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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXPORT FINANCE AND INSURANCE CORPORATION AMENDMENT (DIRECT LENDING AND OTHER MEASURES) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Trade and Investment, the Honourable Andrew Robb AO MP)
Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014

OUTLINE

Purpose/Objective

The Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014 (“the Bill”) expands EFIC’s powers to allow direct lending for export transactions involving all goods, not just capital goods, and provides for competitive neutrality principles to apply to EFIC’s operations.

Why the Bill is required

This Bill would give EFIC the ability to lend in all goods export transactions, not only capital goods transactions. As the vast majority of Australian exports are not capital goods, this will expand EFIC's capacity to support Australian business, particularly Small and Medium sized Enterprises (“SMEs”). This Bill would also expand competitive neutrality to all EFIC's operations.

This Bill is required to give legislative effect to these elements of the Government Decision that require legislative amendments. The Bill will create amendments to the Export Finance and Insurance Corporation Act 1991 (“the Act”).

To give effect to the Government’s decision in relation to direct lending by EFIC the Act will be amended to allow EFIC to support exporters of goods, not just capital goods, increasing the number of exporters eligible for EFIC assistance. This should also reduce the time and paperwork required for many transactions EFIC conducts with SMEs. The amendment to the Act removes the word “capital” from “capital goods” in the definition of an eligible export transaction and includes any consequential amendments.

Consistent with the Productivity Commission’s recommendation in the 2012 Review of Australia’s Export Credit Arrangements, the Government also decided that Competitive Neutrality principles should apply to EFIC to ensure it does not have a net competitive advantage over other business (or potential competitors) simply by virtue of its Government ownership. To achieve this outcome the Bill is required to provide for EFIC to pay a debt neutrality charge or guarantee fee, and a tax equivalent payment. The Minister would determine the appropriate arrangements that are to apply in respect of those payments.

FINANCIAL IMPACT STATEMENT

The Bill 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 (Direct Lending and Other Measures) Bill 2014;

The Act, unless the context indicates otherwise, means the Export Finance and Insurance Corporation Act 1991;

EFIC means the Export Finance and Insurance Corporation;

SMEs means Small and Medium sized Enterprises; and

ABS means Australian Bureau of Statistics.
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.

Clause 3—Schedule(s)

Clause 3 provides that legislation that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to this Bill has effect according to its terms.
Schedule 1—Direct Lending Amendment

Export Finance and Insurance Corporation Act 1991

Item 1 - Before subsection 3(2) Insert: Loans and lending of money

This item provides a heading describing the content of the section below.

Item 2 - Before subsection 3(3) Insert: Eligible export transactions

This item provides a heading describing the content of the section below.

Item 3 - Paragraphs 3(3)(a), (b), (c) and (d)

The word “capital” has been removed to expand EFIC’s power such that it is no longer restricted to lending directly only in relation to export transactions for capital goods.

Item 4 - Subsection 3(4)

This subsection is being repealed as a definition of “capital goods” is no longer required as EFIC is to no longer be restricted to lending only for eligible export transactions involving capital goods.

Item 5 - Before subsection 3(5) Insert: Australian export trade

This item provides a heading describing the content of the section below.

Item 6 - Application provision

The application provision describes how the amendment will apply to EFIC.

Item 7 - Transitional provision

The amendments made by this Schedule do not affect the continuity of any of the following that were in force immediately before the commencement of this Schedule:

(a) directions given under subsection 9(2), 26(1), or section 29, of the Export Finance and Insurance Corporation Act 1991;

(b) approvals (with or without conditions) given under section 27 of that Act;

(c) principles determined under subsection 67(1) of that Act.
Schedule 2 – Competitive Neutrality Amendment

Export Finance and Insurance Corporation Act 1991

Item 1 - Subsections 61A(1) and 62A(1)

This item omits the reference in the Act “in respect of short-term insurance contracts entered into by EFIC”. The reference is being removed so that the Minister may inform EFIC in writing of arrangements that are to apply to EFIC in relation to a debt neutrality charge or guarantee fees to be paid by EFIC to the Commonwealth in all EFICs operations, not just short term insurance contracts.

Item 2 - Subsection 63A(2)

This item omits the reference in the Act to “over other insurers because of the operation of section 63 in relation to its short term insurance contracts” and substitutes with “because of the operation of section 63, over other persons or bodies who provide insurance or financial services or products that EFIC may provide.” As in item 1 this amendment reflects the application of competitive neutrality to all of EFIC’s operations, not just short term insurance contracts.

Item 3 - Subsection 63A(3)

This item omits the reference in the Act “in relation to its short term insurance contracts”. As in item 1 this amendment reflects the application of competitive neutrality to all of EFIC’s operations, not just short term insurance contracts.

Item 4 - Application provision

The application provision states that the amendments made in items 2 and 3 in respect of the tax equivalent payment will apply from the first full financial year after the commencement of the Bill. The intention of this application provision is to ensure that competitive neutrality is aligned with the financial year period over which EFIC measures its financial performance.

Item 5 - Transitional provision

The amendments made by this Schedule do not affect the continuity of any of the following that were in force immediately before the commencement of this Schedule:

(a) arrangements under section 61A or 62A of the Export Finance and Insurance Corporation Act 1991;

(b) determinations under subsection 63A(2) of that Act.
**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Overview of the Bill**

The Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014 (referred to in this Explanatory Memorandum as ‘Bill’) gives legislative effect to the Government’s decision to expand EFIC’s direct lending powers and to apply competitive neutrality across all of EFIC’s operations.

**Human rights implications**

This Bill does not engage any of the applicable rights or freedoms, as it relates to changes in the mandate of EFIC (the Government’s export credit agency). The Bill gives EFIC the ability to lend directly in relation to all transactions not just transactions involving capital goods.

**Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

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*the Honourable Andrew Robb AO MP*