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Senate Foreign Affairs, Defence and Trade Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

31 May 2013

Dear Senators,

Re: Senate Inquiry into the provisions of the Export Finance and Insurance Corporation Amendment (New Mandate and Other Measures) Bill 2013.

Supplementary to evidence given by EFIC at the Committee's public hearing on Friday 17 May 2013, EFIC would like to take this opportunity to address some points raised by other participants to the inquiry and to clarify, for the public record, its practices with regard to environmental and social review of transactions – in particular EFIC's disclosure practices.

EFIC's responses to specific questions taken on notice at the hearing and received in writing are detailed in Annex A.

Regards,

Angus Armour
Managing Director & CEO
Export Finance and Insurance Corporation

EFIC's Policy and Procedure for Environmental and Social Review of Transactions

EFIC's corporate values include a commitment to uphold best-practice environmental and social standards in the transactions we support. In early 2011, EFIC adopted its current Policy and Procedure for Environmental and Social Review of Transactions. The Policy sets out the principles that EFIC applies to meet these corporate values and the Procedure describes how the Policy is implemented. These documents detail EFIC's screening and classification, risk evaluation, consideration and reporting processes, as well as the global standards EFIC uses and how they apply to the transactions EFIC considers.

The Policy and Procedure are publicly available on EFIC's website:

- Policy: <http://www.efic.gov.au/corp-responsibility/envr-responsibility/Pages/Policy.aspx>
- Procedure: <http://www.efic.gov.au/corp-responsibility/envr-responsibility/Pages/Procedure.aspx>

The current Policy and Procedure are the culmination of an in-depth review of EFIC's Environment Policy conducted during 2009-11. The review involved public consultation and significant stakeholder input including from the civil society organisations (CSO) Oxfam, Jubilee Australia, the Human Rights Law Centre and the Mineral Policy Institute. That input was assisted by an independently facilitated workshop between EFIC, the four CSOs and officers from the Department of Foreign Affairs and Trade (DFAT). The outcomes of the workshop helped to finalise the Policy and Procedure and the facilitator's report is on EFIC's website¹.

Finalisation of the 2011 Policy was the fourth time EFIC has reviewed its environmental and social policies since 2000.

Disclosure and transparency

EFIC undertakes a number of disclosure and information sharing activities with regard to the environmental and social aspects of transactions it supports. EFIC's disclosure extends beyond the requirements of its international obligations under the OECD Common Approaches and its voluntary commitments under the Equator Principles and hence in many cases, the practices of other OECD export credit agencies (ECAs). In addition to the information EFIC discloses in its Annual Report, this includes:

- **Category A register:** EFIC discloses its potential involvement in transactions associated with 'Category A' projects in an online Category A register. EFIC's practice in this regard goes beyond OECD Common Approaches requirements and includes details of the type of facility requested, the reasons for categorisation and email notifications to advise interested parties of updates to the register.

Interested parties are invited to make submissions regarding EFIC's potential involvement in the disclosed transaction. For legal reasons, EFIC is unable to publicly respond to submissions made in relation to Category A disclosures, however EFIC has agreed to identify parties that

¹ <http://www.efic.gov.au/CORP-RESPONSIBILITY/ENVR-RESPONSIBILITY/Pages/Environmentpolicyreview.aspx>

have made submissions on its website where permission has been granted by the respondent to do so. The Category A archive records all past Category A disclosures including projects considered by EFIC which did not proceed. The Category A register is available here:

<http://www.efic.gov.au/corp-responsibility/envr-responsibility/Pages/CategoryAregister.aspx>

- **Transaction register:** A register of supported transactions during each financial year is available on EFIC's website. The register is updated as soon as practical after signing and includes results of the transactions' environmental and social screening and classification. Signings are also recorded in EFIC's Annual Report. The transaction register is located here:

<http://www.efic.gov.au/corp-responsibility/envr-responsibility/Pages/Transactionregister.aspx>

- **Multi-stakeholder forum:** EFIC has established a multi-stakeholder forum to facilitate regular dialogue between EFIC, DFAT, civil society organisations and any other interested party on issues relating to EFIC's commitment to uphold best-practice environmental and social standards in the transactions it supports. The most recent forum was held in November 2012 with representatives from DFAT, EFIC, Jubilee, Oxfam, the Human Rights Law Centre and Corporate Analysis Enhanced Responsibility. The forum discussed EFIC's Annual report, grievance mechanism, the Oyu Tolgoi Project, the PNG-LNG Project (and the Pipe Dreams report), changes to the OECD Common Approaches and proposed changes to the Equator Principles. The outcomes of the forum are on EFIC's website at:

<http://www.efic.gov.au/corp-responsibility/Pages/multi-stakeholder-forum.aspx>

- **Grievance mechanism:** In July 2012, EFIC launched a Grievance Mechanism to complement its existing feedback channels. Any party concerned about, affected, or likely to be affected, by EFIC's activities, including a project supported by an EFIC transaction, can use the mechanism. This Grievance mechanism was formulated in consultation with the aforementioned civil society organisations and Oxfam Australia expressed its support for this initiative. Information on the mechanism is available at:

<http://www.efic.gov.au/about/Pages/Complaints-mechanism.aspx>

- **Independent audit.** To provide stakeholders with increased confidence in EFIC's environmental and social reviews the Policy for environmental and social review of transactions commits EFIC to an independent audit of the application its Policy and Procedure every two years. The audit reports are provided to EFIC's Board and made available on EFIC's website at:

<http://www.efic.gov.au/corp-responsibility/envr-responsibility/Pages/Policy-Procedure-independent-audit.aspx>

Some points of clarification

EFIC would also like to take this opportunity to address some of the points raised by Jubilee and Aid Watch at the Committee's public hearing on 17 May 2013 and in their respective submissions to Senate.

1. EFIC's compliance with its Policy and Procedure

At the Committee's public hearing on 17 May Jubilee Australia (Jubilee), contended that "*the instruments themselves [EFIC's Policy and Procedure] provide no guarantee of compliance or due process for stakeholders... there are no safeguards to ensure EFIC complies with them or the standards they reference.*" Jubilee also noted that '*Australian public and project affected communities have no way to determine the accuracy of EFIC's assessments or its compliance with the international standards it says it is obligated to uphold*²."

Aid Watch expressed similar sentiments telling the Committee that it "*is not good enough that EFIC voluntarily has regard to them [EFIC's international obligations]*³" and '*it is very clear that EFIC is not complying with its own standards. Even though those standards need to be strengthened, EFIC is not even complying with its own standards*⁴.' (Page 5)

EFIC believes these statements are unsubstantiated and misleading - particularly in three respects:

- **EFIC's duty to have regard to Australia's obligations under international agreements has statutory recognition.**

EFIC's international obligations with regard to environmental, social and human rights are already recognised by the EFIC Act. Section 8 (2)(b)(iii) of the EFIC Act (Primary Duties of EFIC) *obliges* EFIC to "have regard to Australia's obligations under international agreements." "International agreements" encompass relevant OECD agreements, as well as all international treaties to which Australia is a party (including human rights related treaties).

EFIC's obligations in this regard are then further articulated in the Minister's Statement of Expectations. This statement expresses and formalise the Minister's expectations of EFIC, including that EFIC must operate in accordance with the relevant international standards in managing the social and environmental risks in the transactions it supports.

The current SOE states: "*In effectively managing social and environmental risks relating to transactions, I expect EFIC to fully comply with the OECD Common Approaches on the Environment and officially Supported Export Credits, the Equator Principles and any other relevant standards.*⁵"

This requires EFIC, as part of its statutory fundamental functions to comply with all relevant international agreements, whilst through the Statement of Expectations maintaining flexibility to ensure that EFIC's environmental and social policy requirements can be responsive to updates to the relevant agreements without requiring a cumbersome process of legislative change.

- **EFIC's application of its Policy and Procedure for Environmental and Social Review of Transactions is subject to an independent external audit.**

² Ms Carmelan Polce, Executive Director of Jubilee Australia, FAST Committee Inquiry Public Hearing, May 17 2013 see transcript page 5.

³ Mr Gareth Bryant, Member of the Committee of Management for Aid Watch, FADT Committee Inquiry Public Hearing, May 17 2013 – see transcript page 4

⁴ Mr Gareth Bryant, Member of the Committee of Management for Aid Watch, FADT Committee Inquiry Public Hearing, May 17 2013 – see transcript page 4

⁵ See SOE available: http://www.efic.gov.au/about/governance/Documents/Minister-for-Trade-Statement-of-Expectations-19-July-2011.pdf?utm_source=seo&utm_medium=EFIC-Board&utm_campaign=seo-efic-expectations-PDF-110824

To provide stakeholders with increased confidence in EFIC's environmental and social assessment of transactions, the Policy for environmental and social review of transactions commits EFIC to an independent audit of the application its Policy and Procedure every two years. The audit reports are provided to EFIC's Board and are made available to the public.

Net Balance Management Group Pty Ltd (Net Balance) undertook the first audit from September – November 2012 and a copy of their independent audit report can be found on EFIC's website. The auditors concluded that EFIC was entirely compliant with its application of the Policy and Procedure.

Net Balance concluded that: "based on our reasonable assurance procedures as described in this statement, the environmental and social review of transactions and, where relevant, their associated projects completed by EFIC, between 17 February 2011 and 16 August 2012, is properly completed and presented fairly, in all material respects, in accordance with the requirements of the EFIC Policy for environmental and social review of transactions and the EFIC Procedure for environmental and social review of transactions."⁶

The audit included review of all transactions associated with Category "A" or Category "B" projects and non-projects with potential impacts. It also included a representative sample of transactions associated with "Category C" projects and transactions with "low potential" for environmental and social impacts.

For each transaction, the documentation examined included some or all of:

- Reports prepared by EFIC staff;
- Internal emails between EFIC personnel related to the social and environmental review;
- External emails between EFIC and the exporter, or project proponent, or syndicate lenders; or other ECA facility providers;
- EFIC technical, social and environmental review working papers;
- Environmental and Social Impact Statements, independent reviews, and similar material; and
- Material from independent sources (such as websites and newspaper articles) considered by EFIC in its review.

- **EFIC is subject to peer review**

As a participant to the OECD Common Approaches, EFIC is subject to peer review. The OECD Export Credit Group monitors measures taken by its members (including EFIC) to meet its commitments by undertaking surveys with the outcome of such surveys made publicly available on the OECD website (www.oecd.org). EFIC is also required to report all export credit transactions associated with Category A and Category B projects to the OECD Export Credits and Guarantees Secretariat, an analysis of which is publicly released.

EFIC is an active participant in the regular meetings of the Environmental Practitioners of the OECD's Export Credit Group. The Environmental Practitioners meetings bring together technical experts from Member Export Credit Agencies (ECAs) to review and share best practices for Environmental and Social review of transactions, including the consideration of green house gas accounting and evaluating project-related human rights impacts. EFIC is a signatory to the Equator Principles and Principle 10 of the Equator Principles also requires a signatory to report on its implementation of the principles, including the number of project finance transactions screened and their categorisation. These are disclosed in EFIC's Annual Report and on EFIC's website.

⁶ Net Balance, Audit of EFIC's application of its Policy and Procedure for environmental and social review of transactions, page 6

2. Support for PNG LNG

EFIC's support for the PNG LNG project requires the Project to operate in accordance with PNG laws, the Project's Environmental and Social Management Plan (ESMP) and the Lender Environmental and Social Requirements (which reflect the OECD Common Approaches, the IFC Performance Standards (2006 version) and the Equator Principles.)

EFIC receives quarterly updates from the Project on construction, safety, security, health, environment and social management activities contained in the ESMP. The Lenders' have access to an Independent Environmental and Social Consultant (IESC) for the life of the project. The Lender's IESC, D'Appolonia, has made nine site visits between May 2010 and April 2013. D'Appolonia assesses and reports to the Lender Group on the Project's compliance with the environmental and social provisions in the ESMP and Lender requirements and report on any areas of non-conformance.

The Project makes the IESC reports available publicly via the PNG LNG website: http://pnglng.com/quarterly_reports/e_s_reports.htm

At the public hearing, Aid Watch contended that EFIC often levers AusAID funding and that this was the case with regard to the PNG LNG – with finance conditional upon PNG's establishment of a sovereign wealth fund. EFIC has no financing relationship with AusAID and the approval of EFIC's US\$100 million project finance loan for PNG LNG was not conditional on the establishment and operation of a sovereign wealth fund by the PNG Government.

The Australian Government's aid-supported mixed credit program, the Development Import Finance Facility (DIFF) was discontinued in 1996.

3. Support for Oyu Tolgoi

In accordance with EFIC's Policy for environmental and social review of transactions EFIC's potential involvement in the Oyu Tolgoi Project financing was disclosed between 10 September and 2 November 2012, in EFIC's Category A register.

It is public knowledge that EFIC, agencies of the World Bank, and other export credit agencies, including that of the USA, will partially finance the project. On that basis, the social and environmental requirements attached to the funding will meet best practise international standards. Despite the US abstaining from the vote to approve IFC's support for the project, the US EXIM Bank has since received approval from its Board to participate in the project.

The Project's environmental and social impact assessments (ESIA) are available on the Project website: <http://ot.mn/en>.

The Lenders have developed an Environmental and Social Action Plan identifying actions to ensure the Project and its ESIA's are consistent with lender requirements. The financing documents also contain customary undertakings and warranties to manage environmental and social concerns, and provide lenders with appropriate remedies in the event these are breached. The documents also include provision for an independent environmental and social consultant (IESC) during both construction and operation of the project. The IESC will undertake up to three site audits each year to examine compliance with lender requirements.

4. Sustainable lending

Facilities provided by EFIC are largely to commercial counterparties. In instances where EFIC provides financing to public or publically-guaranteed buyers, as a member of the OECD Working Party on Export Credits and Credit Guarantees (ECG), EFIC adheres to the Principles and Guidelines to Promote Sustainable Lending Practices in the Provision of Official Export Credits to Low Income Countries.

The aim of the guidelines is to ensure that any provision of finance supports the buyer country's economic and social progress without endangering its financial future and long-term development prospects.

ECG members are also required to report details of official export credit transactions to IDA-Only Countries⁷ and HIPCs and to review them on an annual basis.

The sovereign exposures which Aid Watch noted at the public hearing represent facilities provided on the Government's National Interest Account. With regard to the transactions mentioned at the hearing, namely PNG LNG and Oyu Tolgoi, EFIC's finance was provided to the project proponents.

It should also be noted that since EFIC operates on a commercial basis it has no incentive to provide facilities to any entity, sovereign or non sovereign which does not have the capacity to fulfil its obligations under that facility.

For detail see: <http://www.oecd.org/tad/xcred/sustainable-lending.htm>

5. Reference to the UN report

In support of recommendations to remove EFIC's existing FOI exemption, Jubilee Australia cited a report by Dr Cephias Lumina, the UN Independent Expert on Foreign Debt and Human Rights. EFIC would like to draw the Committee's attention to the Australian Government's statement responding to Dr Lumina's report, which noted the Government's concern over the number of inaccuracies that the report contained including the report's conclusions regarding EFIC's disclosure practices. The Australian Government's response is available here: <http://www.geneva.mission.gov.au/gene/Statement210.html>

⁷ Countries which are only eligible for interest free loans and grants from the [International Development Association](#) of the World Bank.

Annex 1

Question No. 2

Topic: FOI

Question on Notice

Page: 14

Senator Rhiannon

Question

Senator Rhiannon: How do you judge—maybe this is a question to the EFIC people—that the commercial-in-confidence provisions in the FOI do not cover you or are not what you need?

Answer

EFIC has a commitment to transparency and the appropriate management of information. EFIC's partial exemption from the operation of the *Freedom of Information Act 1982 (FOI Act)* provides greater certainty than other general FOI Act exemptions. EFIC operates in commercial markets where it's often required to give confidential undertakings with respect to transaction information (whether commercial or otherwise). The publication of such information by EFIC would undermine confidence that EFIC can keep information confidential and in turn reduce the quality of information provided to EFIC. This will impair EFIC's ability to prudently make informed decisions on the credit, environmental and social risks of the transactions it supports and potentially result in adverse implications for project outcomes and financial losses for EFIC. Australian exporters may also suffer a competitive disadvantage from the publication of such information, as a firm tendering for goods and services may be unwilling to award a contract to a party that is unable to maintain transactional information on a confidential basis.

Question No. 3**Topic: Green house gas emissions****Question on Notice****Page: 14****Senator Rhiannon****Question**

Mr Parsons: I do not think so. At the moment the OECD export credit agencies have a small working group looking at how the ECAs as a grouping are addressing greenhouses gas emissions and what sorts of limits we can apply on how we should be examining these. So there is a whole OECD-ECA general approach being considered for that.

Senator Rhiannon: Can you take on notice how you do it currently? I think you said you do have to make a judgement with regard to your projects with regard to greenhouse gas emissions. Is that correct?

Mr Parsons: That is correct.

Senator Rhiannon: So could you take on notice how you undertake that work?

Mr Parsons: As I say, we use the IFC Performance standard and that sets out a system and a process for examining these and then there are guidelines which are attached to that for various industries.

Senator Rhiannon: Could you supply that to us?

Mr Parsons: Sure

Answer:

Performance Standard 3 of the International Finance Corporation (IFC) examines Resource Efficiency and Pollution Prevention. Paragraphs 7-8 of the Standard discuss the approach to considering a project's greenhouse gases. Associated Guidance Note 3 (paragraphs 16 to 24) provides guidance on how to interpret and implement the Performance Standard. These documents can be found on the IFC website at:

http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+Standards+and+Guidance+Notes+2012

Question No. 4**Topic: IFC Performance Standards****Question on Notice****Page: 15****Senator Eggleston****Question**

Senator Eggleston: Could you give us on notice a copy of those standards [IFC Performance Standards] and what they cover?

Answer

The International Finance Corporation (IFC) has eight Performance Standards (PS):

PS 1: Assessment and Management of Environmental and Social Risks and Impacts

PS 2: Labor and Working Conditions

PS 3: Resource Efficiency and Pollution Prevention

PS 4: Community Health, Safety, and Security

PS 5: Land Acquisition and Involuntary Resettlement

PS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

PS 7: Indigenous Peoples

PS 8: Cultural Heritage

PS 1 applies to all projects that have environmental and social risks and impacts. Depending on project circumstances, other PS may apply as well. EFIC uses the PS as its default benchmark for assessing a project's environmental and social risks and impacts. The PS can be found at:

http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability+Sustainability+Framework/Sustainability+Framework+-+2012/Performance+Standards+and+Guidance+Notes+2012

Question No. 5**Topic: Independent Audit****Written Question****Question**

Mr Parsons: There is, yes. Part of our policy is a commitment to engage an independent expert every two years to audit how we have applied and used that policy. We had our first audit last year. It was made public in December, and it found that we had applied the policy and procedure appropriately. In undertaking the audit, they had access to all our projects and all our files.

Question: Who was the “independent expert” that Mr Parsons referred to? What is the expertise of this “independent expert”?

Answer

EFIC engaged Net Balance Management Group Pty Ltd (Net Balance) to undertake the independent audit of the application of EFIC’s Policy and Procedure for environmental and social review of transactions. The audit was conducted from September to November 2012.

Appendix 2 of the Net Balance report details the qualifications and experience of the Net Balance assurance practitioners. The report is available at: <http://www.efic.gov.au/CORP-RESPONSIBILITY/ENVR-RESPONSIBILITY/Pages/Policy-Procedure-independent-audit.aspx>

Question No. 6

Topic: Oyu Tolgoi

Written Question

Senator Rhiannon

Question

Mr Parsons: The \$100 million is contingent on Australian input. That Australian input is largely made up of small contracts.

Question: How much Australian input was there for the \$100 million referred to below – in monetary terms and by percentage? When it is stated that support is “contingent on Australian input” how much Australian input is required to meet that requirement?

Answer

The project sponsor has provided EFIC with a list of over 200 Australian suppliers to the Oyu Tolgoi project. The aggregate of Australian supplier contracts is in excess of approximately \$220m.

The required quantum of Australian content is determined in accordance with EFIC's Australian content guidelines. The guidelines are publicly available at:

<http://www.efic.gov.au/about/governance/Pages/Australiancontentguidelines.aspx>

Question No. 7**Topic: PNG LNG****Written Question****Question**

Mr Crawford: I can give you one example: the PNG LNG project, which EFIC was involved in with other ECAs. Australian contractors have won or are the preferred tenderers for over US\$1 billion worth of work on that project.

Question: Could you provide a breakdown of the Australian contractors that “have won or are the preferred tenderers for over US\$1 billion worth of work” with name of company, brief description of the work they undertook and their financial involvement with the project supplied in the answer?

Answer

EFIC is constrained from providing the requested breakdown, particularly the financial involvement of each contractor with the project, due to the confidentiality provisions that apply to this transaction.

However, publically available information indicates that Australian involvement in the project is substantial and above A\$1 billion. For example, Australian firm Clough Limited, through its joint-venture with Curtain Brothers, is the Engineering Procurement and Construction (EPC) contract for the Project’s upstream infrastructure. In addition, the company is, through its joint venture with Chicago Bridge and Iron (CBI), the EPC contractor for the construction of the Project’s Hides Gas Plant and associated well-pads. Clough was also awarded sub-contracts through its long term joint-venture, BAM Clough, for the design and construction of the PNG LNG condensate and offloading jetty in the Gulf of Papua. McConnell Dowell through its joint-venture with Consolidated Contractors is the EPC contractor for construction of the Project’s Komo Airfield and supporting infrastructure. Other Australian firms, such as Wagner, have also secured sub-contracts associated with the Project.

Details are available from their respective websites. The project sponsors estimate that the investment for the initial phase of the project will be US\$19 billion.

- Clough: <http://www.clough.com.au/about-us/projects>
- McConnell Dowell: <http://www.macdow.com.au/key-projects/overseas-operations/komo-airfield>
- Wagners: <http://www.wagner.com.au/projects/papua-new-guinea-lng-epc3/> and <http://www.wagner.com.au/projects/papua-new-guinea-lng-epc4/>.

Question No. 8**Topic: Transparency****Written Question****Question**

Mr Parsons: That is part of our transparency; because a lot of the comments have been that EFIC is not a transparent organisation. Amongst the OECD export credit agencies, which are our peers, we are probably the most transparent.

Question: What data did you base the claim on that among the OECD export credit agencies EFIC is “probably the most transparent”?

Answer

EFIC reached this view from a variety of inputs including:

- Examination of disclosure practices of other OECD export credit agencies (ECA), especially during the 2009-2011 review of EFIC’s, then, Environment Policy that preceded the current Policy for environmental and social review of transactions;
- Active participation in the regular meeting of the Environmental Practitioners of the OECD’s Export Credit Group. Engagement with this forum enables EFIC to observe and compare the disclosure and environmental, social and technical review practices of other ECAs. The Environmental Practitioners meetings bring together technical experts from Member’s Export Credit Agencies to review and share best practices for Environmental and Social review of transactions, including the consideration of green house gas accounting and evaluating project-related human rights impacts; and
- EFIC various disclosure and information sharing activities which extend beyond the requirements of the OECD Common Approaches and Equator Principles and hence in many cases the practices of other OECD ECAs. Please refer to EFIC’s submission to this inquiry which addresses this matter in detail. In particular, note EFIC’s Policy for Environmental and Social Review of Transactions commits EFIC to engage “an independent environmental and social expert” to audit the application of the Policy and Procedure, every two years. Audit reports are provided to EFIC’s Board and to the public. EFIC is the first ECA to voluntarily commit to transparent, independent auditing of this kind.