Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Act 2017

No. 100, 2017

An Act to amend the *Export Finance and Insurance Corporation Act 1991*, and for related purposes

Contents

1 Short title 1

2 Commencement 2

3 Schedules 2

Schedule 1—Amendments 3

Export Finance and Insurance Corporation Act 1991 3

Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Act 2017

No. 100, 2017

An Act to amend the *Export Finance and Insurance Corporation Act 1991*, and for related purposes

[*Assented to 14 September 2017*]

The Parliament of Australia enacts:

1 Short title

 This Act is the *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Act 2017*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 15 September 2017 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Export Finance and Insurance Corporation Act 1991

1 Subsection 3(1)

Insert:

***Commonwealth company*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***Commonwealth entity*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***EFIC’s Commonwealth entities function*** means the function set out in paragraph 7(1)(dc).

***large business***: see section 3A.

***related party***, for a business, has the meaning given by section 228 of the *Corporations Act 2001*.

***substantial part of a business***meansa part of a business that is substantial and not minor or insignificant.

2 At the end of subsection 3(3)

Add:

 ; or (e) the supply to persons who are not ordinarily resident in Australia of services relating to tourism; or

 (f) the conduct of an online business with customers outside Australia; or

 (g) the sale or licensing of intellectual property and related rights to persons outside Australia; or

 (h) direct investment outside Australia where a benefit flows back to Australia (whether directly or indirectly).

2A After section 3

Insert:

3A Meaning of *large business*

 (1) A business is a ***large business*** at a particular time in a financial year (the ***current financial year***) if:

 (a) its revenue for the previous financial year is $150,000,000 or more; or

 (b) if there was no time in the previous financial year when the business was carried on—its revenue for the current financial year is as at that time $150,000,000 or more.

 (2) Revenue is to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time.

3 After paragraph 7(1)(db)

Insert:

 (dc) as directed by the Minister, to assist Commonwealth entities and Commonwealth companies in performing their functions or achieving their purposes by providing services in relation to financial arrangements and agreements;

4 At the end of section 7

Add:

 (3) The reference in paragraph (1)(dc) to providing services in relation to financial arrangements and agreements does not include the provision of loans, insurance or guarantees.

5 Subsection 8(3)

Repeal the subsection, substitute:

 (3) Subsection (1) and subparagraphs (2)(b)(i) and (iii) do not apply in relation to:

 (a) EFIC’s Northern Australia economic infrastructure functions; or

 (b) EFIC’s Commonwealth entities function.

6 Subsection 9(6)

Omit all the words after “does not apply”, substitute:

 in relation to:

 (a) EFIC’s Northern Australia economic infrastructure functions; or

 (b) EFIC’s Commonwealth entities function.

6A At the end of section 16

Add:

 (3) However, EFIC must not make a guarantee or enter into a contract under this section in relation to a loan or a proposed loan that is to be used for the dominant purpose of direct investment outside Australia unless the requirements in subsection (4) are satisfied.

 (4) For the purposes of subsection (3), the requirements are the following:

 (a) the person who carries on the business must certify, by writing given to EFIC, that the person reasonably believes that the loan will result in a net increase in the number of people employed in Australia by the business, or a related party of the business, during the term of the loan;

 (b) at the completion of the loan, the person carrying on the business must certify to EFIC whether the loan has resulted in a net increase in the number of people employed in Australia by the business, or a related party of the business;

 (c) if the business is a large business—the person who carries on the business must certify, by writing given to EFIC, that the loan will not be used to move the whole or asubstantial part of the business, or of a related party of the business*,* overseas; and

 (d) EFIC must ensure that it publicly discloses copies of the certification it receives under subsection (4)(b).

6B At the end of section 23

Add:

 (3) However, EFIC must not lend money under this section for the purpose of financing a transaction whose dominant purpose is direct investment outside Australia by a person carrying on business in Australia unless the requirements in subsection (4) are satisfied.

 (4) For the purposes of subsection (3), the requirements are the following:

 (a) a person to whom the money is lent must certify, by writing given to EFIC, that the person reasonably believes that the loan will result in a net increase in the number of people employed in Australia by the business, or a related party of the business, during the term of the loan;

 (b) at the completion of the loan, the person carrying on the business must certify to EFIC whether the loan has resulted in a net increase in the number of people employed in Australia by the business, or a related party of the business;

 (c) if the business is a large business—the person who carries on the business must certify, by writing given to EFIC, that the loan will not be used to move the whole or asubstantial part of the business, or of a related party of the business, overseas; and

 (d) EFIC must ensure that it publicly discloses copies of the certification it receives under subsection (4)(b).

7 Section 84A

Repeal the section, substitute:

84A EFIC must charge for certain services

 (1) EFIC must charge fees for services it provides in performing the following:

 (a) EFIC’s Northern Australia economic infrastructure functions;

 (b) EFIC’s Commonwealth entities function.

 (2) The fees:

 (a) must be sufficient to compensate EFIC for the services it provides in relation to those functions; but

 (b) must not be such as to amount to taxation.

[*Minister’s second reading speech made in—*

*House of Representatives on 9 November 2016*

*Senate on 8 August 2017*]

(168/16)