase in callable capital, the use of the power may also be subject to Cabinet approval.

FINANCIAL IMPACT STATEMENT

The Bill allows for the payment of a $200 million special dividend (treated as revenue for budget purposes) from EFIC's surplus capital in the 2012-13 financial year. The Bill will also allow for future special dividends from EFIC to be directed by the Minister.

The new power to increase callable capital through a legislative instrument will have no direct financial impact.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

The Bill means *the Export Finance and Insurance Corporation Amendment (Finance) Bill 2013*;
The Act, unless the context indicates otherwise, means the *Export Finance and Insurance Corporation Act 1991*;
Board means the board of the Export Finance and Insurance Corporation;
EFIC means the Export Finance and Insurance Corporation; and
PC Review means the Inquiry into the Export Finance and Insurance Corporation by the Productivity Commission and the subsequent *Productivity Commission Inquiry Report (31 May 2012).*

NOTES ON CLAUSES

Clause 1—Short title

Clause 1 is a formal provision specifying the short title.

Clause 2—Commencement

Clause 2 provides that the Bill will commence on the day after the Bill receives Royal Assent. The Bill should receive Royal asset prior to the end of the 2012-13 financial year to allow compliance with clause 6 of Schedule 1 of the Bill.

Clause 3—Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to this Act has effect according to its terms.

Schedule 1 relates to amendments to the Act that are required to enact the changes to EFIC's financial arrangements.

Schedule 1—Amendment

Export Finance and Insurance Corporation Act 1991

Item 1—Subsection 36(3)

Correction to redundant numbering to remove the unnecessary (3) from the Act.

Item 2—Subsection 49(2)

Correction to redundant numbering to remove the unnecessary (2) from the Act.

Item 3 At the end of subsection 49(2) (before the note)

This item ensures that any direction for additional dividends made under the new subsection 55A(2) must be included in the corporate plan.

This section ensures that the same corporate plan disclosure requirements that apply to directions to pay dividends under subsection 55(2) also apply to directions to pay dividends under the new subsection 55A(2).

Item 4 Subsection 54(8)

This items repeals the existing Subsection 54(8) and replaces it with a subsection which provides two alternative options to limit the amount of EFIC’s called capital. The pre-existing limit of $200,000,000 remains but the amendment allows a greater limit to be set by legislative instrument.

The Minister is provided with a power to make legislative instruments that allows for EFIC’s called capital to be raised should the Minister consider it necessary for EFIC to meet prudential benchmarks. This power should be exercised after agreement is obtained from the Prime Minister, the Treasurer and the Minister for Finance and Deregulation. In particular if the power is intended to be exercised to increase the size of EFIC’s operations, then the use of the power may also be subject to Cabinet approval.

Item 5 Section 55 (heading)

This item amends the heading to the pre-existing section relating to annual dividends to make clear that this section relates only to annual dividends. This will clarify the distinction between Section 55 which relates to annual dividends and section 55A which relates to special dividends.

Item 6 After section 55 Insert: 55A Payment of additional dividends to the Commonwealth

Subsection (1) of this section was inserted to create the legislative authority for EFIC to pay a one-off dividend of $200,000,000 to the Commonwealth before the end of the 2012-13 financial year. This implements a 2012 Budget Measure.

Subsections 55A (2) to (5) provide a new power for the Minister to direct payment of a specified special dividend which will exist in addition to the annual dividend direction power in section 55.

Subsection 55A(2) provides that the Minister has a discretionary power to direct a specified dividend to be paid within a specified period. This direction should be in writing.

Subsection 55A(3) sets out all the items the Minister must have regard to in determining to direct payment of a dividend under subsection 55A(2).

Subsection 55A(3)(a) sets out the three items the Minister must 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

Subsection 55A(3)(b) states that the Minister must also 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.

The requirement in subsection 55A(3)(b) that the Minister be satisfied that the special dividend is reasonable in the context of items 55A(3)(b)(i)-(ii) creates a standard that must be met before a direction under subsection 55A(2) can be given. This is distinct from the requirement in subsection 55A(3)(a) which details matters the Minister must have regard to.

The information the Minister may receive on the above items set out in subsection 55A(3) can come from a variety of sources including but not limited to Government, EFIC or external consultants.

Subsection 55A(4) also requires the Minister to undertake a process before making a direction under subjection 55A(2). The Minister must consult the EFIC Board about the items in section 55A(3)(a)(ii) and (3)(b)(i)&(ii). In addition the Minister must obtain the agreement of the Prime Minister, Treasurer and Finance Minister.

Subjection 55A(5) provides a mandatory obligation for EFIC to comply with a direction given under Subsection 55A(2).