



# **Export Finance and Insurance Corporation Amendment Act 1997**

No. 65, 1997

**An Act to amend the *Export Finance and Insurance  
Corporation Act 1991***



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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2

<b>Schedule 1—Amendment of the Export Finance and Insurance Corporation Act 1991</b>		<b>3</b>
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# Export Finance and Insurance Corporation Amendment Act 1997

No. 65, 1997

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## **An Act to amend the *Export Finance and Insurance Corporation Act 1991***

[Assented to 30 May 1997]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Export Finance and Insurance  
Corporation Amendment Act 1997*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the

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Royal Assent, it commences on the first day after the end of that period.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Export Finance and Insurance Corporation Act 1991**

### **1 At the end of subsection 54(9)**

Add:

- ; and (c) an expected loss by, or liability of, EFIC under or in relation to a DIFF loan, as defined in section 66A, is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under that section in relation to the loss or liability.

### **2 At the end of subsection 56(2)**

Add:

- ; and (c) a likely liability of EFIC in relation to a DIFF loan, as defined in section 66A, or a likely default of a kind referred to in paragraph (1)(b) in relation to such a loan, is to be ignored to the extent that the Commonwealth would be liable to pay an amount to EFIC under section 66A in relation to the same matter.

### **3 At the end of section 66**

Add:

- (11) On the commencement of section 66A, this section ceases to apply to a loan to which that section applies. This does not affect any liability incurred under this section before the commencement of section 66A.

### **4 After section 66**

Insert:

**66A DIFF loans—assumption of risk by the Commonwealth**

*Purpose of section*

- (1) The purpose of this section is to provide for the Commonwealth to assume the risk associated with DIFF loans. A ***DIFF loan*** is a loan with the following characteristics:
- (a) the loan was made under this Act, the *Australian Trade Commission Act 1985* or the *Export Finance and Insurance Corporation Act 1974* before the commencement of this section; and
  - (b) the borrower’s liability in relation to the loan has not been fully discharged before the commencement of this section; and
  - (c) either:
    - (i) the loan funds included money made available by the Commonwealth as part of an overseas aid project (as defined in subsection 7(2)); or
    - (ii) the loan was made in conjunction with a grant of aid by the Commonwealth, or a Commonwealth instrumentality, as part of such an overseas aid project.

Note: The abbreviation “DIFF” stands for “Development Import Finance Facility”.

*Commonwealth assumption of risk on DIFF loans*

- (2) If, after the commencement of this section, there is a default in payment of an amount due under a DIFF loan:
- (a) the Commonwealth must pay to EFIC an amount equal to the default amount; and
  - (b) the Commonwealth must indemnify EFIC for:
    - (i) any other loss (including damages) suffered by EFIC because of the default; and
    - (ii) any costs incurred by EFIC in attempting to recover the default amount; and
  - (c) if EFIC recovers the whole or part of the default amount or a loss or cost referred to in paragraph (b), EFIC must pay to the Commonwealth an amount equal to the amount recovered.



Note: The obligation in paragraph (b) applies whether or not the Commonwealth's liability has been replaced as mentioned in subsection (4).

*Commonwealth may instead direct EFIC to borrow money*

- (3) The Minister may, on behalf of the Commonwealth, direct EFIC to seek approval under section 59 to borrow an amount equal to an amount payable by the Commonwealth under subsection (2).

*Commonwealth liability if it directs EFIC to borrow money*

- (4) If:
- (a) the Minister gives EFIC a direction under subsection (3) to borrow an amount; and
  - (b) the Treasurer approves the borrowing under section 59;
- the Commonwealth's liability under subsection (2) is replaced by a liability to pay to 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.

*EFIC to make payment to Commonwealth*

- (5) EFIC must pay \$40,000,000 from its reserves to the Commonwealth.

*EFIC may also have to pay Commonwealth a proportion of DIFF loan risk premiums*

- (6) The Minister for Finance may direct EFIC to pay to the Commonwealth a specified amount representing part of the risk premiums paid in relation to the DIFF loans. The amount must not exceed what is necessary to give the Commonwealth an appropriate proportion of the risk premiums.

*Commonwealth to pay EFIC a fee for administering DIFF loans*

- (7) The Commonwealth is liable to pay to EFIC an administration fee in respect of EFIC's costs in administering the DIFF loans after the commencement of this section. The amount of the administration fee, and how and when it is to be paid, are to be as directed by the Minister for Finance.

*Commonwealth and EFIC may set off amounts owed*

- (8) Amounts that the Commonwealth and EFIC owe to each other under this section may be set off.

*Directions under this section*

- (9) A direction under this section is to be in writing.

**5 After subsection 69(2)**

Insert:

- (2A) A DIFF loan, as defined in section 66A, is to be disregarded for the purposes of subsection (1).

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*[Minister's second reading speech made in—  
House of Representatives on 26 February 1997  
Senate on 20 March 1997]*

(16/97)

I HEREBY CERTIFY that the above is a fair print of the Export Finance and Insurance Corporation Amendment Bill 1997 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
1997