



AUSTRALIAN  
COUNCIL  
FOR  
INTERNATIONAL  
DEVELOPMENT

**ACFID's Submission to the Senate Foreign Affairs, Defence and Trade  
Legislation Committee on the Export Finance and Insurance Corporation  
Amendment (Support for Infrastructure Financing) Bill 2019 [Provisions]**

March 2019

## About ACFID

---

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations (NGOs) involved in international development and humanitarian action. Our vision is of a world where all people are free from extreme poverty, injustice and inequality and where the earth's finite resources are managed sustainably. Our purpose is to lead and unite our members in action for a just, equitable and sustainable world.

Founded in 1965, ACFID currently has 125 members and 22 affiliates operating in more than 92 developing countries. In 2017-18, the total revenue raised by ACFID's membership from all sources amounted to \$1.6bn with 80% coming from non-government sources, including \$889m of which was raised from over 1.6 million Australians. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith-based organisations. A list of ACFID member organisations is available at [www.acfid.asn.au](http://www.acfid.asn.au).

## About our Submission

---

Our submission is representative of our members and is the result of a wide-ranging process of consultation. Members who have made specific contributions to ACFID's submission include:

- ActionAid Australia
- Care Australia
- Caritas Australia
- Oxfam Australia
- International Women's Development Agency
- Save the Children Australia
- World Vision Australia

To inform our submission, ACFID has also consulted with a range of experts from Australia's development policy community including:

- Dr John Eyers, independent consultant, formerly Australian Treasury
- Dr Luke Fletcher, Executive Director of Jubilee Australia and Visiting Fellow, University of New South Wales
- Mr Murray Proctor, independent consultant, formerly AusAID
- Dr Pichamon Yeophantong, Australian Research Council DECRA Fellow and Senior Lecturer in International Relations and Development, University of New South Wales ADFA
- Mr Richard Moore, independent consultant, formerly AusAID
- Dr Scott Hook, Resilience at Pacific Islands Forum Secretariat
- Professor Stephen Howes, Professor of Economics and Director, Development Policy Centre, The Australian National University
- Mr Stuart Schaefer, Senior Consultant, JohnStaff
- Dr Susan Engel, Senior Lecturer in Politics and International Studies, University of Wollongong

Our submission is informed by but does not reflect each consultee's position on this Bill or the AIFFP. ACFID would be happy to provide additional clarity on this submission. Follow-up requests should be directed to Marc Purcell, CEO of ACFID.

## Executive Summary

ACFID welcomes the opportunity to provide a submission to the Senate Standing Committee on Foreign Affairs Defence and Trade on the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 [Provisions], hereafter ‘the Bill’.

ACFID welcomes the Australian Government’s Pacific ‘step-up’ and the examination of new ways to finance international development cooperation, including by addressing infrastructure challenges in the Pacific and its wider region.

We understand that the intention of the Bill is to expand *“the ability of the Export Finance and Insurance Corporation (Efic) to finance infrastructure projects by increasing its callable capital and granting it a new overseas infrastructure financing power.”*<sup>i</sup>

We also recognise that Efic will assist in the administration and operation of the AIFFP. During the second reading speech, Assistant Minister for Trade, Tourism and Investment, Mark Coulton MP clarified that the Bill:

*“will also enable Efic to assist with the timely implementation of the Australian Infrastructure Financing Facility for the Pacific by administering the AIFFP loans.”*<sup>ii</sup>

Accordingly, ACFID provides a submission on the expansion of Efic’s mandate in relation to overseas infrastructure financing (including the increased callable capital administered through its commercial account) and the implications of this change for the Australian Infrastructure Facility in the Pacific (AIFFP).

**ACFID recommends that the Bill is not passed in its current form.**

**ACFID recommends that the Bill be subjected to greater parliamentary scrutiny, with time for wider public, multisectoral and expert consultation and co-design before its passage is considered.**

There is insufficient evidence that Efic’s standards of governance; capability; risk management; environmental and social safeguarding; and transparency and accountability can effectively deliver on its proposed expanded mandate constituted in this Bill and will be commensurate and aligned with the high development standards and principles employed in Australia’s development cooperation program by the Department of Foreign Affairs and Trade (DFAT).

The design of the AIFFP is ongoing but passing the Bill and using Efic as AIFFP’s ‘back office’ puts Australia on a trajectory towards an infrastructure facility which will not achieve appropriate dividends for Australian foreign policy and create mutually beneficial partnerships. There must be further consideration by Government, in consultation with stakeholders, to determine a sustainable and effective long-term solution for development financing.

As part of its inquiry, ACFID encourages the Committee to consider the following questions:

1. As part of the Pacific ‘step-up’ announcement, Prime Minister, the Hon Scott Morrison MP stated that if Australia’s *“standing and influence in the Pacific is to grow, our commitment must be genuine, authentic and enduring”*. Australia’s national and commercial interest are central to the Bill, but how have Pacific interests been accounted for? <sup>iii</sup>
2. Are Efic’s current transparency arrangements in conflict with open Government and the public interest? Do they pose an unacceptable risk to Government reputation in Australia and abroad?

3. What are the governance arrangements set out between DFAT and Efic, as well as the criteria for investment, safeguards, monitoring and performance of proposed infrastructure projects?
4. Is Efic the most appropriate financing instrument and institution for establishing a new international development financing initiative?

## Key concerns

Prior to expanding upon these questions within this submission, ACFID has summarised its key concerns raised in consultation with its members and stakeholders for the Committee's consideration.

- i. **The period for policy decision and consultation has been inadequate** given this is a substantial departure from the current policy approach to development driven infrastructure. The speed of decision-making is driven by geopolitical pressures but must be considered in greater depth;
- ii. **The Bill does not consider recipient nations' interests.** The Bill only establishes an Australian benefit test. There is insufficient consideration of recipient nations' benefit, whether a target for Efic-directed infrastructure lending through its commercial account or the AIFFP;
- iii. **The model poses unacceptable reputation and performance risks to Australia.** The proposed provisions that set criteria for allowable loans – namely, loans which “*Efic thinks appropriate*” and “*likely to result in Australian benefit*” – are narrowly defined and increases the potential for Efic-financed infrastructure projects to bring reputational and performance risks to Australia. This is especially critical as Efic's role for the AIFFP will bring it into interaction with Australia's development cooperation program and partnerships in the Pacific;
- iv. **There are no proposed changes to Efic's due diligence, safeguarding standards or development expertise or capability** to reflect the substantial change of purpose and additional finance available to it as proposed in the Bill, nor information available on how DFAT may be responsible for guiding its involvement in and interaction with Australia's development cooperation program via the AIFFP;
- v. **The transparency arrangements governing Efic are not consistent with those pertaining to other international investments** made by Australia or with the high level of public scrutiny presently applied to Australia's international development cooperation program, presently funded by grants sourced from Australia's Official Development Assistance (ODA) budget.
- vi. **The Bill and its implementing institutional arrangements may be in conflict with foreign policy outcomes relating to sustainable development.** The Bill does not consider how Efic – both in terms of its general mandate and in its proposed interaction with the AIFFP – will be required to consider OECD DAC guidelines or sustainable development outcomes for nations that might receive Efic-administered loans or host Efic-financed projects. This point is critical as official statements at Senate Estimates in February 2019 allude to Efic's proposed expanded powers and its relationship with the AIFFP as supporting “development” outcomes;<sup>iv</sup> and
- vii. **There is insufficient information available on how DFAT will interact with Efic's expanded infrastructure mandate** or the governance arrangements around this interaction, including in relation to its proposed new capacity for sovereign lending or in relation to the AIFFP.

## Critical questions for the Senate Committee

1. As part of the Pacific 'step-up' announcement, Prime Minister, the Hon Scott Morrison MP stated that if Australia's *"standing and influence in the Pacific is to grow, our commitment must be genuine, authentic and enduring"*. Australia's national and commercial interests are central to the Bill, but how have Pacific interests been accounted for?

Speaking in Queensland on Australia's *"new chapter"* with the Pacific, Prime Minister, the Hon Scott Morrison MP, stated that relations with the Pacific family should be *"based on respect, equality and openness"*.<sup>v</sup> In scrutinising the Bill, there is little reference on how Pacific (and other recipient country) interests will be considered in Efic's expanded mandate compared to securing Australian benefit.

The Bill states that for loans to be made for overseas infrastructure development Efic must reasonably believe *"that lending the money is likely to result in an Australian benefit."* Provisions in the Bill give effect to an Australian benefit test. The Bill's explanatory memorandum references building *"stronger relationships with our regional partners, especially in the Pacific"*, but no further reference to how Pacific interests will be realised. For example, without examining Pacific interests, there is a risk of displacing local labour when Pacific interests could be better served in building local capability.

ACFID is not aware of the extent of consultation with the Pacific and the wider region for this Bill or its role in enabling the AIFFP, and it is not clear how the Bill is intended to interact with existing and proposed mechanisms for infrastructure development generated in the Pacific and wider region. For example, Secretary General of the Pacific Islands Forum, Dame Meg Taylor, has set out priorities for Pacific infrastructure, including the need for *"channelling assistance through the Pacific Resilience Facility (PRF)"* to *"drive our own pathways toward resilient development"* and as a method to establishing *"common, regional criteria to...assess investments to ensure they are consistent with the long-term vision and priorities for the Blue Pacific."*<sup>vi</sup> Greater support from all development partners to the Pacific region is crucially required for its operation, with a proposed initial capitalisation of USD \$0.5 billion.

The Australian Government has supported the development of the PRF, but there is no recognition of how the Bill and the wider ambitions of the AIFFP will be matched with existing priorities of the Pacific. To build strong, enduring relationships of trust, Australia must assist and ensure that Pacific nations can maximise this opportunity.

**Recommendation:** Any Australian lending for overseas infrastructure financing should include a requirement for an assessment of benefits and costs to the recipient country to ensure recipient-country interests are prioritised and protected.

2. Are Efic's current transparency arrangements in conflict with open Government and the public interest? Do they pose an unacceptable risk to Government reputation in Australia and abroad?

Current Australian Government funded development initiatives are subject to high standards of transparency, including international transparency charter requirements, public scrutiny via the Freedom of Information Act, the publication of material on the DFAT website and AUSTender.

However, under exemptions from the Freedom of Information Act 1982 (Cth) all documents relating to anything done by Efic under Part 4 (Insurance and Financial Service Products) or Part 5 (National Interest Transactions) of the Efic Act are exempt from public disclosure.

This exemption, coupled with opaque decision-making under on the grounds of commercial-in-confidence (which also covers information pertaining to social and environmental assessment of funding proposals) and not-for-publication status of the national interest account in budget papers, limits the ability of taxpayer-backed loans to be scrutinised and does not give confidence to the provisions of the Bill.

All loan decisions made under the AIFFP banner and lending through Efic's commercial account should be transparent and open for scrutiny by the Australian public. This form of compliance would have the added effect of boosting Australia's investment in the region and would also distinguish the AIFFP from China's BRI in terms of its use of safeguards to control against the risk of debt distress among partner nations.

Given recent domestic and regional concerns over Commonwealth contracts, such as those with Paladin and the Pacific International Hospital in PNG, an increased lack of transparency over expenditure of may reduce confidence in Australia's commercial and international dealings both domestically and internationally.

**Recommendation:** If Efic is to be utilised for development initiative purposes, then the transparency and governance arrangements should be reviewed against and aligned with standards employed by the Australian development cooperation program and development finance institutions of equivalent standing globally. This should include, but not be limited to, the establishment of open calls for funding requests, competitive and transparent processes, publication of budget figures and other governance mechanisms commensurate with other OECD countries.

### **3. What are the governance arrangements set out between DFAT and Efic, as well as the criteria for investment, safeguards, monitoring and performance of proposed infrastructure projects?**

The Bill increases available lending under its commercial account by \$1bn to \$1.2bn. Lending must be commercially viable, and repayments made to Efic. While Efic makes assessments of all loans, at the highest level, the criteria for the investment under the proposed Bill is 1) commercial viability and 2) to Australia's benefit.

Beyond these two criteria, it is not clear how potential infrastructure projects (under Efic's commercial account) for the region are assessed and prioritised. It is also unclear how DFAT would make assessments of potential projects (under AIFFP), how it would propose lending is structured and coupled with grants and ultimately, advise and give instruction to Efic.

This is particularly unclear given that the 'Statement of Expectations' and 'Statement of Intent' galvanizing the relationship between the Australian Government (via the Minister for Trade, Tourism and Investment) and Efic are not available prior to the scrutiny of the Bill. Given that future lending with developing nations will more acutely impact upon Australian diplomacy and development, we believe this responsibility should sit with the Minister for Foreign Affairs and both statements shared for Parliament to consider alongside the Bill.

Australian development initiatives are also subject to stringent monitoring and performance evaluation to ensure the Australian Government can demonstrate value for money, meet aid performance targets and projects contribute to Australia's foreign policy ambitions.

At present, it is not clear how minimum safeguards and due diligence – critical to Australia's pursuit of development initiatives in the region – will be considered and integrated in lending through Efic's commercial and national interest accounts and match with Efic's expanded mandate. This includes the

need to conduct environmental feasibility studies, incorporate social protection measures including relating to gender, child protection and sexual exploitation.

ACFID recognises the standards Efic already pursues in relation to its lending, including the IFC Performance Standards. However, given the extension of Efic's mandate and greater intersection with the development cooperation program, a review should take place to ensure the appropriate social, environmental and human rights safeguards are in place.

Information relating to Efic's environmental and social classification of projects and why the determination is made is not currently disclosed. This reinforces the need to review existing safeguards.

Whilst ACFID anticipates the nature of the concerns will be considered during the design of the AIFFP, the approach of utilising Efic as the back office for this initiative means there is not currently a formal requirement for these considerations to be incorporated. This sets a double standard for Australian investments in the region.

**Recommendation:** Critical issues including the criteria for investment, safeguards, monitoring and performance which apply to Australia's current investments in development initiatives overseas must also apply to lending utilising Efic.

#### **4. Is EFIC the most appropriate financing instrument and institution for establishing a new international development financing initiative?**

Establishing a new policy direction through the re-introduction of infrastructure financing has been a decision made rapidly. Establishing Efic as even a temporary solution for financing infrastructure in the Pacific is not consistent with international lessons learned on development financing and limits other options available to Australia.

Australia and New Zealand are two of a minority of nations who have not established a Development Financing Institution such as the UK CDC, the Dutch Entrepreneurial Development Bank and the German DEG. According to reports in *The Australian*, ACFID understands that DFAT is actively exploring a suite of innovative and effective options for financing development through a feasibility study which considers the characteristics of regional supply and demand for finance, market challenges, governance structures, lending criteria, transparency, safeguarding requirements and long-term priorities.<sup>vii</sup>

ACFID believes that development cooperation program cannot be driven solely or primarily by geostrategic considerations or commercial gain and must seek to maximise human development and human security. All infrastructure projects must include climate resilience and adaptation measures. As set out by the OECD, any *"new infrastructure assets should be prioritised, planned, designed, built and operated to account for the climate changes that may occur over their lifetimes."*<sup>viii</sup>

Alongside this, "soft" system considerations such as additional ongoing maintenance costs (including training and equipment) must be factored into projects so assets do not become obsolete. They should use local and gender-balanced labor forces, and all projects should ensure that the rights, health, safety, and livelihoods of people, including children, women, indigenous people, and other vulnerable groups are protected. This is clearly articulated in Principle 1 of DFAT's environmental and social safeguards: do no harm.

Fundamentally, "infrastructure" should not only pertain to 'hard' infrastructure such as roads, bridges and ports. It should also include the systems and institutions that support education, health, gender, governance, and climate outcomes, or 'soft' infrastructure.

For example, infrastructure projects could be matched with governance projects that build partner nations' capacity to scrutinise debt-funded public private partnerships in their citizens' interest.

Aside from the positive impact of such measures on levels of poverty and inequality, the practice of mutually supportive "hard" and "soft" infrastructure projects will protect Australia's interest in soft power projection over the long term as a values-driven, socially-responsive, liberal democracy.

ACFID notes that Efic is not empowered by its founding legislation as a statutory corporation to consider such critical development questions. As a result, it is unclear that the legislation will permit this to take place. The Bill and explanatory memorandum suggest that only an Australian benefit test will be applied to projects financed by Efic through the AIFFP and, importantly, any future blended finance facilities that might follow in Asia and the Pacific.

All AIFFP-funded infrastructure should be pro-poor, climate-resilient, gender-sensitive, and bundled with "soft" infrastructure or sustainable development initiatives. The apparatus set up for the AIFFP should enable this and advance development policy and practice aims as defined by the Sustainable Development Goals.

**Recommendation:** All options must be considered for establishing a sustainable and effective long-term solution for development financing, including through the public release of the DFAT Development Financing Feasibility Study and appropriate consultation period for the AIFFP. The Government should avoid a situation where initiatives financed under the auspices of development by Efic undermine other development initiatives undertaken by Australia's development cooperation program.

## Analysis: Efic and Australia's Development Cooperation Program

The implications of this Bill may transform the foundations of Australian development cooperation, introducing overseas infrastructure loans to a program that is presently administered entirely via grants sourced from a public ODA budget. This introduction of loans is performed by the AIFFP and, in addition, the present Bill's provisions allow for any number of similar blended finance facilities to be established in future.

It is unclear how Efic will support DFAT's development aims given the design of the AIFFP and the provisions in the present Bill. For example, there has been no public clarification to date on how Efic will disburse infrastructure loans finance or to whom, including how it will determine whether to lend on its commercial account or its national interest account.

DFAT officials have stated at Senate Estimates that Efic's new callable capital will be made available for use via its commercial account but the \$1.5 billion in loans finance under the AIFFP will not. Deriving from this statement, and because Efic uses "two distinct platforms" for finance, ACFID infers that the national interest account will be used for the AIFFP and Efic will form a view on whether projects are suitable for the commercial or national interest accounts. This gives Efic significant scope for directing how support for overseas infrastructure is made.

If loans are designated as commercial, then FOI restrictions and commercial-in-confidence provisions will apply under Efic, and if the national interest account is used then the "NFP" or "not for publication" designation can be used. This arrangement is entirely new for Australia's international development cooperation program, which is generally subject to high levels of public, bureaucratic, and political scrutiny.

There has been no public discussion as to the concessionality of Efic's proposed loans, nor how the AIFFP's \$500m grant component, sourced from the ODA budget, will be incorporated and applies to how it lends. The AIFFP might finance some projects through loans and some through grants (including by grouping existing ODA-funded infrastructure investments under its budget), or it might apply grant finance to loans to make them concessional, or any combination of these options on a case-by-case basis.

If the AIFFP functions in this way, assessing which projects are ODA-eligible would be a retrospective rather than forward-looking exercise. This potentially damaging and uncoordinated way of working would not be limited to the AIFFP but applied to future blended finance facilities enabled by Efic's proposed new powers.

ACFID's view is this lack of clarity in relation to how Efic intends to support the work of the AIFFP renders both this present Bill and the design of the AIFFP deeply problematic in relation to financial predictability, transparency, and clarity of purpose in terms of advancing sustainable development. In short, it appears that the AIFFP is being designed as a significant "development" initiative, albeit one with a "back office" that operates entirely by a separate set of rules, as set out in the provisions of the present Bill.

ACFID is not opposed to the creation of an AIFFP, the pursuit of trade goals, or the use of loans and other blended finance methodologies, provided that these factors are aligned with sustainable development goals in a manner that is both thoughtful and evidence-informed.

## Endnotes

---

<sup>i</sup> Export Finance and Insurance Corporation Amendment (Support For infrastructure Financing) Bill 2019 – [Explanatory Memorandum](#)

<sup>ii</sup> Mr Mark Coulton, (Parkes—Assistant Minister for Trade, Tourism and Investment), [Second Reading Speech](#), Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019

<sup>iii</sup> Address – "[Australia and the Pacific: A New Chapter](#)", Prime Minister, Hon Scott Morrison.

<sup>iv</sup> Export Finance and Insurance Corporation Amendment (Support For infrastructure Financing) Bill 2019 – [Explanatory Memorandum](#) & [Senate Estimates, Foreign Affairs, Defence and Trade Legislation Committee](#) 21 February 2019

<sup>v</sup> Address – "[Australia and the Pacific: A New Chapter](#)", Prime Minister, Hon Scott Morrison.

<sup>vi</sup> [Keynote address by Dame Meg Taylor, Secretary General “The China Alternative: Changing Regional Order in the Pacific Islands”](#)

<sup>vii</sup> ‘DFAT to run Pacific bank despite doubts’, The Australian – Ben Packham  
<https://www.theaustralian.com.au/national-affairs/foreign-affairs/dfat-to-run-pacific-bank-despite-doubts/news-story/b1e2d002068e1c9a64ed0facf1b8ee63>

<sup>viii</sup> ‘[Climate-resilient Infrastructure](#)’, OECD Environment Policy Paper No. 14