

# EXPORT FINANCE AND INSURANCE CORPORATION AMENDMENT ACT 1978

No. 163 of 1978

An Act to amend the *Export Finance and Insurance Corporation Act 1974*.

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

Short title,  
&c.

1. (1) This Act may be cited as the *Export Finance and Insurance Corporation Amendment Act 1978*.<sup>1</sup>

(2) The *Export Finance and Insurance Corporation Act 1974*<sup>2</sup> is in this Act referred to as the Principal Act.

Commence-  
ment

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

Interpret-  
ation

3. Section 4 of the Principal Act is amended—

(a) by omitting the definition of “approved bank” and substituting the following definition:

“ ‘approved bank’ means a trading bank as defined by subsection 5 (1) of the *Banking Act 1959* or another bank for the time being approved by the Treasurer for the purposes of the provision in which the expression occurs;”;

(b) by inserting “for the time being” after “being a person” in the definition of “approved foreign insurer”; and

(c) by omitting “or 26” from the definition of “contract of indemnity” and substituting “, 26 or 35B”.

4. After Division 5 of Part III the following Division is inserted:

“*Division 6—Indemnities in relation to Tender Guarantees and Performance Guarantees*

Interpret-  
ation

“35A. In this Division, ‘approved guarantor’ means a bank or other financial institution, or an insurer, that—

(a) is declared by the Minister, in writing, to be an approved guarantor for the purposes of this Division; or

- (b) is included in a class of banks or other financial institutions, or insurers, declared by the Minister, in writing, to be a class of approved guarantors for the purposes of this Division.

“35B. (1) The Corporation may enter into a contract with an approved guarantor under which the Corporation gives an indemnity or guarantee to the approved guarantor in respect of the liability, or proposed liability, of the approved guarantor under an indemnity or guarantee given, or proposed to be given, by that approved guarantor in relation to a tender or proposed tender for, or in relation to the performance of, a contract or proposed contract that, in whole or in part, involves or is associated with—

Contracts of indemnity in relation to tender guarantees and performance guarantees

- (a) the supply, installation, erection, operation, maintenance or repair by a person of goods produced or manufactured in whole or in substantial part in Australia and exported from Australia; or
- (b) 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 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 connection with such 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 a country outside Australia or of any political subdivision of a country outside Australia.

“(2) The regulations may make provision for limiting the extent to which a guarantee or an indemnity may be given by the Corporation under sub-section (1).

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

- (a) an application is made to the Corporation for a contract of indemnity of a kind referred to in section 35B; 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,

Contracts 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 enter into a contract of indemnity 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 extent to which the guarantee or indemnity is to be given by the Corporation).

“(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 35B (2), 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.

Approved  
guarantor to  
bear part of  
liability

“35D. An indemnity or guarantee shall not be given under this Division to an approved guarantor unless the approved guarantor bears, or is to bear, part of the liability, or proposed liability, under the indemnity or guarantee, or proposed indemnity or guarantee, in relation to which the indemnity or guarantee is to be given under this Division.”

Repeal of  
section 64

5. Section 64 of the Principal Act is repealed.

Application  
of moneys

6. Section 71 of the Principal Act is amended by omitting from paragraph (a) of sub-section (2) “fixed”.

Proper  
accounts to  
be kept

7. Section 72 of the Principal Act is amended by omitting “proper control” and substituting “adequate control”.

**8. Section 73 of the Principal Act is amended—**

- (a) by omitting from paragraph (c) of sub-section (1) “and”;
- (b) by adding at the end of sub-section (1) the following word and paragraph:
  - “; and (e) contracts of indemnity entered into by the Corporation in accordance with approvals given for the purposes of section 35C.”;
- (c) by adding at the end of sub-section (2) the following paragraph:
  - “; (e) contracts of indemnity referred to in paragraph (1) (e).”; and
- (d) by omitting from sub-section (5) “ or 35 (6)” and substituting “, 35 (6) or 35C (6)”.

Contracts  
and  
guarantees  
in national  
interest

**9. Section 76 of the Principal Act is amended—**

- (a) by omitting from paragraph (a) of sub-section (1) “and” (last occurring);
- (b) by adding at the end of sub-section (1) the following word and paragraph:
  - “; and (c) its contingent liability under contracts of indemnity entered into by the Corporation under Division 6 of Part III does not exceed such amount as is prescribed for the purposes of this paragraph.”;
  - and
- (c) by omitting from sub-section (2) “or (b)” and substituting “, (b) or (c)”.

Maximum  
contingent  
liability

**10. Section 79 of the Principal Act is amended—**

- (a) by omitting from sub-sections (4), (5) and (6) “an officer” and substituting “a person”; and
- (b) by omitting from sub-section (6) “authorized officer” and substituting “authorized person”.

Audit

**11. Section 84 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) “of State administered by the Minister” and substituting “that deals with matters arising under this Act”; and
- (b) by inserting in sub-section (1) “, 35C” after “35”.

Delegation  
of powers of  
Minister

**12. Section 85 of the Principal Act is amended by inserting in sub-section (3) “or 6” after “Division 3” (last occurring).**

Secrecy

**13. Section 87 of the Principal Act is repealed.**

Repeal of  
section 87

Annual  
report of  
Corporation

**14.** Section 88 of the Principal Act is amended—

- (a) by omitting from paragraph (e) of sub-section (2) “and”;
  - (b) by inserting after paragraph (e) of sub-section (2) the following paragraph:
    - “(ea) the total contingent liability of the Corporation at the end of the year under contracts of indemnity entered into by the Corporation in accordance with approvals given for the purposes of section 35C; and”;
  - (c) by omitting from paragraph (b) of sub-section (3) “operations” and substituting “transactions”.
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**NOTES**

1. Act No. 163, 1978; assented to 28 November 1978.
2. Act No. 122, 1974, as amended. For previous amendments *see* Acts Nos. 102 and 148, 1976.