

# EXPORT FINANCE AND INSURANCE CORPORATION ACT 1974

**No. 122 of 1974**

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# EXPORT FINANCE AND INSURANCE CORPORATION ACT 1974

## No. 122 of 1974

An Act to establish an Export Finance and Insurance Corporation.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

### PART I—PRELIMINARY

- Short title.       **1.** This Act may be cited as the *Export Finance and Insurance Corporation Act 1974*.<sup>1</sup>
- Commence-  
ment.           **2.** This Act shall come into operation on such date as is fixed by Proclamation.
- Repeal.           **3.** The Acts specified in Schedule 1 are repealed.
- Definitions.      **4.** In this Act, unless the contrary intention appears—  
“acting Chairman” means an acting Chairman of the Board appointed under sub-section 50 (1);  
“acting Deputy Chairman” means an acting Deputy Chairman of the Board appointed under sub-section 50 (2);  
“acting Deputy Managing Director” means an acting Deputy Managing Director of the Corporation appointed under sub-section 60 (2);  
“acting Managing Director” means an acting Managing Director of the Corporation appointed under sub-section 60 (1);  
“acting member of the Board” or “acting member” means an acting Chairman, an acting Deputy Chairman or an acting member of the Board appointed under sub-section 50 (3);  
“appointed member of the Board” or “appointed member” means the Chairman, the Deputy Chairman or a member of the Board referred to in paragraph 44 (1) (e);  
“approved bank” means a bank for the time being approved by the Treasurer for the purposes of the provision in which the expression occurs;  
“approved foreign insurer” means a person who enters into foreign contracts of indemnity under which that person is the insurer or guarantor, being a person approved by the Minister for the purposes of this definition;

- “Australia” includes the Territories to which this Act extends;
- “Board” means the Export Finance and Insurance Corporation Board established by section 42;
- “Chairman” means the Chairman of the Board;
- “contract of indemnity” means a contract under which an indemnity or guarantee is given by the Corporation under section 17, 18, 20, 25 or 26;
- “Corporation” means the Export Finance and Insurance Corporation established by section 7;
- “Deputy Chairman” means the Deputy Chairman of the Board;
- “Deputy Managing Director” means the Deputy Managing Director of the Corporation;
- “Export Payments Insurance Corporation” means the Export Payments Insurance Corporation established by the Export Payments Insurance Corporation Act;
- “Export Payments Insurance Corporation Act” means the *Export Payments Insurance Corporation Act 1956* or that Act as amended and in force at any time before the commencement of this Act;
- “foreign contract of indemnity” 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 2 or more countries;
- “eligible export transaction” means a transaction that, by virtue of section 37, is an eligible export transaction for the purposes of Part IV;
- “guarantee” means a guarantee given by the Corporation under section 16, 19, 21, 22, 23, 24, 34 or 35;
- “loan” means a loan of moneys by the Corporation under section 40 or 41;
- “Managing Director” means the Managing Director of the Corporation;
- “repealed Act” means the Export Payments Insurance Corporation Act.

5. (1) Subject to sub-section (2), this Act extends to all the Territories. Extension to Territories.

(2) The Minister may, by notice published in the *Gazette*, declare that, on a date specified in the notice, this Act shall cease to extend to an external Territory specified in the notice and, where such a notice is published—

- (a) this Act does not, on or after that date, extend to the Territory so specified;

- (b) a reference in this Act to a Territory does not, on and after that date, include a reference to the Territory so specified; and
- (c) the Territory so specified shall, on and after that date, be deemed, for the purposes of this Act, to be a country outside Australia.

Application  
of Act out-  
side  
Australia.

6. This Act applies both within and without Australia.

## PART II—EXPORT FINANCE AND INSURANCE CORPORATION

Establishment  
of  
Corporation.

7. (1) There shall be a Corporation by the name of the Export Finance and Insurance Corporation.

(2) The Corporation—

- (a) is a body corporate;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) The seal of the Corporation shall be kept in such custody as the Board directs and shall not be used except as authorized by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to a document and shall presume that it was duly affixed.

Duties of  
Corporation.

8. The Corporation shall endeavour to encourage trade and commerce with countries outside Australia, and with the external Territories, by developing and expanding its business under this Act.

General  
powers of  
Corporation.

9. The Corporation has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to, the carrying on of its business under this Act.

## PART III—INSURANCE AND GUARANTEE BUSINESS OF CORPORATION

### *Division 1—Preliminary*

Insurance  
and  
guarantee  
business.

10. (1) The Corporation shall carry on the business of insurance, being insurance under contracts which the Corporation is empowered to enter into under this Part.

(2) The Corporation shall also carry on the business of giving guarantees and indemnities which it is empowered to give under this Part.

**11.** (1) The Board shall keep the Minister informed of the decisions of the Board with respect to matters of policy in relation to the conduct of the Corporation's business under this Part. Questions of policy.

(2) Before adopting a policy (including an altered policy) with respect to a matter included in any of the following subjects, namely:—

- (a) the classes of contracts of insurance into which the Corporation will enter;
- (b) the nature of the risks that may be covered under contracts of insurance with the Corporation;
- (c) the undertaking of liabilities in relation to trade with particular countries;
- (d) the giving of guarantees; and
- (e) the entering into of contracts of indemnity,

the Board shall submit the policy for the approval of the Minister, and the Board shall not adopt the policy without the approval of the Minister, or, except during such time as the Minister permits, continue to pursue the policy where the Minister, having approved the policy, subsequently withdraws his approval.

(3) If the Board fails to obtain the Minister's approval to a policy with respect to a matter included in a subject specified in paragraph (2) (a), (b), (c), (d) or (e) or the Minister withdraws his approval of a policy with respect to such a matter, the Board shall endeavour to reach agreement with the Minister as to the policy to be adopted by the Board with respect to that matter and, in the event of agreement not being reached within a time which the Minister considers reasonable, the Minister may, by writing under his hand, determine a policy to be adopted by the Board with respect to that matter, and the Board shall adopt that policy.

(4) Nothing in this section shall be construed—

- (a) as requiring the approval of the Minister to the Corporation entering into a particular contract of insurance or a particular contract of indemnity, or to the Corporation giving a particular guarantee; or
- (b) as empowering the Minister to determine that the Corporation shall or shall not enter into a particular contract of insurance or a particular contract of indemnity, or give a particular guarantee,

but the Corporation shall not enter into a particular contract of insurance or a particular contract of indemnity, or give a particular guarantee, contrary to a policy approved or determined by the Minister under this section.

Contracts of indemnity in relation to business of Corporation.

**12.** 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 or a contract of indemnity entered into, or a guarantee given, under this Part.

*Division 2—Export Payments Insurance Contracts and Guarantees*

Export payments insurance contracts in relation to overseas trade.

**13.** (1) The Corporation may enter into contracts of insurance with, or for the benefit of, persons carrying on business in Australia, being contracts of insurance against risk of monetary loss or other monetary detriment attributable to circumstances outside the control of the person suffering the loss or detriment and 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 with countries outside Australia.

(2) The Corporation shall not enter into contracts of insurance under sub-section (1) against risks that are normally insured with commercial insurers.

(3) In this section, “trade with countries outside Australia” includes any transaction (including a transaction for the rendering of a service) involving a consideration in money or money’s worth accruing from a person in the course of carrying on business or other activities outside Australia to a person carrying on business or other activities in Australia.

Export payments insurance contracts in relation to trade with external Territories.

**14.** (1) The Corporation may enter into contracts of insurance with, or for the benefit of, persons carrying on business in Australia, being contracts of insurance against risk of monetary loss or other monetary detriment attributable to circumstances outside the control of the person suffering the loss or detriment and 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 with an external Territory.

(2) The Corporation shall not enter into contracts of insurance under sub-section (1) against risks that are normally insured with commercial insurers.

(3) In sub-section (1)—

“Australia” does not include an external Territory;

“trade with an external territory” includes any transaction (including a transaction for the rendering of a service) involving a consideration in money or money’s worth accruing from a person in the course of carrying on business or other activities in an external Territory to a person carrying on business or other activities in Australia.



15. (1) Subject to this section, in a contract of insurance entered into by the Corporation under section 13 or 14, there shall, in relation to each cause of loss to which the contract applies, be specified a percentage as the percentage of the amount of the loss, as defined in the contract, to which the indemnity under the contract extends.

Percentage of loss that may be insured under export payments insurance contracts.

(2) In relation to the one cause of loss, different percentages may be specified as being applicable in respect of loss sustained by reason of the occurrence of the cause at different times.

(3) The regulations may prescribe a percentage as the maximum percentage that may be specified, in pursuance of this section, in a contract of insurance in relation to a cause of loss.

(4) Regulations so made may prescribe different percentages for different classes of contracts and for different causes of loss, and according to different times of occurrence of a cause of loss.

(5) The Minister may, if so requested by the Board in a particular case and if he thinks it appropriate so to do having regard to special circumstances applicable in the case, direct, by instrument in writing, that, in lieu of the percentage that is the maximum percentage applicable in that case under the regulations, such greater percentage as is specified in the instrument shall apply.

16. (1) Where—

- (a) the Corporation has entered into, or proposes to enter into, a contract of insurance under section 13 or 14 with, or for the benefit of, any person;
- (b) the value of the consideration payable to that person in respect of the acts or transactions to which the contract of insurance relates is not less than such amount as is prescribed for the purposes of this paragraph; and
- (c) another person has lent, or proposes to lend, moneys to the first-mentioned person for the purpose of financing, in whole or in part, the acts or transactions to which the contract of insurance relates,

Guarantees in relation to export payments insurance contracts.

the Corporation may, subject to any regulations made by virtue of sub-section (2), guarantee to that other person the repayment of the whole or any part of the moneys lent or to be lent 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) The regulations may make provision for limiting the extent to which a guarantee may be given by the Corporation under sub-section (1).

Contracts of indemnity in relation to transactions with overseas countries.

17. (1) Subject to sub-section (2), 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 contract of indemnity relating to a transaction involving—

- (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 sub-section (1) 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.

Contracts of indemnity in relation to transactions with external Territories.

18. (1) Subject to sub-section (2), 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 contract of indemnity 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.

(2) A contract entered into by the Corporation under sub-section (1) 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.

(3) In this section, “Australia” does not include the external Territories.

Guarantees in relation to foreign contracts of indemnity.

19. (1) 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 indemnity under section 17 or 18 in respect of the liability of an approved foreign insurer under a foreign contract of indemnity;

- (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 contract of indemnity;
- (c) 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 lent, or proposes to lend, 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 any regulations made by virtue of sub-section (2), guarantee to that other person the repayment of the whole or any part of the moneys lent, or to be lent, 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) The regulations may make provision for limiting the extent to which a guarantee may be given by the Corporation under sub-section (1).

**20.** (1) Subject to sub-section (2), where—

- (a) an application is made to the Corporation for a contract of insurance of a kind referred to in section 13 or 14 or a contract of indemnity of a kind referred to in section 17 or 18; and
- (b) the proposed contract 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,

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national  
interest.

the Board may refer the application to the Minister for consideration under sub-section (3).

(2) The Minister may give directions to the Board with respect to the circumstances or cases in which applications are, or are not, to be referred to him under sub-section (1), and the Board shall comply with any such direction.

(3) Where, in relation to an application referred to the Minister under sub-section (1), the Minister is of opinion that it is in the national interest that the Corporation should enter into a contract of insurance or contract of indemnity, as the case may be, in respect of the matter the subject of the application, the Minister may, by writing under his hand, approve the entering into by the Corporation of such a contract.

(4) An approval under sub-section (3) may contain conditions or directions in relation to the proposed contract (including conditions or directions with respect to the amount of the premium to be charged or the percentage of the amount of the loss to which the insurance or indemnity is to extend).

(5) Where an approval is given under sub-section (3), the Corporation is empowered, notwithstanding anything contained in section 11 or regulations made for the purposes of sub-section 15 (3), to enter into a contract in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

(6) The Board may, before the Corporation enters into a contract in accordance with an approval given under sub-section (3), inform the Minister, by notice in writing, that the Corporation will bear such proportion of the liability of the Corporation under the contract as is specified in the notice.

(7) Where a contract is entered into in accordance with an approval under sub-section (3), the Minister shall notify the fact in the *Gazette* (without reference to the names of the parties to the transaction to which the contract relates), together with particulars of the nature and extent of the liability under the contract.

Guarantees  
in relation to  
national  
interest  
contracts.

21. (1) Subject to sub-section (2), where an application is made to the Corporation for the giving of a guarantee in relation to a contract of insurance or contract of indemnity entered into, or proposed to be entered into, by the Corporation in accordance with an approval given under sub-section 20 (3), the Board may refer the application to the Minister for consideration under sub-section (3).

(2) The Minister may give directions to the Board with respect to the circumstances or cases in which applications are, or are not, to be referred to him under sub-section (1), and the Board shall comply with any such direction.

(3) Where, in relation to an application referred to the Minister under sub-section (1), 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 sub-section (3) 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 relevant loan to which the guarantee is to extend).

(5) Where an approval is given under sub-section (3), the Corporation is empowered, notwithstanding anything contained in section 11 or regulations made for the purposes of sub-section 16 (2) or 19 (2), to give a guarantee in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

(6) The Board may, before the Corporation gives a guarantee in accordance with an approval given under sub-section (3), inform the Minister by notice in writing, that the Corporation will 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 sub-section (3), the Minister shall notify the fact in the *Gazette* (without reference to the names of the parties to the transaction to which the guarantee relates) together with particulars of the nature and extent of the liability under the guarantee.

(8) The Corporation shall not give a guarantee in relation to a contract of insurance or contract of indemnity entered into by the Corporation in accordance with an approval given under sub-section 20 (3) except in accordance with an approval given under sub-section (3) of this section.

(9) For the purposes of this section, a guarantee shall be deemed to relate to a contract of insurance or contract of indemnity, as the case may be, entered into by the Corporation in accordance with an approval given under sub-section 20 (3) if it is given in respect of moneys lent for the purpose of financing, whether in whole or in part, the acts or transactions to which that contract relates.

### *Division 3—Guarantees in relation to Loans to Overseas Buyers*

#### **22. (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—

- (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 lent, or proposes to lend, moneys to the overseas buyer or to another person for the purpose of financing, in whole or in part, the making of payments by the overseas buyer to the Australian supplier under the contract referred to in paragraph (a),

the Corporation may, subject to sub-section (2), guarantee to the lender the repayment of the whole or any part of the moneys so lent or proposed to be lent 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.

Guarantees  
in relation to  
loans to  
overseas  
buyers.

(2) Subject to sub-section (3), a guarantee shall not be given under sub-section (1) in respect of a loan made, or proposed to be made, in relation to a contract referred to in paragraph (1) (a) unless—

- (a) the amount of the loan is not less than such amount as is prescribed by the regulations for the purposes of this paragraph;
- (b) the amount of the loan 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 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 (1) (a) is not less than such percentage (not being less than 50) 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 Board 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 (2) (a), 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 (2) (b), 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 (2) (c) exceeds 50—in lieu of that percentage, such lesser percentage (not being less than 50) as is specified in the instrument shall apply.

Guarantees  
in relation to  
loans to  
buyers in  
external  
Territories.

23. (1) 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 lent, or proposes to lend, moneys to the Territory buyer or to

another person for the purpose of financing, in whole or in part, the making of payments by the Territory buyer to the Australian supplier under the contract referred to in paragraph (a),

the Corporation may, subject to sub-section(2), guarantee to the lender the repayment of the whole or any part of the moneys so lent or proposed to be lent 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 sub-section (3), a guarantee shall not be given under sub-section (1) in respect of a loan made, or proposed to be made, in relation to a contract referred to in paragraph (1) (a) unless—

- (a) the amount of the loan is not less than such amount as is prescribed by the regulations for the purposes of this paragraph;
- (b) the amount of the loan 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 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 (1) (a) is not less than such percentage (not being less than 50) 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 Board 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 (2) (a), 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 (2) (b), 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 (2) (c) exceeds 50—in lieu of that percentage, such lesser percentage (not being less than 50) as is specified in the instrument shall apply.

(4) In sub-section (1), “Australia” does not include the external Territories.

Guarantees  
in national  
interest.

**24.** (1) Subject to sub-section (2), where—

- (a) an application is made to the Corporation for the giving of a guarantee of a kind referred to in section 22 or 23; 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 Board may refer the application to the Minister for consideration under sub-section (3).

(2) The Minister may give directions to the Board with respect to the circumstances or cases in which applications are, or are not, to be referred to him under sub-section (1), and the Board shall comply with any such direction.

(3) Where, in relation to an application referred to the Minister under sub-section (1), 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 sub-section (3) 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 relevant loan to which the guarantee is to extend).

(5) Where an approval is given under sub-section (3), the Corporation is empowered, notwithstanding anything contained in section 11 or sub-section 22 (2) or 23 (2), to give a guarantee in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

(6) The Board may, before the Corporation gives a guarantee in accordance with an approval given under sub-section (3), inform the Minister, by notice in writing, that the Corporation will 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 sub-section (3), the Minister shall notify the fact in the *Gazette* together with particulars of the nature and extent of the liability under the guarantee.



## 25. Where—

Contracts of indemnity in relation to persons guaranteeing loans to overseas buyers.

- (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 lent, or proposes to lend, moneys to the overseas buyer or to another person for the purpose of financing, in whole or in part, the making of payments by the overseas buyer to the overseas supplier under the contract referred to in paragraph (a);
- (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 lent, or proposed to be lent, 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), 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 (d) (i) or (ii).

Contracts of indemnity in relation to persons guaranteeing loans to buyers in external Territories.

**26. (1) 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 lent, or proposes to lend, moneys to the Territory buyer or to another person for the purpose of financing, in whole or in part, the making of payments by the Territory buyer to the overseas supplier under the contract referred to in paragraph (a);
- (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 lent, or proposed to be lent, 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), 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 (d) (i) or (ii).

(2) In sub-section (1), “Australia” does not include the external Territories.

*Division 4—Overseas Investment Insurance*

**27. (1)** In this Division, unless the contrary intention appears—  
 “overseas investment transaction” means—

Interpretation.

- (a) the acquisition of shares or stock, or any other interest, in a corporation incorporated in a country outside Australia, being a corporation that, either alone or with other persons, carries on or proposes to carry on a business in that country;
- (b) the acquisition of a right to share in the income or assets, or the income and assets, of a business carried on, or proposed to be carried on, in a country outside Australia, whether under a partnership or otherwise;
- (c) the lending of moneys to a person for use by him in or in connexion with a business carried on, or proposed to be carried on, by him in a country outside Australia; or
- (d) the transferring of moneys to, or the importing of equipment or other goods into, a country outside Australia for use in or in connexion with a business carried on, or proposed to be carried on, in that country by the person transferring the moneys or importing the equipment or other goods;

“war-like operation” includes any operation in the course of any war (including civil war), riot, civil commotion, revolution, insurrection, rebellion or any similar happening.

(2) This Division has effect in relation to Papua New Guinea as if, on 22 January 1974, Papua New Guinea had ceased to be an external territory and had become a country outside Australia.

**28.** For the purposes of this Division, each of the following is an approved cause of loss:—

Approved cause of loss.

- (a) expropriation of property;
- (b) damage to or destruction of property caused by a war-like operation;
- (c) inability to transfer money to Australia from another country.

**29.** Where a person carrying on business in Australia has, on or after 22 January 1974 and before the commencement of this Act, entered upon, or, after the commencement of this Act proposes to enter upon, an overseas investment transaction, he may, by application in writing made to the Corporation, request the Corporation to enter into a contract of insurance insuring him against monetary loss or other monetary detriment in respect of the transaction, being loss or detriment resulting from such approved cause of loss as is, or such approved causes of loss as are, specified in the application.

Applications for insurance.

Reference of applications to Minister.

**30.** (1) Subject to sub-section (2), where the Corporation receives an application under section 29, the Board shall refer the application to the Minister for consideration under sub-section (3).

(2) The Minister may give directions to the Board with respect to the circumstances or cases in which applications are, or are not, to be referred to him under sub-section (1), and the Board shall comply with any such direction.

(3) Where an application has been referred to the Minister under sub-section (1) and the Minister is of the opinion that—

- (a) the overseas investment transaction to which the application relates will assist in the social and economic development of a country outside Australia; and
- (b) it is in the national interest that the Corporation should enter into a contract of insurance in respect of the matter the subject of the application,

the Minister may, by writing under his hand, approve the entering into by the Corporation of such a contract.

Minister may give directions with respect to insurance to be provided under insurance contracts.

**31.** (1) An approval under sub-section 30 (3) may contain conditions or directions in relation to the proposed contract of insurance (including conditions or directions with respect to the amount of the premium to be charged or the percentage of the amount of the loss to which the insurance is to extend).

(2) Without limiting the generality of sub-section (1), the Minister, in an approval given under sub-section 30 (3) in relation to a contract of insurance insuring a person against monetary loss or other monetary detriment resulting from expropriation of property—

- (a) may direct that the insurance shall apply only in relation to expropriation of such kind or kinds, or expropriation of such property or property of such kind or kinds, or expropriation occurring in or as a result of such circumstances, as is or are specified in the approval; and
- (b) may direct that the insurance shall extend to monetary loss or other monetary detriment resulting from—
  - (i) such acts similar to expropriation as are specified in the approval; or
  - (ii) any substantial interference with the rights of the owner of the business to which the contract relates to control or carry on the business or to dispose of the business or any of its assets, being interference of such kind, or interference occurring in or as a result of such circumstances, as is or are specified in the approval.

(3) Without limiting the generality of sub-section (1), the Minister, in an approval given under sub-section 30 (3) in relation to a contract of insurance insuring a person against monetary loss or other monetary

detriment resulting from damage to or destruction of property caused by a war-like operation, may direct that the insurance shall apply only in relation to damage or destruction of such kind or kinds, or damage to or destruction of such property or property of such kind or kinds, or damage or destruction occurring in or as a result of such circumstances, as is or are specified in the approval.

(4) Without limiting the generality of sub-section (1), the Minister, in an approval given under sub-section 30 (3) in relation to a contract of insurance insuring a person against monetary loss or other monetary detriment resulting from inability to transfer money to Australia from another country—

- (a) may direct that the insurance shall apply only where the inability is of such a kind, or occurs in or as a result of such circumstances, as is or are specified in the approval; and
- (b) may direct that the insurance shall extend to monetary loss or other monetary detriment resulting from such other causes related to the transfer of moneys as are specified in the approval.

32. (1) Where, under sub-section 30 (3), the Minister approves the Corporation entering into a contract of insurance, the Corporation is empowered to enter into a contract in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

Corporation to enter into insurance contracts in accordance with Minister's approval.

(2) The Board may, before the Corporation enters into a contract of insurance in accordance with an approval given under sub-section 30 (3), inform the Minister, by notice in writing, that the Corporation will bear the whole of the liability of the Corporation under the contract or such proportion of that liability as is specified in the notice.

(3) Where a contract of insurance is entered into in accordance with an approval under sub-section 30 (3), the Minister shall notify the fact in the *Gazette* (without reference to the names of the parties to the overseas investment transaction to which the contract relates), together with particulars of the nature and extent of the liability under the contract.

33. The Minister shall not approve the entering into by the Corporation of a contract of insurance under this Division under which a person is insured—

Insurance to be restricted to non-commercial risks, &c.

- (a) in respect of risks that are normally insured with commercial insurers or, in the opinion of the Minister, are normal commercial risks; or
- (b) against loss or other detriment attributable to circumstances within the control of that person.

*Division 5—Guarantees in relation to Certain Export Transactions*

Guarantees  
in relation to  
certain  
export  
transactions.

**34.** Where, for the purpose of financing, in whole or in part, an eligible export transaction—

- (a) the Corporation has lent, or proposes to lend, moneys under section 40 to any person or persons; and
- (b) another person (in this section referred to as the “co-lender”), by arrangement with the Corporation, has also lent, or proposes to lend, moneys, to that person or persons, or to another person or persons,

the Corporation may guarantee to the co-lender the repayment of the whole or any part of the moneys lent, or to be lent, by the co-lender and the payment of the whole or any part of any interest or other charges that may become payable to the co-lender in respect of the moneys lent, or to be lent, by the co-lender.

Guarantees  
in national  
interest.

**35.** (1) Subject to sub-section (2), where—

- (a) an application is made to the Corporation for the giving of a guarantee of a kind referred to in section 34; 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 Board may refer the application to the Minister for consideration under sub-section (3).

(2) The Minister may give directions to the Board with respect to the circumstances or cases in which applications are, or are not, to be referred to him under sub-section (1), and the Board shall comply with any such direction.

(3) Where, in relation to an application referred to the Minister under sub-section (1), 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 sub-section (3) 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 relevant loan to which the guarantee is to extend).

(5) Where an approval is given under sub-section (3), the Corporation is empowered, notwithstanding anything contained in section 11, to give a guarantee in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

(6) The Board may, before the Corporation gives a guarantee in accordance with an approval given under sub-section (3), inform the Minister, by notice in writing, that the Corporation will 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 sub-section (3), the Minister shall notify the fact in the *Gazette* together with particulars of the nature and extent of the liability under the guarantee.

#### PART IV—EXPORT FINANCE BUSINESS OF CORPORATION

**36.** The Corporation shall, subject to this Act, carry on the business of lending money for the purpose of financing transactions which are eligible export transactions for the purposes of this Part. Export  
finance  
business.

**37.** (1) For the purposes of this Part, a transaction is an eligible export transaction if, in whole or in part, it involves, is associated with or is incidental or related to— Eligible  
export  
transactions.

- (a) the export from Australia of capital goods produced or manufactured in whole or in substantial part in Australia;
  - (b) the production or manufacture in Australia, in whole or in substantial part, of capital goods that are to be exported from Australia;
  - (c) the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured in whole or in substantial part in Australia and exported from Australia; or
  - (d) the rendering in a country outside Australia by a person carrying on business in Australia—
    - (i) of any services in or in connexion with the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured in whole or in substantial part in Australia and exported from Australia; or
    - (ii) of any construction, technological, managerial or other services (whether in connexion with such capital goods or otherwise) for a person carrying on business in a country outside Australia or for the government, or an agency of the government, of that country or of any political subdivision of that country.
- (2) In sub-section (1) “capital goods” means—
- (a) machinery; or
  - (b) any goods declared by the Minister, in writing, to be capital goods for the purposes of this section or goods included in a class of goods declared by the Minister, in writing, to be a class of capital goods for the purposes of this section.

Encouragement of financing of eligible export transactions by Australian banks, &c.

**38.** The Board shall take such steps as it considers appropriate to encourage banks, and other financial institutions, carrying on business in Australia, to finance, or to assist in the financing of, transactions that are eligible export transactions.

Questions of policy.

**39.** (1) The Board shall keep the Minister informed of the decisions of the Board with respect to matters of policy in relation to the conduct of the Corporation's business under this Part.

(2) Before adopting a policy (including an altered policy) with respect to a matter included in any of the following subjects, namely:—

- (a) the classes of eligible export transactions which the Corporation will finance;
- (b) the classes of persons to whom the Corporation will make loans; and
- (c) the financing of eligible export transactions relating to trade with particular countries; and
- (d) interest rates,

the Board shall submit the policy for the approval of the Minister, and the Board shall not adopt the policy without the approval of the Minister, or, except during such time as the Minister permits, continue to pursue the policy where the Minister, having approved the policy, subsequently withdraws his approval.

(3) If the Board fails to obtain the Minister's approval to a policy with respect to a matter included in a subject specified in paragraph (2) (a), (b), (c) or (d), or the Minister withdraws his approval of a policy with respect to such a matter, the Board shall endeavour to reach agreement with the Minister as to the policy to be adopted by the Board with respect to that matter and, in the event of agreement not being reached within a time which the Minister considers reasonable, the Minister may, by writing under his hand, determine the policy to be adopted by the Board with respect to that matter, and the Board shall adopt that policy.

(4) The Minister may, by writing under his hand, determine that the Board shall adopt a policy of obtaining the approval of the Minister to the making of any loan in respect of which the rate of interest to be charged by the Corporation is less than such rate as is from time to time determined by the Minister as the rate applicable under this sub-section to the class of loans in which that loan is included.

(5) Nothing in this section, other than sub-section (4), shall be construed—

- (a) as requiring the approval of the Minister to the Corporation financing a particular transaction; or



(b) as empowering the Minister to determine that the Corporation shall or shall not finance a particular transaction, but the Corporation shall not finance a particular transaction contrary to a policy approved or determined by the Minister under this section.

**40.** (1) Subject to this section, where an eligible export transaction has been entered into, or is proposed to be entered into, the Corporation may, for the purpose of financing that transaction in whole or in part, lend moneys to such person or persons as the Board considers appropriate, whether or not that person is or will be, or those persons are or will be, parties to the transaction or proposed transaction.

Financing of eligible export transactions.

(2) The Corporation shall not lend moneys under sub-section (1) for the purpose of financing a transaction unless the Board is of opinion that moneys to finance the transaction will not otherwise be available on reasonable and suitable terms and conditions.

(3) The regulations may prescribe a rate of interest as the minimum rate of interest that may be charged by the Corporation on moneys lent by the Corporation under sub-section (1).

(4) Regulations so made may prescribe different rates of interest for different classes of loans, and, without limiting the generality of the foregoing, loans may be classified for the purposes of those regulations by reference to classes of borrowers or by reference to transactions relating to trade with particular countries.

(5) The Minister may, if requested by the Board in the case of a particular transaction and if he thinks it appropriate so to do having regard to special circumstances applicable in that case, direct, by instrument in writing, that, in lieu of the rate of interest that is the minimum rate of interest applicable in that case under the regulations, such lesser rate as is specified in the instrument shall apply.

**41.** (1) Subject to sub-section (2), where—

(a) an application is made to the Corporation for the Corporation to lend moneys for the purpose of financing, in whole or in part, an eligible export transaction;

(b) the Corporation is not authorized to make the loan, or is not authorized to make the loan on the terms and conditions that are proposed, or the Corporation would not make the loan, or would not make the loan on those proposed terms and conditions, in the ordinary course of business,

Loans in national interest.

the Board may refer the application to the Minister for consideration under sub-section (3).

(2) The Minister may give directions to the Board with respect to the circumstances or cases in which applications are, or are not, to be referred to him under sub-section (1), and the Board shall comply with any such direction.

(3) Where, in relation to an application referred to the Minister under sub-section (1), the Minister is of opinion that it is in the national interest that the Corporation should make a loan in respect of the transaction the subject of the application, the Minister may, by writing under his hand, approve the making of such a loan by the Corporation.

(4) An approval under sub-section (3) may contain conditions or directions in relation to the proposed loan and the terms and conditions of the loan (including conditions or directions with respect to the amount of the loan, the rate of interest to be charged, and the security, if any, to be given).

(5) Where an approval is given under sub-section (3), the Corporation is empowered, notwithstanding anything in section 39 or regulations made for the purposes of sub-section 40 (3) to make a loan in accordance with the approval and, unless the approval is revoked, shall not decline to do so.

(6) The Board may, before the Corporation makes a loan in accordance with an approval given under sub-section (3), inform the Minister, by notice in writing, that the Board proposes that the Corporation will provide such proportion of the moneys to be lent as is specified in the notice.

(7) Where the Corporation makes a loan in accordance with an approval under sub-section (3), the Minister shall notify the fact in the *Gazette*, together with particulars of the amount of the loan and the interest rate to be charged on the moneys lent.

## PART V—EXPORT FINANCE AND INSURANCE CORPORATION BOARD

Establishment of Board.

**42.** There shall be an Export Finance and Insurance Corporation Board, which shall be constituted as provided by sub-section 44(1).

Functions of Board.

**43.** (1) The business and other affairs of the Corporation shall be conducted and controlled by the Board and, subject to sections 11 and 39, the policy of the Corporation with respect to any matter shall be determined by the Board.

(2) All acts and things done in the name of, or on behalf of, the Corporation by the Board, or with the authority of the Board, shall be deemed to have been done by the Corporation.

**44.** (1) The Export Finance and Insurance Corporation Board shall consist of— Membership of Board.

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) the Managing Director;
- (d) the Deputy Managing Director; and
- (e) such number of other members, not being less than 4 nor more than 7, as is from time to time determined by the Governor-General by notice published in the *Gazette*.

(2) The Chairman, the Deputy Chairman and the members of the Board referred to in paragraph (1) (e) shall be appointed by the Governor-General.

(3) An appointed member of the Board shall hold office for such period, not exceeding 3 years, as the Governor-General specifies in his instrument of appointment.

(4) An appointed member is eligible for re-appointment.

(5) The performance of the functions, or the exercise of the powers, of the Board is not affected by reason of there being a vacancy or vacancies in the membership of the Board.

**45.** (1) The Board may, by resolution, delegate all or any of its powers and functions under this Act (except this power of delegation) to the Managing Director, to the Deputy Managing Director or to an officer of the Corporation. Delegation by Board.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the resolution and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.

(3) A delegation under this section is revocable by resolution of the Board and does not prevent the exercise of a power or the performance of a function by the Board.

**46.** (1) The Chairman, the Deputy Chairman and the other appointed members of the Board shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, they shall be paid such remuneration as is prescribed. Remuneration and allowances.

(2) The Chairman, the Deputy Chairman and the other appointed members shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973-1974*.

Leave of absence.

**47.** The Minister may grant leave of absence to an appointed member of the Board on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation.

**48.** An appointed member of the Board, or an acting member, may resign his office by writing under his hand delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister.

Termination of appointment.

**49.** (1) The Governor-General may terminate the appointment of an appointed member of the Board for misbehaviour or physical or mental incapacity.

(2) If an appointed member—

(a) becomes bankrupt, applies for the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(b) is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Board; or

(c) fails to comply with his obligations under sub-section (3),

the Governor-General shall, by notice published in the *Gazette*, declare that the office of that member is vacant, and thereupon the office shall be deemed to be vacant.

(3) If an appointed member, or an acting member, is directly or indirectly interested in a contract made, or proposed to be made, by the Corporation, otherwise than as a member, and in common with the other members, of an incorporated company consisting of not less than 25 persons, he shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(4) A disclosure under sub-section (3) shall be recorded in the minutes of the Board, and the member or acting member, as the case may be—

(a) shall not take part, after the disclosure, in any deliberation or decision of the Board with respect to the contract; and

(b) shall be disregarded for the purposes of constituting a quorum of the Board for any deliberation or decision.

Acting appointments.

**50.** (1) Where there is a vacancy in the office of Chairman, or the Chairman is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Board, the Minister may appoint the Deputy Chairman or, subject to sub-section (4), another person to be acting Chairman of the Board until the filling of the vacancy or during the inability, as the case may be.

(2) Where there is a vacancy in the office of Deputy Chairman, or the Deputy Chairman is, or is expected to be, unable (whether on

account of illness or otherwise) to attend meetings of the Board, the Minister may, subject to sub-section (4), appoint a person to be acting Deputy Chairman until the filling of the vacancy or during the inability, as the case may be.

(3) Where there is a vacancy in the office of an appointed member (other than the Chairman or Deputy Chairman), or an appointed member (other than the Chairman or Deputy Chairman) is unable (whether on account of illness or otherwise) to attend meetings of the Board, the Minister may, subject to sub-section (4), appoint a person to be an acting member until the filling of the vacancy or during the inability, as the case may be.

(4) A person may be appointed under this section as acting Chairman, as acting Deputy Chairman or as an acting member whether or not he is a member of the Board, but the Managing Director, the Deputy Managing Director or a person acting as Managing Director or Deputy Managing Director shall not be so appointed.

(5) For the purposes of this section—

- (a) there shall be deemed to be a vacancy in the office of Deputy Chairman at any time when the Deputy Chairman is acting Chairman; and
- (b) there shall be deemed to be a vacancy in the office of an appointed member (other than the office of Chairman or Deputy Chairman) at any time when the person occupying that office is acting Chairman or acting Deputy Chairman.

(6) An acting Chairman, an acting Deputy Chairman or other acting member of the Board appointed by reason of the office of Chairman, Deputy Chairman or other appointed member, as the case may be, being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(7) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(8) The validity of a decision of the Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or an appointment under this section had ceased to have effect.

**51.** (1) The Board shall hold such meetings as are necessary for the performance of its functions. Meetings of Board.

(2) The Minister, the Chairman or, if the Chairman is unable (whether on account of illness or otherwise) to perform the functions of

his office, the Deputy Chairman, may at any time convene a meeting of the Board.

(3) The Chairman or, if the Chairman is unable (whether on account of illness or otherwise) to perform the functions of his office, the Deputy Chairman, shall convene a meeting of the Board upon the receipt of a request in writing from not less than 3 members.

(4) The Chairman shall preside at all meetings of the Board at which he is present.

(5) If the Chairman is not present at a meeting of the Board, the Deputy Chairman shall, if present at the meeting, preside at the meeting.

(6) If neither the Chairman nor the Deputy Chairman is present at a meeting of the Board, the members present shall elect one of their number to preside at the meeting.

(7) At a meeting of the Board, 5 members constitute a quorum.

(8) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present and voting.

(9) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) In this section—

(a) a reference to the Chairman shall, if there is an acting Chairman, be read as a reference to the acting Chairman;

(b) a reference to the Deputy Chairman shall, if there is an acting Deputy Chairman, be read as a reference to the acting Deputy Chairman; and

(c) a reference to a member shall be read as including a reference to an acting member appointed under sub-section 50 (3) and to an acting Managing Director or an acting Deputy Managing Director.

## PART VI—MANAGING DIRECTOR, DEPUTY MANAGING DIRECTOR AND STAFF

### *Division 1—Managing Director and Deputy Managing Director*

Managing Director and Deputy Managing Director.

**52.** There shall be a Managing Director and a Deputy Managing Director of the Corporation.

Duties of Managing Director and Deputy Managing Director.

**53. (1)** The Managing Director shall, under the Board, manage the Corporation.

(2) The Deputy Managing Director shall perform such duties as the Managing Director directs.

**54.** (1) The Managing Director and the Deputy Managing Director shall be appointed by the Governor-General.

Appointment and term of office.

(2) A person appointed as Managing Director or Deputy Managing Director shall hold office for such period, not exceeding 6 years, as the Governor-General specifies in his instrument of appointment.

(3) A person appointed as Managing Director or Deputy Managing Director is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as Managing Director or Deputy Managing Director and a person shall not be appointed or re-appointed as Managing Director or Deputy Managing Director for a period that extends beyond the date on which he will attain the age of 65 years.

(5) The Managing Director and the Deputy Managing Director hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

**55.** The Managing Director and the Deputy Managing Director shall not engage in paid employment outside the duties of their office except with the approval of the Minister.

Managing Director and Deputy Managing Director not to engage in other work.

**56.** (1) The Managing Director and the Deputy Managing Director shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, they shall be paid such remuneration as is prescribed.

Remuneration and allowances.

(2) The Managing Director and the Deputy Managing Director shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

**57.** The Minister may grant leave of absence to the Managing Director or the Deputy Managing Director on such terms and conditions as to remuneration or otherwise as the Minister determines.

Leave of absence.

**58.** The Managing Director or the Deputy Managing Director, or a person who is acting as Managing Director or Deputy Managing Director, may resign his office by writing under his hand delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister.

Resignation.

**59.** (1) The Governor-General may terminate the appointment of the Managing Director or the Deputy Managing Director for misbehaviour or physical or mental incapacity.

Termination of appointment.

(2) If the Managing Director or the Deputy Managing Director—

- (a) becomes bankrupt, applies for the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) except with the approval of the Minister, engages in paid employment outside the duties of his office;
- (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or
- (d) in any way, otherwise than as a member and in common with the other members, of an incorporated company consisting of not less than 25 persons becomes concerned or interested in a contract entered into by or on behalf of the Corporation or participates or claims to participate in the profit of any such contract or any benefit or emolument arising from any such contract,

the Governor-General shall, by notice published in the *Gazette*, declare that the office of the Managing Director or the Deputy Managing Director, as the case may be, is vacant, and thereupon the office shall be deemed to be vacant.

Acting  
appoint-  
ments.

**60.** (1) Where there is a vacancy in the office of Managing Director, or the Managing Director is, or is expected to be, absent from duty or from Australia, the Minister may appoint the Deputy Managing Director or another person (not being an appointed member of the Board or an acting member), to be acting Managing Director until the filling of the vacancy or during the absence, and, when a person is so acting as Managing Director, he shall have and may exercise the powers and perform the functions of the Managing Director (including powers and functions delegated to the Managing Director under section 45) and may attend and vote at meetings of the Board as if he were the Managing Director.

(2) Where there is a vacancy in the office of Deputy Managing Director or the Deputy Managing Director is, or is expected to be, absent from duty or from Australia, the Minister may appoint a person (not being an appointed member of the Board or an acting member) to be acting Deputy Managing Director until the filling of the vacancy or during the absence, and, when a person is so acting as Deputy Managing Director, he shall have and may exercise the powers and perform the functions of the Deputy Managing Director (including powers and functions delegated to the Deputy Managing Director under section 45) and may attend and vote at meetings of the Board as if he were the Deputy Managing Director.

(3) For the purposes of sub-section (2), there shall be deemed to be a vacancy in the office of Deputy Managing Director at any time when the Deputy Managing Director is acting Managing Director.



(4) An acting Managing Director or an acting Deputy Managing Director appointed by reason of the office of the Managing Director or the Deputy Managing Director, as the case may be, being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(5) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(6) The validity of an act or thing done by a person appointed, or purporting to have been appointed, under this section, including the attendance and voting of such a person at a meeting of the Board, shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment had not arisen or that the appointment had ceased to have effect.

### *Division 2—Staff*

**61.** The Corporation may appoint such officers as the Board thinks necessary. Appointment of officers.

**62.** (1) Subject to sub-section (2), the terms and conditions of employment of officers appointed by the Corporation shall be such as are, with the approval of the Australian Public Service Board, determined by the Board. Terms and conditions of employment of officers.

(2) The Board shall not, except with the approval of the Minister, determine the salary of a position in the service of the Corporation at a rate exceeding \$17,775 per annum or such higher rate as is prescribed.

**63.** (1) The Corporation may employ such temporary or casual employees as the Board thinks necessary. Temporary and casual employees.

(2) The terms and conditions of employment of temporary or casual employees shall be such as are determined by the Board.

*Division 3—Miscellaneous*

Super-  
annuation.

**64.** (1) The Corporation is an approved authority for the purposes of the *Superannuation Act 1922-1974*.

(2) For the purposes of sub-sections 4(3A) and (4) of that Act, the Managing Director and the Deputy Managing Director shall each be deemed to be required by the terms of his appointment, to give the whole of his time to the duties of his office.

(3) For the purposes of the application of section 145 and 146 of that Act, the Managing Director and the Deputy Managing Director shall be deemed to be employed by the Corporation.

(4) For the purposes of that Act, the removal from office under sub-section 59 (1) of this Act of the Managing Director or the Deputy Managing Director by reason of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

(5) Nothing in this Act authorizes the provision of superannuation benefits to a person appointed or employed under this Act otherwise than under the *Superannuation Act 1922-1974*.

Officers' Rights Declaration Act.

**65.** Where the Managing Director, the Deputy Managing Director, or an officer or employee of the Corporation was, immediately before his appointment or engagement, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1973* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928-1973* applies as if this Act and this section had been specified in the Schedule to that Act.

**PART VII—FINANCE**

Financial policy of Corporation.

**66.** In the conduct of the Corporation's business, the Board shall act in accordance with sound commercial principles and shall pursue a policy directed towards securing revenue sufficient to meet all the Corporation's expenditure properly chargeable to revenue.

Capital of Corporation.

**67.** (1) The Treasurer may make available to the Corporation, out of moneys appropriated by the Parliament for the purpose, such amounts as are, in the opinion of the Minister, required by the Corporation.

(2) The capital of the Corporation shall be the aggregate of—

- (a) the amount of the capital of the Export Payments Insurance Corporation immediately before the commencement of this Act; and
- (b) amounts made available to the Corporation under sub-section (1) less any amounts of capital repaid by the Corporation to Australia.

(3) Interest is payable to Australia on the capital of the Corporation at such rate as the Treasurer from time to time determines.

(4) The capital of the Corporation is repayable to Australia at such times and in such amounts as the Treasurer determines.

(5) For the purpose of a determination under sub-section (4), the Treasurer shall have regard to any advice that the Board furnishes to the Treasurer in relation to the Corporation's financial affairs.

- 68.** (1) The Corporation may, with the approval of the Treasurer—
- (a) borrow moneys from an approved bank, or another lender, for the purpose of performing its functions under this Act; and
  - (b) give security over any of its assets for the purpose of a borrowing referred to in paragraph (a).

Borrowing  
by Corpor-  
ation.

(2) The Treasurer may, out of moneys appropriated by the Parliament for the purposes of this Act, make advances to the Corporation of such amounts and on such terms as the Treasurer determines.

(3) The Corporation shall not borrow otherwise than in accordance with this section.

(4) The Treasurer may, on behalf of Australia, guarantee the payment of amounts borrowed in accordance with sub-section (1) and the payment of interest on amounts so borrowed.

**69.** The Government of Australia is responsible for the payment of all moneys due by the Corporation, but nothing in this section authorizes a creditor or other person claiming against the Corporation to sue Australia in respect of his claim.

Guarantee  
by Australia.

**70.** (1) The Corporation may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

Bank  
accounts.

(2) The Corporation shall pay all moneys of the Corporation, including moneys borrowed by the Corporation, into an account referred to in this section.

**71.** (1) The moneys of the Corporation may be applied by the Corporation—

Application  
of moneys.

- (a) in payment or discharge of the costs, expenses and other obligations of the Corporation;

- (b) in payment of remuneration and allowances payable to any person appointed or employed under this Act; and
- (c) in repayment of advances made to the Corporation by the Treasurer under this Act in accordance with the terms upon which those advances were made,

but not otherwise.

(2) Moneys of the Corporation not immediately required for the purposes of the Corporation may be invested—

- (a) on fixed deposit with an approved bank;
- (b) in securities of Australia; or
- (c) in any other manner approved by the Treasurer.

Proper  
accounts to  
be kept.

72. The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation in accordance with accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that proper control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities by the Corporation.

Contracts  
and  
guarantees  
in national  
interest.

73. (1) This section applies to—

- (a) contracts of insurance and contracts of indemnity entered into by the Corporation in accordance with approvals given for the purposes of section 20 and guarantees given by the Corporation in accordance with approvals given for the purposes of section 21;
- (b) guarantees given by the Corporation in accordance with approvals given for the purposes of section 24;
- (c) contracts of insurance entered into by the Corporation under section 32, other than a contract in respect of which the Board has, under sub-section (2) of that section, informed the Minister that the Corporation will bear the whole of the liability of the Corporation under the contract; and
- (d) guarantees given by the Corporation in accordance with approvals given for the purposes of section 35.

(2) The Corporation shall keep a separate account of its receipts and disbursements arising out of each of the following:—

- (a) contracts of insurance, contracts of indemnity and guarantees referred to in paragraph (1) (a);
- (b) guarantees referred to in paragraph (1) (b);
- (c) contracts of insurance referred to in paragraph (1) (c);
- (d) guarantees referred to in paragraph (1) (d).

(3) Subject to this section, the Corporation shall pay to Australia from time to time, as directed by the Treasurer, the receipts of the Corporation arising out of contracts of insurance, contracts of indemnity and guarantees to which this section applies.

(4) Subject to this section, Australia 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 contract of insurance, contract of indemnity or guarantee to which this section applies.

(5) Where the Board informs the Minister by notice under sub-section 20 (6), 21 (6), 24 (6), 32 (2) or 35 (6) that the Corporation will bear a proportion of the liability of the Corporation under a contract of insurance, contract of indemnity or guarantee to which this section applies—

- (a) the Corporation may, if the amount of any receipts that it is required to pay to Australia under sub-section (3) includes receipts arising out of that contract or that guarantee, deduct from that amount such proportion of the receipts of the Corporation arising out of that contract or that guarantee as corresponds to the proportion specified in the notice; and
- (b) there shall be deducted from an amount required under sub-section (4) to be paid by Australia to the Corporation in respect of that contract or 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 Australia under sub-section (3) 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 contracts of insurance, contracts of indemnity or guarantees.

**74.** (1) This section applies to loans made by the Corporation in accordance with approvals given for the purposes of section 41.

Loans in  
national  
interest.

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

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

(4) Subject to this section, Australia shall pay to the Corporation, out of moneys lawfully available for the purpose, the amount needed by the Corporation to finance loans to which this section applies.

(5) Where the Board informs the Minister, by notice under sub-section 41 (6), that the Board proposes that the Corporation will provide a proportion of the moneys to be lent under the approval—

- (a) the Corporation may, if the amount of any receipts that it is required to pay Australia under sub-section (3) includes receipts arising out of that loan, deduct from that amount such proportion of the receipts of the Corporation arising out of that loan as corresponds to the proportion specified in the notice; and
- (b) there shall be deducted from an amount required under sub-section (4) to be paid by Australia to the Corporation in respect of that loan 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 Australia under sub-section (3) a reasonable amount, to be ascertained in such manner as the Treasurer directs, in respect of the expenses of the Corporation.

Provision in the nature of reserves.

75. The Corporation may make provision in its accounts for depreciation, or future or contingent liabilities to such extent only as is approved by the Treasurer.

Maximum contingent liability.

76. (1) The Corporation shall carry on its business so that—

- (a) its contingent liability under contracts of insurance and contracts of indemnity entered into, and under guarantees given, by the Corporation under Divisions 2, 3 and 5 of Part III does not exceed such amount as is prescribed for the purposes of this paragraph; and
- (b) its contingent liability under contracts of insurance entered into by the Corporation under Division 4 of Part III does not exceed such amount as is prescribed for the purposes of this paragraph.

(2) Regulations made for the purposes of paragraph (1) (a) or (b) may provide that the contingent liability of the Corporation under a contract of insurance, contract of indemnity or guarantee of a kind specified in the regulations shall not be taken into account, or shall be taken into account only to such extent as is specified in the regulations.

Maximum amount of loans.

77. (1) The Corporation shall carry on its business so that the total amount of loans given by the Corporation does not exceed such amount as is prescribed for the purposes of this sub-section.

(2) Regulations made for the purposes of sub-section (1) may provide that a loan of a kind specified in the regulations shall not be taken into account, or shall be taken into account only to such extent as is specified in the regulations.

Profits of Corporation.

78. (1) For the purposes of this Act, the profits of the Corporation for a financial year are the amount, if any, remaining after deducting from the revenue received or receivable in respect of that financial year the expenditure, and provision for expenditure, properly chargeable against that revenue.

(2) The profits of the Corporation for a financial year (if any) shall be applied in such manner as the Minister determines.

(3) In making a determination under sub-section (2), regard shall be had to any advice which the Board has furnished to the Minister in relation to the financial affairs of the Corporation.

**79.** (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Corporation and records relating to assets of, or in the custody of, the Corporation and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his doing so. Audit.

(2) The Auditor-General may, in his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General, or an officer authorized by him, is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Corporation relating directly or indirectly to the receipt or payment of moneys by the Corporation or to the acquisition, receipt, custody or disposal of assets by the Corporation.

(5) The Auditor-General, or an officer authorized by him, may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General, or an officer authorized by him, may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized officer considers necessary for the purposes of the functions of the Auditor-General under this Act and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

**80.** (1) The Corporation is subject to taxation (other than income tax) under the laws of Australia. Liability to taxation.

(2) Subject to sub-section (3), the Corporation is not subject to taxation under a law of a State or of a Territory.

(3) The regulations may provide that sub-section (2) does not apply in relation to taxation under a specified law of a State or Territory.

(4) Securities issued by the Corporation are not public securities or Commonwealth securities for the purposes of the *Income Tax Assessment Act 1936-1974*.

## PART VIII—MISCELLANEOUS

Reports to  
Minister.

**81.** The Board shall—

- (a) from time to time inform the Minister concerning the general conduct of the Corporation's operations; and
- (b) furnish to the Minister such information relating to those operations as the Minister requires.

Application  
of laws to  
Corporation.

**82.** Subject to this Act, the Corporation is not subject to any requirement, obligation, liability, penalty or disability under a law of Australia, or of a State or Territory, to which Australia is not subject.

Validity of  
contracts,  
guarantees  
and loans.

**83.** Without prejudice to the duty of the Corporation to comply with the provisions of this Act and to observe the limits of its powers under this Act, a contract of insurance or contract of indemnity entered into, a guarantee given, or an agreement for, or in relation to, a loan entered into, by the Corporation is not invalidated by reason of a provision of this Act not having been complied with by the Corporation in relation to the contract or guarantee, or the agreement or loan, as the case may be or by reason of its not being within those limits.

Delegation  
of powers of  
Minister.

**84.** (1) The Minister may, either generally or in relation to a particular matter or class of matters, by writing under this hand, delegate to the Permanent Head of the Department of State administered by the Minister or an officer of that Department occupying an office in the Second Division of the Australian Public Service all or any of his powers under this Act, except this power of delegation, his power under sections 20, 21, 24, 30, 31, 35 and 41 and his power to make determinations under sections 11 and 39, so that the delegated powers may be exercised by the delegate either generally or with respect to the matter or class of matters specified in the instrument of delegation, as the case may be.

(2) A power so delegated shall be exercised by the delegate in accordance with the instrument of delegation and, when so exercised, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Minister.

Secrecy.

**85.** (1) This section applies to a person who is or has been—

- (a) Managing Director, Deputy Managing Director, acting Managing Director or acting Deputy Managing Director;
- (b) Chairman, Deputy Chairman, acting Chairman or acting Deputy Chairman;
- (c) any other member of the Board, or an acting member; or
- (d) an officer or employee of the Corporation.



(2) A person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act or as provided by sub-section (3)—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$500 or imprisonment for 1 year.

(3) Sub-section (2) does not prevent a person to whom this section applies from communicating or making available to another person particulars of a guarantee given, or proposed to be given, under Division 3 or 5 of Part III, particulars of a contract of indemnity entered into or proposed to be entered into, under Division 3 of Part III or particulars of a loan made, or proposed to be made, under Part IV.

**86.** (1) A person who wilfully makes a false or misleading statement in or in connexion with— False statements.

- (a) an application or proposal for a contract of insurance, an application for a contract of indemnity, an application for a guarantee, or an application for a loan, under this Act; or
- (b) a claim under a contract of insurance, contract of indemnity, or a guarantee, under this Act,

is guilty of an offence.

(2) An offence against this section may be prosecuted either summarily or on indictment.

(3) The punishment for an offence against this section is—

- (a) if the offence is prosecuted summarily—a fine not exceeding \$200; or
- (b) if the offence is prosecuted on indictment—imprisonment for a term not exceeding 2 years.

**87.** (1) A provision of the *Judiciary Act* 1903-1973 by which a court of a State is invested with jurisdiction with respect to offences against the laws of Australia has effect, in relation to offences against this Act not committed within any State, as if that jurisdiction were so invested without limitation as to locality. Jurisdiction of courts.

(2) Subject to the Constitution, jurisdiction is conferred on the several courts of a Territory, within the limits of their several jurisdictions other than limits as to locality, with respect to offences against this Act not committed within a State or within another Territory.

(3) The trial on indictment of an offence against this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

Annual  
report of  
Corpora-  
tion.

**88.** (1) The Board shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Corporation during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) The financial statements in respect of a year shall show, separately—

- (a) the total contingent liability of the Corporation at the end of the year under contracts of insurance and contracts of indemnity entered into by the Corporation in accordance with approvals given for the purposes of section 20;
- (b) 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 21;
- (c) 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 24;
- (d) the total contingent liability of the Corporation at the end of the year under contracts of insurance entered into by the Corporation under section 32;
- (e) 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 35; and
- (f) the amount that, at the end of the year, is equal to the total amount of the loans made by the Corporation in accordance with approvals given for the purposes of section 41, and not repaid.

(3) Before furnishing the financial statements to the Minister, the Board shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and the state of the affairs of the Corporation;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Corporation during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Minister shall cause a copy of the report and financial statements of the Corporation, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

**89.** The Corporation shall, as soon as practicable after each period of 3 months ending on 31 March, 30 June, 30 September and 31 December, forward to the Minister a return in a form approved by the Minister with respect to—

Quarterly  
return of  
liabilities.

- (a) contracts of insurance and contracts of indemnity entered into, guarantees given and loans made by the Corporation in that period of 3 months; and
- (b) contracts of insurance and contracts of indemnity entered into, and guarantees given, by the Corporation and in force at the end of that period of 3 months, and loans made by the Corporation and not repaid at the end of that period of 3 months.

**90.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not exceeding a fine of \$100 or imprisonment for a period not exceeding 3 months, or both, for offences against the regulations.

Regulations.

#### PART IX—TRANSITIONAL

**91.** In this Part, unless the contrary intention appears—

Definitions.

“assets” means property of every kind and, without limiting the generality of the foregoing, includes—

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing;

“authorized officer” means—

- (a) the Managing Director, the Deputy Managing Director, an acting Managing Director or an acting Deputy Managing Director; or
- (b) an officer of the Corporation;

“commencing date” means the date on which this Act comes into operation;

“instrument” includes a contract, guarantee or agreement (whether express or implied and whether made or given orally or in writing), bond, authority, order, power of attorney, mortgage, transfer, conveyance or other assurance charge, lien, bill of lading, bill of exchange, letter of credit and security;

“instrument to which this Part applies” means an instrument—

- (a) to which the Export Payments Insurance Corporation is a party;

- (b) which was given to or in favour of the Export Payments Insurance Corporation;
- (c) in which a reference is made to the Export Payments Insurance Corporation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the Export Payments Insurance Corporation,

being an instrument subsisting immediately before the commencing date;

“liabilities” means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

Transfer of assets and liabilities.

**92.** Upon the commencing date—

- (a) the assets of the Export Payments Insurance Corporation subsisting immediately before the commencing date shall, by force of this section, cease to be assets of the Export Payments Insurance Corporation and shall become assets of the Export Finance and Insurance Corporation; and
- (b) the liabilities of the Export Payments Insurance Corporation subsisting immediately before the commencing date shall, by force of this section, cease to be liabilities of the Export Payments Insurance Corporation and shall become liabilities of the Export Finance and Insurance Corporation.

Instruments.

**93.** An instrument to which this Part applies continues, by force of this section, in full force and effect, but, in its operation in relation to acts, transactions, matters or things done, entered into or occurring on or after the commencing date, has effect as if a reference in the instrument to the Export Payments Insurance Corporation were a reference to the Export Finance and Insurance Corporation.

Certificates with respect to assets, liabilities and instruments.

**94.** (1) An authorized officer may, by writing under his hand, certify that an asset, liability or instrument specified or described in the certificate is an asset referred to in paragraph 92 (a), a liability referred to in paragraph 92 (b) or an instrument referred to in section 93, as the case may be, and such certificate is, in all courts, and for all purposes, *prima facie* evidence of the matters stated in the certificate.

(2) Where a document purports to be a certificate under sub-section (1) signed by a person purporting to be an authorized officer, judicial notice shall be taken of the signature of that person and of the fact that that person is or was such an authorized officer.

**95.** An instrument or document that an authorized officer certifies to have been made, executed or given by reason of, or for a purpose connected with or arising out of, the operation of this Part is not liable to stamp duty or other tax under a law of Australia or of a State or of a Territory.

Exemption from taxation.

**96.** (1) A reference in a provision of this Act specified in column 1 of Schedule 2 to a matter or thing specified in column 2 of that Schedule opposite to the provision so specified shall be read as including a reference to a matter or thing specified in column 3 of that Schedule opposite to the provision so specified.

Transitional provisions specified in Schedule 2.

(2) Words and phrases used in column 3 of Schedule 2 have the same meaning as in the repealed Act.

**97.** Where the Export Payments Insurance Corporation had informed the Minister by notice under sub-section 16A (5A), 16B (3) or 16BD(6) of the repealed Act that the Export Payments Insurance Corporation proposed to bear a proportion of the liability of that Corporation under a contract of insurance or guarantee, being a contract of insurance which the Export Payments Insurance Corporation was empowered to enter into under section 16A of the repealed Act or a guarantee which that Corporation was empowered to give under section 16B or 16BD of that Act—

National interest insurance contracts entered into, and guarantees given, by Export Payments Insurance Corporation.

- (a) the Export Finance and Insurance Corporation may, if the amount of any receipts that it is required to pay to Australia under sub-section 73 (3) of this Act includes receipts arising out of that contract or that guarantee, deduct from that amount such proportion of the receipts of that Corporation arising out of that contract or that guarantee as corresponds to the proportion specified in the notice; and
- (b) there shall be deducted from an amount required under sub-section 73 (4) of this Act to be paid by Australia to the Export Finance and Insurance Corporation in respect of that contract or that guarantee such proportion of that amount as corresponds to the proportion so specified.

**98.** (1) The Export Finance and Insurance Corporation shall, as soon as practicable after the commencing date, prepare and furnish to the Minister a report of the operations of the Export Payments Insurance Corporation during the period that commenced on 1 July 1974 and ended immediately before the commencing date (in this section referred to as the “final period”), together with financial statements in respect of that period in such form as the Treasurer approves.

Final report of operations of Export Payments Insurance Corporation.

(2) The financial statements referred to in sub-section (1) shall show separately—

- (a) the total contingent liability of the Export Payments Insurance Corporation at the end of the final period under contracts of insurance entered into by that Corporation in accordance with

approvals given for the purposes of section 16A of the repealed Act;

- (b) the total contingent liability of the Export Payments Insurance Corporation at the end of the final period under guarantees given by that Corporation in accordance with approvals given for the purposes of section 16B of the repealed Act;
- (c) the total contingent liability of the Export Payments Insurance Corporation at the end of the final period under guarantees given by that Corporation in accordance with approvals given for the purposes of section 16BD of the repealed Act; and
- (d) the total contingent liability of the Export Payments Insurance Corporation at the end of the final period under contracts of insurance entered into by that Corporation under section 16H of the repealed Act.

(3) Before furnishing the financial statements to the Minister, the Export Finance and Insurance Corporation shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and state of affairs of the Export Payments Insurance Corporation;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Export Payments Insurance Corporation during the final period have been in accordance with the repealed Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Minister shall cause a copy of the report and financial statements referred to in sub-section (1), together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(5) The person who, immediately before the commencing date, was the Commissioner constituting the Export Payments Insurance Corporation, and the person who, immediately before that date was the principal executive officer of the Export Payments Insurance Corporation shall furnish to the Export Finance and Insurance Corporation such information as is necessary to enable that Corporation to prepare the report and financial statements referred to in sub-section (1).

Transfer of staff and retention of accrued rights.

**99.** (1) A person who, immediately before the commencing date, was an officer of the Export Payments Insurance Corporation appointed under section 17 of the repealed Act—

- (a) shall be deemed to have been appointed on that date as an officer of the Export Finance and Insurance Corporation; and

(b) retains his rights, if any, in respect of—

- (i) recreation leave;
- (ii) long service leave or pay in lieu of long service leave;
- (iii) leave on the ground of illness; and
- (iv) such other matters as are prescribed,

that had accrued to him as an officer of the Export Payments Insurance Corporation before the commencing date.

(2) The reference in sub-section (1) to an officer of the Export Payments Insurance Corporation does not include a person who ceased to be an officer of that Corporation on the day immediately preceding the commencing date by reason of his retirement, resignation or dismissal.

(3) Subject to paragraph (1) (b), the terms and conditions of employment of a person who, by virtue of that sub-section, becomes an officer of the Export Finance and Insurance Corporation on the commencing date shall be as determined by the Board under section 62.

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## SCHEDULE 1

Section 3

### Repealed Acts

*Export Payments Insurance Corporation Act 1956*  
*Export Payments Insurance Corporation Act 1959*  
*Export Payments Insurance Corporation Act (No. 2) 1959*  
*Export Payments Insurance Corporation Act 1961*  
*Export Payments Insurance Corporation Act 1964*  
*Export Payments Insurance Corporation Act 1965*  
*Export Payments Insurance Corporation Act 1970*  
*Export Payments Insurance Corporation Act (No. 2) 1970*  
*Export Payments Insurance Corporation Act 1971*  
*Export Payments Insurance Corporation Act (No. 2) 1971*  
*Export Payments Insurance Corporation Act 1972*  
*Export Payments Insurance Corporation Act 1973*

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## SCHEDULE 2

Section 96

### Transitional Provisions

Column 1 Provision of this Act	Column 2 Matter or thing referred to in this Act	Column 3 Matter or thing referred to in repealed Act
Section 12	Contract of insurance or contract of indemnity entered into under Part III of this Act	Contract of insurance entered into under Division 2 or 2AA of Part II of the repealed Act
Section 12	Guarantee given under Part III of this Act	Guarantee given under Division 2 or 2AA of Part II of the repealed Act
Sub-section 16 (1)	Contract of insurance entered into by the Export Finance and Insurance Corporation under section 13 of this Act	Contract of insurance entered into by the Export Payments Insurance Corporation under section 13 of the repealed Act

## SCHEDULE 2—continued

Column 1 Provision of this Act	Column 2 Matter or thing referred to in this Act	Column 3 Matter or thing referred to in repealed Act
Sub-section 16 (1)	Contract of insurance entered into by the Export Finance and Insurance Corporation under section 14 of this Act	Contract of insurance entered into by the Export Payments Insurance Corporation under section 13AA of the repealed Act
Sub-section 19 (1)	Contract of indemnity entered into by the Export Finance and Insurance Corporation under section 17 of this Act	Contract of insurance entered into by the Export Payments Insurance Corporation under section 13B of the repealed Act
Sub-section 19 (1)	Contract of indemnity entered into by the Export Finance and Insurance Corporation under section 18 of this Act	Contract of insurance entered into by the Export Payments Insurance Corporation under section 13C of the repealed Act
Section 21	Contract of insurance or contract of indemnity entered into by the Export Finance and Insurance Corporation in accordance with an approval given under sub-section 20 (3) of this Act	Contract of insurance entered into by the Export Payments Insurance Corporation in accordance with an approval given under sub-section 16A (3) of the repealed Act
Paragraph 73 (1) (a)	Contracts of insurance and contracts of indemnity entered into by the Export Finance and Insurance Corporation in accordance with approvals given for the purposes of section 20 of this Act	Contracts of insurance entered into by the Export Payments Insurance Corporation in accordance with approvals given for the purposes of section 16A of the repealed Act
Paragraph 73 (1) (a)	Guarantees given by the Export Finance and Insurance Corporation in accordance with approvals given for the purposes of section 21 of this Act	Guarantees given by the Export Payments Insurance Corporation in accordance with approvals given for the purposes of section 16B of the repealed Act
Paragraph 73 (1) (b)	Guarantees given by the Export Finance and Insurance Corporation in accordance with approvals given for the purposes of section 24 of this Act	Guarantees given by the Export Payments Insurance Corporation in accordance with approvals given for the purposes of section 16BD of the repealed Act
Paragraph 73 (1) (c)	Contracts of insurance entered into by the Export Finance and Insurance Corporation under section 32 of this Act	Contracts of insurance entered into by the Export Payments Insurance Corporation under section 16H of the repealed Act
Sub-section 76 (1)	Contracts of insurance and contracts of indemnity entered into by the Export Finance and Insurance Corporation under Divisions 2 and 3 of Part III of this Act	Contracts of insurance entered into by the Export Payments Insurance Corporation under Divisions 2 and 2AA of Part II of the repealed Act
Sub-section 76 (1)	Guarantees given by the Export Finance and Insurance Corporation under Divisions 2 and 3 of Part III of this Act	Guarantees given by the Export Payments Insurance Corporation under Divisions 2 and 2AA of Part II of the repealed Act
Sub-section 76 (1)	Contracts of insurance entered into by the Export Finance and Insurance Corporation under Division 4 of Part III of this Act	Contracts of insurance entered into by the Export Payments Insurance Corporation under Division 2A of Part II of the repealed Act
Paragraph 88 (2) (a)	Contracts of insurance and contracts of indemnity entered into by the Export Finance and Insurance Corporation in accordance with approvals given for the purposes of section 20 of this Act	Contracts of insurance entered into by the Export Payments Insurance Corporation in accordance with approvals given for the purposes of section 16A of the repealed Act
Paragraph 88 (2) (b)	Guarantees given by the Export Finance and Insurance Corporation in accordance with approvals given for the purposes of section 21 of this Act	Guarantees given by the Export Payments Insurance Corporation in accordance with approvals given for the purposes of section 16B of the repealed Act



## SCHEDULE 2—continued

Column 1 Provision of this Act	Column 2 Matter or thing referred to in this Act	Column 3 Matter or thing referred to in repealed Act
Paragraph 88 (2) (c)	Guarantees given by the Export Finance and Insurance Corporation in accordance with approvals given for the purposes of section 24 of this Act	Guarantees given by the Export Payments Insurance Corporation in accordance with approvals given for the purposes of section 16BD of the repealed Act
Paragraph 88 (2) (d)	Contracts of insurance entered into by the Export Finance and Insurance Corporation under section 32 of this Act	Contracts of insurance entered into by the Export Payments Insurance Corporation under section 16H of the repealed Act
Paragraph 89 (b)	Contracts of insurance and contracts of indemnity entered into by the Export Finance and Insurance Corporation	Contracts of insurance entered into by the export Payments Insurance Corporation
Paragraph 89 (b)	Guarantees given by the Export Finance and Insurance Corporation	Guarantees given by the Export Payments Insurance Corporation

## NOTE

1. Act No. 122, 1974; assented to 3 December 1974.