

1991

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXPORT FINANCE AND INSURANCE CORPORATION BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,  
Technology and Commerce, Senator the Hon. John N Button)





## EXPORT FINANCE AND INSURANCE CORPORATION BILL 1991

### OUTLINE

The purpose of this Bill is to establish an independent Export Finance and Insurance Corporation (EFIC) to effect the separation of the export finance and insurance function from the other operations of the Australian Trade Commission. This implements the announcement of such a proposed separation made by the Minister for Industry, Technology and Commerce, Senator Button, on 12 March 1991, as part of the Government's "Building a Competitive Australia" statement.

The Export Finance and Insurance Corporation Bill establishes a new organisation, the Export Finance and Insurance Corporation, with responsibility for officially supported export finance and insurance matters previously undertaken by the Australian Trade Commission under the name 'Export Finance and Insurance Corporation'. The transfer of functions is achieved by re-enacting in the Bill, with amendments, those provisions of the Australian Trade Commission Act 1985 which relate to export finance and insurance matters.

Additionally, implementing the joint announcement of the Prime Minister and the Minister for Industry, Technology and Commerce during the 12 March statement, the Bill provides for EFIC's existing reserves to be supplemented by the Government by a \$200 million callable capital facility.

The Government will limit its control over the proposed Corporation to one of broad policy oversight. The Government's focus will be on planning, through corporate plans, financial targets (including the payment of dividends to the Commonwealth) and accountability for results. Strategic aspects will be scrutinised on an ongoing basis. Day-to-day control of the Corporation's activities will be the responsibility of the Board of the Corporation, drawn mainly from the private sector, and the management of the Corporation.

The Managing and Deputy Managing Directors of the Corporation will be accountable to the Board. These two office holders are to be appointed by the Minister after receiving a recommendation from the Board, but shall only hold office during the pleasure of the Board. The terms and conditions of their employment shall be matters for the Board to determine.

The Bill is to come into effect on 1 November 1991.

### FINANCIAL IMPACT STATEMENT

While the Bill does not involve any direct additional expenditure by the Commonwealth, or additional revenue to the Commonwealth, it does provide a mechanism for the Corporation to make a call on the Consolidated Revenue Fund by the provision of a \$200 million callable capital facility. The Corporation is empowered to make a call on this facility if it determines that its money and other assets are insufficient to meet anticipated liabilities, losses and claims. Where the Corporation determines that its money and other assets are excessive for the purposes of meeting anticipated liabilities, losses and claims, the Corporation is to return excess capital to the Consolidated Revenue Fund.

ABBREVIATIONS

The following abbreviation is used in this explanatory memorandum:

EFIC : Export Finance and Insurance Corporation to be established by the Export Finance and Insurance Corporation Bill 1991.

NOTES ON CLAUSES

## PART 1 - PRELIMINARY

Clause 1 Short title

1. This clause provides for the Act to be cited as the Export Finance and Insurance Corporation Act 1991.

Clause 2 Commencement

2. This clause provides that the Act shall be taken to have commenced on 1 November 1991.

Clause 3 Interpretation

3. This clause defines the various terms used in the Act.

Clause 4 Extension to Territories

4. This provision will enable EFIC's services to be provided in respect of exports from an external territory to an overseas buyer. This clause also allows, by means of a declaration by the Minister published in the Gazette, for an external territory to be treated as though it were a foreign country.

Clause 5 Application of Act outside Australia

5. Enables the provisions of the Act to apply both within and outside Australia.

## PART 2 - ESTABLISHMENT AND FUNCTIONS OF EXPORT FINANCE AND INSURANCE CORPORATION

Clause 6 Establishment of EFIC

6. Establishes the Export Finance and Insurance Corporation as a body corporate:

- . with perpetual succession;
- . with a seal;
- . which may hold and dispose of real and personal property; and
- . which may sue and be sued in its corporate name.

Clause 7      Functions of EFIC

7. This clause specifies the functions of EFIC as follows:

- . to facilitate and encourage Australian export trade by providing insurance and financial services and products to persons involved in such trade;
- . to encourage banks and other financial institutions operating in Australia to finance, or assist in financing, exports;
- . on behalf of the Commonwealth, or an instrumentality of the Commonwealth, to manage, ensure payment is authorised and pay money in respect of overseas aid projects which involve Australian export contracts; and
- . to provide information and advice concerning insurance and financing facilities available to assist Australian export trade.

Clause 8      Primary duties of EFIC

8. Clause 8 requires EFIC to perform its functions in such manner as will best assist in the development of Australia's export trade having regard to:

- . any directions of the Minister under clause 9;
- . the desirability of improving and extending the range of finance and insurance services and products available to persons involved in that trade;
- . the need to provide its services as efficiently and economically as possible; and
- . Australia's obligations under international agreements.

Clause 9      Ministerial directions to EFIC

9. This clause empowers the Minister to direct EFIC in the conduct of its operations, the performance of its functions or the exercise of its powers where the Minister is satisfied that it is desirable in the public interest to issue such a direction. Subclause 9(5) however precludes the Minister from directing EFIC in relation to specific transactions.

10. Subclause 9(4) requires EFIC to include the particulars of such Ministerial directions in its annual report.

Clause 10     Reimbursement of cost of complying with directions

11. Clause 10 provides that where the Minister is satisfied that EFIC has suffered financial detriment as a result of complying with a direction under clause 9, other than a direction stated to be in accordance with the general policy of the Commonwealth Government, then EFIC is entitled to Commonwealth reimbursement in such amount as the Minister determines constitutes the financial detriment to EFIC.

## PART 3 - GENERAL POWERS AND DUTIES OF EFIC

Clause 11 General powers of EFIC

12. This clause provides EFIC with the power to do all things necessary or convenient in connection with or incidental to the performance of its functions and in particular to:

- . enter into contracts;
- . appoint agents and attorneys and act as agent for other persons;
- . engage persons to perform services for EFIC;
- . enter into financial arrangements such as currency and interest rate swaps, foreign exchange and forward rate agreements, options or hedge agreements; or arrangements having a similar purpose or effect;
- . accept gifts, grants, and bequests and act as trustee of money and other property vested in it on trust; and
- . do anything incidental to any of its powers or the exercise of those powers.

13. Subclause 11(4) provides that, to the extent practicable, EFIC must exercise its powers so as to give effect to its corporate plan in force at the time.

14. Subclause 11(5) makes it clear that EFIC may provide its financial services and products and information and advice for reward.

Clause 12 Offices of EFIC

15. Clause 12 of the Bill authorises EFIC to establish offices in Australia and overseas in order to further the efficient performance of its functions.

Clause 13 Formation of companies, partnerships etc.

16. This clause authorises EFIC to form companies and other business associations such as joint ventures and partnerships for purposes in connection with or incidental to the performance of its functions. The formation of any such business undertaking is required to be on such terms and conditions as are approved by the Minister and be consistent with the achievement of the objectives of EFIC's corporate plan in force at the time.

## PART 4 - INSURANCE AND OTHER FINANCIAL SERVICES AND PRODUCTS

Clause 14 Export payments insurance contracts

17. Enables EFIC to provide insurance to exporters against the risk of non-payment by overseas buyers of Australian goods and services.

Clause 15     Reinsurance etc. in relation to business of EFIC

18. Provides for EFIC to enter into reinsurance contracts, take a guarantee or security to cover any actual or contingent liability, or reduce or reschedule any actual or contingent liability, that it may have in respect of insurance and guarantee services provided by it under Part 4 of the Bill.

Clause 16     Guarantees and subsidies in relation to loans to Australian suppliers

19. This clause enables EFIC to give guarantees of repayment of monies lent to Australian suppliers for the purpose of financing export transactions. It also provides for the payment of interest subsidies in relation to such guarantees.

20. In common with the similar provision in clause 17, a subsidy payment would arise when the return to the lender was less than a return agreed between EFIC and the lender.

Clause 17     Guarantees and subsidies in relation to loans to overseas buyers etc.

21. This enables EFIC to give guarantees of repayment of monies lent to overseas buyers. It also provides for the payment of subsidies in relation to such guarantees in similar circumstances to those set out in paragraph 20 above.

Clause 18     Guarantees to co-lenders in relation to export transactions

22. Provides for EFIC to provide a guarantee of repayment to a co-lender involved with EFIC in financing an eligible export transaction, being, broadly, a transaction involved with the export from Australia of capital goods, and/or services associated with such goods. [Subclauses 3(3) and (4) of the Bill provide that capital goods means machinery or any goods or class of goods declared by the Minister to be capital goods.]

Clause 19     Tender guarantees and performance guarantees

23. Enables EFIC to provide indemnities, guarantees and similar arrangements (such as bonds) in respect of tenders for, and the performance of, export contracts.

Clause 20     Reinsurance of guarantees, insurance etc. relating to export business etc.

24. Clause 20 of the Bill enables EFIC to give indemnities and guarantees to persons who have provided insurance, guarantees or indemnities to third persons in respect of matters which EFIC would have been empowered under Part 4 of the Bill to insure, guarantee or indemnify.

Clause 21 Approved causes of loss

25. This clause enables EFIC to declare a cause of loss an approved cause of loss for the purposes of Part 4 of the Bill. Such declarations, and revocations of declarations, must be published in the Commonwealth Gazette.

Clause 22 Insurance in respect of overseas investment transactions

26. Provides for EFIC to insure persons in respect of overseas investment transactions against monetary losses or other detriments resulting from approved causes of loss. EFIC is however precluded from providing insurance against loss or other detriment which is attributable to circumstances within the control of the person seeking the insurance.

Clause 23 Loans to finance eligible export transactions

27. This clause enables EFIC to provide loans to finance eligible export transactions, whether or not the person to whom the loan is made is or will be a party to the transaction.

PART 5 - NATIONAL INTEREST TRANSACTIONS

Clause 24 Interpretation

28. Provides that a 'referred application' means an application received by EFIC for its services under Part 4 of the Bill which it has referred to the Minister for consideration as a national interest matter.

Clause 25 Reference of applications to Minister

29. Provides that, subject to any ministerial direction under clause 26, EFIC may refer any application to it under Part 4 for its services or products to the Minister. Such referrals may include applications which EFIC is not otherwise authorised to enter into or would not enter into in the ordinary course of business.

Clause 26 Ministerial directions regarding reference of applications

30. Provides that the Minister may give directions to EFIC regarding the circumstances in which applications to it for its services may, or may not, be referred to the Minister for the Minister's consideration as a national interest matter. EFIC must comply with such directions.



Clause 27     Approval of EFIC entering into contracts etc.

31. Clause 27 provides that the Minister may approve EFIC entering into a contract of insurance or indemnity, give a guarantee or make a loan where that transaction has been transferred under clause 25 of the Bill if the Minister is satisfied that it is in the national interest that the transaction be entered into. Subclause 27(9) provides that while such an approval is in place, EFIC shall not refuse a request to enter into a transaction coming within the approval.

32. Subclause 27(3) provides that before approving a contract of insurance in respect of an overseas investment transaction within clause 22 of the Bill as a national interest transaction, the Minister must also be satisfied that the transaction will assist in the social and economic development of the host country.

33. Subclauses 27(5) and (6) provide, respectively, that the Minister's approval under subclause 27(3) may be in relation to the whole or a specified portion only of the overseas investment transaction concerned; and that the Minister may not approve the entry by EFIC into a contract of insurance under subclause 27(3) under which a person would be insured against loss or detriment which is attributable to circumstances within the control of the person.

Clause 28     Conditional approvals

34. Clause 28 provides that the Minister may make an approval under clause 27 subject to conditions, including the premium or fee to be charged in respect of a contract of insurance or indemnity or a guarantee; or the amount of a loan and the terms and conditions relating to the loan, including the rate of interest and any security to be given.

Clause 29     Ministerial directions regarding entry into national interest contracts etc.

35. This clause empowers the Minister, if the Minister considers it to be in the national interest, to direct EFIC that whenever it receives a request for its services under Part 4, being a service that comes within a specified class of transaction, that it enter into the transaction requested, whether or not it would, otherwise, be authorised to enter into the transaction or would do so in the ordinary course of business.

36. Such a direction may include requirements , including the premium or fee to be charged in respect of a contract of insurance or indemnity or a guarantee; or the amount of a loan and the terms and conditions relating to the loan, including the rate of interest and any security to be given. While such a direction is in force, EFIC shall not refuse a request to enter into a transaction in accordance with the direction.

37. Subclause 29(6) provides that the Minister must not direct the entry by EFIC into a contract of insurance under subclause 27(3) that would have the effect of a person being insured against loss or other detriment which is attributable to circumstances within the control of the person.

Clause 30     Gazettal of national interest contracts etc.

38. Clause 30 requires EFIC to have published in the Commonwealth Gazette notices setting out the details of all national interest transactions it enters into pursuant to Ministerial approvals under clause 27 and Ministerial directions under clause 29. The matters to be included in such a Gazette notice are the nature and extent of the insurance, indemnity or guarantee and, in respect of loans, the amount of the loan and the interest rate to be charged; and the extent of the Commonwealth's liability to EFIC under Part 8 of the Act in respect of the transaction. Except in the case of loans, such a notice must not identify the parties to the transaction.

Clause 31     Reinsurance etc. in relation to EFIC business under Part 5

39. Subclauses 31(1) and (2) enable EFIC, with the approval of the Minister, to enter into reinsurance contracts, take a guarantee or security to cover any actual or contingent liability, or reduce or reschedule any actual or contingent liability, in respect of insurance and finance services undertaken by it in accordance with an approval or direction under Part 5 of the Bill. Subclause 31(3) empowers the Minister to direct EFIC to exercise its powers under subclauses 31(1) and (2) and, by subclause 31(4), EFIC must comply with any such direction.

PART 6 -     BOARD

Clause 32     Establishment of the Board

40. Establishes an Export Finance and Insurance Corporation Board.

Clause 33 Functions of the Board

41. Sets down the functions of the Board, which is to manage the affairs of EFIC, including determining the policy to be followed in the conduct of those affairs.

Clause 34 Membership of the Board

42. Specifies the composition of the Board as:

- . a Chairperson;
- . a Deputy Chairperson;
- . a Managing Director;
- . the Managing Director of the Australian Trade Commission;
- . one government member; and
- . not less than 4 nor more than 6 other members as the Minister determines to be appropriate.

43. Subclauses 34(2) and (3) specify, respectively, that members, other than the Managing Directors, shall be appointed by the Minister and shall hold office on a part-time basis.

44. Subclause 34(5) precludes the Managing Director of the Australian Trade Commission from being appointed as Chairperson or Deputy Chairperson of the Board.

Clause 35 Term of office and conditions of office of members

45. Provides that an appointed member, other than the government member, shall hold office for such period not exceeding 5 years as is specified in the member's instrument of appointment, but is eligible for reappointment. The government member holds office during the Minister's pleasure.

Clause 36 Age limitations on appointment

46. Provides that a person who has attained the age of 65 may not be appointed nor shall a person, other than the government member, be appointed for a period extending beyond the date the person reaches the age of 65. A government member ceases to hold office when that member reaches the age of 65.

47. Appointed members hold office on such terms and conditions not provided for in the Bill as are determined by the Minister in writing.

Clause 37 Remuneration etc. of appointed members

48. This clause provides for the remuneration of Board members, other than the Managing Directors and the government member, to be determined by the Remuneration Tribunal. Allowances for Board members are to be as prescribed.

Clause 38 Acting Chairperson and acting Deputy Chairperson

49. Provides for the Deputy Chairperson to act as Chairperson in the event of there being a vacancy in that position, the occupant being absent from duty or Australia or unable to perform the functions of Chairperson for any reason. The Minister may appoint a person to act as Deputy Chairperson in the event of there being a vacancy in that position or during any or all periods when the occupant is absent from duty or Australia or unable to perform the functions of Deputy Chairperson for any reason. Subclause 39(6) precludes the Managing Director of the Australian Trade Commission from being appointed to act as Deputy Chairperson.

Clause 39 Acting members

50. Provides for the Minister to appoint a person to act as a member in the event of there being a vacancy in the office of a member or because the occupant is acting as Chairperson or Deputy Chairperson or is absent from duty or Australia or unable to perform the functions of that member's office for any reason. This clause also allows the Minister to appoint a person to as the government member when that member is, for any reason, unable to attend meetings of the Board.

Clause 40 Leave of absence of appointed members

51. Provides for the Minister to give leave of absence to the Chairperson, and for the Chairperson to give leave of absence from Board meetings to other appointed Board members.

Clause 41 Resignation of appointed members

52. This clause provides that resignation by appointed Board members shall be tendered in writing to the Minister.

Clause 42 General provision for termination of appointment of appointed members

53. Subclause 42(1) provides the Minister with the discretion to terminate the appointment of a member for misbehaviour or physical or mental incapacity.

54. Subclause 42(2) provides that the Minister must terminate an appointment if a member:

- . becomes bankrupt;
- . is absent without leave from three consecutive Board meetings; or
- . fails to comply with the member's obligations concerning disclosure of pecuniary interests (see clause 45 of the Bill).

Clause 43 Termination of appointment of appointed members at instance of Board or for non-performance etc.

55. Subclause 43(2) provides that the Minister may terminate the appointment of a member if the Board, at a meeting convened for the purpose, resolves by a two-thirds majority of those present (other than the Board member to whom the matter relates) that the appointment of a Board member should be terminated.

56. Subclause 43(3) provides that the Minister may terminate the appointment of a member if the Minister is satisfied that:

- . it is not in the best interests of EFIC that the Board member continue in office; or
- . the performance of the member has been unsatisfactory for a significant period.

Clause 44 Meetings of the Board

57. Provides for the convening of meetings of the Board, and the working arrangements to apply at such meetings, including that a quorum shall consist of 5 members. The Minister or the Chairperson may convene a meeting at any time and the Chairperson must convene a meeting on the written request of 2 or more members.

Clause 45 Disclosure of interests

58. This clause provides that a member who has a pecuniary interest in a matter requiring the Board's consideration shall disclose the nature of that interest. The disclosure is to be recorded in the minutes of the meeting and the member shall not take part in any deliberation or decision of the Board on the matter unless the Board or Minister otherwise determines.

Clause 46 Resolutions without meetings

59. This clause allows for resolutions to be passed by members of the Board without holding a formal meeting. Members must sign an identical document and a resolution will be taken to have been passed when the last member of a majority of members (which majority includes the Chairperson) has signed the document. This procedure is intended to be used only when urgent matters which cannot await the next formal Board meeting require resolution between such meetings.

Clause 47 Committees

60. This clause authorises the Board of EFIC to set up committees to assist it in carrying out its functions. Such committees shall include at least one Board member.

## PART 7 - CORPORATE PLANS

Clause 48 Corporate Plans

61. Clause 48 requires the EFIC Board to prepare annually a corporate plan for a period of not less than three years. The first plan, however, is to be for the period commencing on 1 January 1992 and ending on 30 June 1994.

Clause 49 Matters to be included in corporate plans

62. Each plan is to set out for the period of the plan:

- . EFIC's principal objectives, including financial targets, in performing its functions;
- . an outline of EFIC's overall strategies to be applied in achieving its principal objectives and financial targets; together with the principal performance indicators against which its achievement of those objectives and targets can be assessed; and
- . estimates of the resources that will be applied and revenues received by EFIC each financial year.

63. In preparing or revising a financial target, the Board shall have regard to:

- . the need to generate sufficient reserves to expand EFIC's business;
- . the adequacy of EFIC's capital having regard to the requirements of clause 56; and
- . any requirement to pay a dividend to the Commonwealth under subclause 55(2).

Clause 50 Approval of corporate plans

64. Provides that each corporate plan is to be submitted to the Minister for approval and comes into effect on the day on which the Minister approves the plan or the first day of the period of the plan, whichever is the later. The first plan is to be submitted to the Minister for approval by 30 November 1991.

Clause 51 Variation of corporate plans

65. Clause 51 permits the Board, with the approval of the Minister, to vary a corporate plan. The Minister may also, at any time, request the Board to vary a corporate plan, whether or not the plan has come into effect, and Board must comply with the request. A variation of a plan that has come into force takes effect on the day on which it is approved.

## PART 8 - FINANCE

Clause 52 Capital of EFIC

66. Clause 52 provides that the capital of EFIC at any time consists of:

- . an amount determined by the Minister under section 19 of the Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991 as being payable out of the assets of the Australian Trade Commission as capital of EFIC; and
- . amounts of capital paid by the Commonwealth to EFIC under clause 54, less any amounts returned by EFIC to the Commonwealth under that clause; and
- . amounts transferred to capital from reserves by EFIC under clause 53.

Clause 53 Transfers to capital from reserves

67. Provides that EFIC may transfer from its reserves to capital such amounts as the Board determines.

Clause 54 Callable capital of EFIC

68. Subclauses 54(1)-(4) provide that the Board may, after consultation with the Minister for Finance, determine, in accordance with sound commercial principles, that EFIC's money and other assets are, or within the current or next financial year are likely to become, inadequate to meet all expected liabilities, losses and claims of or against it and determine the amount of capital required to overcome this inadequacy. Where the Board has made such a determination, notice of the determination is to be provided to the Minister, the Minister for Finance and the Treasurer, and there is payable by the Commonwealth to EFIC within 5 working days the amount of capital that the Board has determined is necessary to overcome the above inadequacy.

69. Subclauses 54(5) and (6) provide that the Board may, from time to time, determine that EFIC's money and other assets are excessive to requirements in relation to expected liabilities, losses and claims of or against it. In such a case the Board may determine the amount of called capital which is excessive and return that amount to the Commonwealth.

70. Subclause 54(9) provides that for the purposes of assessing EFIC's capital requirements under the processes set out in paragraphs 68 and 69 above, expected liabilities in respect of national interest transactions under Part 5 of the Bill are to be ignored to the extent that the Commonwealth is liable to pay amounts to EFIC in respect of those transactions.

71. The total of the amounts of capital payable to EFIC under the procedure set out in paragraph 68 is, excluding any amount paid to the Commonwealth by EFIC under paragraph 69 above, not to exceed \$200 million (subclause 54(8)). Payments of capital to EFIC are to be made out of the Consolidated Revenue Fund which is appropriated accordingly (subclause 54(10)).

Clause 55 Payment of dividends to the Commonwealth

72. This clause specifies that the Board must, by 31 October each year, provide the Minister with a recommendation that EFIC pay a dividend, or not pay a dividend, to the Commonwealth for the preceding financial year. The Minister must approve the recommendation or direct the payment of a different dividend or a dividend, as the case may be. In determining the payment or level of a dividend, the Board and the Minister must have regard to:

- . the policies of the Commonwealth Government, and the general policy of EFIC in relation to the performance of its functions; and
- . such commercial considerations as the Board and the Minister, as the case may be, considers appropriate.

Clause 56 Maintenance of adequate capital and reserves

73. Subclause 56(1) requires the Board to ensure, in accordance with sound commercial principles, that EFIC's capital and reserves are sufficient at any time to meet its likely liabilities having regard to its overall level of business under Part 4 and to make adequate provision against default in the payment of principal or interest in respect of loans made by it. Subclause 56(4) requires the Board, if at any time it determines that EFIC's capital and reserves are not, or may at some time in the future not be, sufficient to cover its likely liabilities and to make adequate provision against loan defaults, to inform the Minister of its determination and the reasons for it.

74. Subclause 56(2) provides that for the purposes of determining EFIC's 'capital adequacy' under subclause 56(1):

- . it is to be assumed that all the \$200 million capital provided for by subclause 54(8) has been paid to EFIC; and
- . EFIC's likely liabilities and defaults on loans in respect of national interest transactions under Part 5 are to be ignored to the extent that the Commonwealth would be liable to pay amounts to EFIC as regards those transactions.



**Clause 57     Estimates**

75. Requires EFIC to prepare estimates of its anticipated receipts and expenditure for each financial year and, if required, for any other period directed by the Minister.

**Clause 58     Borrowings from the Commonwealth**

76. Clause 58 provides that the Minister for Finance may, on behalf of the Commonwealth and out of money appropriated by Parliament for the purpose, lend money to EFIC on such terms and conditions as that Minister determines.

**Clause 59     Other borrowings**

77. Provides that EFIC may, with the approval of and on such terms and conditions as are determined by the Treasurer, borrow money from sources other than the Commonwealth and raise money by other means, including by dealing in securities.

**Clause 60     Security**

78. This clause enables EFIC to provide security over its assets against repayment of its borrowings (including interest) and other raisings of money under clauses 58 and 59.

**Clause 61     Limitation on borrowing etc.**

79. Precludes EFIC from borrowing or raising money other than under clauses 58 and 59.

**Clause 62     Guarantee by Commonwealth**

80. This clause provides that the Commonwealth guarantees the payment by EFIC of any money payable by it to third persons.

**Clause 63     Exemptions from taxation**

81. Clause 63 provides for EFIC to be exempt from Commonwealth, State and Territory taxation. This general exemption may be restricted by regulations to the EFIC Act and does not apply in respect of any company, partnership, joint venture or other business association in the formation of which EFIC may be involved.

Clause 64     Transactions in the national interest: EFIC share of liability

82. Subclause 64(1) enables EFIC to undertake on its own account so much of the risk associated with a national interest contract or guarantee under Part 5 as it specifies by written notice to the Minister. Such a notice absolves the Commonwealth, to the extent of the proportion of the risk adopted by EFIC, from the liability it would otherwise have to EFIC in respect of that national interest transaction under clause 65 of the Bill.

83. Subclause 64(2) provides that EFIC may, in respect of a national interest loan, notify the Minister that it proposes to undertake so much of the risk associated with the loan on its own account as it specifies in the notice. The Commonwealth's liability to EFIC is similarly reduced under clause 66 as is the case with an EFIC undertaking under subclause 64(1).

Clause 65     Contracts and guarantees in the national interest

84. Subclause 65(1) provides that clause 65 applies to contracts entered into and guarantees given by EFIC in the national interest under Part 5. Subclause 65(2) provides that this clause does not apply where EFIC has advised the Minister under clause 64 that it will bear the whole of the liability under such a transaction. Subclause 65(3) requires EFIC to maintain a separate account in respect of that part of national interest transactions entered into by it for which it has not assumed responsibility for the risk on its own account.

85. EFIC is required to pay to the Commonwealth the receipts from each such transaction (subclause 65(4)). The receipts are determined by deducting from EFIC's gross receipts in respect of a transaction the amounts paid or payable by EFIC (subclause 65(5)). EFIC is to deduct from the amount payable to the Commonwealth the receipts which are referable to that proportion of the liability under the transaction which EFIC has undertaken to bear on its own account (paragraph 65(9)(a)). Additionally, EFIC may deduct, from the amount otherwise payable to the Commonwealth, an administration fee, to be determined in a manner agreed by the Minister for Finance, in respect of its expenses in undertaking the national interest transaction (subclause 65(10)).

86. Subclause 65(6) requires the Commonwealth to pay EFIC the amount needed to discharge any liability of EFIC under a national interest transaction. Paragraph 65(9)(b) provides that the Commonwealth's liability to EFIC is reduced by the proportion, if any, which EFIC has notified under clause 64 that it will bear.

87. Subclauses 65(7)-(8) provide that in lieu of the Commonwealth discharging its liability to EFIC by paying the relevant amount to EFIC, the Minister may direct EFIC to seek the approval of the Treasurer under clause 59 to borrow an amount equal to that needed to discharge the Commonwealth's liability. If approval is given, EFIC's resulting borrowing substitutes for the Commonwealth's liability to pay EFIC the relevant amount, a liability on the Commonwealth to pay EFIC the amount needed by EFIC to discharge the borrowing and to pay its costs of borrowing.

Clause 66    Loans made in the national interest

88. Clause 66 repeats, in respect of the Commonwealth's relationship with EFIC for national interest loans made by EFIC, the regime for national interest contracts and guarantees set out in paragraphs 84 to 87 above.

Clause 67    Subsidy to EFIC

89. Clause 67 provides for the Commonwealth, in connection with a contract entered into, or guarantee or loan provided by EFIC in respect of an eligible export transaction, to pay EFIC a subsidy representing the difference between EFIC's costs of obtaining finance for the purposes of undertaking the transaction and its receipts from the other party to the transaction. EFIC's right to receive such payments is subject to such contract, guarantee or loan being in accordance with principles determined by the Minister for the purposes of this provision.

Clause 68    Maximum contingent liability under Part 4

90. This clause provides that EFIC shall carry out its insurance and guarantee business so that its total contingent liability in respect of such business does not exceed the amounts prescribed in regulations to the EFIC Act for that business.

91. In determining EFIC's contingent liability, any liability of the Commonwealth to EFIC in respect of the risk associated with a contract or guarantee entered into or given by EFIC in accordance with an approval or direction under Part 5 is to be ignored.

Clause 69    Limit on total amount of loans under Part 4

92. Provides that EFIC shall carry out its loan business so that the level at any time of outstanding loans does not exceed the amount prescribed in regulations to the EFIC Act in respect of that business.

93. In determining the total amount of money lent by EFIC, any liability of the Commonwealth to EFIC in respect of the risk associated with a loan made by EFIC in accordance with an approval or direction under Part 5 is to be ignored.

Clause 70     Application of Division 2 of Part XI of the Audit Act 1901

94. Clause 70 provides that EFIC is a public authority for the purposes of Division 2 of Part XI of the Audit Act 1901. This provision requires among other things, that the Auditor-General should audit EFIC's accounts. Subclause 70(2) provides that in preparing its annual financial statements for the purposes of the Audit Act 1901, EFIC shall set out the effects of complying with any direction of the Minister under clause 9 of the Bill.

PART 9 -     MANAGING DIRECTOR AND DEPUTY MANAGING DIRECTOR

Clause 71     Appointment of Managing Director and Deputy Managing Director

95. Provides for EFIC to have a Managing Director and, at the discretion of the Minister, a Deputy Managing Director. Appointments to these offices are to be made by the Minister on the recommendation of the Board of EFIC.

Clause 72     Appointments to be full-time and at Board's pleasure

96. The Managing Director and any Deputy Managing Director are to hold office on a full-time basis and at the pleasure of the Board.

Clause 73     Terms and conditions of appointment

97. Provides for the Board to set the terms and conditions (including terms and conditions relating to remuneration and allowances) of appointment for the Managing Director and any Deputy Managing Director.

Clause 74     Disclosure of interests

98. The Managing Director and any Deputy Managing Director are to disclose in writing to the Chairman of the Board any direct or indirect pecuniary interest that they have or acquire in any business or company carrying on business.

Clause 75     Exclusion from certain Board deliberations

99. Clause 75 provides that the Managing Director and any Deputy Managing Director are not to be present at any Board meeting involving the appointment, terms and conditions of appointment or termination of a person to either of those offices.

Clause 76 Age limitations on appointment

100. This clause provides that a person who has attained the age of 65 years shall not be appointed to the office of Managing Director or Deputy Managing Director.

Clause 77 Duties of Managing Director and Deputy Managing Director

101. This clause provides that the Managing Director has the duty, under the Board, to conduct the operations of EFIC in accordance with the policy of the Board. Subclause 77(3) provides that the Deputy Managing Director shall perform such duties as the Managing Director allots to that office.

Clause 78 Outside employment

102. Stipulates that the Managing Director and Deputy Managing Director shall not engage in paid employment outside EFIC without the Board's approval.

Clause 79 Acting Managing Director and acting Deputy Managing Director

103. Clause 79 provides that the Deputy Managing Director, or in the absence of an appointment having been made to that office a person appointed by the Board, shall act as Managing Director when there is a vacancy in that office or the appointee is absent from duty or from Australia or is otherwise unable to perform the functions of that office.

104. This clause also empowers the Board to appoint an acting Deputy Managing Director in the event of there being a vacancy in that office or the occupant being absent from duty or from Australia or being otherwise unable to perform the functions of that office (including the reason that the occupant is acting as Managing Director).

Clause 80 Resignation

105. This clause provides that the Managing Director and Deputy Managing Director may resign from office by giving the Chairperson of the Board a signed notice of resignation.

PART 10 - MISCELLANEOUS

Clause 81 Use of name of Corporation

106. This clause provides that EFIC may conduct its business under its full name of 'Export Finance and Insurance Corporation' or 'EFIC' and provides exclusive rights to EFIC (with a penalty of \$1,000 for infringement) to use those names, unless there are pre-existing rights in other persons to the use of one or both of those names.

Clause 82     Application of Lands Acquisition Act 1989

107. This clause exempts EFIC from the provisions of the Lands Acquisition Act 1989 in respect of the acquisition of land or an interest therein where it is related to the performance by EFIC of its functions.

Clause 83     Delegations by Minister and Managing Director

108. Subclause 83(1) provides for the Minister to delegate to the Board all or any of the powers of the Minister under the proposed Act other than the Minister's powers under clause 9 (directions to EFIC), Part 5 (national interest directions and approvals) or subsection 84(3) (directions in respect of delegations by the Board).

109. Subclause 83(2) enables the Managing Director to delegate all or any of the powers of the Managing Director to the Deputy Managing Director or any other person employed by EFIC.

Clause 84     Delegation by the Board

110. Provides for the Board to delegate its powers to a committee appointed under clause 47, the Managing Director, the Deputy Managing Director or any other person employed by EFIC. The Board may not delegate its powers under clauses 48, 54, 71 or 72. The Minister may give directions to the Board on the exercise of its delegation power.

Clause 85     Annual reports

111. This clause specifies that for the purposes of the annual report prepared in accordance with subclause 70(1) above, the first annual report of EFIC to be submitted to the Minister is to cover the period from the commencement of EFIC on 1 November 1991 to 30 June 1992.

112. Paragraph 85(2)(a) and subsection 85(3) specify that each annual report is to include particulars of all directions given by the Minister under clause 9 except where the direction includes a statement that disclosure would have an adverse affect on the Commonwealth's (or a Commonwealth instrumentality's) financial or property interests or affect national security.

113. Subclause 85(3) further requires EFIC to include in each annual report a statement of EFIC's principal objectives and an assessment of the extent to which it has achieved those objectives in that period.

Clause 86 EFIC's obligation to keep the Minister informed

114. Clause 86 requires EFIC to keep the Minister informed in relation to the general conduct of its activities and to supply any information to the Minister on those activities which the Minister may require.

Clause 87 Secrecy

115. Requires Board members and employees of EFIC to observe secrecy in relation to information relating to the affairs of other persons which they acquire as part of their duties. Such information may however be disclosed to the Minister, the Secretary to the Department and officers in the Department nominated by the Secretary and to a court where this is necessary for the purposes of, or a prosecution for an offence against, the proposed Act.

Clause 88 Offences

116. Provides penalties for persons wilfully making false or misleading statements in connection with applications for insurance, indemnities, guarantees or loans from EFIC or in relation to making claims under such transactions against EFIC.

Clause 89 Effectiveness of acts of EFIC

117. Subclause 89(1) provides that an act done by EFIC is not invalid merely because it was outside the power of EFIC or because EFIC failed to comply with a provision of the Bill in relation to that act.

118. Subclause 89(2) states that subclause 89(1) is not to be taken to absolve EFIC from its duty to comply with the provisions of the proposed Act and the limits of its powers under that Act.

119. Subclause 89(4) provides that a person dealing in good faith with EFIC is entitled to assume that:

- . a document that purports to have the seal of EFIC on it and to have been sealed under the authority of the Board has been so sealed; and
- . a person held out by EFIC as authorised to act on behalf of EFIC is to be taken to have been duly authorised and to have the powers usually exercisable by such a person in a corporation.

Clause 90 Staff

120. Authorises EFIC to employ such persons as the Board thinks necessary and on such terms and conditions as are determined by the Board.

Clause 91 Regulations

121. Provides for the Governor-General to make regulations for the purposes of the proposed Act, including prescribing penalties not exceeding \$500 for offences against such regulations.