

2016-2017-2018-2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**EXPORT FINANCE AND INSURANCE CORPORATION AMENDMENT
(SUPPORT FOR INFRASTRUCTURE FINANCING) BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Trade, Tourism and Investment,
Senator the Hon Simon Birmingham)

Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019

OUTLINE

Purpose/Objective

The Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 (“the **Bill**”) expands the ability of the Export Finance and Insurance Corporation (Efic) to finance infrastructure projects by increasing its callable capital and granting it a new overseas infrastructure financing power. This will enable Efic to both finance more and larger projects, and expand its capabilities to regional infrastructure projects that have a broad national benefit for Australia, including for Australian businesses.

Why the Bill is required

The Bill is required to give legislative effect to the Government’s policy to enhance Australia’s role and attractiveness as a partner in regional infrastructure development by expanding Efic’s ability to finance overseas infrastructure projects that have a broad national benefit for Australia including for Australian businesses.

In line with the 2017 Foreign Policy White Paper, the Bill forms part of the Government’s package of measures to broaden and deepen our engagement in the Pacific and the region.

The Bill enhances the Government’s regional commitment especially to infrastructure. It delivers on the initiatives announced by the Prime Minister to address the infrastructure needs of the Pacific region by boosting Efic’s ability to support Australian commercial participation in Pacific infrastructure as well as the timely implementation of the Australian Infrastructure Financing Facility for the Pacific. These measures form part of a significant new package of security, economic, diplomatic and people to people initiatives that will build on our strong partnerships in the Pacific.

Better infrastructure in the Pacific will contribute to stronger growth not only in their countries, but across the region including in Australia. Productive and sustainable infrastructure is mutually beneficial.

The Bill will create amendments to the *Export Finance and Insurance Corporation Act 1991* (“the **Act**”).

The Bill grants Efic a new power to finance overseas infrastructure projects based on an Australian benefit test. Applying an Australian benefit test for infrastructure will open up a larger pool of potential projects eligible for Efic financing. It enables Efic to take account of the direct benefits from the involvement of Australian companies in infrastructure projects, as well as future and indirect benefits for Australia or Australians, such as greater Australian participation in supply chains, access to new markets for Australian businesses, more Australian jobs, payments, dividends or other financial proceeds from overseas to Australia, or stronger relationships with our regional partners, especially in the Pacific.

The amendment will enhance the Government’s ability to play a constructive role in regional infrastructure that serves our national interest and supports Australian businesses to take on international opportunities.

The Bill increases Efic's callable capital by \$1 billion on its Commercial Account. This will allow Efic to provide more commercially meaningful financing offers, including for overseas infrastructure projects where the total size of debt financing required is large. It will give Efic greater flexibility and credibility with project proponents, sovereign borrowers and financing partners, who require the confidence that Efic's support is meaningful and can be sustained over often long repayment terms. Increasing callable capital by legislative amendment, rather than legislative instrument, will provide the higher degree of certainty needed.

The Bill allows Efic to conduct its operations under the trading name Export Finance Australia. A simpler trading name that references Australia will provide greater recognition for Efic and the Australian Government, both with Australian small and medium sized enterprises and exporters, and in overseas markets.

FINANCIAL IMPACT STATEMENT

The Bill will have no impact on the Commonwealth's underlying cash balance. The increase in Efic's callable capital will enable Efic to provide more financing over time, raising the Government's contingent liability for Efic within the established upper limit of \$6.5 billion. The Export Finance and Insurance Corporation Regulations 2018 set this maximum liability.

NOTES ON CLAUSES

Clause 1: Short title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. The Bill will commence on the day after the Bill receives Royal Assent.

Clause 3: Schedule(s)

3. 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—Amendments

Export Finance and Insurance Corporation Act 1991

Item 1 – Title

Omit “**by the provision of insurance and financial services and products**”, substitute “**and overseas infrastructure development**”.

This item simplifies and updates the long title of the Act to reflect Efic’s new infrastructure financing power.

Item 2 – Subsection 3(1)

Insert:

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

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

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.

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

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, or providing a financial accommodation, in any form: see subsection (2).

This item defines Efic’s new power to finance overseas infrastructure projects based on an Australian benefit test. The power is made operational through other changes to the Act (items 4, 5, 6, 7, 8, 9, 11 and 12). The power enables Efic to take account of the direct benefits from the involvement of Australian companies in infrastructure projects, as well as future and indirect benefits for Australia or Australians, such as greater Australian participation in supply chains, access to new markets for Australian businesses, more Australian jobs, payments, dividends or other financial proceeds from overseas to Australia, or stronger relationships with our regional partners, especially in the Pacific. It enables Efic to finance infrastructure projects that are connected to Australia in some way, but will be used wholly or substantially outside Australia (e.g. an undersea telecommunications cable connecting Australia to a nearby country for use substantially by that country). The power enhances Australia’s ability to play a role in regional infrastructure that serves our national interest and support international opportunities for Australian businesses.

Item 3 – Paragraph 7(1)(b)

Omit “banks”, substitute “ADIs”.

This item makes clear the range of authorised deposit-taking institutions Efic may encourage to finance, or assist in financing, export contracts or eligible export transactions, including under the new infrastructure financing power.

Item 4 - After paragraph 7(1)(dc)

Insert:

- (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;

This item adds the new infrastructure financing power to the functions of Efic.

Item 5 – At the end of section 8

Add:

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.

This item adds the new infrastructure financing power to the primary duties of Efic.

Item 6 – After section 18

Insert:

18A Guarantees to co-lenders in relation to overseas infrastructure development

If, for the purpose of supporting overseas infrastructure development:

- (a) EFIC has lent, or proposes to lend, money under section 23A to a person; and
- (b) another person (the *co-lender*), by arrangement with EFIC, has also lent, or proposes to lend, 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.

This item enables Efic to provide guarantees to co-lenders in connection with the new infrastructure financing power.

Item 7 – At the end of subsection 23(1)

Add:

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

This item clarifies Efic's ability to provide financial accommodation, in any form, to eligible export transactions and under the new infrastructure financing power.

Item 8 – At the end of Part 4

Add:

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, or to provide a financial accommodation, 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).

This item enables Efic to provide financial accommodation, in any form, under the new overseas infrastructure financing power.

Item 9 – After subsection 27(4)

Insert:

(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.

This item enables the Minister to approve Efic to administer on the National Interest Account support for infrastructure projects under the new infrastructure financing power.

Item 10 – Paragraph 54(8)(a)

Omit “\$200,000,000”, substitute “\$1,200,000,000”.

This item increases Efic’s callable capital by \$1 billion.

Item 11 – At the end of subsection 67(1)

Add “or in relation to overseas infrastructure development”.

This item enables the Minister to determine the principles according to which the Commonwealth will pay Efic a subsidy in connection with the new overseas infrastructure financing power.

Item 12 – Subsection 67(2)

After “eligible export transaction”, insert “or in connection with overseas infrastructure development”.

This item enables the Commonwealth to pay Efic a subsidy in connection with the new infrastructure financing power.

Item 13 – Subsection 81(1)

Omit “or under the acronym EFIC”, substitute “, under the acronym EFIC or under the name “Export Finance Australia””.

This item allows Efic to conduct its operations under the name Export Finance Australia.

Item 14 – Subsection 81(2)

Omit “or the acronym EFIC” (first occurring), substitute “, the acronym EFIC, the name “Export Finance Australia””.

This item allows Efic to conduct its operations under the name Export Finance Australia.

Item 15 – Subsection 81(2)

Omit “or the acronym EFIC” (second occurring), substitute “, the acronym EFIC or the name “Export Finance Australia””.

This item allows Efic to conduct its operations under the name Export Finance Australia.

Item 16 – Subsections 81(3) and (4)

Repeal the subsections, substitute:

(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.

This item ensures a person is not penalised for using the new name prior to the Bill coming into force.

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 (Support for Infrastructure Financing) Bill 2019

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 (Support for Infrastructure Financing) Bill 2019 gives legislative effect to the Government's policy to expand the ability of the Export Finance and Insurance Corporation (Efic) to finance infrastructure projects. The Bill gives Efic an extra \$1 billion in callable capital and grants it a new more flexible power to finance infrastructure projects, which have broad national benefit for Australia.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms, as it relates to high level changes to Efic's general powers, functions and primary duties.

Conclusion

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

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