

Inquiry into the provisions of the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019

Submission to Senate Foreign Affairs, Defence and Trade Legislation Committee

6 March 2019

Introduction

ActionAid Australia welcomes the opportunity to make a submission to the inquiry into the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 (the Bill).

ActionAid Australia supports women living in poverty to stand up and claim their human rights by collectively confronting the injustices they face. In more than 45 countries, ActionAid supports women to understand their rights, reflect on the people and systems that affect them, and harness their power to act with others to change their lives and positions in society. This work includes supporting women from mining-affected communities in their efforts to ensure equal benefits from natural resources and to influence relevant government policies.

Our understanding of the purpose of the Bill is to amend the Export Finance and Insurance Corporation Act 1991 (Efic Act) to expand the functions 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 Bill forms part of the Government's package of measures to broaden and deepen our engagement in the Pacific and the region. It enables Efic to support Australian commercial participation in Pacific infrastructure as well as the timely implementation of the Australian Infrastructure Financing Facility for the Pacific¹.

ActionAid Australia does not recommend proceeding with the proposed expansion of the functions and remit of Efic proposed in this Bill as part of the Government's package of measures to support the Pacific. The model proposed in this Bill for supporting infrastructure development in the Pacific is unprecedented and the Government should extend its consultation period on the Australian Infrastructure Financing Facility for the Pacific (AIFFP) to consider a broader range of

¹ Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019, Explanatory Memorandum, Pg 3.

more effective, just and equitable financing options. Australian support for infrastructure in the Pacific should respond to the needs of Pacific Island Countries, with due to consideration to human rights, gender equality and environmental sustainability.

The Government is yet to address serious concerns regarding Efic's insufficient transparency and due diligence policies which could undermine development in low income countries, and entrench inequalities experienced by women living in poverty. These issues have been raised repeatedly by civil society organisations, and were recognised by the Productivity Commission in 2012,² but have not yet been adequately addressed. ActionAid sees the current Bill as incompatible with Australia's commitments to uphold women's rights and gender equality, and with climate resilient, sustainable, and equitable development in the Pacific region and beyond.

Summary of recommendations

In considering the role of the Bill in complementing Australia's broader package of engagement with the Pacific, ActionAid recommends that:

- 1. The Bill to expand Efic's functions and remit to overseas infrastructure financing is not passed by the Senate**
- 2. The Government undertakes an extended consultation process on the proposed Australian Infrastructure Financing Facility that:**
 - a. includes consideration of a range of models for infrastructure financing in the Pacific, including a grant rather than loan-based model, and;**
 - b. involves consultation with Pacific Island Countries, including civil society stakeholders and women's organisations.**

Efic and Australia's international human rights obligations

ActionAid notes that the Bill in its current form will allow Efic to invest in larger projects through an increase in its callable capital. It is reasonable to expect that the increased scale of Efic investments will promote the interests of the powerful elite in low-income Pacific countries at the expense of gender equality, and the human rights of women and their communities.

As previously identified by civil society organisations such as Jubilee Australia, serious human rights concerns have emerged from Efic's activities in the past, such as the PNG LNG Project.³ In 2016 ActionAid Australia also documented the experiences of women in one location where Efic

² Productivity Commission (2012), Inquiry into Australia's Export Credit Arrangements, <http://www.pc.gov.au/inquiries/completed/export-credit/report>

³ Jubilee Australia (2012) Pipe Dreams: The PNG LNG Project and the Future Hopes of a Nation, <http://www.jubileeaustralia.org/page/work/pipe-dreams-report>

was at the time considering a multi-million-dollar loan to open a new coal mine, the Boikarabelo mine, in one of South Africa's largest untapped coal reserves. The community affected by the Boikarabelo mine raised serious concerns regarding their treatment by the proponent company and contractors, including restriction of access to a local cemetery, insufficient and inaccessible consultation mechanisms, and failure to deliver services that had been committed to⁴. In addition, women and their communities affected by coal mining in South Africa have systematically experienced human rights violations and environmental impacts that include: contaminated water, land grabs, polluted air, poisoned land, black lung disease in mine workers, and social breakdown in affected communities⁵.

In their submission to the 2011 Productivity Commission's review of Australia's export credit arrangements, the Human Rights Law Centre noted that Efic is an organ of the state and as such is bound by Australia's international human rights obligations⁶. This includes all of the human rights treaties to which Australia is a signatory, as well as the Common Approaches set out by the OECD Working Group on Export Credit, the Equator Principles, and the UN Guiding Principles on Business and Human Rights. Although Efic recently adopted a short Human Rights Statement, this is insufficient to prevent further violations through Efic's activities.

Given Efic's history of lending to projects associated with significant adverse consequences for human rights, it is ActionAid Australia's view that Efic's mandate and callable capital must not be expanded until Efic's compliance with international human rights obligations is strengthened and tested.

Transparency of Efic's transactions and due diligence

In the context of human rights violations associated with Efic's investments outlined above, it is critical that the Australian public can access information about taxpayer backed investments in Efic and to assess their resulting value for money and adherence to global obligations and national policies. Efic's exemption from the *Freedom of Information Act 1982* and a lack of transparency regarding transactions, however, has prevented public scrutiny of Efic's application of its due diligence procedures.

Efic's due diligence procedures are outlined within its Environmental and Social Policy and Procedures (ESPP). The ESPP incorporates Australia's obligations under the OECD Common

⁴ Francina Nkosi (2017), complaint to the Export Finance and Insurance Corporation, <https://actionaid.org.au/wp-content/uploads/2019/03/Letter-from-Francina-Nkosi-1.pdf>

⁵ ActionAid (2014), DIRTY POWER http://www.actionaid.org/sites/files/actionaid/dirty_power_copy.pdf

⁶ Human Rights Law Centre (2011) Submission to the Productivity Commission's Inquiry into the Export Finance and Insurance Corporation, <http://www.pc.gov.au/inquiries/completed/export-credit/submissions/sub013.pdf>

Approaches mentioned above, as well as the voluntary Equator Principles. A risk evaluation is undertaken, where risks are identified, using the International Finance Corporation (IFC) Performance Standards. Continued pressure from Jubilee and other advocates led the Australian Government to establish a Productivity Commission⁷ inquiry into Australia's export credit arrangements in November 2011. The Productivity Commission report found that Efic's environmental and social policy and procedures were lacking sufficient transparency and recommended that "information that is relevant to Efic's assessment of environmental and social impacts should be made public". The key recommendations are yet to be implemented.

ActionAid Australia has since attempted to obtain further information about Efic's risk based approach to assessing environmental and social impact of prospective and approved investments, however this information remains inaccessible to the public. ActionAid Australia is concerned that the application of risk screening and risk evaluation in this process is being applied at a sub-standard level, however it is difficult to assess Efic's performance without sufficient information on how the ESPP is being implemented.

Efforts to encourage Efic to lift its performance benchmarks for environmental and social due diligence have had minimal impact since the Productivity Commission report in 2012. A range of development financing institutions, including the ADB, have developed robust and transparent environmental and social safeguards that could provide a comparison for improving Efic's organisational systems.

ActionAid Australia is therefore concerned that the current due diligence applied by Efic is insufficient for the scale and purpose of infrastructure investments proposed in the Pacific. Further, the secrecy with which Efic conducts its due diligence makes it an inappropriate vehicle for the AIFFP, and increasing its callable capital would put human rights of women and communities affected by infrastructure projects at risk.

Efic's complaints mechanisms

In 2015, Efic established a complaints mechanism for "...any client or individual, group, community, entity or other party concerned about, affected or likely to be affected by Efic's activities, including any project supported by one of our transactions"⁸. Concerned about the impacts of the proposed Efic-funded Boikarabelo coal mine in South Africa on local communities, ActionAid supported local women to submit a complaint via Efic's complaints mechanism that

⁷ Productivity Commission (2012), Inquiry into Australia's Export Credit Arrangements, <http://www.pc.gov.au/inquiries/completed/export-credit/report>

⁸ Export Finance and Investment Corporation (Efic) Website (2019), Complaints mechanism <https://www.efic.gov.au/our-organisation/our-organisation/complaints-mechanism/>

included interviews and photographic evidence of human rights and environmental impacts from affected community members. The response provided by Efic through this mechanism was grossly inadequate, with no attempt made by Efic to engage with the complainants or to provide any pathways to remedy or redress for the concerns they raised. Without a substantially reformed complaints handling mechanism for affected communities, it is ActionAid's view that Efic's scope and callable capital must not be expanded.

Efic and Australia's international climate change obligations

As the world moves to address the crisis posed by climate change, and especially with the Paris Agreement having come into force in 2016, the role of fossil fuel subsidies in contributing to carbon emissions is increasingly under international scrutiny. It is well established that export credit agency funding for fossil fuel developments should be considered a fossil fuel subsidy due to loans being backed by governments. The OECD Export Credits Working Group has already agreed to stop funding coal-fired power stations,⁹ and various international frameworks including the Sustainable Development Goals¹⁰ and the G20 Toronto and Pittsburgh commitments outline the importance of phasing out fossil fuel subsidies.¹¹ Despite international standards for climate policy and fossil fuel subsidies, Efic currently lacks policy guidance in these areas and is therefore not required to consider the carbon emissions – including Scope 3 emissions from fossil fuel mining infrastructure – associated with investments that it supports.

ActionAid also notes that with an increased focus on the Pacific, there is a disconnect between the demands of Pacific Island Countries and the role of Efic has historically played in financing Australian fossil fuel companies to expand into new fossil fuel reserves. In September 2018, the Pacific Islands Forum Leaders endorsed the Boe Declaration on Regional Security which immediately affirms “...that climate change remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific and our commitment to progress the implementation of the Paris Agreement”. The Bill explicitly states that the Efic will perform its overseas infrastructure financing functions to result in the “maximum Australian benefits”¹². At no point in the proposed Bill is there any consideration of sovereign nations in the Pacific, or otherwise, having the opportunity to be considered in Efic's decision making regarding

⁹ OECD (2015) Sector Understanding on export credits for coal-fired electricity generation projects (CFSU), <http://www.oecd.org/tad/xcred/cfsu.htm>

¹⁰ Sustainable Development Goal 12, <https://sustainabledevelopment.un.org/sdg12>

¹¹ G20 (2009) The Pittsburgh Summit commitments, <http://www.g20.utoronto.ca/analysis/commitments-09-pittsburgh.html>

¹² Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019, section 8 (4), p.g.4

infrastructure financing.

Conclusion

ActionAid Australia has been calling for reform of Efic's governance and due diligence since 2016, yet no significant actions have been taken by Efic to lift its standards on transparency, accountability, environmental sustainability and human rights. Efic therefore does not have the track record to manage Australian infrastructure investment in the Pacific in line with our commitments to women's rights and gender equality, and ActionAid Australia does not support the expansion of Efic's functions and remit as proposed in this Bill.

Submitted by:

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