

**Submission of the ACTU to the Inquiry into
the Export Finance and Insurance
Corporation Amendment (Support for
Commonwealth Entities) Bill 2016
Senate Foreign Affairs, Defence and Trade
Legislation Committee**

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INTRODUCTION

The Australian Council of Trade Unions (ACTU) is the peak body for Australian unions, made up of 46 affiliated unions. We represent more than 1.6 million working Australians and their families. The ACTU and affiliated unions have had a long and significant interest in the skilled migration program on behalf of our members and workers generally.

We appreciate the opportunity to make a submission to this Inquiry into the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016.

As the ACTU works on issues related to workers and human rights both in Australia and internationally, we have several comments to make in relation to the proposed amendments to the Export Finance and Insurance Corporation Act 1991.

The ACTU's view on the proposed amendments aligns with our mission to protect the jobs of workers in Australia and ensure workers and other human rights are respected both here and abroad.

We note that Efic was established to provide exporters unable to secure finance or insurance services from private institutions with taxpayer funded loans and insurance to support export expansion, but on the assumption that they would do so whilst using a certain level of locally made goods and services.

We agree in principle with the idea that small and medium enterprises should be supported to access export markets. Indeed, the 2012 Productivity Commission Review of Efic criticized Efic for being biased in favour of large multinational companies and that it provided access to finance to both Australian and offshore projects, many of them large mining companies, which they could find through their own banks and shareholders¹.

However we cannot agree with an amendment whose purpose is to remove Efic's requirement to lend to companies that make items that are "produced or manufactured wholly or substantially in Australia" and allow loans instead to "any transaction (including the rendering of a service) involving a benefit flowing directly or indirectly from overseas to a person carrying on business or other activities in Australia²."

¹ <http://www.pc.gov.au/inquiries/completed/export-credit/report>

² http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r5758_first-reps/toc_pdf/16168b01.pdf;fileType=application%2Fpdf#search=%22legislation/bills/r5758_first-reps/0000%22

KEY POLICY RECOMMENDATIONS

The ACTU believes that the proposed amendments should not be supported.

Australia's local industries require more rather than less support in order to sustain and create job growth. Manufacturing in particular plays a large role in innovation and needs to be supported by relevant government policies.

In addition, further reforms are necessary to ensure that Efic's procedures are consistent with international standards and that taxpayers can be assured that their money is not contributing to human rights abuses.

BACKGROUND AND CONTEXT FOR THE REVIEW

Local content

The proposal to replace the current definition 'eligible export transaction' to the broader definition of 'Australian export trade' in effect removes the local content requirements which are currently in place. On that basis we strongly oppose this amendment.

The current guidelines for SMEs seeking Efic support state "The value of Australian content needs to be at least 1/3 of the total contract value for a transaction to be eligible for maximum Efic support"³. The guidelines go on to further clarify:

What can be included as Australian Content?

Goods manufactured or produced in Australia.

- *Inputs sourced from other Australian suppliers*
- *Services performed by third parties in Australia or by Australians employed outside Australia*
- *Profit*
- *Australian Intellectual property*

However please note that profit alone cannot be considered as sufficient Australian content even if it is worth more than 1/3 of total contract value.

³ <https://www.efic.gov.au/business-solutions/small-to-medium-sized-business/australian-content-guidelines/>

These are the guidelines based on the definition of “an eligible export transaction” in the current act.

1. *Preliminary section- 3. Interpretation -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.*

The amendment is intended to remove all the text after “incidental and related” and replace it with the loosely defined terms of “Australian export trade” as defined in Subsection 3 (4):
“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”

It is in the national interest that companies which receive government loans are required to use that money in a way which benefits Australian employment. The removal of these provisions will be yet another blow to the Australian manufacturing and services sectors. It could potentially lead to jobs being offshored.

The ACTU has for a long time been asking the Government to strengthen procurement policies across Government Departments and entities. We believe that more than ever we need to leverage our institutions to help sustain and create jobs in Australia.

With over 2 million Australians either out of work or looking for more work⁴, the need to ensure that tax payer money is used to support the creation of local jobs. Not only that but levels of youth unemployment are as high as 32% in some areas such as Elizabeth in South Australia. In such an economic context Australian workers and their families need to know that the guarantees and loans provided by Efic are not being used to offshore jobs that could be done in Australia.

The Australian Council of Trade Unions (ACTU) has proposed a Buy Australian Act that would require all major government projects and services to use locally manufactured goods, such as steel, iron, clothing and equipment.

The Buy Australian Act would generate a trifecta of benefits: jobs for Australian workers, a badly needed boost to the Australian economy and would ensure government projects use safe, Australian made goods.

This would ensure jobs are created and maintained locally. It is vital that our manufacturing industry thrives and creates much needed high quality jobs, rather than being forced to shut down like Ford and Holden which are closing by the end of October 2017.

America's long history of support for its domestic industries and jobs has been a key factor in their economic success. The 'Buy American Act' was enacted in 1933 and while it was substantially amended four time since, every Congress in the intervening years has seen fit to enact some form of additional preference legislation. A similar 'Buy American' provision was used by the US Government in 2009 to stimulate the American economy after the Global Financial Crisis (GFC) and continues to operate within the United States government purchasing guidelines.

The Victorian Government has also had considerable economic success by amending the rules surrounding local content and state government procurement. The industry participation policy Local Jobs First sets local content requirements for strategic projects over \$50 million. The number of strategic projects has more than tripled over the last financial year, with minimum local content requirements set for 22 major projects. \$5.4 billion worth of procurement will support over 5,556 local jobs and 510 local apprentices and trainees.

⁴ ABS Labour Force detailed quarterly August 2016.

We propose that government procurement laws be overhauled on similar lines to ensure that Commonwealth, state and local governments take into account the social and economic benefits of local procurement, and the Australian government looks at the wider national interest in supporting a diverse economy, local jobs and local content in our trade negotiations. Local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce.

Broader issues affecting Efic and potential impact of amendments

Efic has been at the center of much controversy with regard to the support it has provided in the past to Australian companies expanding their export operations overseas. In the ACTU's view, the risk- assessments done by Efic have not adequately captured the extent to which projects could negatively affect workers and their communities and have thus resulted in human rights violations.

Many of these human rights abuses are captured in Pipe Dreams: The PNG LNG project and the future hopes of a nation by Jubilee (2012)⁵. More recently EFIC's decision to grant funding to Rio Tinto's \$6 billion Oyu Tolgoi gold-and-copper project in Mongolia⁶ and the support it provided to Leighton Contractors (now rebranded as the CIMIC group) to win work in Iraq which has been the subject of bribery allegations⁷, are further examples of how the Efic Act needs to be amended and Efic's due diligence processes strengthened.

As a Federal Government taxpayer-funded agency Efic has responsibility to ensure that the support that it provides does not result in human rights abuses and hence that adequate steps are taken to evaluate the risks before funding is granted.

The inclusion of strong and relevant standards, due diligence and access to remedy is fast becoming a global standard when it comes to business and human rights.

The UN Guiding Principles on Business and Human Rights⁸ places obligations on business to respect human rights, which at a minimum requires business to act with due diligence to avoid infringing the rights of others, or to "do no harm", and to provide a remedy if things do go wrong. Human rights due diligence requires companies to identify and assess the actual or potential human rights impacts of their operations (including by conducting a human rights impact

⁵ <http://www.jubileeaustralia.org/page/work/export-credit>

⁶ www.aph.gov.au/DocumentStore.ashx?id=e1a87157-a58f-4e6c-ba0b-3d4bc3bac0df

⁷ <http://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/leighton-news.html>

⁸ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

assessment) to allow it to then prevent, mitigate and account for how it will address its human rights impacts.

The Australian Government has indicated its support for a number of global corporate accountability mechanisms and international treaties over the last 2 years. It is currently considering developing a National Action Plan to support the implementation of the UN Business and Human Rights Guidelines and is implementing the Extractive Industries Transparency Initiative⁹. Government-funded entities which use taxpayer money to support investment should be even more cognisant and compliant with relevant standards and protections and hence engage in substantive due diligence. A large part of these mechanisms is based on the principle of transparency.

Thanks to the continuous engagement of civil society some commitments to improving so called 'social and environmental protections', and accountability and disclosure, have been made by Efic. In the last few years it has developed a Human Rights statement which includes references to the UN Guiding Principles and ILO Core Conventions¹⁰ and has also set up a multi-stakeholder forum which includes participation from civil society. Efic also publishes its Policy and Procedures for Environmental and Social Review which now include references to IFC Performance Standards¹¹, the OECD Guidelines on MNEs¹² and the Equator Principles¹³.

However, major issues with Efic's benchmarking against these standards remain. More needs to be done to ensure that EFIC does not support "risky" projects and to further strengthen accountability and disclosure. This is particularly important for Category A projects which are judged by Efic to have "potentially significant adverse environmental and/or social impacts"¹⁴. For these projects Efic does not report publically their benchmarking results. It is therefore hard to judge how the screening process works in practice and whether in fact it is weeding out projects which have the potential to adversely impact human rights.

Secondly Efic has a blanket exemption from the Freedom of Information Act. This prevents proper public scrutiny of EFIC and limits EFIC's accountability to Australian taxpayers and people potentially affected by EFIC supported projects.

⁹ <https://industry.gov.au/resource/Programs/ExtractiveIndustriesTransparencyInitiative/Pages/default.aspx>

¹⁰ http://www.ilo.org/asia/decentwork/dwcp/WCMS_143046/lang--en/index.htm?ssSourceSiteId=islamabad

¹¹

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/performance+standards+-+2012

¹² <http://www.oecd.org/corporate/mne/>

¹³ <http://www.equator-principles.com/>

¹⁴ <https://www.efic.gov.au/about-efic/our-corporate-responsibility/transactions/environmental-and-social-review/policy/>

In order for any of the standards listed above to make a concrete difference the current EFIC Act which requires EFIC to “have regard to” Australia’s international human rights obligations should be changed to “comply”. This will send a clear message to investors and companies that Australia intends to honour its commitments.

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