



Export Finance and Insurance Corporation Act 1991

No. 148 of 1991

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Extension to Territories
5. Application of Act outside Australia

PART 2—ESTABLISHMENT AND FUNCTIONS OF EXPORT FINANCE AND INSURANCE CORPORATION

6. Establishment of EFIC
7. Functions of EFIC
8. Primary duties of EFIC
9. Ministerial directions to EFIC
10. Reimbursement of cost of complying with directions

PART 3—GENERAL POWERS AND DUTIES OF EFIC

11. General powers of EFIC
12. Offices of EFIC
13. Formation of companies, partnerships etc.

PART 4—INSURANCE AND FINANCIAL SERVICES AND PRODUCTS

14. Export payments insurance contracts
15. Reinsurance etc. in relation to business of EFIC
16. Guarantees and subsidies in relation to loans to Australian suppliers
17. Guarantees and subsidies in relation to loans to overseas buyers etc.

TABLE OF PROVISIONS—*continued*

Section	
18.	Guarantees to co-lenders in relation to export transactions
19.	Tender guarantees and performance guarantees
20.	Reinsurance of guarantees, insurance etc. relating to export business etc.
21.	Approved causes of loss
22.	Insurance in respect of overseas investment transactions
23.	Loans to finance eligible export transactions
PART 5—NATIONAL INTEREST TRANSACTIONS	
24.	Interpretation
25.	Reference of applications to Minister
26.	Ministerial directions regarding reference of applications
27.	Approval of EFIC entering into contracts etc.
28.	Conditional approvals
29.	Ministerial directions regarding entry into national interest contracts etc.
30.	Gazettal of national interest contracts etc.
31.	Reinsurance etc. in relation to EFIC business under Part 5
PART 6—BOARD	
32.	Establishment of the Board
33.	Functions of the Board
34.	Membership of the Board
35.	Term of office and conditions of office of members
36.	Age limitations on appointment
37.	Remuneration etc. of appointed members
38.	Acting Chairperson and acting Deputy Chairperson
39.	Acting members
40.	Leave of absence of appointed members
41.	Resignation of appointed members
42.	General provision for termination of appointment of appointed members
43.	Termination of appointment of appointed members at instance of Board or for non-performance etc.
44.	Meetings of the Board
45.	Disclosure of interests
46.	Resolutions without meetings
47.	Committees
PART 7—CORPORATE PLANS	
48.	Corporate plans
49.	Matters to be included in corporate plans
50.	Approval of corporate plans
51.	Variation of corporate plans
PART 8—FINANCE	
52.	Capital of EFIC
53.	Transfers to capital from reserves
54.	Callable capital of EFIC
55.	Payment of dividends to the Commonwealth
56.	Maintenance of adequate capital and reserves
57.	Estimates
58.	Borrowings from the Commonwealth
59.	Other borrowings
60.	Security
61.	Limitation on borrowing etc.
62.	Guarantee by Commonwealth
63.	Exemptions from taxation
64.	Transactions in the national interest: EFIC share of liability
65.	Contracts and guarantees in the national interest

TABLE OF PROVISIONS—*continued*

Section

- 66. Loans made in the national interest
- 67. Subsidy to EFIC
- 68. Maximum contingent liability under Part 4
- 69. Limit of total amount of loans under Part 4
- 70. Application of Division 2 of Part XI of the *Audit Act 1901*

PART 9—MANAGING DIRECTOR AND DEPUTY MANAGING
DIRECTOR

- 71. Appointment of Managing Director and Deputy Managing Director
- 72. Appointments to be full-time and at Board's pleasure
- 73. Terms and conditions of appointment
- 74. Disclosure of interests
- 75. Exclusion from certain Board deliberations
- 76. Age limitations on appointment
- 77. Duties of Managing Director and Deputy Managing Director
- 78. Outside employment
- 79. Acting Managing Director and acting Deputy Managing Director
- 80. Resignation

PART 10—MISCELLANEOUS

- 81. Use of name of Corporation
- 82. Application of the *Lands Acquisition Act 1989*
- 83. Delegations by Minister and Managing Director
- 84. Delegation by the Board
- 85. Annual reports
- 86. EFIC's obligation to keep the Minister informed
- 87. Secrecy
- 88. Offences
- 89. Effectiveness of acts of EFIC
- 90. Staff
- 91. Regulations



Export Finance and Insurance Corporation Act 1991

No. 148 of 1991

An Act to establish an Export Finance and Insurance Corporation for the purpose of facilitating and encouraging Australian export trade by the provision of insurance and financial services and products, and for related purposes

[Assented to 21 October 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Export Finance and Insurance Corporation Act 1991*.

Commencement

2. This Act commences on 1 November 1991.

Interpretation

3.(1) In this Act, unless the contrary intention appears:

“appointed member” means a member, other than the Managing Director of EFIC and the Managing Director of the Australian Trade Commission;

“Board” means the Export Finance and Insurance Corporation Board;

“called capital”, in relation to EFIC at a particular time, means the total amount paid by the Commonwealth to EFIC under subsection 54(4), less any amounts paid by EFIC to the Commonwealth under subsection 54(6);

“Chairperson” includes a person acting as Chairperson;

“Deputy Chairperson” includes a person acting as Deputy Chairperson;

“Deputy Managing Director” includes a person acting as Deputy Managing Director;

“EFIC” means the Export Finance and Insurance Corporation;

“export contract” means a contract or arrangement:

- (a) for the export of goods produced or manufactured wholly or in part in Australia; or
- (b) for the rendering (whether inside or outside Australia) of a service to a person outside Australia;

“guarantee” includes the provision of stand-by credit and any other form of monetary commitment supporting the performance of an obligation;

“Managing Director” includes a person acting as Managing Director;

“member” means a member of the Board, and includes the Chairperson, the Deputy Chairperson and a person acting as a member of the Board;

“overseas investment transaction” means:

- (a) the acquisition of shares or stock, or of any other interest, in a corporation incorporated in a foreign country, being a corporation:
 - (i) that, either alone or with other persons, carries on, or proposes to carry on, a business in a foreign country; or
 - (ii) that has a substantial shareholding in another corporation that, either alone or with other persons, carries on, or proposes to carry on, a business in a foreign country; or
- (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 foreign country, whether as a partnership or otherwise; or
- (c) the lending of money to a person for use by that person in, or in connection with, a business carried on, or proposed to be carried on, by the person in a foreign country or the guaranteeing of, or the provision of other support for, the repayment of

money so lent and the payment of interest or other charges that may become payable in respect of money so lent; or

- (d) the transferring of money to, or the importing of equipment or other goods into, a foreign country for use in, or in connection with, a business carried on, or proposed to be carried on, in a foreign country by the person transferring the money or importing the equipment or other goods; or
- (e) the transferring of money, or the supply of equipment or other goods, by a corporation to another corporation in which that first-mentioned corporation has a substantial shareholding, being money, equipment or goods for use in, or in connection with, a business carried on, or proposed to be carried on, by that other corporation in a foreign country.

(2) In this Act, a reference to a loan or to the lending of money includes a reference to the provision of finance, or to the provision of a financial accommodation, in any form.

(3) For the purposes of this Act, a transaction is an eligible export transaction if, in whole or in part, it involves, is associated with, or is incidental or related to:

- (a) the export from Australia of capital goods produced or manufactured wholly or substantially in Australia; or
- (b) the production or manufacture in Australia, wholly or substantially, of capital goods that are to be exported from Australia; or
- (c) the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured wholly or substantially in Australia and exported from Australia; or
- (d) the rendering in Australia or a foreign country:
 - (i) of any services in or in connection with the supply, installation, erection, operation, maintenance or repair of capital goods produced or manufactured wholly or substantially in Australia and exported from Australia; or
 - (ii) of any construction, technological, managerial or other services (whether in connection with such capital goods or otherwise) for a person carrying on business in a foreign country or for the government, or an agency of the government, of that country or of any political subdivision of that country.

(4) In subsection (3), “capital goods” means:

- (a) machinery; or
- (b) any goods or class of goods declared by the Minister, in writing, to be capital goods for the purposes of subsection (3).

(5) In this Act, a reference to Australian export trade includes a reference to any transaction (including the rendering of a service) involving a benefit flowing directly or indirectly from overseas to a person carrying on business or other activities in Australia.

Extension to Territories

4.(1) Subject to subsection (2), this Act extends to all the Territories.

(2) The Minister may, by notice published in the *Gazette*, declare that, on a specified day, this Act is to cease to extend to a specified external Territory.

(3) On and from the day specified in the notice:

- (a) this Act does not extend to the specified Territory; and
- (b) a reference in this Act to a Territory does not include the specified Territory; and
- (c) this Act has effect as if the specified Territory were a foreign country.

Application of Act outside Australia

5. This Act applies both within and outside Australia.

PART 2—ESTABLISHMENT AND FUNCTIONS OF EXPORT FINANCE AND INSURANCE CORPORATION

Establishment of EFIC

6.(1) There is established by this Act a corporation called the Export Finance and Insurance Corporation.

(2) EFIC:

- (a) is a body corporate; and
- (b) is to have a seal; and
- (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 EFIC is to be kept in such custody as the Board directs, and must not be used except as authorised by the Board.

(4) All courts, judges and persons acting judicially are to take judicial notice of the imprint of the seal of EFIC appearing on a document and are to presume that the document was duly sealed.

Functions of EFIC

7.(1) The functions of EFIC are as follows:

- (a) to facilitate and encourage Australian export trade by providing insurance and financial services and products to persons involved directly or indirectly in such trade;

- (b) to encourage banks, and other financial institutions, carrying on business in Australia to finance, or assist in financing, export contracts or eligible export transactions;
- (c) in relation to overseas aid projects that involve the making of payments under export contracts out of money made available by the Commonwealth or a Commonwealth instrumentality, on behalf of the Commonwealth or that instrumentality, as the case may be:
 - (i) to manage the application of money made available by the Commonwealth or the Commonwealth instrumentality; and
 - (ii) to ensure that payments under those contracts are properly authorised; and
 - (iii) to attend to payments out of that money;
- (d) to provide information and advice to any person regarding insurance or financial arrangements available to support Australian export trade;
- (e) to do any other act or thing required by or under this or any other Act to be done by EFIC.

(2) For the purposes of paragraph (1)(c), an overseas aid project is a project under which the Commonwealth, or an instrumentality of the Commonwealth, proposes to provide funds to assist in the social and economic development of a foreign country.

Primary duties of EFIC

8.(1) EFIC is to perform its functions in such a manner as will best assist the development of Australian export trade.

- (2) In performing its functions, EFIC must:
 - (a) comply with any directions given under section 9; and
 - (b) have regard to:
 - (i) the desirability of improving and extending the range of insurance and other financial services and products available (whether from EFIC or otherwise) to persons involved, or likely to be involved, directly or indirectly, in Australian export trade; and
 - (ii) the need to provide its services and products as efficiently and economically as possible; and
 - (iii) Australia's obligations under international agreements.

Ministerial directions to EFIC

9.(1) Except as expressly provided by this Act, EFIC is not subject to direction by the Minister.

(2) The Minister may give written directions to EFIC with respect to the performance of its functions or the exercise of its powers if the

Minister is satisfied that it is desirable in the public interest that the directions be given.

- (3) EFIC must comply with any direction under subsection (2).
- (4) Particulars of directions under subsection (2) are to be included in the annual report of EFIC in accordance with subsection 85 (2).
- (5) Subsection (2) is not intended to authorise a direction:
 - (a) requiring the Minister's approval of the entry by EFIC into a particular contract or the giving by EFIC of a particular guarantee or the making of a particular loan; or
 - (b) giving the Minister power to determine that EFIC is or is not to enter into a particular contract, give a particular guarantee or make a particular loan.

Reimbursement of cost of complying with directions

10.(1) Where the Minister is satisfied that, during a particular period, EFIC has suffered financial detriment as a result of complying with a direction under section 9, EFIC is entitled to be reimbursed by the Commonwealth the amount of the detriment as determined in writing by the Minister.

(2) The reference in subsection (1) to EFIC suffering financial detriment as a result of complying with a direction includes a reference to EFIC:

- (a) suffering a loss in complying with the direction; or
- (b) incurring costs in complying with the direction that EFIC would not otherwise have incurred; or
- (c) incurring costs in complying with the direction that are greater than the costs EFIC would otherwise have incurred; or
- (d) in complying with the direction, forgoing revenue that EFIC could otherwise have received.

(3) This section does not apply to a direction expressed to be given in accordance with the general policy of the Commonwealth Government.

PART 3—GENERAL POWERS AND DUTIES OF EFIC

General powers of EFIC

11.(1) EFIC has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.

- (2) In particular, EFIC may:
 - (a) enter into contracts; and
 - (b) appoint agents and attorneys, and act as agent for other persons; and

- (c) engage persons to perform services for EFIC; and
- (d) enter into:
 - (i) arrangements known as swaps, foreign exchange agreements, forward rate agreements, options or hedge agreements; or
 - (ii) arrangements having a similar purpose or effect; and
- (e) accept gifts, grants, bequests and devises made to it, and act as trustee of money or other property vested in it on trust; and
- (f) do anything incidental to any of its powers or the exercise of any of those powers.

(3) A power conferred by subsection (1) is not to be taken to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on EFIC.

(4) So far as practicable, EFIC must exercise its powers in a way that will give effect to the corporate plan in force at the time.

(5) EFIC may provide insurance or financial services or products, information or advice for reward.

(6) EFIC's powers may be exercised within or outside Australia.

Offices of EFIC

12. EFIC may have offices in such places, whether in Australia or elsewhere, as the Board thinks appropriate to further the efficient performance of EFIC's functions.

Formation of companies, partnerships etc.

13.(1) EFIC may:

- (a) arrange for the formation of a company; or
- (b) join in the formation of a company, partnership, joint venture or other business association;

for any purpose connected with, or incidental to, EFIC's functions.

(2) EFIC may only exercise a power under subsection (1) if:

- (a) the exercise of the power would be consistent with the achievement of the objectives of EFIC as set out in the corporate plan in force at the time; and
- (b) the power is exercised on terms and conditions approved in writing by the Minister.

PART 4—INSURANCE AND FINANCIAL SERVICES AND PRODUCTS

Export payments insurance contracts

14.(1) EFIC may enter into export payments insurance contracts with, or for the benefit of, persons carrying on business or other activities in Australia.

(2) An export payments insurance contract is a contract of insurance against risk of direct or indirect monetary loss or other detriment resulting from failure to receive payment in connection with, or otherwise arising out of, acts or transactions in the course of, or for the purposes of, Australian export trade.

Reinsurance etc. in relation to business of EFIC

15.(1) EFIC may enter into a contract of insurance or indemnity, take a guarantee or take security to cover any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, under this Part.

(2) EFIC may enter into any other contract in order to reduce or reschedule any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, under this Part.

Guarantees and subsidies in relation to loans to Australian suppliers

16.(1) Where:

- (a) a person (in this section called “**the lender**”) has lent, or proposes to lend, money to a person who is carrying on business in Australia; and
- (b) the purpose of the loan or proposed loan is the financing, in whole or in part, of Australian export trade;

EFIC may guarantee to the lender the repayment of the whole, or any part, of the money lent, or proposed to be lent, and the payment of the whole, or a part, of any interest or other charges that may become payable to the lender in respect of the money lent.

(2) Where EFIC has given, or proposes to give, a guarantee to the lender, EFIC may enter into a contract with the lender under which, in consideration of the lender making or agreeing to make the loan, EFIC agrees to pay the lender, in specified circumstances, an amount ascertained in accordance with the contract.

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

17.(1) Where a person (in this section called “**the lender**”) has lent, or proposes to lend, money to a person for the purpose of financing, in whole or in part, the making of payments under:

- (a) an export contract; or
- (b) a contract for the sale of goods, or for the performance of works or services outside Australia, for the purpose of performing which a party to the contract has entered into an export contract;

EFIC may guarantee to the lender the repayment of the whole, or any part, of the money lent, or proposed to be lent, and the payment of the whole or a part of any interest or other charges that may become payable to the lender in respect of the money lent.

(2) Where EFIC has given, or proposes to give, a guarantee to the lender, EFIC may enter into a contract with the lender under which, in consideration of the lender making or agreeing to make the loan, EFIC agrees to pay the lender, in specified circumstances, an amount ascertained in accordance with the contract.

Guarantees to co-lenders in relation to export transactions

18. Where, for the purpose of financing, in whole or in part, an eligible export transaction:

- (a) EFIC has lent, or proposes to lend, money under section 23 to a person; and
- (b) another person (in this section called “the co-lender”), by arrangement with EFIC, has also lent, or proposes to lend, money to that person, or to another person;

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

Tender guarantees and performance guarantees

19.(1) EFIC may enter into a contract under which an indemnity or guarantee is given to a person in relation to a tender or proposed tender for, or in relation to the performance of, a contract or proposed contract that is, or will be:

- (a) an export contract; or
- (b) either in whole or in part, an eligible export transaction; or
- (c) a contract associated with such a transaction.

(2) Subsection (1) applies to a contract which, however expressed and in whatever form, is in substance an indemnity or guarantee.

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

20.(1) EFIC may enter into a contract under which it gives an indemnity or guarantee to a person in respect of a liability to which this section applies.

(2) The liabilities to which this section applies are as follows:

- (a) the liability of an insurer under a contract, whether entered into in Australia or elsewhere, to give an indemnity or guarantee in respect of monetary loss or other detriment suffered in connection with a transaction involving:
 - (i) goods exported, or to be exported, under an export contract; or

- (ii) goods in the production or treatment of which goods referred to in subparagraph (i) have been, or are to be, used; or
 - (iii) services rendered, or to be rendered, under an export contract;
- (b) the liability of a person under a contract under which the person has given a guarantee in respect of the loan, or proposed loan, of moneys for the purpose of financing, in whole or in part, the making of payments under a contract referred to in subsection 17(1);
- (c) the liability of a person under an indemnity or guarantee given, or proposed to be given, by the person in relation to a tender or proposed tender of a kind referred to in subsection 19(1).
- (3) An indemnity or guarantee given in respect of a liability referred to in paragraph (2)(a) must relate only to such part of the liability as may reasonably be regarded as related to the goods or services referred to in subsection (2).
- (4) An indemnity or guarantee given in relation to a liability referred to in paragraph (2)(b) must relate only to so much of the liability as does not exceed:
- (a) where the indemnity or guarantee under which the liability arises relates to money lent, or proposed to be lent, for the purpose of financing payments under an export contract—the amount, or the total of the amounts, payable under that contract in respect of goods or services to which that export contract relates; or
 - (b) where the indemnity or guarantee under which the liability arises relates to money lent, or proposed to be lent, for the purpose of financing payments under a contract for the purpose of performing which a party to that contract has entered into an export contract—the amount, or the total of the amounts, payable under that export contract in respect of goods or services to which that export contract relates.
- (5) A reference in this section to a contract under which an indemnity or guarantee is given is a reference to a contract which, however expressed and in whatever form, is in substance a contract for the giving of an indemnity or guarantee.

Approved causes of loss

21.(1) EFIC may declare a specified cause of loss to be an approved cause of loss for the purposes of this Part.

- (2) A declaration under subsection (1):
 - (a) must be in writing; and
 - (b) takes effect on the day specified in the declaration.

(3) As soon as practicable after making or revoking a declaration, EFIC must cause a copy of the declaration or the instrument of revocation to be published in the *Gazette*.

Insurance in respect of overseas investment transactions

22.(1) This section applies to:

- (a) a person who carries on business in Australia; and
- (b) any corporation in which such a person has a substantial shareholding.

(2) A person to whom this section applies who proposes to enter into an overseas investment transaction may apply to EFIC to enter into a contract of insurance insuring the person against risk of direct or indirect monetary loss or other detriment in respect of the transaction arising out of an approved cause of loss specified in the application.

(3) A person to whom this section applies who has entered into an overseas investment transaction may apply to EFIC to enter into a contract of insurance insuring the person against risk of direct or indirect monetary loss in respect of payments generated by the transaction where the loss or detriment arises out of an approved cause of loss specified in the application.

(4) The reference in subsection (3) to payments generated by a transaction is a reference to payments generated after the application is made to EFIC.

(5) An application must be in writing.

(6) On receipt of an application, EFIC may enter into a contract of insurance of the kind referred to in subsection (2) or (3), as the case may be, in respect of the whole or a part of the overseas investment transaction to which the application relates.

(7) EFIC must not enter into a contract of insurance under which a person is insured against loss or detriment attributable to circumstances within the control of the person.

Loans to finance eligible export transactions

23.(1) Where an eligible export transaction has been entered into, or is proposed to be entered into, EFIC may lend money for the purpose of financing the transaction in whole or in part.

(2) The money may be lent to such person or persons as EFIC thinks appropriate, whether or not the person or persons are, or will be, party to the transaction or proposed transaction.

PART 5—NATIONAL INTEREST TRANSACTIONS

Interpretation

24. In this Part, “referred application” means an application that has been referred to the Minister under section 25.

Reference of applications to Minister

25.(1) Subject to any directions under section 26, EFIC may refer to the Minister an application for EFIC to:

- (a) enter into a contract of insurance or indemnity under Part 4; or
- (b) give a guarantee under Part 4; or
- (c) make a loan under Part 4.

(2) An application relating to a proposed contract or a proposed guarantee may be referred to the Minister whether or not EFIC is authorised to enter into the contract or give the guarantee and whether or not it would do so in the ordinary course of business.

(3) An application relating to a proposed loan may be referred to the Minister:

- (a) whether or not EFIC is authorised to make the loan, or to make the loan on the terms and conditions proposed; and
- (b) whether or not EFIC would make the loan, or would make the loan on the terms and conditions proposed, in the ordinary course of business.

Ministerial directions regarding reference of applications

26.(1) The Minister may give EFIC written directions regarding the circumstances in which applications are, or are not, to be referred to the Minister.

(2) EFIC must comply with the Minister's directions.

Approval of EFIC entering into contracts etc.

27.(1) The Minister may approve of EFIC entering into a contract of insurance or indemnity (other than a contract under section 22) if the Minister is satisfied that it is in the national interest for EFIC to enter into the contract.

(2) The Minister may approve of EFIC giving a guarantee if the Minister is satisfied that it is in the national interest for EFIC to give the guarantee.

(3) The Minister may approve of EFIC entering into a contract of insurance under section 22 if the Minister is satisfied that:

- (a) an overseas investment transaction to which the contract will relate will assist in the social and economic development of a foreign country; and
- (b) it is in the national interest that EFIC enter into the contract in respect of the whole or a part of that transaction.

(4) The Minister may approve of EFIC making a loan under section 23 in respect of an eligible export transaction if the Minister is

satisfied that it is in the national interest that EFIC make the loan in respect of the transaction.

(5) The Minister's approval of entry into a contract of insurance under section 22 may be an approval of entry into the contract in relation to the whole or a specified part of the overseas investment transaction concerned.

(6) The Minister must not approve the entry by EFIC into a contract of insurance under section 22 under which a person would be insured against loss or detriment attributable to circumstances within the control of the person.

(7) The Minister's approval is to be in writing.

(8) EFIC has power to enter into a contract, give a guarantee, or make a loan in accordance with an approval under this section.

(9) While an approval under this section remains in force, EFIC must not decline a request that it enter into a contract, give a guarantee, or make a loan in accordance with the approval.

Conditional approvals

28. An approval under section 27 may be given subject to conditions, including:

- (a) where the approval relates to a contract of insurance or indemnity under Part 4 (other than a contract of insurance under section 22) or a guarantee under Part 4—conditions relating to the amount of the premium or fee to be charged by EFIC; and
- (b) where the approval relates to a contract of insurance under section 22—conditions relating to:
 - (i) the amount of the premium or fee to be charged by EFIC; and
 - (ii) the cause of the loss or detriment to which the contract may relate; and
- (c) where the approval relates to a loan under Part 4—conditions relating to the amount of the loan, the rate of interest to be charged, other terms and conditions of the loan and the security (if any) to be given.

Ministerial directions regarding entry into national interest contracts etc.

29.(1) The Minister may direct that whenever EFIC receives an application for EFIC to enter into a contract of insurance or indemnity included in a specified class of contracts of insurance or indemnity under Part 4, EFIC is to enter into the transaction, whether or not EFIC would, apart from this section, be authorised to enter into the

transaction and whether or not EFIC would enter into the transaction in the ordinary course of business.

(2) The Minister may direct that whenever EFIC receives an application for EFIC to give a guarantee included in a specified class of guarantees under Part 4, EFIC is to give the guarantee, whether or not EFIC would, apart from this section, be authorised to give the guarantee or would give the guarantee in the ordinary course of business.

(3) The Minister may direct that whenever EFIC receives an application for EFIC to make a loan included in a specified class of loans under Part 4, EFIC is to make the loan, whether or not EFIC would, apart from this section, be authorised to make the loan or to make the loan on the terms and conditions proposed and whether or not EFIC would make the loan, or would make the loan on the terms and conditions proposed, in the ordinary course of business.

(4) The Minister may only give a direction if he or she considers it is in the national interest that the direction be given.

(5) A direction may include requirements relating to:

- (a) where the direction relates to a contract of insurance or indemnity (other than a contract of insurance under section 22) or a guarantee—the amount of the premium or fee to be charged by EFIC; or
- (b) where the direction relates to a contract of insurance under section 22:
 - (i) the amount of the premium to be charged by EFIC; and
 - (ii) the cause of the loss or detriment to which the contract may relate; or
- (c) where the direction relates to a loan under Part 4—the amount of the loan, the rate of interest to be charged, other terms and conditions of the loan and security (if any) to be given.

(6) The Minister must not direct EFIC to enter into a contract of insurance that would have the effect of a person being insured against loss or detriment attributable to circumstances within the control of the person.

(7) A direction under this section must be in writing.

(8) EFIC has power to enter into a contract, give a guarantee or make a loan, in accordance with a direction under this section.

(9) While a direction under this section remains in force, EFIC must not decline a request that it enter into a contract, give a guarantee or make a loan, in accordance with the direction.

Gazettal of national interest contracts etc.

30.(1) Where EFIC enters into a contract, gives a guarantee or makes a loan in accordance with an approval or direction under this Part, EFIC must cause notice of the contract, guarantee or loan to be published in the *Gazette*.

(2) A notice under subsection (1) must set out the following particulars:

- (a)** in the case of a contract of insurance or indemnity—particulars of the nature and extent of the insurance or indemnity;
- (b)** in the case of a guarantee—particulars of the nature and extent of the guarantee;
- (c)** in the case of a loan—particulars of the amount of the loan and the rate of interest to be charged on the money lent.

(3) A notice under subsection (1) must also set out particulars of:

- (a)** in the case of a contract or guarantee—the proportion of the liability under the contract or guarantee that is to be borne by the Commonwealth; or
- (b)** in the case of a loan—the proportion (if any) of the risk associated with the loan that is to be borne by the Commonwealth.

(4) A notice under subsection (1) must not state the name of any of the parties to a contract or of any person in respect of whom a guarantee has been given by EFIC.

Reinsurance etc. in relation to EFIC business under Part 5

31.(1) EFIC may, with the written approval of the Minister, enter into a contract of insurance or indemnity, take a guarantee or take security to cover any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, in accordance with an approval or direction under this Part.

(2) EFIC may, with the written approval of the Minister, enter into any other contract in order to reduce or reschedule any actual or contingent liability of EFIC in respect of contracts entered into, or guarantees given, in accordance with an approval or direction under this Part.

(3) The Minister may, in writing, direct EFIC to exercise its power under subsection (1) or (2) in respect of a contract entered into, or a guarantee given, in accordance with an approval or direction under this Part.

(4) EFIC must comply with a direction.

PART 6—BOARD

Establishment of the Board

32. There is established an Export Finance and Insurance Corporation Board.

Functions of the Board

33.(1) It is the function of the Board to manage the affairs of EFIC.

(2) The Board's role under subsection (1) includes the determination of the policy to be followed in the conduct of the affairs of EFIC.

(3) A decision of the Board is not invalid merely because the Board has limited the exercise of its discretion in the particular case and made the decision in accordance with a general policy determined by the Board.

(4) Anything done by the Board in the name of, or on behalf of, EFIC for the purposes of this Act or any other Act that confers powers or functions on EFIC is taken to have been done by EFIC.

Membership of the Board

34.(1) The Board consists of the following members:

- (a)** the Chairperson;
- (b)** the Deputy Chairperson;
- (c)** the Managing Director;
- (d)** the Managing Director of the Australian Trade Commission;
- (e)** the government member;
- (f)** as many other members, not fewer than 4 nor more than 6, as the Minister determines in writing to be appropriate.

(2) The members of the Board, other than the Managing Director of EFIC and the Managing Director of the Australian Trade Commission, are appointed by the Minister.

(3) Appointed members are to be appointed on a part-time basis.

(4) The exercise of a power, or the performance of a function, of the Board is not affected merely because of a vacancy or vacancies in the membership of the Board or because the number of appointed members referred to in paragraph (1)(f) falls below 4 for not longer than 6 months.

(5) The Managing Director of the Australian Trade Commission may not be appointed as Chairperson or Deputy Chairperson.

Term of office and conditions of office of members

35.(1) An appointed member, other than the government member, holds office for such period, not exceeding 5 years, as is specified in the member's instrument of appointment, but is eligible for re-appointment.

(2) Subject to subsection 36(2), the government member holds office during the Minister's pleasure.

Age limitations on appointment

36.(1) The Minister may not:

- (a) appoint as a member a person who has reached 65 years of age; or
- (b) appoint a person as a member, other than the government member, for a period extending beyond the day on which the person will reach 65 years of age.

(2) A person holding office as the government member ceases to hold office when he or she reaches 65 years of age.

(3) Appointed members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

Remuneration etc. of appointed members

37.(1) An appointed member (other than the government member) is to be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

(2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Acting Chairperson and acting Deputy Chairperson

38.(1) Whenever:

- (a) there is a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
- (b) the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;

the Deputy Chairperson is to act as Chairperson.

(2) The Minister may appoint a person to act as Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Deputy Chairperson is absent from Australia or is, for any other reason (including the reason that the Deputy Chairperson is acting as Chairperson) unable to perform the functions of his or her office.

(3) The Managing Director or Deputy Managing Director is not entitled to any remuneration or allowances in relation to an appointment under this section.

(4) Anything done by or in relation to the Deputy Chairperson when purporting to act under subsection (1) is not ineffective merely because the occasion for the Deputy Chairperson to act had not arisen or had ceased.

(5) Anything done by or in relation to a person purporting to act under an appointment under this section is not ineffective merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

(6) The Managing Director of the Australian Trade Commission may not be appointed to act as Deputy Chairperson.

Acting members

39.(1) The Minister may appoint a person to act as a member of the Board referred to in paragraph 34(1)(f):

- (a) during a vacancy in the office of such a member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when such a member is acting as Chairperson or Deputy Chairperson, is absent from Australia or is, for any other reason, unable to perform the duties of his or her office.

(2) The Minister may appoint a person to act as the government member during any period, or during all periods, when the government member is unable, for any reason, to attend meetings of the Board.

(3) Anything done by, or in relation to, a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Leave of absence of appointed members

40.(1) The Minister may give leave of absence to the Chairperson on such terms and conditions as the Minister determines.

(2) The Chairperson may give any other appointed member leave of absence from a meeting.

Resignation of appointed members

41. An appointed member may resign by giving a signed notice of resignation to the Minister.

General provision for termination of appointment of appointed members

42.(1) This section only applies to members referred to in paragraphs 34(1)(a), (b) and (f).

(2) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(3) The Minister must terminate the appointment of an appointed member who:

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b)** is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
- (c)** fails to comply with his or her obligations under section 45.

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

43.(1) This section only applies to members referred to in paragraphs 34(1)(a), (b) and (f).

(2) The Minister may terminate the appointment of a member if:

- (a)** the Board has resolved that the appointment of the member be terminated; and
- (b)** the resolution was passed at a meeting of the Board convened for the purpose of considering a motion that the appointment of the member be terminated; and
- (c)** the resolution was passed by not less than a two-thirds majority of the members present, excluding the member to whom the resolution relates.

(3) The Minister may terminate the appointment of a member if the Minister is satisfied:

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

Meetings of the Board

44.(1) The Board is to hold such meetings as are necessary for the performance of its functions.

(2) The Minister or the Chairperson may at any time convene a meeting of the Board.

(3) The Chairperson must convene a meeting of the Board on the written request of 2 or more members.

(4) The Chairperson is to preside at all meetings of the Board at which he or she is present.

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

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

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

(8) A question arising at a meeting of the Board is to be decided 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, if the votes are equal, also has a casting vote.

Disclosure of interests

45.(1) A member who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) The disclosure is to be recorded in the minutes of the meeting and, unless the Minister or the Board otherwise determines, the member must not:

- (a) be present during any deliberation of the Board in relation to the matter; or
- (b) take part in any decision of the Board in relation to the matter.

(3) A member who has made a disclosure under subsection (1) must not:

- (a) be present during any deliberation of the Board for the purpose of making a determination under subsection (2) in relation to the member; or
- (b) take part in the making of the determination.

Resolutions without meetings

46.(1) Where a majority of the members (being a majority that includes the Chairperson) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a duly constituted meeting of the Board held on the day the document was signed, or, if the members sign the document on different days, on the last of those days.

(2) For the purpose of subsection (1), 2 or more documents containing statements in identical terms each of which is signed by one or more members are together taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the documents.

(3) A member must not sign a document containing a statement in favour of a resolution if the resolution is in respect of a matter in which the member has a direct or indirect pecuniary interest.

Committees

47.(1) The Board may appoint committees to assist the Board in relation to the performance of any of its functions.

(2) At least one member of a committee must be a member of the Board.

(3) The Board may give such directions as it thinks fit regarding the procedure to be followed at, and in relation to, meetings of a committee.

PART 7—CORPORATE PLANS

Corporate plans

48.(1) The Board is to prepare corporate plans.

(2) The first corporate plan is to be for the period that begins on 1 January 1992 and ends on 30 June 1994.

(3) Each subsequent corporate plan is to be for a period of 3 years commencing immediately after the end of the first year of the period of the previous plan.

(4) The first of the corporate plans referred to in subsection (3) is to be for a period commencing on 1 July 1992.

Matters to be included in corporate plans

49.(1) Each corporate plan must:

- (a) set out the principal objectives of EFIC, including financial targets, in performing its functions during the period of the plan; and
- (b) outline the overall strategies for EFIC for the achievement of those objectives and targets during the period of the plan and the principal performance indicators for assessing the extent to which the objectives and targets are being met; and
- (c) set out estimates of the resources that are to be applied, and the revenue to be received, by EFIC during each financial year included in the period of the plan.

(2) In determining or revising a financial target, the Board must have regard to:

- (a) the need for EFIC to generate reserves sufficient to support expansion of its operations; and
- (b) the adequacy of EFIC's capital, having regard to any determinations made by the Board for the purposes of section 56; and
- (c) any direction by the Minister under subsection 55(2) for the payment of a dividend by EFIC in respect of the financial year to which the target relates.

Approval of corporate plans

50.(1) Each corporate plan is to be submitted to the Minister for approval.

(2) The first corporate plan is to be submitted to the Minister on or before 30 November 1991.

(3) Each subsequent corporate plan is to be submitted to the Minister not less than 3 months, or such longer period as is prescribed, before the commencement of the period of the plan.

(4) A corporate plan comes into force on:

- (a) the day on which it is approved by the Minister; or
- (b) the first day of the period of the plan;

whichever is the later.

Variation of corporate plans

51.(1) The Board may, with the approval of the Minister, vary a corporate plan.

(2) The Minister may, at any time, request the Board to vary a corporate plan, whether or not the plan has come into force.

(3) Where the Minister requests a variation of a corporate plan, the Board must vary the plan accordingly.

(4) Where a variation of a corporate plan is approved by the Minister after the plan has come into force, the variation takes effect on the day on which it is approved.

PART 8—FINANCE

Capital of EFIC

52. The capital of EFIC at any time consists of:

- (a) the amount paid to EFIC as a result of the determination by the Minister under section 19 of the *Export Finance and Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991*; and

- (b) the called capital (if any) of EFIC at that time; and
- (c) amounts transferred to capital from reserves under section 53.

Transfers to capital from reserves

53. EFIC may transfer from its reserves to the capital of EFIC such amounts as the Board determines.

Callable capital of EFIC

54.(1) The Board may, after consultation with the Minister for Finance, determine that the money and other assets of EFIC are, or within the current or next financial year are likely to become, inadequate to meet the expected liabilities, losses and claims of or against EFIC and may determine the amount of capital required to overcome the inadequacy.

(2) A determination under subsection (1) must be made according to sound commercial principles.

(3) The Chairperson must give notice of a determination under subsection (1) to the Minister for Finance, the Treasurer and the Minister not later than the day after the determination is made.

(4) Where notice has been given in accordance with subsection (3):

- (a) there is payable by the Commonwealth to EFIC an amount equal to the amount of capital determined by the Board as necessary to overcome the inadequacy mentioned in subsection (1); and
- (b) the amount is to be paid within 5 working days after the day on which it becomes payable.

(5) Where:

- (a) the capital of EFIC includes called capital; and
- (b) the Board determines that the money and other assets of EFIC are excessive, having regard to the expected liabilities, losses and claims of and against EFIC;

the Board may determine the amount representing the extent to which the money and assets are excessive.

(6) Where a determination is made under subsection (5), there is payable by EFIC to the Commonwealth:

- (a) the amount equal to EFIC's called capital at the time when the determination was made; or
- (b) the amount determined by the Board under subsection (5);

whichever is the lesser.

(7) An amount payable under subsection (6) is to be paid within 28 days after the making of the determination.

(8) EFIC's called capital at any time must not exceed \$200,000,000.

(9) For the purposes of subsections (1) and (5):

- (a) an expected liability of EFIC under a contract entered into, or a guarantee given, in accordance with an approval or direction under Part 5 is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 65 in relation to the contract or guarantee; and
- (b) an expected loss by EFIC under a loan made in accordance with an approval or direction under Part 5 is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 66 in relation to the loan.

(10) Payments by the Commonwealth to EFIC under this section are to be made out of the Consolidated Revenue Fund which is appropriated accordingly.

Payment of dividends to the Commonwealth

55.(1) The Board must, within 4 months after the end of each financial year, by written notice given to the Minister, recommend that EFIC pay a specified dividend, or not pay a dividend, to the Commonwealth for that financial year.

(2) The Minister must, within 30 days after receiving the recommendation, by written notice given to EFIC:

- (a) approve the recommendation; or
- (b) where the Board has recommended the payment of a dividend—direct the payment of a different specified dividend; or
- (c) where the Board has recommended that no dividend be paid—direct the payment of a specified dividend.

(3) Subject to subsections (4) and (5), in performing their functions under subsections (1) and (2), the Board and the Minister must have regard to:

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

(4) EFIC's dividend for a financial year must not exceed its profit for that year.

(5) For each financial year in relation to which the Minister has approved a recommendation that a dividend be paid or has directed the payment of a dividend, EFIC must pay to the Commonwealth:

- (a) if the Minister has approved a recommendation that a dividend be paid—the dividend specified in the recommendation; or
- (b) if the Minister has directed that a dividend be paid or that a different dividend be paid—the dividend specified in the direction.

(6) For the purposes of this section, the period beginning on the commencement of this Act and ending on 30 June 1992 is to be taken to be a financial year.

Maintenance of adequate capital and reserves

56.(1) The Board is required to ensure, according to sound commercial principles, that the capital and reserves of EFIC at any time are sufficient:

- (a) to meet the likely liabilities of EFIC, having regard to the estimated contingent liability at that time of EFIC under Part 4; and
- (b) to make adequate provision for default in the repayment of principal, or in the payment of interest or other charges, in connection with loans made by EFIC.

(2) For the purposes of subsection (1):

- (a) the value of the capital and reserves of EFIC is to be assessed on the assumption that the whole of the amount specified in subsection 54(8) had been paid to EFIC under section 54; and
- (b) a likely liability of EFIC in relation to anything done by EFIC, or a likely default of a kind referred to in paragraph (1)(b) in relation to a loan made by EFIC, in accordance with an approval or direction under Part 5 is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 65 or 66 in relation to the same matter.

(3) In this section, a reference to the estimated contingent liability of EFIC under Part 4 at any time is a reference to the amount that EFIC estimates to be, at that time, the total contingent liability of EFIC under all contracts of insurance or indemnity entered into, and all guarantees given, by EFIC under Part 4.

(4) If, at any time, the Board determines:

- (a) that the capital and reserves of EFIC are not sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1); or
- (b) that there are reasonable grounds for believing that, at a time in the future, the capital and reserves of EFIC may not be sufficient to meet the likely liabilities, and make the provision, referred to in subsection (1);

the Board must, as soon as practicable, cause the Minister to be informed in writing of its determination and the reasons for that determination.

Estimates

57.(1) EFIC is to prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if so directed by the Minister, for any other period.

(2) EFIC is to submit the estimates to the Minister by such date as the Minister directs.

Borrowings from the Commonwealth

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

Other borrowings

59.(1) EFIC may, with the written approval of the Treasurer:

- (a) borrow money otherwise than from the Commonwealth; or
- (b) raise money otherwise than by borrowing;

on such terms and conditions as are specified in the approval.

(2) One of the ways in which EFIC may borrow or raise money under subsection (1) is by dealing with securities.

(3) An approval under subsection (1) may relate to:

- (a) a particular transaction; or
- (b) a class of transactions.

Security

60. EFIC may give security over all or any of its assets:

- (a) for the repayment by EFIC of money borrowed under section 58 or paragraph 59(1)(a) and the payment of interest on money so borrowed; or
- (b) for the payment by EFIC of money (including interest) that EFIC is liable to pay in respect of money raised under paragraph 59(1)(b).

Limitation on borrowing etc.

61. EFIC must not borrow or raise money except under section 58 or 59.

Guarantee by Commonwealth

62. By force of this section, the due payment by EFIC of any money that becomes payable by EFIC to a person other than the Commonwealth is guaranteed by the Commonwealth.

Exemptions from taxation

63.(1) Subject to subsection (3), EFIC is not subject to taxation under any law of the Commonwealth or of a State or Territory.

(2) The exemption conferred by subsection (1) does not extend to a company, partnership, joint venture or other business association in the formation of which EFIC was involved merely because of that involvement.

(3) The regulations may provide that subsection (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory or to a specified class of such laws.

(4) If regulations made for the purpose of subsection (3) provide that subsection (1) does not apply in relation to laws of the Commonwealth that impose income tax, EFIC is to be taken not to be a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

(5) Securities issued by EFIC are not public securities or Commonwealth securities for the purposes of the *Income Tax Assessment Act 1936*.

Transactions in the national interest: EFIC share of liability

64.(1) Before it enters into a contract or gives a guarantee in accordance with an approval or direction under Part 5, EFIC may give the Minister written notice that EFIC will meet the whole, or a specified proportion, of the liability of EFIC under the contract or guarantee, as the case may be.

(2) Before it makes a loan in accordance with an approval or direction under Part 5, EFIC may give the Minister written notice that EFIC will bear the whole, or a specified proportion, of the risk associated with the loan.

Contracts and guarantees in the national interest

65.(1) Subject to subsection (2), this section applies to contracts entered into, and guarantees given, by EFIC in accordance with approvals or directions under Part 5.

(2) This section does not apply to a contract or guarantee in relation to which EFIC has given the Minister notice, under section 64, that EFIC will bear the whole of the liability of EFIC under the contract or guarantee.

(3) EFIC is required to keep separate accounts of so much of its receipts and disbursements relating to contracts and guarantees to which this section applies as relates to the proportion of the liability under those contracts and guarantees that is to be borne by the Commonwealth.

(4) Subject to subsections (9) and (10), EFIC is required to pay to the Commonwealth, from time to time, as directed by the Minister for Finance, so much of the receipts by EFIC from contracts and guarantees to which this section applies as relates to the proportion of the liability under those contracts and guarantees that is to be borne by the Commonwealth.

(5) For the purpose of subsection (4), the receipts from a contract or guarantee are calculated by deducting from the total of the amounts

received by EFIC in relation to the contract or guarantee all amounts paid or payable by EFIC in relation to the contract or guarantee.

(6) Subject to subsections (8) and (9), the Commonwealth is liable to pay to EFIC the amount needed to discharge any liability of EFIC under a contract or guarantee to which this section applies.

(7) Instead of the Commonwealth paying the amount due under subsection (6) when the liability of the Commonwealth arises, the Minister may, on behalf of the Commonwealth, direct EFIC to seek approval under section 59 for EFIC to borrow the amount necessary to discharge its liability under the contract or guarantee.

(8) If the Treasurer gives approval under section 59, the Commonwealth's liability under subsection (6) is replaced by a liability to pay EFIC the amount needed to discharge the borrowing by EFIC and to pay all costs (including interest) incurred by EFIC in connection with the borrowing.

(9) Where EFIC has given the Minister notice, under section 64, that EFIC will bear a specified proportion of the liability of EFIC under a contract or guarantee to which this section applies:

- (a) if EFIC would be required by subsection (4) to pay an amount to the Commonwealth in respect of the contract or guarantee—EFIC may deduct from the amount the proportion of the amount that equals the proportion specified in the notice; and
- (b) the liability of the Commonwealth to EFIC under subsection (6) or (8), as the case may be, in relation to the contract or guarantee is reduced by the proportion specified in the notice.

(10) EFIC may deduct from any amount that it is required to pay under subsection (4) an administration fee, to be ascertained in such manner as the Minister for Finance directs in writing, in relation to contracts and guarantees to which this section applies.

Loans made in the national interest

66.(1) Subject to subsection (2), this section applies to loans made by EFIC in accordance with approvals under section 27 or directions under section 29.

(2) This section does not apply to a loan in relation to which EFIC has given the Minister notice, under section 64, that EFIC will bear the whole of the risk associated with the loan.

(3) EFIC is required to keep separate accounts of so much of its receipts and disbursements relating to loans to which this section applies as relates to the proportion of the risk associated with such loans that is to be borne by the Commonwealth.

(4) Subject to subsections (9) and (10), EFIC is required to pay to the Commonwealth, from time to time, as directed by the Minister for Finance, so much of the receipts by EFIC from loans to which this

section applies as relates to the proportion of the risk associated with those loans that is to be borne by the Commonwealth.

(5) For the purpose of subsection (4), net receipts from a loan are calculated by deducting from the total of the amounts received by EFIC in relation to the loan all amounts paid or payable by EFIC in relation to the loan, including amounts payable in respect of borrowings made by EFIC to enable it to make the loan.

(6) Subject to subsections (8) and (9), the Commonwealth is liable:

- (a) to reimburse EFIC the amount of all costs (including interest) incurred by EFIC in connection with the borrowing of money needed to finance a loan to which this section applies; and
- (b) to pay to EFIC an amount equal to any amount in respect of which default is made under a loan to which this section applies.

(7) Instead of the Commonwealth paying the amount due under subsection (6) when the liability of the Commonwealth arises, the Minister may, on behalf of the Commonwealth, direct EFIC to seek approval under section 59 for EFIC to borrow an amount equal to the amount due by the Commonwealth.

(8) If the Treasurer gives approval under section 59, the Commonwealth's liability under subsection (6) is replaced by a liability to pay EFIC the amount needed to discharge the borrowing by EFIC and to pay all costs (including interest) incurred by EFIC in connection with the borrowing.

(9) Where EFIC has given the Minister notice, under section 64, that EFIC will bear a proportion of the risk associated with a loan to which this section applies:

- (a) if EFIC would be required by subsection (4) to pay an amount to the Commonwealth in respect of the loan—EFIC may deduct from the amount the proportion of the amount that equals the proportion specified in the notice; and
- (b) the liability of the Commonwealth to EFIC under subsection (6) or (8), as the case may be, in relation to the loan is reduced by the proportion specified in the notice.

(10) EFIC may deduct from any amount that it is required to pay under subsection (4) a reasonable amount, to be ascertained in such manner as the Minister for Finance directs, in respect of the expenses of EFIC in relation to the making of loans to which this section applies.

Subsidy to EFIC

67.(1) The Minister may determine in writing principles according to which the Commonwealth will pay to EFIC a subsidy in respect of contracts entered into, guarantees given, or loans made by EFIC in relation to eligible export transactions.

(2) Where a contract has been entered into, a guarantee given, or a loan made, by EFIC in connection with an eligible export transaction, EFIC is entitled to be paid by the Commonwealth such amount (if any) by way of subsidy as is payable according to the principles in force under subsection (1).

Maximum contingent liability under Part 4

68.(1) EFIC is to carry on its operations so that:

- (a) its total contingent liability at any time under contracts entered into, and guarantees given, under Part 4 (other than contracts of insurance entered into under section 22) does not exceed the amount prescribed for the purposes of this paragraph; and
- (b) its total contingent liability at any time under contracts of insurance entered into under section 22 does not exceed the amount prescribed for the purposes of this paragraph.

(2) A contingent liability under a contract entered into, or a guarantee given, in accordance with an approval or direction under Part 5 is to be disregarded for the purposes of subsection (1) to the extent that the liability would be borne by the Commonwealth.

Limit of total amount of loans under Part 4

69.(1) EFIC is to carry on its operations so that the total amount of money at any time lent by EFIC under Part 4 and not repaid or written off does not exceed the amount prescribed for the purpose of this subsection.

(2) A loan made in accordance with an approval or direction under Part 5 is to be disregarded for the purposes of subsection (1) to the extent that the risk associated with the loan is to be borne by the Commonwealth.

(3) In calculating the total amount of money lent by EFIC under Part 4 and not repaid or written off, there is to be included the amount of any contingent liability of EFIC under the terms of any loan made by EFIC under that Part.

Application of Division 2 of Part XI of the *Audit Act 1901*

70.(1) EFIC is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) EFIC is required, in the financial statements prepared in respect of each financial year for the purpose of section 63H of the *Audit Act 1901* (as it applies by virtue of subsection (1)), to show separately the financial effect on the operations of EFIC of each direction given to it by the Minister under subsection 9(2) and in force at any time during that financial year.

PART 9—MANAGING DIRECTOR AND DEPUTY MANAGING DIRECTOR

Appointment of Managing Director and Deputy Managing Director

71.(1) There is to be a Managing Director of EFIC.

(2) The Managing Director is to be appointed by the Minister after the Minister has received a recommendation from the Board.

(3) The Minister may appoint a Deputy Managing Director of EFIC after the Minister has received a recommendation from the Board.

(4) A member of the Board cannot be appointed as Managing Director or Deputy Managing Director.

(5) An appointment under this section is not ineffective merely because of a defect or irregularity in relation to the appointment.

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

72. The Managing Director and Deputy Managing Director hold office:

- (a)** on a full-time basis; and
- (b)** at the pleasure of the Board.

Terms and conditions of appointment

73. The Managing Director and Deputy Managing Director hold office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board.

Disclosure of interests

74. The Managing Director and Deputy Managing Director must give written notice to the Chairperson of all direct or indirect pecuniary interests that they have or acquire in any business or in any body corporate that carries on a business.

Exclusion from certain Board deliberations

75. A person holding office as Managing Director or Deputy Managing Director must not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

- (a)** the appointment of a Managing Director or Deputy Managing Director; or
- (b)** the determination or application of any terms or conditions on which the person holds office; or
- (c)** the termination of the person's appointment.

Age limitations on appointment

76. A person who has reached 65 years of age is not to be appointed as Managing Director or Deputy Managing Director.

Duties of Managing Director and Deputy Managing Director

77.(1) The Managing Director has the duty, under the Board, of conducting the operations of EFIC.

(2) In conducting the operations of EFIC, the Managing Director must act according to the policy of the Board.

(3) The Deputy Managing Director has such duties as are allotted to him or her by the Managing Director.

Outside employment

78. The Managing Director and Deputy Managing Director are not to engage in paid employment outside the duties of their respective offices except with the approval of the Board.

Acting Managing Director and acting Deputy Managing Director

79.(1) Whenever:

- (a) there is a vacancy in the office of Managing Director (whether or not an appointment has previously been made to the office); or
- (b) the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;

then:

- (c) if there is a Deputy Managing Director—the Deputy Managing Director is to act as Managing Director; or
- (d) if there is no Deputy Managing Director—the Board may appoint a person to act as Managing Director.

(2) The Board may appoint a person to act as Deputy Managing Director:

- (a) during a vacancy in the office of Deputy Managing Director (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Deputy Managing Director is absent from duty or from Australia or is, for any other reason (including the reason that the Deputy Managing Director is acting as Managing Director), unable to perform the functions of his or her office.

(3) Anything done by or in relation to the Deputy Managing Director when purporting to act under subsection (1) is not ineffective merely because the occasion for the Deputy Managing Director to act had not arisen or had ceased.

(4) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) or (2) is not ineffective merely because:

- (a) the occasion for the appointment had not arisen; or

- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Resignation

80. The Managing Director or Deputy Managing Director may resign by giving the Chairperson a signed notice of resignation.

PART 10—MISCELLANEOUS

Use of name of Corporation

81.(1) The corporation established by this Act may conduct its operations under its full name or under the acronym EFIC.

- (2) A person other than EFIC must not:
 - (a) use in connection with a business, trade, profession or occupation; or
 - (b) use as the name, or as part of the name, of any firm, body corporate or institution; or
 - (c) use in relation to:
 - (i) services or products; or
 - (ii) the promotion, by any means, of the supply of services or products;

the name of EFIC or the acronym EFIC or a name or acronym so closely resembling the name of EFIC or the acronym EFIC as to be likely to be mistaken for it.

Penalty: \$1,000.

(3) Nothing in subsection (2) applies to the use of a name or acronym by a person in a particular manner if, immediately before the commencement of this Act, the person was using the name or acronym in good faith in that manner.

(4) Nothing in subsection (2) affects rights conferred by law in relation to the use of a name or acronym, or the use of the name or acronym in pursuance of such a right, if the rights were in existence immediately before the commencement of this Act.

Application of the *Lands Acquisition Act 1989*

82.(1) The *Lands Acquisition Act 1989* does not apply in relation to the acquisition of land, or an interest in land, by EFIC.

- (2) In subsection (1), “interest”, in relation to land, means:
 - (a) a legal or equitable estate or interest in the land; or
 - (b) a right, power or privilege over, or in relation to, the land.

Delegations by Minister and Managing Director

83.(1) The Minister may, in writing, delegate to the Board all or any of the powers of the Minister under this Act, other than the Minister's powers under section 9, Part 5 and subsection 84(3).

(2) The Managing Director may, in writing, delegate to the Deputy Managing Director or any person employed under section 90 all or any of the Managing Director's powers under this Act.

Delegation by the Board

84.(1) The Board may delegate all or any of its powers and functions under this Act; other than powers and functions under sections 48, 54, 71 and 72, to:

- (a) a committee appointed under section 47; or
- (b) the Managing Director; or
- (c) the Deputy Managing Director; or
- (d) a person employed by EFIC under section 90.

(2) In the exercise of a delegated power, the delegate is subject to the directions of the Board.

(3) The Minister may, if he or she thinks it appropriate to do so, give directions to the Board regarding the exercise of its powers under subsection (1).

Annual reports

85.(1) For the purposes of the application of section 63H of the *Audit Act 1901* by virtue of subsection 70(1) of this Act, the period commencing on 1 November 1991 and ending on 30 June 1992 is to be regarded as a period of one year.

(2) Subject to subsection (3), EFIC must include in each annual report:

- (a) particulars of every direction given by the Minister to EFIC under section 9 during the period to which the report relates; and
- (b) a statement of the principal objectives of EFIC for the period to which the report relates; and
- (c) an assessment of the extent to which EFIC has achieved its principal objectives for that period.

(3) Particulars of a direction under section 9 are not to be included in an annual report if the direction includes a statement that it is not to be disclosed for reasons of national security or because its disclosure would have an adverse effect on the financial interests or property interests of the Commonwealth or of an instrumentality of the Commonwealth.

EFIC's obligation to keep the Minister informed

86. EFIC is required:

- (a) from time to time to inform the Minister of the general conduct of its activities; and
- (b) to give the Minister such information regarding its activities as the Minister may require.

Secrecy

87.(1) This section applies to the following persons:

- (a) a person holding an appointment as Chairperson or Deputy Chairperson;
- (b) a person acting as Deputy Chairperson;
- (c) a person holding an appointment as Managing Director or Deputy Managing Director;
- (d) a person acting as Deputy Managing Director;
- (e) a member of the Board referred to in paragraph 34(1)(e) or (f);
- (f) a person employed by EFIC.

(2) A person to whom this section applies is authorised:

- (a) to disclose information concerning the affairs of another person acquired by the first-mentioned person because of his or her duties under this Act; or

(b) to produce a document containing such information;

to the Minister, to the Secretary to the Department, or to an officer of the Department designated by the Secretary.

(3) A person to whom this section applies is authorised to disclose information, or produce a document, referred to in subsection (2) to another person if the disclosure or production is for the purposes of this Act.

(4) Subject to subsections (2) and (3), it is the duty of a person to whom this section applies not to publish or communicate any information of the kind referred to in paragraph (2)(a) or a document containing any such information.

(5) A person to whom this section applies must not make a record of any information of the kind referred to in paragraph (2)(a) except for the purposes of this Act.

Penalty: Imprisonment for 6 months.

(6) This section does not prevent EFIC from communicating to another person particulars of:

- (a) a guarantee given, or proposed to be given, under this Act; or

(b) a contract entered into, or proposed to be entered into, under this Act; or

(c) a loan made, or proposed to be made, under this Act.

(7) In this section:

“produce” includes permit access to.

Offences

88.(1) In this section:

“application” means:

(a) an application to EFIC to enter into a contract of insurance or indemnity; or

(b) an application to EFIC for the giving of a guarantee by EFIC; or

(c) an application to EFIC for the making of a loan by EFIC;

“claim” means:

(a) a claim under a contract of insurance or indemnity entered into by EFIC; or

(b) a claim under a guarantee given by EFIC; or

(c) a claim for payment under a loan made by EFIC.

(2) A person must not, in, or for the purposes of, a claim, make a statement to EFIC, or give to EFIC a document, that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 5 years.

(3) A person must not, in, or for the purposes of, an application, make a statement to EFIC, or give to EFIC a document, that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 5 years.

(4) Subsections (2) and (3) do not apply to a document that is false or misleading in a material particular if, when the person gives it to EFIC, the person informs EFIC that it is, to the person’s knowledge, false or misleading in a material particular and identifies to EFIC that particular.

Effectiveness of acts of EFIC

89.(1) In this section, “transaction entered into by EFIC” means:

(a) a contract entered into by EFIC; or

(b) a guarantee given by EFIC; or

(c) a loan made by EFIC.

(2) The effect of a transaction entered into by EFIC may not be called in question merely because:

(a) a provision of this Act has been contravened in relation to the transaction; or

(b) the transaction is not within the limits of EFIC's powers.

(3) Subsection (1) does not affect the duty of EFIC to comply with this Act and to observe the limits of its powers under this Act.

(4) In favour of a person dealing in good faith with EFIC:

(a) a document that purports to bear the imprint of the seal of EFIC and to have been sealed under the authority of the Board is to be taken to have been so sealed with the seal of EFIC; and

(b) a person held out by EFIC as a person authorised to act on behalf of EFIC is to be taken to have authority to exercise, on behalf of EFIC, the powers usually exercisable by a person of similar status, or a person occupying a similar position, in relation to a corporation.

Staff

90.(1) EFIC may employ such persons as the Board thinks necessary for the performance of the functions and duties, and the exercise of the powers, of EFIC.

(2) A person employed under subsection (1) is to be employed on such terms and conditions as are determined by the Board.

Regulations

91.(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The provision that may be made by regulations under subsection (1) includes, but is not limited to, provision prescribing penalties, not exceeding a fine of \$500, for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 12 September 1991
Senate on 8 October 1991]*