

Export Payments Insurance Corporation (No. 2)

No. 91 of 1971

An Act relating to the Export Payments Insurance
Corporation.

[Assented to 12 November 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Export Payments Insurance Corporation Act (No. 2) 1971*.

(2.) The *Export Payments Insurance Corporation Act 1956–1970*,* as amended by the *Salaries Act 1971*† and by the *Export Payments Insurance Corporation Act 1971*,‡ is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Export Payments Insurance Corporation Act 1971* is amended by omitting sub-section (4.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Export Payments Insurance Corporation Act 1956–1971*.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Parts.

3. Section 2 of the Principal Act is amended by inserting after the words—

“ Division 2.—Export Payments Insurance (Sections 13–16B).”
the words—

“ Division 2AA.—Guarantees in respect of Loans to Overseas Buyers (Sections 16BA–16BG).”.

Definitions.

4. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “ approved bank ” the following definition:—

“ ‘ approved foreign insurer ’ means a person who enters into foreign insurance contracts under which that person is the insurer or guarantor, being a person approved by the Minister for the purposes of this definition;”;

* Act No. 32, 1956, as amended by Nos. 1 and 101, 1959; No. 14, 1961; No. 104, 1964; No. 74, 1965; No. 93, 1966; and Nos. 24 and 124, 1970.

† Act No. 22, 1971.

‡ Act No. 33, 1971.

- (b) by inserting after the definition of “ external Territory ” the following definition:—

“ ‘ foreign insurance contract ’ means a contract entered into outside Australia under which an indemnity or guarantee is given in respect of monetary loss or other monetary detriment resulting from failure to receive payment in connexion with, or otherwise arising out of, acts or transactions in the course of, or for the purpose of, trade or commerce between two or more countries;”;

- (c) by inserting in the definition of “ guarantee ”, after the words “ section thirteen A ”, the words “, thirteen D, sixteen BB or sixteen BC ”; and

- (d) by inserting after the definition of “ guarantee ” the following definition:—

“ ‘ insurance ’ includes an indemnity or guarantee given by the Corporation under section thirteen B, thirteen C, sixteen BE or sixteen BF of this Act;”.

5. Section 10 of the Principal Act is amended by omitting from sub-section (6.) the word “ The ” and inserting in its stead the word “ An ”.

Acting
Commissioner.

6. Section 11 of the Principal Act is amended by inserting in sub-section (5.), after the word “ section ” (second occurring), the words “ sixteen AA, sixteen BG or ”.

Relations of
Corporation
with Minister.

7. Section 13A of the Principal Act is amended—

- (a) by inserting in paragraph (c) of sub-section (2.), after the word “ transactions ”, the words “ to which the contract of insurance relates ”; and

- (b) by omitting from paragraph (d) of sub-section (2.) the words “ those acts or transactions ” and inserting in their stead the words “ the acts or transactions to which the contract of insurance relates ”.

Guarantees
in relation
to contracts
under s. 13
or s. 13AA.

8. After section 13A of the Principal Act the following sections are inserted:—

“ 13B.—(1.) Subject to the next succeeding sub-section, the Corporation may enter into a contract with an approved foreign insurer under which an indemnity or guarantee is given to that insurer in respect of the liability of that insurer under a foreign insurance contract relating to a transaction involving—

Reinsurance
in relation to
transactions
with overseas
countries.

- (a) goods exported, or to be exported, from Australia by a person carrying on business in Australia or goods in the production or treatment of which goods so exported, or to be so exported, have been, or are to be, used; or

- (b) services rendered or to be rendered (whether in or outside Australia) to a person carrying on business outside Australia by a person carrying on business in Australia.

“(2.) A contract entered into by the Corporation under this section shall relate only to such part of the liability of the approved foreign insurer as may reasonably be regarded as related to the goods exported, or to be exported, from Australia or to the services rendered, or to be rendered, by the person carrying on business in Australia.

Reinsurance
in relation to
transactions
with external
Territories.

“13C.—(1.) In this section, ‘Australia’ does not include the external Territories.

“(2.) Subject to the next succeeding sub-section, the Corporation may enter into a contract with an approved foreign insurer under which an indemnity or guarantee is given to that insurer in respect of the liability of that insurer under a foreign insurance contract relating to a transaction involving—

- (a) goods exported, or to be exported, from Australia to an external Territory by a person carrying on business in Australia or goods in the production or treatment of which goods so exported, or to be so exported, have been, or are to be, used; or
- (b) services rendered or to be rendered (whether in Australia or in an external Territory) to a person carrying on business in an external Territory by a person carrying on business in Australia.

“(3.) A contract entered into by the Corporation under this section shall relate only to such part of the liability of the approved foreign insurer as may reasonably be regarded as related to the goods exported, or to be exported, from Australia or to the services rendered, or to be rendered, by the person carrying on business in Australia.

Guarantees in
relation to
foreign
insurance
contracts.

“13D.—(1.) The business of the Corporation extends to the giving of guarantees under this section.

“(2.) Where—

- (a) in relation to the export of goods, or the rendering of services, by a person (in this section referred to as ‘the exporter’), the Corporation has entered into, or proposes to enter into, a contract of insurance under either of the last two preceding sections in respect of the liability of an approved foreign insurer under a foreign insurance contract;
- (b) the exporter is, or is to be, entitled (whether by virtue of an assignment or otherwise) to receive a part of any moneys payable by the approved foreign insurer under the foreign insurance contract;
- (c) the Corporation is satisfied that the value of the consideration payable to the exporter in respect of those goods or services is not less than such amount as is prescribed for the purposes of this paragraph; and

- (d) another person has advanced, or proposes to advance, moneys to the exporter for the purpose of financing, in whole or in part, his acts and transactions in relation to the export of those goods, or the rendering of those services,

the Corporation may, subject to the next succeeding sub-section, guarantee to that other person the repayment of the whole or any part of the moneys advanced or to be advanced by him and the payment of the whole or any part of any interest or other charges that may become payable to him in respect of those moneys.

“(3.) The regulations may make provision for limiting the extent to which a guarantee may be given under this section to a specified percentage of the moneys advanced.”

9. Section 14 of the Principal Act is repealed.

Duties of Corporation.

10. Section 16 of the Principal Act is amended by inserting in sub-section (1.), after the word “thirteen”, the words “or section thirteen AA”.

Percentage of loss that may be covered.

11. After section 16 of the Principal Act the following section is inserted:—

“16AA. The Corporation may enter into a contract under which the Corporation is given an indemnity or guarantee in respect of the whole or any part of the liability of the Corporation under a contract of insurance entered into, or a guarantee given, under this Division.”

Reinsurance of liability of Corporation under certain contracts.

12. After section 16B of the Principal Act the following Division is inserted:—

“Division 2AA.—*Guarantees in respect of Loans to Overseas Buyers.*”

“16BA. The business of the Corporation extends to the giving of guarantees under this Division.

Business of Corporation includes giving of guarantees.

“16BB.—(1.) Where—

- (a) a person (in this sub-section referred to as ‘the overseas buyer’), in the course of carrying on business outside Australia, has entered into, or proposes to enter into, a contract with a person carrying on business in Australia (in this sub-section referred to as ‘the Australian supplier’), being a contract involving—

Guarantees in respect of loans to overseas buyers.

- (i) the export from Australia by the Australian supplier of goods manufactured or produced wholly or partly in Australia; or
- (ii) both the export from Australia by the Australian supplier of such goods and the rendering of services by the Australian supplier in connexion with the goods; and

- (b) a person (in this sub-section referred to as 'the lender') has advanced, or proposes to advance, moneys to the overseas buyer or to another person for the purpose of financing the making of payments by the overseas buyer to the Australian supplier under the contract referred to in the last preceding paragraph,

the Corporation may, subject to the next two succeeding sub-sections, guarantee to the lender the repayment of the whole or any part of the moneys so advanced or proposed to be advanced by him and the payment of the whole or any part of any interest or other charges that may become payable to him in respect of those moneys.

“(2.) Subject to the next succeeding sub-section, a guarantee shall not be given under this section in respect of an advance made, or proposed to be made, in relation to a contract referred to in paragraph (a) of the last preceding sub-section unless—

- (a) the amount of the advance is not less than such amount as is prescribed by the regulations for the purposes of this paragraph;
- (b) the amount of the advance is not greater than such percentage of the amount, or of the total of the amounts, payable under the contract as is prescribed by the regulations for the purposes of this paragraph; and
- (c) the Corporation is satisfied that the amount, or the total of the amounts, payable under the contract that relates or relate to the goods, or to the goods and services, as the case may be, referred to in paragraph (a) of the last preceding sub-section is not less than such percentage (not being less than fifty) of the amount, or of the total of the amounts, payable under the contract as is prescribed by the regulations for the purposes of this paragraph.

“(3.) The Minister may, if so requested by the Corporation in a particular case and if he thinks it appropriate so to do having regard to the special circumstances applicable in the case, direct, by instrument in writing, that—

- (a) in lieu of the amount that is prescribed by the regulations for the purposes of paragraph (a) of the last preceding sub-section, such lesser amount as is specified in the instrument shall apply;
- (b) in lieu of the percentage that is prescribed by the regulations for the purposes of paragraph (b) of the last preceding sub-section, such greater percentage as is specified in the instrument shall apply; and
- (c) if the percentage that is prescribed by the regulations for the purposes of paragraph (c) of the last preceding sub-section exceeds fifty—in lieu of that percentage, such lesser percentage (not being less than fifty) as is specified in the instrument shall apply.

“ 16BC.—(1) In this section, ‘ Australia ’ does not include the external Territories.

Guarantees in respect of loans to buyers in external Territories.

“ (2.) Where—

(a) a person (in this sub-section referred to as ‘ the Territory buyer ’), in the course of carrying on business in an external Territory, has entered into, or proposes to enter into, a contract with a person carrying on business in Australia (in this sub-section referred to as ‘ the Australian supplier ’), being a contract involving—

(i) the export from Australia by the Australian supplier of goods manufactured or produced wholly or partly in Australia; or

(ii) both the export from Australia by the Australian supplier of such goods and the rendering by the Australian supplier of services in connexion with the goods; and

(b) a person (in this sub-section referred to as ‘ the lender ’) has advanced, or proposes to advance, moneys to the Territory buyer or to another person for the purpose of financing the making of payments by the Territory buyer to the Australian supplier under the contract referred to in the last preceding paragraph,

the Corporation may, subject to the next two succeeding sub-sections, guarantee to the lender the repayment of the whole or any part of the moneys so advanced or proposed to be advanced by him and the payment of the whole or any part of any interest or other charges that may become payable to him in respect of those moneys.

“ (3.) Subject to the next succeeding sub-section, a guarantee shall not be given under this section in respect of an advance made, or proposed to be made, in relation to a contract referred to in paragraph (a) of the last preceding sub-section unless—

(a) the amount of the advance is not less than such amount as is prescribed by the regulations for the purposes of this paragraph;

(b) the amount of the advance is not greater than such percentage of the amount, or of the total of the amounts, payable under the contract as is prescribed by the regulations for the purposes of this paragraph; and

(c) the Corporation is satisfied that the amount, or the total of the amounts, payable under the contract that relates or relate to the goods, or to the goods and services, as the case may be, referred to in paragraph (a) of the last preceding sub-section is not less than such percentage (not being less than fifty) of the amount, or of the total of the amounts, payable under the contract as is prescribed by the regulations for the purposes of this paragraph.

“(4.) The Minister may, if so requested by the Corporation in a particular case and if he thinks it appropriate so to do having regard to the special circumstances applicable in the case, direct, by instrument in writing, that—

- (a) in lieu of the amount that is prescribed by the regulations for the purposes of paragraph (a) of the last preceding sub-section, such lesser amount as is specified in the instrument shall apply;
- (b) in lieu of the percentage that is prescribed by the regulations for the purposes of paragraph (b) of the last preceding sub-section, such greater percentage as is specified in the instrument shall apply; and
- (c) if the percentage that is prescribed by the regulations for the purposes of paragraph (c) of the last preceding sub-section exceeds fifty—in lieu of that percentage, such lesser percentage (not being less than fifty) as is specified in the instrument shall apply.

Guarantees
in national
interest.

“16BD.—(1.) Subject to the next succeeding sub-section, where—

- (a) an application is made to the Corporation under this Division for the giving of a guarantee of a kind referred to in either of the last two preceding sections; and
- (b) the proposed guarantee would impose upon the Corporation a liability that the Corporation is not authorized to undertake, or would not undertake in the ordinary course of business,

the Corporation may refer the application to the Minister for consideration under this section.

“(2.) The Minister may give directions to the Corporation with respect to the circumstances or cases in which applications are, or are not, to be referred to him under this section, and the Corporation shall comply with any such direction.

“(3.) Where, in relation to an application referred to the Minister under this section, the Minister is of opinion that it is in the national interest that the Corporation should give a guarantee in respect of the matter the subject of the application, the Minister may, by writing under his hand, approve the giving by the Corporation of such a guarantee.

“(4.) An approval under the last preceding sub-section may contain conditions or directions in relation to the proposed guarantee (including conditions or directions with respect to the amount to be charged by the Corporation for the giving of the guarantee or the percentage of the moneys advanced to which the guarantee is to extend).

“(5.) Where an approval is given under sub-section (3.) of this section, the Corporation is empowered, notwithstanding anything contained in section eleven, sixteen BB or sixteen BC of this Act, to give a guarantee in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

“(6.) The Corporation may, before it gives a guarantee in accordance with an approval given under sub-section (3.) of this section, inform the Minister, by notice in writing, that the Corporation proposes to bear such proportion of the liability of the Corporation under the guarantee as is specified in the notice.

“(7.) Where a guarantee is given in accordance with an approval under this section, the Minister shall notify the fact in the *Gazette* together with particulars of the nature and extent of the liability under the guarantee.

“16BE. Where—

- (a) a person (in this section referred to as ‘the overseas buyer’), in the course of carrying on business outside Australia, has entered into, or proposes to enter into, a contract with another person carrying on business outside Australia (in this section referred to as ‘the overseas supplier’), being a contract for the supply of goods or the carrying out of works outside Australia by the overseas supplier;
- (b) a person (in this section referred to as ‘the lender’) has advanced, or proposes to advance, moneys to the overseas buyer or to another person for the purpose of financing the making of payments by the overseas buyer to the overseas supplier under the contract referred to in the last preceding paragraph;
- (c) a person (in this section referred to as ‘the guarantor’) has guaranteed to the lender the repayment of the whole or any part of the moneys so advanced or proposed to be advanced by the lender and the payment of the whole or any part of any interest or other charges that may become payable to the lender in respect of those moneys; and
- (d) for the purpose of supplying any of the goods or carrying out any of the works referred to in paragraph (a) of this sub-section, the overseas supplier has entered into a contract (in this section referred to as ‘the sub-contract’) with a person carrying on business in Australia (in this section referred to as ‘the Australian supplier’), being a contract involving—
 - (i) the export from Australia by the Australian supplier of goods manufactured or produced wholly or partly in Australia; or
 - (ii) both the export from Australia by the Australian supplier of such goods and the rendering of services by the Australian supplier in connexion with the goods,

Reinsurance of liability of persons guaranteeing loans to overseas buyers.

the Corporation may enter into a contract with the guarantor under which the Corporation gives an indemnity or guarantee to the guarantor in respect of so much of the liability of the guarantor under the guarantee as does not exceed the amount, or the total of the amounts, payable under the sub-contract that relates or relate to the goods, or to the goods and services, as the case may be, referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph (d) of this section.

Reinsurance of liability of persons guaranteeing loans to buyers in external Territories.

“ 16BF.—(1.) In this section, ‘ Australia ’ does not include the external Territories.

“ (2.) Where—

- (a) a person (in this section referred to as ‘ the Territory buyer ’), in the course of carrying on business in an external Territory has entered into, or proposes to enter into, a contract with a person carrying on business outside Australia (in this section referred to as ‘ the overseas supplier ’), being a contract for the supply of goods or the carrying out of works in that Territory by the overseas supplier;
- (b) a person (in this section referred to as ‘ the lender ’) has advanced, or proposes to advance, moneys to the Territory buyer or to another person for the purpose of financing the making of payments by the Territory buyer to the overseas supplier under the contract referred to in the last preceding paragraph;
- (c) a person (in this section referred to as ‘ the guarantor ’) has guaranteed to the lender the repayment of the whole or any part of the moneys so advanced or proposed to be advanced by the lender and the payment of the whole or any part of any interest or other charges that may become payable to the lender in respect of those moneys; and
- (d) for the purpose of supplying any of the goods or carrying out any of the works referred to in paragraph (a) of this sub-section, the overseas supplier has entered into a contract (in this section referred to as ‘ the sub-contract ’) with a person carrying on business in Australia (in this section referred to as ‘ the Australian supplier ’), being a contract involving—
 - (i) the export from Australia by the Australian supplier of goods manufactured or produced wholly or partly in Australia; or
 - (ii) both the export from Australia by the Australian supplier of such goods and the rendering of services by the Australian supplier in connexion with the goods,

the Corporation may enter into a contract with the guarantor under which the Corporation gives an indemnity or guarantee to the guarantor in respect of so much of the liability of the guarantor under the guarantee as does not exceed the amount, or the total of the amounts, payable under the sub-contract that relates or relate to the goods, or to the goods and services, as the case may be, referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph (d) of this sub-section.

Reinsurance of liability of Corporation under guarantees given under this Division.

“ 16BG. The Corporation may enter into a contract under which the Corporation is given an indemnity or guarantee in respect of the whole or any part of the liability of the Corporation under a guarantee given under this Division.”

13. Section 16D of the Principal Act is amended by omitting the word “Part” and inserting in its stead the word “Division”. Approved cause of loss.

14. Section 28 of the Principal Act is amended—

(a) by omitting from sub-section (1.) the words “entered into under section thirteen or section thirteen AA of this Act,” and inserting in their stead the words “, other than overseas investment insurance contracts,”; Maximum contingent liability.

(b) by omitting from paragraph (c) of sub-section (2.) the word “and”; and

(c) by adding at the end of sub-section (2.) the following paragraphs:—

“ (e) where the Corporation has not given a notice under sub-section (6.) of section sixteen BD of this Act in respect of a guarantee given by the Corporation in accordance with an approval given for the purposes of that section—the contingent liability of the Corporation under the guarantee shall not be taken into account; and

(f) where the Corporation has given a notice under that sub-section in respect of a guarantee given by the Corporation in accordance with an approval given for the purposes of that section—only such proportion of the contingent liability of the Corporation under the guarantee as corresponds to the proportion specified in the notice shall be taken into account.”.

15. After section 29A of the Principal Act the following section is inserted:—

“ 29AA.—(1.) This section applies to guarantees given by the Corporation in accordance with approvals given for the purposes of section sixteen BD of this Act. Guarantees to which section 16AD applies.

“ (2.) The Corporation shall keep a separate account of its receipts and disbursements arising out of guarantees to which this section applies.

“ (3.) Subject to this section, the Corporation shall pay to the Commonwealth from time to time, as directed by the Treasurer, the receipts of the Corporation arising out of guarantees to which this section applies.

“ (4.) Subject to this section, the Commonwealth shall pay to the Corporation, out of moneys lawfully available for the purpose, the amount needed to discharge any liability of the Corporation under a guarantee to which this section applies.

“ (5.) Where the Corporation informs the Minister by notice under sub-section (6.) of section sixteen BD of this Act that the Corporation proposes to bear a proportion of the liability of the Corporation under a guarantee to which this section applies—

(a) the Corporation may, if the amount of any receipts that it is required to pay to the Commonwealth under sub-section (3.) of

this section includes receipts arising out of that guarantee, deduct from that amount such proportion of the receipts of the Corporation arising out of that guarantee as corresponds to the proportion specified in the notice; and

- (b) there shall be deducted from an amount required under the last preceding sub-section to be paid by the Commonwealth to the Corporation in respect of that guarantee such proportion of that amount as corresponds to the proportion so specified.

“(6.) The Corporation may deduct from the amount of any receipts that it is required to pay to the Commonwealth under sub-section (3.) of this section a reasonable amount, to be ascertained in such manner as the Treasurer directs, in respect of the expenses of the Corporation, other than payments in discharge of liabilities of the Corporation under guarantees.”.

Annual report
of Corporation.

16. Section 32 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1A.) the word “and”; and

- (b) by inserting after that paragraph the following paragraphs:—

“(aa) the total contingent liability of the Corporation at the end of the year under national interest guarantees;

(ab) the total contingent liability of the Corporation at the end of the year under guarantees given by the Corporation in accordance with approvals given for the purposes of section sixteen BD of this Act; and”.

17. After section 34 of the Principal Act the following section is inserted:—

Duties of
Corporation.

“34A. The Corporation shall—

- (a) endeavour to encourage trade with countries outside Australia and with the external Territories by developing and expanding its business under Divisions 2 and 2AA of Part II.; and

- (b) pursue a policy in relation to its business under those Divisions directed towards securing revenue sufficient to meet all its expenditure properly chargeable to revenue.”.

Delegation of
powers of
Minister.

18. Section 35 of the Principal Act is amended by inserting in sub-section (1.), after the words “section sixteen A,”, the words “sixteen B, sixteen BD,”.

Secrecy.

19. Section 36 of the Principal Act is amended by inserting after sub-section (1.) the following sub-section:—

“(1A.) The last preceding sub-section does not prevent a person from communicating or making available to another person particulars of a guarantee given, or proposed to be given, under Division 2AA of Part II.”.