



**EXPORT FINANCE AUSTRALIA: INFRASTRUCTURE
MANDATE REVIEW**

INDEPENDENT REPORT

Stephen Sedgwick AO

October 2021



© Commonwealth of Australia 2021 ISBN 978-0-6483308-5-1

Author: Stephen Sedgwick AO FIPAA

With the exception of the Commonwealth Coat of Arms and where otherwise noted all material presented in this document is provided under a Creative Commons Attribution 3.0 Australia (<http://creativecommons.org/licenses/by/3.0/au/>) licence. The details of the relevant licence conditions are available on the Creative Commons website (accessible using the links provided) as is the full legal code for the CC BY 3.0 AU licence (<http://creativecommons.org/licenses/by/3.0/au/legalcode>). The document must be attributed as the Department of Foreign Affairs and Trade, Canberra, 2021.

Published by the Australian Government Department of Foreign Affairs and Trade, Canberra, 2021.

This document is online at dfat.gov.au

Disclaimer: The views contained in this report do not necessarily represent those of the Australian Government.

For further information, please contact efa_infra_review@dfat.gov.au.

Export Finance Australia: infrastructure mandate review

Executive Summary

DFAT has commissioned a review (Review) of the implementation by Export Finance Australia (EFA) of certain amendments enacted in 2019 to the *Export Finance and Insurance Corporation Act 1991* that substantially widened the remit of EFA in respect of infrastructure projects in the Indo-Pacific. The Review is in respect of the operationalisation of EFA's new functions; it is too soon to assess their effectiveness in advancing the government's policy objectives. The operations of the Australian Infrastructure Financing Facility in the Pacific (AIFFP) are not in scope. Two amendments are a particular focus: the increase in EFA's callable capital and the introduction of a widened Australian benefit test applicable only to overseas infrastructure developments in the Indo-Pacific.

The Review was informed by submissions provided in response to a public invitation and extensive discussions and information provision by EFA and the Department of Foreign Affairs and Trade (DFAT). Submissions raised a number of issues that were also examined by the Review. These include views about the instruments available to EFA, its approach to safeguards and the public transparency with which they are addressed, the attention paid by EFA to the interests of recipient governments, and a range of smaller matters including the range of financing partners that EFA seeks to engage with.

The Review makes 25 findings, which may be summarised:

- EFA has promulgated appropriate strategies, policies and procedures to give effect to its revised remit, supported by specific strategies for countries that seem prospective. It has increased resourcing and applied its internal processes to monitor and report on compliance to the Board. In time it may be sensible for the government and the Board selectively to institute more systematic monitoring and evaluation of the benefits actually secured from financings occasioned by the expanded Australian benefit test.
- The increased callable capital has enabled EFA to increase its project, client and country lending limits within an unchanged aggregate maximum exposure limit (set by regulation at \$6.5 billion).
- Infrastructure is broadly defined to include both economic and social infrastructure. EFA has begun to undertake infrastructure financing activities in the region that are only possible after the 2019 amendments to the EFIC Act (including the expanded Australian benefits test) and has a significant pipeline of work under consideration. The pipeline includes both economic and social assets across several countries. The probability that projects will proceed to financial close cannot be estimated reliably. The time taken to reach close varies considerably, but is typically 3 to 5 years (with particular cases requiring more or less years depending on circumstances that may be outside of EFA's control).
- EFA maintains substantial outreach activities, both domestically and in-country, to assist it to identify possible projects, clients and financing partners and to support its decision making with good information about local conditions etc.;
- The relationship between EFA and DFAT is fundamental to enabling EFA to discharge its expanded remit properly informed and in ways that maximise the benefits to Australia. The relationship is currently very close, playing out at multiple levels in both organisations and including DFAT's in-country representatives and a number of DFAT programs (e.g., the

recently introduced P4I initiative - Partnerships for Infrastructure¹). However, there is scope in the longer term to further develop that relationship, possibly including through DFAT undertaking parallel investments for selected EFA investments, in support of Australia's national interests.

- Desirable further amendments to the Act have been presented to Parliament (early August 2021) to enable EFA to take an equity position in limited circumstances and to provide guarantees to overseas infrastructure clients in circumstances in which they would be available for EFA's other clients. EFA already has scope to engage in local currency financing. These are more likely to involve guarantees or bonds rather than loans because of the risks.
- The relevant Minister² sets out the safeguard policies required of EFA through the Statement of Expectations (SoE)³, which is revised from time to time. EFA is an export credit agency, not a development finance institution (DFI). Current policies and publication practices are consistent with the commercial nature of EFA's remit and the practices of comparator officially supported export credit agencies. Any proposal to adopt stronger safeguards or greater transparency would require detailed analysis.
- EFA is open to seeking financing partnerships with superannuation /provident funds and cashed up multinational companies that operate in the region – there is no legal or policy prohibition against such arrangements. However, the opportunities are reported to be limited currently.

¹ The Australian Government's \$141 million Partnerships for Infrastructure (P4I) initiative in Southeast Asia facilitates working with partner countries to share expertise in planning, procuring and managing new and existing infrastructure assets to generate inclusive, sustainable growth.

² Currently the Minister for Trade, Tourism and Investment.

³ The operations of the SoE in respect to safeguards matters is further discussed below.

Acronyms and abbreviations

ADB	Asian Development Bank
AIFFP	Australian Infrastructure Financing Facility for the Pacific
ANAO	Australian National Audit Office
ANZ	Australian and New Zealand Bank Banking Group
CA	Commercial Account
DFI	Development Finance Institution
ECA	Export Credit Agency
EFA	Export Finance Australia
EFIC	Export Finance and Insurance Corporation
ESR	Environmental and Social Review
FJD	Fijian Dollars
FOI	Freedom of Information
FTE	Full Time Equivalent
GBP	Pounds Sterling
IFC	International Finance Corporation (part of the World Bank Group)
JBIC	Japan Bank for International Cooperation
KIAT	The Indonesia-Australia Partnership for Infrastructure
MDB	Multilateral Development Bank
NEXI	Nippon Export and Investment Insurance
NIA	National Interest Account
P4I	Partnerships for Infrastructure initiative in Southeast Asia
PGPA	Public Governance, Performance and Accountability Act 2013 (PGPA Act)
PIC	Pacific Island Country
PNG	Papua New Guinea
PSF	Project and Structured Finance
SIF	Support for Infrastructure Financing
SME	Small and Medium Enterprise
SOE	State Owned Enterprise
TIP	Trilateral Infrastructure Partnership
TOR	Terms of Reference
US\$	United States Dollars
\$	Australian Dollars
5G	Fifth Generation wireless technology

Table of Contents

EXPORT FINANCE AUSTRALIA: INFRASTRUCTURE MANDATE REVIEW	0
Executive Summary.....	2
Acronyms and abbreviations	4
About the Review	7
Introduction.....	7
Scope of the Review	7
Not in scope	8
Conduct of the Review.....	8
About EFA.....	9
Background – EFA’s core business.....	9
An expanded mandate - the 2019 Amendments	10
Increased Callable Capital.....	10
Operationalising the Australian benefit test.....	11
AIFFP	12
Issues raised in submissions	13
Instruments available to EFA.....	13
Approach to safeguards	13
Benefits assessment	13
Other matters.....	13
Positioning EFA to discharge the expanded Mandate.....	14
The Strategic Environment.....	14
EFA’s Strategy, Policies and Procedures	15
Capability and capacity	15
Developing a pipeline of projects.....	17
Impact of the Amendments on EFA and the pursuit of Australia’s interests in the region.....	20
Impact of increased callable capital.....	20
Impact of the new Australian benefits test: Projects made possible since 2019	21
Implications of the changes to the benefits test for EFA’s operations	21
Projects made possible since 2019	22
Benefits monitoring and Evaluation.....	24
Findings in respect of this Section	25
Relationships with DFAT.....	26
Pursuing Australia’s national interests.....	27

Maximising Australia’s national interests?	28
Consideration of Issues raised in Submissions	29
Additional Instruments that should be available to EFA.....	29
The option to take an equity position	30
The option to provide local currency financing	30
The option to provide guarantees when not a lender	31
Safeguards	31
Safeguard policies applicable to EFA.....	32
EFA’s Implementation of safeguards requirements	34
Assessment of the appropriateness of EFA’s safeguard policies	36
Assessment of EFA’s Transparency and Publication obligations.....	36
Findings in respect of this section.....	37
Recipient country benefits.....	37
Other matters raised in submissions	39
EFA’s definition of Infrastructure.....	39
EFA’s range of partners.....	39
EFA’s resourcing.....	40
EFA’s Support for Australian branch offices etc	40
EFA’s fees	40
Conclusions.....	42
Consolidated Findings	43
Attachment 1: Terms of Reference - Export Finance Australia: infrastructure mandate review	46
Background	46
Terms of Reference	46
Attachment 2: Summary of Amendments proposed by the SIF Bill.....	47
Attachment 3: List of submissions	48
Attachment 4: CA Projects Supported by EFA (3 April 2019 – end-June 2021)	49
Attachment 5: List of Stakeholders invited to make submissions.....	55

About the Review

Introduction

In 2019 the *Export Finance and Insurance Corporation Act 1991* was amended⁴ to give Australia's export credit agency (ECA), then known as the Export Finance and Insurance Corporation (EFIC), a new overseas infrastructure financing power with an expanded Australian benefits eligibility criterion and an extra \$1 billion in callable capital. The amendments significantly expanded EFIC's traditional mandate to support Australian exports and underwrote EFIC's capacity to make larger loans. EFIC was also renamed Export Finance Australia (EFA). The amendments also enabled the Minister to approve EFIC to administer on the National Interest Account support for infrastructure projects under the new infrastructure financing power (eg loans and other support agreed to by the government following the establishment of a previously announced new Australian government facility, namely the Australian Infrastructure Financing Facility for the Pacific (AIFFP)⁵).

Scope of the Review

In its July 2019 response to the Senate Foreign Affairs, Defence and Trade Legislation Committee Report on the proposed amendments ('the Senate Inquiry'), the Government confirmed it would commission an independent review of EFA's overseas infrastructure financing functions, starting within 18 to 24 months after the Bill's assent (which occurred on 5 April 2019), subject to prevailing circumstances.

This Review was commissioned to fulfill that commitment. The Terms of Reference are provided in Attachment 1. In brief, the Review is to examine the impact of the 2019 amendments on EFA's ability to (a) undertake overseas infrastructure financing operations and (b) support the Government's aims and the infrastructure needs of Australia's Indo-Pacific neighbours. The Indo-Pacific is defined as the region ranging from the eastern Indian Ocean to the Pacific Ocean connected by Southeast Asia, including India, North Asia and the United States⁶.

It takes some time, often 3 to 5 years, to develop and bring to financial close a significant infrastructure project. This is especially the case if the counterparty is the government of a small Pacific Island Country (PIC), which may face administrative and other capacity constraints. EFA's involvement may be shorter if its role is solely that of a late-stage financier. However, several more years may be required if EFA becomes involved early in the project cycle, which may be desirable if EFA wishes to influence either project design or its financial engineering.

With barely two years elapsed since passage of the amendments (and having regard also to the restrictions on travel etc imposed by the COVID-19 pandemic), relatively few transactions of any scale have progressed to financial close relying on EFA's new powers. The primary focus of this Review, therefore, is EFA's response to the additional authority provided by the 2019 amendments to facilitate increased financing of overseas infrastructure interventions in the Indo-Pacific, including more accommodating eligibility requirements, rather than the effectiveness of the new powers in advancing Australia's trade and other interests in the Indo-Pacific. An informed assessment of the latter will not be possible for several years.

The Terms of Reference specifically require the Review to canvass and consider the views of a range of stakeholders, including those that contributed submissions to the Senate Inquiry into the

⁴ The Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019

⁵ The AIFFP was announced by Prime Minister Morrison in November 2018 [see footnote 20, below for further details] and became operational on 1 July 2019.

⁶ See the Australian Government's *2017 Foreign Policy White Paper*, footnote 1, p1.

amending legislation (the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 – the ‘SIF Bill’). This aspect is a secondary focus of the Review.

***Finding 1:** it is too early to conduct a meaningful review of the effectiveness of the 2019 amendments in advancing Australia’s trade and other interests in the Pacific. The principal focus of the Review, rather, is an assessment of the appropriateness of EFA’s responses to the 2019 amendments. A secondary focus is to canvass and consider the views of a range of stakeholders regarding the operations of the amended Act.*

Not in scope

The Terms of Reference refer solely to EFA’s overseas infrastructure financing operations. They exclude consideration of EFA’s more traditional activities (see [Background – EFA’s Core Business](#), below) and the establishment or operations of the AIFFP.

Conduct of the Review

As previously noted, the Review is required to consider the views of a wide range of stakeholders, including those who provided submissions to the 2019 Senate Inquiry. Attachment 5 provides a list of the stakeholders who were approached. Attachment 3 lists the submissions received, with links to either the full or redacted submission when permission has been provided – the few requests not to publish or to effect redactions have typically been made to protect commercial information provided to the Review in confidence.

The Review has also been majorly assisted by discussions with key personnel and the provision of information, opinions, and data by EFA and DFAT in response to issues raised with them during discussions or otherwise. The Review has drawn on contributions received through these channels in addition to the formal submissions of both agencies. Both agencies also provided factual feedback on a draft Report. However, both have respected the independence of the Review and the views expressed in this Report (and the responsibility for any errors) are entirely mine.

Although I have sought to verify the information provided whenever possible, having regard to confidentiality requirements, I have ultimately relied on the accuracy of the information provided and the representations made to me by EFA and DFAT in relation to their processes and activities.

I particularly acknowledge the support provided to the Review by the Chairman of the Board of EFA, Mr James Millar AM, the Managing Director and CEO, Ms Swati Dave, and their senior management team, including members of EFA’s Corporate Affairs, Project and Structured Finance and Environmental and Technical Review teams. In the case of DFAT, my thanks go to Deputy Secretary Christopher Langman, and officials in the Trade, Investment and Business Engagement Division, the Office of the Pacific, the US and Indo-Pacific Strategy Division and the Southeast Asia Division. Secretariat functions were performed by DFAT’s Trade Finance Section, in the Trade, Investment and Business Engagement Division.

About EFA

Background – EFA’s core business

EFA, known prior to the 2019 amendments as EFIC, was established in its current form as Australia’s official export credit agency in 1991⁷. The bulk of EFA’s activities today reflect its primary purpose. This is to provide financial solutions and support to Australian export businesses that are unable to secure funding from the domestic private sector. Key objectives are to facilitate and encourage Australian export trade and to encourage private financiers in Australia to finance or assist in financing exports, including by demonstrating that support for such ventures is commercially viable.

Legislation requires that EFA not compete with private sector financiers. Rather it is to operate in the ‘market gap’, where finance is not available to otherwise viable ventures. Since 2014, the Government has directed EFA to focus on supporting Small and Medium-Sized Enterprises (SMEs). Since 2020, the government has deemed that a ‘market gap’ for finance exists in respect of SMEs⁸. EFA supports its activities in respect of SMEs with targeted marketing and outreach activities intended to raise awareness of EFA’s capability. The 2019 amendments to the EFIC Act introduced specific provisions in respect of financing in support of overseas infrastructure developments in the Indo-Pacific (for details see [An Expanded Mandate – the 2019 Amendments](#), below).

EFA financing solutions may involve loans, bonds, and guarantees, delivered as part of either EFA’s Commercial Account (CA) and/or the government’s National Interest Account (NIA). EFA also retains the power to provide insurance. Potential investments⁹ progressed under the CA are assessed and, if consistent with EFA’s risk appetite and other criteria, are agreed to by EFA, with the risk and rewards borne by EFA. Decisions in respect of NIA investments are made by the government, with EFA providing due diligence and some administrative support. All revenues and the risk associated with NIA investments are reflected in the Commonwealth financial accounts. EFA’s direct client may be a corporate, an SME or a sovereign government. Section 3 of the EFIC Act sets out the criteria that an eligible export transaction must satisfy to qualify for funding by EFA under its traditional powers - importantly, those criteria effectively require that Australian beneficiaries are identifiable.

A potential investment is first assessed for eligibility for the CA, with consideration for funding under the NIA available when CA criteria are not met. Typically, transactions referred to the NIA are outside the risk appetite of the CA as determined by EFA’s Board¹⁰.

EFA also provides support, on a cost recovery basis, for some specific government initiatives, including processes in support of decision making in regard to investments on the NIA and, with the Minister’s consent, can similarly provide technical advice to Commonwealth agencies and those of state governments. Examples of such government initiatives include: support for defence exports, support for critical minerals projects and related infrastructure, the Indigenous Entrepreneurs

⁷ EFIC was established on 1 November 1991 under the Export Finance and Insurance Corporation Act 1991 (the EFIC Act). Prior to this, export finance and insurance was officially provided under the operations of the former Australian Trade Commission in accordance with the Australian Trade Commission Act 1985 and prior to that by the Export Payments Insurance Corporation under the Export Payments Insurance Corporation Act 1956.

⁸ For example, the current Ministerial Statement of Expectations (SoE) includes: ‘I have determined that a ‘market gap’ for finance for SMEs.’ (SoE, 24 November, 2020, p2).

⁹ In this Report ‘investment’, ‘project’ ‘financing’ or ‘transaction’ is defined to mean any financing considered by EFA, whether by way of loans, bonds, or guarantees.

¹⁰ EFA *Annual Report 2019-2020*, p7. This Annual report also noted that the Defence Export Facility, the Australian Infrastructure Financing Facility for the Pacific (AIFFP) and the (now expired) COVID-19 Export Capital Facility (COVID-19 Facility) are examples of financing solutions delivered through the NIA.

Capital Scheme, the National Housing Finance and Investment Corporation and the Northern Australia Infrastructure Facility. The 2019 amendments to the EFIC Act also included specific provisions that enable EFIC to support the lending and other operations of the (previously established) AIFFP.

The COVID-19 pandemic caused financial stress for many EFA customers, triggering requests for assistance with repayment terms and the provision of finance. EFA assisted the government to establish and administer a \$500m COVID-19 Facility on the NIA, which was designed to extend a financial lifeline to eligible COVID-affected businesses at the outset of the pandemic¹¹.

As at end-June 2021, EFA's total maximum exposures on the CA amounted to \$1.8 billion and it managed \$703 million of exposures on the NIA. It had delivered a profit and returned a dividend to the Commonwealth in each of the last 20 years, including through the Global Financial Crisis and in the immediate aftermath of the COVID-19 pandemic. It has experienced an historical write-off rate of less than 1 percent on exposures across both the CA and NIA. Attachment 4 provides data regarding EFA's CA investments since EFIC's mandate was changed in 2019, specifically identifying those made possible by the 2019 Amendments. The section "[Projects made possible since 2019](#)" includes similar information in respect of NIA transactions made possible by the 2019 Amendments.

An expanded mandate - the 2019 Amendments

In introducing the SIF Bill in February 2019, the responsible Minister said:

'The amendments give Australia's export credit agency, EFIC, new overseas infrastructure financing power and an extra \$1 billion in callable capital. These initiatives will support infrastructure projects in the region that have a benefit for Australia or Australians, and enable EFIC to write larger loans, including within its current export mandate. The amendments will enhance EFIC's ability to support Australian businesses, and drive stronger links between Australia and its region by enabling EFIC to support more and more larger, overseas infrastructure projects.'¹²

Three key provisions relate to:

- The increase in EFIC's callable capital, which potentially benefits both EFIC's traditional business and overseas infrastructure financings in the Indo-Pacific;
- An expanded 'Australian benefit' test to apply in instances of overseas infrastructure projects in the Indo-Pacific; and
- Provisions that enable EFIC to assist in the operations of AIFFP.

Increased Callable Capital

An amendment increased EFIC's callable capital by \$1 billion, bringing total callable capital to \$1.2 billion, a substantial increase. In conjunction with almost \$475 million¹³ in cash capital, that raised EFIC's total capital at the time to nearly \$1.7 billion.

¹¹ In 2019-2020 EFA provided support for 14 customers and 15 transactions, valued at \$15.3m. Op cit, p26. The Facility expired on 8 April 2021.

¹² Second Reading Speech of Mr Mark Coulton, Assistant Minister for Trade, Tourism and Investment, Hansard, House of Representatives, 13 February 2019, p229.

¹³ Ibid, p230.

The increase did not lead to an immediate cash injection of \$1 billion. Callable capital is not ‘paid up’ capital. Rather, the government is required to make funds up to that magnitude available if they are needed. In his submission to the 2019 Senate Inquiry, S Howes argued:

‘Like any such arrangement, the call is expected never to have to be made; and if it is made, it is the end of the organisation. The callable capital is nevertheless valuable as it enables EFIC to borrow greater amounts at lower interest rates – since its creditors know that the government is standing behind it.’¹⁴

Importantly, the increase will enable EFIC to make larger loans (see [Impact of Increased Callable capital](#), below), over time. However, the government did not propose an increase in the total contingent liability it would underwrite on the CA. This remained set at a regulated upper limit of \$6.5 billion. In his second reading speech the Minister argued that the increase was provided through a ‘legislative amendment, rather than by legislative instrument, [to] provide the higher degree of certainty that infrastructure projects proponents, borrowers and commercial financing partners require when they look to EFIC to assist with financing gaps’¹⁵.

Operationalising the Australian benefit test

Prior to the 2019 amendments, all transactions supported by EFIC had to demonstrate that the underlying transaction had Australian content or Australian investment. Australian content was defined¹⁶ as:

- goods manufactured or produced in Australia;
- inputs sourced from other Australian suppliers;
- services, including management and professional services provided by third parties, performed in Australia or by Australians employed outside Australia; and
- the Australian exporter’s profit margin.

Broadly, this remains the test applied to most EFA transactions. However, in 2019 the test applicable to overseas infrastructure projects in the Indo-Pacific was amended to remove the explicit requirement that the proponents had to identify a specific Australian beneficiary. The test introduced by the SIF Bill allow overseas infrastructure financing in the Indo-Pacific if the transaction is likely to result in an Australian benefit. Infrastructure financing transactions elsewhere are subject to EFIC’s standard criteria. The amended Act defined Australian benefit¹⁷ ‘as a benefit that flows (whether directly or indirectly) from overseas to:

- (a) Australia; or
- (b) a person carrying on business or other activities in Australia’.

EFA has introduced Board-approved policies and procedures to give effect to the revised test in respect of overseas infrastructure transactions in the Indo-Pacific. Consistent with the Minister’s second reading speech and advice provided in successive Ministerial SoEs, the test was operationalised by EFIC such that Australian benefits¹⁸ can include (but are not limited to):

¹⁴ S Howes, Submission 17 to The Senate Foreign Affairs, Defence and Trade Legislation Committee Inquiry onto the Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Bill 2019 [Provisions], 2019, Pp3,4

¹⁵ Coulton, op cit, p230

¹⁶ Summary taken from ANAO Report No. 44 2018-19, p30.

¹⁷ Subsection 3(1).

¹⁸ See EFA Submission to this Review, section 2.2

- Australian content (goods or services) in a project;
- greater Australian participation in international supply chains;
- access to new markets or export opportunities for Australian businesses;
- more Australian jobs;
- payment of dividends or other financial proceeds from overseas to Australia;
- new research and development expenditure in Australia; and/or
- Australian access to new products, intellectual property or technology;

EFA's internal guidance to staff acknowledges that not all such benefits may be immediately capable of quantification. An assessment may include both quantitative and qualitative material. The objective is to assess whether real, substantive, and significant benefit(s) is (are) likely to occur and that the arrangement or activity to be financed is essential to the realisation of such benefit(s). The benefit(s) may accrue to a specific Australian entity, interest or group, or it could accrue more widely or even nationally. Judgement may be required in assessing the information at hand to form a conclusion about possible benefits and their likelihood of occurrence.

AIFFP

The intention to establish the AIFFP was announced by Prime Minister Morrison in November 2018¹⁹. It became operational on 1 July 2019. The AIFFP is part of Australia's Pacific Step-up²⁰ and is consistent with the government's objective to ensure that Australia is seen to be an enduring infrastructure development partner in the Pacific.

The AIFFP is a \$2 billion facility, which has the flexibility to combine loans with grants on a case-by-case basis. Responsibility for the establishment and operations of the AIFFP rests with DFAT. However, the SIF Bill provided the legislative authority for EFA to issue loans on AIFFP's behalf. This allowed EFA to assist, on a cost recovery basis, with the timely implementation of the AIFFP by providing assistance as required and by administering the AIFFP loans. The operations and effectiveness of the AIFFP are not within the scope of this Review. However, it needs to be acknowledged that EFA supported DFAT in setting up AIFFP and, because AIFFP loans are delivered by EFA through the EFIC Act, is the 'lender of record' for AIFFP loans.

¹⁹ Speech by Prime Minister, Mr Morrison, Lavarck Barracks, Townsville, Qld, 8 November 2018. See <https://www.pm.gov.au/media/address-australia-and-pacific-new-chapter>

²⁰ The Pacific Step-up is consistent with the priorities highlighted in Australia's *2017 Foreign Policy White Paper* and *2016 Defence White Paper*. The Step-up was first announced at the Pacific Island Forum Leaders' Meeting in September 2016 as a 'step-change' in the way Australia would engage the region. 'The Step-up responds to and recognises the broad-ranging challenges of our region, identified by Pacific leaders and communities themselves, including: strengthening climate and disaster resilience; sustained economic growth; and support to promote healthy, educated, inclusive populations'. See <https://www.dfat.gov.au/geo/pacific/engagement/stepping-up-australias-pacific-engagement>

Issues raised in submissions

Ten submissions were received in response to a public invitation - see Attachment 3²¹. This chapter sets out the main issues identified in these submissions. A [later chapter](#) provides an assessment of them.

Instruments available to EFA

Some submissions argued that the additional instruments should be available to EFA:

- (a) to take equity positions;
- (b) to undertake local currency financing, especially in debt-stressed Pacific countries or where shortages exist of foreign exchange or where there is uncertainty about the availability or price of foreign exchange;
- (c) to extend guarantees in respect of overseas infrastructure projects in the Indo-Pacific that meet the expanded Australian benefits test when EFA is not itself a lender; and
- (d) to provide grants to debt-stressed sovereign borrowers, especially in the Pacific.

Approach to safeguards

A joint submission on behalf of some aid advocacy bodies and some individuals argued that EFA's approach to safeguards should be broadened beyond 'do no harm' to require EFA more actively and more transparently to pursue improved environmental and social outcomes, including in respect of disaster risk or climate resilience, gender and disability inclusiveness, human rights, and environmental outcomes. It further recommended greater public reporting by EFA of its assessments in respect of such matters.

Benefits assessment

That joint submission also argued that EFA's assessment of benefits potentially to be secured by a transaction should go beyond whether a proposal is in Australia's interests to also consider whether it is in the recipient country's interests. It argued that EFA should not proceed unless both tests are satisfied.

Other matters

Five other matters were also canvassed in submissions, namely that:

- EFA should adopt a broad definition of 'infrastructure' to encompass social as well as economic infrastructure.
- EFA should seek to solicit a wider range of partners, including in-country provident or super funds and well rated local corporates or multinationals.
- adequate resources should be made available to enable EFA to discharge its additional responsibilities.
- EFA should support with financing Australian branch offices and equipment for infrastructure related companies.
- EFA should lower fees for unused lines of credit, which are higher than those charged by banks.

²¹ Attachment 5 provides the full list of those specifically invited to submit, in addition to the public call for submissions.

Positioning EFA to discharge the expanded Mandate

The Strategic Environment

Chapter three of the government's *2017 Foreign Policy White Paper* (2017 White Paper) sets out the importance and the range of initiatives Australia is pursuing to strengthen relationships with the countries of the Indo-Pacific. The Indo-Pacific is a large and very diverse region. For example, as a generalisation, the major economies of South and Southeast Asia are developing quickly, progressively lifting millions out of poverty, while the PICs face significant disadvantages because of their smaller scale and geography, amongst other things. The *2017 White Paper* observes that '[t]he [Indo-Pacific] region's infrastructure needs are massive and wide ranging'²². Moreover, '[m]uch of the new competition for influence is also being played out through infrastructure development'²³. In addition to facilitating increased Australian business opportunities in the Indo-Pacific region, EFA's enhanced mandate is intended to help strengthen Australia's influence and effectiveness to advance the development priorities of key regional partners and progress Australia's White Paper objectives.

The *2017 White Paper* indicates that the government's agenda for the Indo-Pacific centres on strengthening engagement with partners to support an open, inclusive and prosperous region based on robust rules, norms and institutions, and respect for international law. Working with development institutions and like-minded governments to support high-quality infrastructure development is a key element of this agenda.

DFAT's submission to the Review puts it in these terms²⁴:

'Australia supports all investment in regional infrastructure that is transparent and non-discriminatory, promotes fair and open competition, upholds robust standards, including environmental and social safeguards, meets genuine needs, and avoids unsustainable debt burdens.

'Australia wants to help ensure Indo-Pacific countries have access to a range of sources of infrastructure financing and can make well-informed investment choices. Infrastructure development can drive prosperity and stability, enable the movement of people and goods, and better connect the growing markets of our region. It will also play an important role in supporting economic recovery post-COVID.

'The Australian Government provided [EFA] with its overseas infrastructure financing powers as part of a package of measures to step up Australia's engagement in the Pacific and the broader region, enhancing Australia's regional commitment, especially to infrastructure. The powers enable EFA to better support quality infrastructure projects in the Indo-Pacific that are inclusive and resilient.'

The Review examined what procedures and relationships EFA put in place after passage of the SIF Bill to ensure that, when considering Australian benefit, its analysis and, as appropriate, its decision making are well informed about the implications of each potential investment for Australia's interests in respect of the region and the relevant country. Also relevant are EFA's actions to support the government's regional engagement activities.

²² 2017 White Paper, p45

²³ *ibid*

²⁴ p1

EFA's Strategy, Policies and Procedures

The 2019 amendments to the EFIC Act significantly expanded EFA's scope and financial capacity to undertake infrastructure projects in the Indo-Pacific. Moreover, the government's public statements conveyed a clear expectation that EFA would avail itself of the additional flexibilities to advance significantly larger sums under the CA, with a similar expectation for increased recourse to the NIA (including via the operations of the AIFFP) if appropriate.

It is apparent that EFA moved swiftly following passage of the 2019 Amendments to reform its strategies, policies, procedures and governance to give effect to the government's policy intentions. Thus EFA:

- developed and obtained Board endorsement of an infrastructure strategy that details EFA's regional infrastructure focus and approach.
- identified five strategic markets²⁵, together with specific strategies for these key markets, and created dedicated country and industry leads.
- developed and, after Board endorsement, promulgated an 'Australian benefits' policy to guide decision making in respect overseas infrastructure development financing in the Indo-Pacific, which is subject to periodic review under EFA's established governance.
- updated internal policies to ensure compliance with the changes to the Minister's SoE, which, like the new Australian benefits policy, are subject to verification and reporting to the Board under EFA's established assurance processes, for example through its program of Internal Audits.

Of course, these changes did not detract from EFA's capacity to offer financing to overseas infrastructure developments outside the Indo-Pacific region that meet the traditional eligibility criteria. On 1 July 2019, EFA completed the transition to its new trading name and branding, which EFA believes has had a positive impact on brand recognition.

Finding 2: EFA's strategy, policies and procedures have been revised appropriately, including the development of an Australian benefits policy in line with legislation and the Minister's Statement of Expectations.

Finding 3: EFA has internal governance checks and balances in place, including Board and internal audit oversight, to ensure that policies are appropriately applied²⁶ and are periodically reviewed.

Capability and capacity

EFA requires a range of capabilities to support its activities. These include capabilities in respect of project origination and analysis, structured finance, due diligence (including in respect of environmental and social review activities (ESR) and credit assessment), legal expertise, marketing and relationship management, internal governance, loan portfolio administration and other administrative support.

Passage of the 2019 amendments did not change the nature of the capabilities required of EFA to assess the quality and commercial viability of a potential investment. Moreover, EFA has long had

²⁵ These are PNG, Indonesia, the Philippines, Vietnam, and Sri Lanka.

²⁶ This finding is consistent with a 2019 ANAO Report, *Effectiveness of the Export Finance and Insurance Corporation*, which in respect of its obligations prior to the 2019 Amendments, found that EFIC 'is operating within its prescribed mandate. It has developed a framework to interpret, operationalise and comply with each mandate requirement.' p8.

authority to undertake infrastructure financing subject to demonstrating that identifiable Australian exporters or investors are involved or receive a benefit. Responding to the 2019 amendments required EFA to acquire additional resources (capacity) but did not require it to build entirely new capability.

EFA has long relied on DFAT support to understand the Australian government's policy interests and how they might impact assessments of the eligibility of projects for potential funding through the NIA, amongst other things. The revised Australian benefits test enables account to be taken of potential benefits that accrue 'to Australia', not just 'to Australians', as appropriate in the circumstances of the case. EFA draws on its longstanding relationship with DFAT for assistance in interpreting the revised Australian benefits test in such cases.

Accordingly, EFA has reported that:

- overall headcount has grown from 97.7 full time equivalent staff (FTE) in June 2019 to 119 FTE at end-June 2021. These additional resources have supported the increased origination and back-office support necessary to progress transactions.
- the origination and execution of infrastructure transactions is primarily a focus of the Project and Structured Finance (PSF) team. PSF's headcount has been supplemented by specialist consultants to progress some transactions. The team is expected to expand further in 2021-22.
- although none is exclusively devoted to AIFFP, a total of 22 staff directly support the AIFFP in some manner, ranging from PSF to support functions such as credit assessment and legal advice. EFA's submission to the Review cites the following as examples of the support provided to AIFFP:
 - 'project review and credit assessment;
 - transaction management;
 - legal documentation and execution support;
 - OECD reporting and compliance, including compliance with anti-money laundering and counter terrorism financing laws;
 - treasury services; and
 - loan portfolio management.'²⁷

As noted previously, EFA has assigned relevant staff specifically to progress EFA's infrastructure interests in the key countries identified in its updated infrastructure strategy.

Finding 4: EFA has undertaken a substantial investment in expanded capacity and assigned relevant staff to progress EFA's infrastructure interests in key countries of interest, to enable it to implement its new powers (and to support establishment of AIFFP).

²⁷ EFA Submission, p7. The Submission further notes: 'We have longstanding experience financing projects in emerging markets and are well placed to provide this support. The AIFFP has a separate governance process and a development-focused investment mandate.'

Developing a pipeline of projects

The Indo-Pacific region is very diverse. The development challenges and in-country capability to analyse and respond to them varies enormously. Official reports demonstrate that the infrastructure needs of the region are truly massive²⁸. However, bankable projects that meet commerciality tests are substantially less prevalent, especially amongst PICs.

EFA follows different strategies to identify potential infrastructure investment opportunities in South and Southeast Asia compared to the PICs. EFA's origination strategies are tailored to local conditions, the nature and quality of in-country networks, government processes and capability, and the like. Thus, EFA is far more actively engaged in developing projects from an early stage in the Pacific than elsewhere in the Indo-Pacific, where deal flow is more likely to be identified organically through existing stakeholder relationships rather than through active origination activities by EFA with counterparts. EFA needs the capability and institutional flexibility both to respond to opportunities as they emerge and to work to create opportunities and build a pipeline of potential projects / financing opportunities, as circumstances require.

Networks are fundamental to EFA's approach to project origination. EFA's networks include MDBs²⁹, private sector financiers (relatively few of whom operate to provide finance in the PICs with tenors longer than trade credit)³⁰, DFAT and Austrade in-country presences³¹, DFAT Canberra staff (including AIFFP), engineering firms or contractors or other enterprises that operate in countries of interest, and relevant governments and their agencies, including SOEs etc. The Australian Government's recently established P4I³² facility, which provides early-stage support to assist proponents to develop infrastructure projects in South-East Asia also provides an emerging source of origination possibilities, supported by an outsourced in-country presence. Moreover, EFA has well established domestic outreach activities not only to raise awareness amongst Australian SMEs and financial institutions of EFA's service offering but also to identify possible opportunities to provide support.

²⁸ For example, the ADB has estimated the total infrastructure deficit in the Pacific (including PNG and Timor-Leste) to be US\$46 billion (adjusted to account for climate change mitigation and adaptation) out to 2030 [ADB, 2017. *Meeting Asia's Infrastructure Needs*, Table 1, p xiv; cited in DFAT 2017. *Foreign Policy White Paper*, 100]. This implies around US\$3.1 billion annually will need to be invested in infrastructure in the Pacific (including PNG and Timor-Leste) up to 2030. These estimates do not include the costs of restoring infrastructure damaged by natural disasters. The PICs are highly susceptible to climate change and are amongst those most exposed to natural disasters in the world, which periodically generate substantial reconstruction requirements.

²⁹ EFA cooperates closely with banks such as the IFC and the ADB. It also participates in key regional forums for export finance, such as the Asian Exim Banks Forum.

³⁰ EFA notes in its submission (p8): 'In countries such as the Philippines and Indonesia, domestic capital markets are liquid and project sizes large. We are seeking to leverage our relationships with private financiers, export credit agencies and [MDBs] active in those markets, which expedites market entry and reduces origination costs.'

³¹ These engagements are intended to improve awareness of EFA's infrastructure financing capabilities, share intelligence, build knowledge, and identify project proponents and prospective Australian business partners. EFA also notes in its Submission to the Review: 'in addition to regular engagements with selected Posts, since our mandate was changed in April 2019, we have had over 30 engagements with senior Australian diplomats (Heads and Deputy Heads of Missions as well as Senior Trade Commissioners) in the Indo-Pacific region.' (p 9)

³² The \$141 million P4I initiative is working with partner countries to share expertise in planning, procuring and managing new and existing infrastructure assets to generate inclusive, sustainable growth in Southeast Asia. EFA is reportedly exploring how its new powers can support the initiative, including in relation to potential project pipelines. This initiative includes an outsourced network (currently provided through a consortium led by EY) that provides an in-country presence in many countries of interest.

Partly in support of its quest for origination, EFA maintains an active dialogue with equivalent organisations that operate in the region. It has well established relationships with key counterparts such as UK Export Finance, Nippon Export Investment Insurance (NEXI), Japan Bank for International Cooperation (JBIC), Export Development Canada, the US International Development Finance Corporation, the Export-Import Bank of the United States and the Export-Import Bank of Korea. It also is in close touch with the Indonesia-Australia Partnership for Infrastructure (KIAT³³) and, as noted above, the P4I initiative in Southeast Asia. Australia's engagement in the Trilateral Infrastructure Partnership (TIP) with Japan and the United States³⁴ ensures its involvement in the TIP's project pipeline discussions.

EFA advises that it can take 3 to 5 years³⁵ to develop a significant infrastructure project from scratch. However, some investments can close more quickly - for example a late-stage engagement to complete the financial engineering of a project that has been under development for some time by a partner such as an MDB. Others can take considerably longer, for example if the financing or other arrangements require documentation that involves multiple legal jurisdictions; or where complex government approvals or extensive community consultations are required in a country with poor administrative systems or complex governance arrangements. Travel and other restrictions associated with the COVID-19 pandemic have further complicated such processes in many jurisdictions in recent times.

Five priority markets have been identified after EFA's analysis as prospective for infrastructure investment opportunities, namely PNG, Indonesia, the Philippines, Vietnam, and Sri Lanka. Accountable staff have been assigned to pursue opportunities in these countries and, as opportunities arise, elsewhere. Specific scoping visits have been conducted in the Philippines and Singapore. Joint (TIP) missions also took place to PNG and Indonesia, with a virtual joint mission to Vietnam. The Review has sighted evidence of a substantial pipeline of possible projects under examination for funding etc. These include projects from almost all the five priority markets³⁶ plus some others, and involve several different sectors, such as energy, electrification, telecommunications, health and transportation.

Details about individual projects are commercially sensitive and cannot be disclosed. Most are at an early stage of development. EFA's submission to the Review observes: 'Many of these opportunities are in key sectors which directly support the Australian Government's strategic objectives in the region, and which will support the Foreign Policy White Paper objective of ensuring that infrastructure is developed in a way which conforms with our principles³⁷.' It is impossible to predict how many of these possibilities will proceed to financial close involving EFA (or AIFFP). EFA's submission notes: 'Our experience to date is that many of these projects in our pipeline may be

³³ The Indonesia-Australia Partnership for Infrastructure (KIAT) is a 10-year \$300 million facility implemented by Cardno, an ASX-listed professional infrastructure and environmental services company. The facility supports improvements to infrastructure policy, planning and delivery which can lead to new projects that may be eligible for EFA overseas infrastructure financing.

³⁴ The TIP is a collaboration between Australia, Japan and the United States and provides a platform for coordination between the trilateral partners in assisting to meet the region's infrastructure needs. EFA's overseas infrastructure financing power underpins its involvement in the TIP's project pipeline discussions.

³⁵ A financial institution that made a submission stated a project can take 5 to 10 years between initial design and financial close.

³⁶ Two of the 3 projects already concluded by EFA on its CA that were made possible by the amendments also come from the priority markets (see [here](#) for further details).

³⁷ EFA Submission, p1.

delayed or do not proceed due to decisions by governments in the host country. Nevertheless, our current pipeline value and volume is at a historical high.’³⁸

The Pipeline implies that EFA has made a good start towards discharging its enhanced infrastructure mandate, despite COVID-19. In addition, seven typically small projects have reached financial close since passage of the amendments in mid-2019, apparently facilitated by the new arrangements, four of which are being progressed through AIFFP. The role of the revised Australian benefits test in the design of this pipeline is discussed below in the section “[Projects made possible since 2019](#)”.

Finding 5: revised country strategies have been developed that identify five priority Indo-Pacific countries in which to concentrate EFA’s initial effort, with accountable staff assigned to pursue opportunities in these countries and, as opportunities arise, elsewhere.

Finding 6: EFA has undertaken systematic outreach to DFAT and Austrade in-country representatives, key governments and a wide range of contacts, prospective partners and clients, especially in respect of the five priority countries, to raise awareness of what EFA has to offer and to gather market intelligence. It has built a substantial pipeline of possible investments that appear to warrant further investigation.

³⁸ EFA Submission p9.

Impact of the Amendments on EFA and the pursuit of Australia's interests in the region

Impact of increased callable capital

Howes argued to the Senate Inquiry in 2019 that EFA's capacity to lend in aggregate was not an immediately binding constraint on EFA's ability to lend at the time of the 2019 amendments. He noted that its 2017-18 Annual Report states that

'EFIC requires a ratio of cash capital (that is, excluding callable capital) to risk weighted assets of at least 8%, and a ratio of capital (including callable capital) to risk weighted assets of at least 16%. (p. 53). Actual ratios in 2017 were 17.6% on a cash capital basis and 25.2% if callable capital is included, that is, way above what EFIC itself judges to be adequate.'³⁹

However, the Minister's second reading speech makes clear that the primary purpose of the increase in callable capital is not to lift EFA's maximum potential exposure on its CA. Indeed, the speech states explicitly that the government did not propose an increase in the total contingent liability it would underwrite on the CA, which remained set at a regulated upper limit of \$6.5 billion. DFAT's submission to this Review argues that, rather than raising its aggregate lending ceiling, the \$1 billion increase in EFA's callable capital 'has enabled EFA to raise its country lending limits, enhancing its credibility and ability to engage project proponents, sovereign borrowers and financing partners'⁴⁰. EFA's submission states:

'Under our SoE, we are required to be guided by the Australian Prudential Regulation Authority (APRA) in managing risk. Our Board, in following APRA's guidance, generally applies an upper limit of 25 per cent of our capital, for country, sector and non-bank counterparty exposures.

The \$1 billion increase in our callable capital has allowed for an overall percentage increase in the amount that we can lend to any one exposure, based on current APRA prudential guidance. The additional capital has also enabled our Board to set individual maximum exposure limits that are materially higher and better reflect the financing capabilities of other ECAs in our region.'⁴¹

Indeed, Howes' analysis records that the ability to increase individual country or project exposure limits was accepted as a materially significant benefit even in 2019⁴². As previously noted, it is impossible to predict which transactions currently in EFA's pipeline will proceed to financial close on EFA's CA at the scale apparently under consideration. It is nonetheless observable that a number of these possible transactions most likely could not have been progressed under the CA exposure limits previously in place, even if they had satisfied other eligibility criteria. Also as previously noted, the Minister's second reading speech observes that the government opted to increase callable capital by way of amendment to legislation rather than regulation to give others confidence about EFA's capacity to transact with them at scale.

³⁹ S Howes, op cit, p4.

⁴⁰ DFAT Submission, p4

⁴¹ EFA Submission, p5.

⁴² Howes observes that an earlier EFIC LNG transaction in PNG amounting to \$350m had been split between the CA and the NIA, possibly to fit within the individual counterparty exposure limit then in existence in respect to the CA (footnote 4, p5, Howes submission).

Impact of the new Australian benefits test: Projects made possible since 2019

This section examines the implications of the changes in the Australian benefits test for EFA's approach to potential infrastructure transactions in the Indo-Pacific. It illustrates this analysis with an examination of the seven transactions that have reached financial close under the revised test.

Implications of the changes to the benefits test for EFA's operations

The steps taken by EFA to operationalise the Australian benefits test introduced by the 2019 amendments are set out [above](#). EFA's submission and interviews with key staff have characterised the main impacts of the changes from their perspective as:

1. Removal of the requirement to have a specific Australian content or exporter or investor identified as a potential beneficiary increases the range of projects in Australia's long term interests that EFA can engage with. The revised Australian benefit test strongly encourages, but does not mandate, the immediate involvement of Australian business or content.
2. This change also provides EFA and potential clients and financing partners⁴³ with greater certainty that when EFA enters into discussions with them about a possible infrastructure investment that EFA can remain a party to the transaction as it develops. Such discussions with possible counterparties can be time consuming and costly. Greater certainty reduces the risk that resources will be wasted on projects that EFA cannot participate in for reasons unrelated to their underlying commercial viability.
3. Such additional certainty provides an incentive for EFA to become engaged in such discussions at an earlier point in their lifecycle, increasing EFA's capacity to influence both the project's design and financial engineering, which can assist to improve the efficacy of the transaction and the long-term benefits available to Australia.
4. The SIF Bill changes are also consistent with the mandates of other officially sponsored ECAs, which are evolving to meet broader domestic economic and trade policy objectives⁴⁴.
5. The less restrictive test has already enabled several transactions to proceed that are most likely in Australia's long term interests that would not otherwise have proceeded with Australian participation (seven of which have reached financial close).

In its submission, EFA illustrated point 1 in these terms:

'Under the Australian benefit test, we can more deeply engage in sectors such as telecommunications and power, which deliver both short and long-term benefits to Australian business. For example, improved regional internet connectivity in the Pacific will benefit Australia over the longer-term by:

- reducing the cost of doing business;
- encouraging greater economic integration; and
- promoting Australian exports to and investment in the region.

⁴³ including private banks, ECAs and bilateral and multilateral development financing agencies (such as the ADB and IFC).

⁴⁴ Examples cited in EFA's submission are: Export Development Canada's 'pull strategy', which sees it financing projects without Canadian content in the hope of establishing a relationship with project proponents which in future leads to greater Canadian export opportunities and the UK Government's recent injection of GBP2 billion into UK Export Finance to increase lending for low carbon exports.

‘Other potential beneficial outcomes can include:

- supporting future employment in Australia through using or sourcing Australian workers, products or services;
- supporting export sectors important to Australia;
- paving the way for Australian businesses to more easily access new markets;
- crowding in of Australian equity and finance institutions; and
- encouraging future Australian participation in project supply chains.’⁴⁵

Projects made possible since 2019

EFA has advised the Review that between passage of the SIF bill in April 2019 until end June 2021, EFA has supported ‘19 customers with 55 transactions worth \$93.3 million across 15 countries in the region’⁴⁶ on the CA. A full list of these transactions is at Appendix 4.

Three of these transactions were written using the powers introduced by the SIF Bill. The following descriptions of these transactions are based on EFA’s Submission⁴⁷ :

1. *Warehouse and supporting infrastructure, Tuhava, PNG.* A \$2.5 million loan in November 2019 to Rhodes Project Services for construction of two warehouses, one supermarket, and 32 accommodation houses in Tuhava, PNG. Australian benefits include revenue flowing back to Australia as well as enabling greater Australian SME access to new opportunities to develop the Tuhava Township.
2. *Business park in Dili, Timor-Leste.* A \$5.7 million loan in October 2020 to Discovery Business Industrial Zone LDA⁴⁸ for construction of 14 warehouses to create a business park. Australian benefits include revenue flowing back to Australia and the expectation that the warehouses would help facilitate Australian exports to Timor-Leste.
3. *Wind power project in Vietnam.* A US\$32 million (\$41 million) loan in May 2021 to a wind power project in the Quang Tri province in the central highlands of Vietnam. EFA participation will facilitate future commercial infrastructure opportunities for Australian businesses in Vietnam. EFA participated in a syndicated finance facility that includes ADB, JBIC and private financiers. Deepening EFA’s collaboration with ADB will support more infrastructure development transactions and facilitate new market opportunities for Australian businesses. Additionally, this transaction will help support a growing sector where Australia has significant capability, including export capability.

When asked for more specific information about the types of Australian benefits these projects would provide, EFA responded:

‘The exact details of what benefits were identified, including their scope, are commercial-in-confidence. However, we can advise that the type of benefits identified for the three include:

⁴⁵ EFA Submission, p5.

⁴⁶ EFA Submission, p10, which refers to data as at end May 2021. However, EFA subsequently confirmed that no further transactions closed in June, such that the data is current as at June 30, 2021. The data in Attachment 4 is so described.

⁴⁷ *ibid*

⁴⁸ LDA stands for the equivalent of ‘Limited Liability Company’.

- design and contract management fees earned by an Australian business;
- profits accruing to an Australian ultimate beneficial owner;
- potential for follow-on contracts for Australian businesses;
- Australian SMEs are in the supply chain;
- the infrastructure will facilitate easier and more efficient movement of Australian export goods;
- the project is in line with the Trilateral Infrastructure Partnership;
- the project is in line with and supports relationship with the Asian Development Bank;
- the project promotes the reputation of Australia in key markets; and
- the project provides greater access to future projects for Australian business.’

Although the operations of the AIFFP are formally out of scope for this Review, it is important to note EFA’s advice that the new Australian benefits test also enabled AIFFP to undertake the following four transactions over this period:

1. *Palau Cable Phase 1.* A US\$2 million loan to complement a grant to part-fund a branching unit to a new submarine cable connection from Palau to ECHO Cable, a private fibre-optic submarine cable network connecting Indonesia, Singapore and the US.
2. *Palau Cable Phase 2.* A US\$7 million loan to finance phase two of the development –the fibre optic submarine cable.
3. *Tina River Electricity Transmission Line.* A US\$11 million loan for a transmission line for the new Tina River Hydro Project in the Solomon Islands.
4. *Fiji airport.* A FJD106 million (\$68 million) investment in Airports Fiji Pty Ltd, alongside ANZ Fiji, to help fund capital works at Nadi International and other outer islands’ airports, refinance existing debt, and address several infrastructure priorities of Airports Fiji Pty Ltd. The financing utilises AIFFP’s guarantee mechanism to facilitate a Fijian Dollar denominated loan by co-lending with ANZ.

Advice was sought from DFAT about the Australian benefits secured through these 4 investments. DFAT replied:

‘ The AIFFP transactions were all considered by the EFA Board and referred to the Trade Minister after the EFA Board resolved that each transaction met the requirements contained in the section 26 Direction of 3 April 2019. This includes assessing that the transaction is in accordance with EFA’s Statement of Expectations, and therefore the Board must consider the Australian benefits test when considering whether to refer AIFFP transaction proposals to the Minister. In summary, the type of benefits that were identified by EFA for the AIFFP transactions include:

- *provides economic development benefits to our region (which Australia will benefit from);*
- *reinforces Australia’s bilateral relationship with the borrowing country;*
- *positions Australia as a partner of choice for infrastructure finance; and*
- *bolsters Australia’s infrastructure financing partnerships with likeminded lenders.’*

Benefits monitoring and Evaluation

In discussions it became apparent that EFA does not have arrangements in place to routinely monitor after the event whether prospective Australian benefits identified during its due diligence are achieved in practice. This is understandable for EFA's traditional transactions. Satisfaction of the eligibility criteria in such cases requires the identification of specific beneficiaries, supported by contractual or other documentation, and EFA's support is required to be proportionate to the expected benefit. However, after the 2019 amendments, a wider, potentially more speculative test is applied in cases of overseas infrastructure projects in the Indo-Pacific. This test does not necessarily require the identification of specific beneficiaries. It is sufficient, in some cases, that the financing is expected to facilitate future benefits with specific beneficiaries yet to be identified. Indeed, those benefits may accrue to 'Australia' rather than specific Australians (see [previous discussion](#)).

In such cases, better practice would suggest that an investment in appropriate ex-post monitoring capability would provide both the Board and the government with increased assurance about the effectiveness of EFA's interventions. It would also enable EFA to learn from experience and refine its benefits identification procedures in the light of experience. Such an approach would need to be sensitive to the fact that the payoff from a financing undertaken under the revised Australian benefits test may take a considerably longer time (spanning years, not months) than traditional EFA export financing, the benefits of which (by comparison) are likely to be observable almost immediately. Quantification of actual benefits may be difficult, even well after the event. Such an approach could be costly, which would need careful management given EFA's commercial mandate.

Potential infrastructure financing opportunities are very diverse. Some infrastructure financings may be more 'greenfields' than others. They vary enormously in scale and scope. The payoff time for Australia is likely to vary considerably. The likely benefits may be diffused or lagged. Data may be difficult to assemble, and some benefits may be less susceptible to quantification than others (for example the benefits to Australia of securing a regional telecommunications infrastructure that conforms to the Prague Proposals). A large element of judgement may be required, in which case the analysis should be explicit about the basis on which such judgements have been reached. Sufficient time needs to have elapsed since construction was completed to enable any expected benefits to emerge, which may take 3 to 5 years or more. For all such reasons, as previously noted, a professional approach to benefits monitoring and evaluation can be resource intensive.

One option is to require the documentation provided to the relevant decision maker, which varies as between CA and NIA funding, to specifically address how best to address this issue and, as appropriate, to develop and put in place and resource a benefits monitoring and evaluation plan appropriate to the scale and scope of the project and the finance provided.

It would not be appropriate to assume that a 'one size fits all' approach is appropriate. EFA is required to operate commercially on its CA. EFA would rightly be concerned not to unduly raise its costs. EFA operates in the 'market gap', meaning it has no direct domestic competitors. However, its charges need to represent reasonable value for money, as perceived by the paying client. If EFA's cost structure is too high, clients will be deterred from entering into transactions that are in their interests and ultimately also in Australia's interests. EFA could therefore be expected to want to pursue a relatively light touch approach to benefits monitoring and evaluation in respect of CA transactions (unless the government directly provides funds for this purpose).

Arguably, transactions that rely the most heavily on national interest benefits (those accruing to 'Australia') in satisfying the Australian benefits test are more likely to be booked to the NIA than CA.

In such cases, the risks that diffused and longer-term benefits will not be realised may put the financing outside EFA's risk appetite. Alternatively, bankable benefits may not accrue to the paying client sufficient to cover their financing costs. In such cases, a decision to proceed may be contingent on the government exercising the flexibility available to it when considering transactions on the NIA. Amongst others, these flexibilities include options to provide financing on concessional terms through the AIFFP. The costs and revenue generated by an NIA transaction accrue to the government's account. It would be in the government's interests to establish and fund a benefits monitoring and evaluation regime to enable it to demonstrate subsequently that financing made available in such circumstances has been applied efficiently and effectively for public policy purposes.

The government may also wish to consider whether it should offer a subvention to EFA to enable it to undertake such analysis in respect of CA transactions that satisfy the Australian benefits test by relying significantly on benefits that are expected to accrue in time to 'Australia' rather than to identified Australians. Decisions about such matters are best made on a case-by-case basis, having regard to a benefits monitoring and evaluation plan jointly agreed between DFAT and EFA. It would be wise to defer any decision in principle on this suggestion until there is more evidence about what types of transactions will proceed on the CA under the new Australia benefits test and the nature (and timing) of the benefits they are expected to provide.

A systematic approach to monitor the outcomes achieved by financings justified by the national interest elements of the expanded benefits test (i.e. those that accrue to 'Australia') may be difficult to put in place. However, success would enable EFA (and the government) to draw on such material in framing any public commentary, including for EFA' or DFAT's Annual Report, about the effectiveness of its new mandate, whether discharged through the CA or the NIA. Once an approach has been agreed, it would be sensible to negotiate contractual arrangements with partners to support such work in future. Some partners (for example MDBs) may be more open to such approaches than others. EFA may well require specialist contracted support to progress this work.

Findings in respect of this Section

Finding 7: the 2019 Amendments (especially the Australian benefits test) provide greater certainty to EFA and its prospective clients, financing and other partners about the breadth of EFA's role, enabling earlier engagement in the project lifecycle and enhanced leverage over both project design, in some circumstances, and financial engineering by EFA, potentially to Australia's long-term benefit.

Finding 8: seven projects have already reached financial close that rely, at least in part, on the new Australian benefits test.

Finding 9: EFA and the government should consider selectively introducing and resourcing post project monitoring to report to the Board (and the government as appropriate) on whether expected Australian benefits were realised in practice for financings authorised under the 2019 Australian benefits test, acknowledging such benefits may take some years to materialise fully and may be costly and difficult to quantify.

Relationships with DFAT

An effective relationship between EFA and DFAT provides a strong underpinning to EFA's activities. This relationship is of longstanding. It plays out through multiple channels of communication across many levels of each organisation. DFAT is formally represented on the Board of EFA, since the Secretary is typically appointed to the Board by the Minister as the 'government member'⁴⁹ (with scope for an alternate to attend if the Secretary is unavailable). This can provide a vehicle for high-level communication if necessary, acknowledging that each Board member has a fiduciary responsibility to act in the best interests of EFA, consistent with its enabling legislation. In practice, however, the vast bulk of communication between the two agencies occurs through routine interactions at working level. These interactions occur between EFA staff and DFAT staff that are both Australia-based and in-country, including Heads of Mission.

Both EFA and DFAT agree that this relationship has substantially underpinned EFA's efforts to implement its expanded infrastructure remit since 2019. Three aspects of this relationship have been particularly important. Firstly, EFA has undertaken targeted outreach to relevant DFAT in-country representatives. EFA's submission notes: 'In addition to regular engagements with selected Posts, since our mandate was changed in April 2019, we have had over 30 engagements with senior Australian diplomats (Heads and Deputy Heads of Missions as well as Senior Trade Commissioners) in the Indo-Pacific region'⁵⁰. EFA attests that DFAT's in-country networks have provided local market intelligence and effective vehicles to build in-country awareness of EFA's service offering. Their engagements have generated valuable information about pipeline possibilities or potential partners. Similarly, EFA says that valuable local market intelligence has also been obtained through effective engagement with Austrade's in-country and Australia-based operations. The recently established P4I initiative, which includes an outsourced in-country capability, may also offer new opportunities in future to access such market intelligence.

Secondly, DFAT is EFA's principal source of authoritative advice about the government's view of Australia's national interests, which has informed EFA assessments of Australian benefits in some circumstances. DFAT can also provide assessments to EFA about the compatibility of each proposal before it with the recipient country's priorities and needs. EFA has informed the Review that it is proactive in engaging DFAT about both matters as early as possible in its consideration of possible projects. This is because it is in EFA's interests to withdraw before substantial resources have been committed to a project that is likely to raise unresolvable concerns on either front. In several important respects, therefore, a quality relationship between EFA and DFAT (and the quality of the information that underpins it) can significantly affect both the efficiency and the effectiveness of EFA's operations.

Thirdly, EFA's due diligence in respect of a potential financing includes background checks about its proponents (including having regard to obligations conferred by anti-money laundering legislation and the like), country governance (when appropriate) and/or local concerns about environmental and social matters. EFA has informed the Review that it routinely consults DFAT's in-country representatives about these matters for significant potential infrastructure financings as part of its due diligence.

Both EFA and DFAT attest to the closeness of their relationship, especially in respect of countries in which EFA has an established track record (which can more tangibly demonstrate what EFA can provide). Both believe the relationship is mutually beneficial, noting their shared commitment to

⁴⁹ Appointment of a 'government member' is required by s34(1)(e) of the EFIC Act.

⁵⁰ EFA Submission, P9.

advancing Australian interests. Curiously, however, an examination has revealed that documents setting out DFAT's agreed country aid strategy in respect of EFA's preferred markets do not yet typically reference services available from EFA, although they often reference Austrade.

Finding 10: Both DFAT and EFA agree that their collaboration is multi-faceted and traditionally close, especially for countries in which EFA has an established track record (which can more tangibly demonstrate what EFA can provide). This collaboration facilitates (a) in-country awareness of EFA's service offering, (b) referral of potential projects, partners or leads to EFA to inform the development of EFA's deal pipeline, and (c) advice about whether potential investments meet certain elements of the Australian benefit test, are consistent with the recipient country's priorities and needs, and/or raise concerns relevant to EFA's due diligence.

Finding 11: DFAT is EFA's principal source of advice about the implications of potential financings for Australia's national interests and the government's policy objectives.

Pursuing Australia's national interests

The *2017 Foreign Policy White* paper sets out a multi-dimensional agenda for Australia's engagement in the Indo-Pacific region, consistent with the government's view of how best to advance Australia's national interests. As previously noted, the government's agenda centres on strengthening engagement with partners to support an open, inclusive and prosperous region based on robust rules, norms and institutions, and respect for international law. Working with development institutions and like-minded governments to support high-quality infrastructure development is proposed as a key element of this agenda.

EFA's enhanced role in infrastructure development in the region is fully consistent with this agenda in several ways. For example, EFA is actively engaged with key regional counterparts and groupings⁵¹, and supports DFAT (a) to participate in the TIP, (b) to implement the Quad (Australia, India, Japan and the United States) Leaders' and Foreign Ministers' commitment to deepen cooperation on infrastructure and (c) to develop international standards that support quality infrastructure⁵².

Moreover, although a project must satisfy commerciality tests to qualify for CA funding, the revised Australian benefits test enables EFA to take account of potential contributions to advancing Australia's long-term interests in the region, not simply the short-term commercial returns that may accrue to an Australian business. As previously noted, DFAT is the principal source of advice on such matters. However, EFA must also have regard to the Ministerial SoE, which sets out a number of due diligence matters that a project must satisfy. These are further discussed below, under "[Safeguards](#)". It is notable, however, that since November 2020 the Minister's list has included that EFA should ensure compliance with the Prague Proposals⁵³ and the standards they promote for the development of secure 5G networks.

⁵¹ see, for example, the discussion on Pp16-17 of this Report.

⁵² 'EFA has supported DFAT's pursuit of initiatives such as the G20 Quality Infrastructure Investment Principles (agreed 2019) and the Blue Dot Network (a project to certify quality infrastructure projects, with the concept launched by Australia, the United States and Japan).' DFAT Submission P3.

⁵³ The Prague Proposals on 5G security outline a set of principles countries should consider when developing, deploying and maintaining 5G and future communication technologies. The Prague Proposals are intended to ensure any risks are appropriately assessed and addressed, and underscore the importance of technology supply chain security and the security of the Internet of Things.

It is possible that a financing that is desirable because of its contribution to meeting Australia's objectives in the Indo-Pacific or which has potentially significant long-term benefits for Australian businesses is insufficiently profitable in the short term to support EFA's financing costs or entails a degree of risk that exceeds EFA's risk appetite. A financing on EFA's CA is inappropriate in such circumstances. Options then available include referral by EFA for consideration by the government on the NIA, either as a freestanding loan or guarantee or as one facilitated with the addition of grant monies accessible through the AIFFP. In such circumstances the government's consideration is informed by EFA's assessment of the likelihood of commercial returns and the nature of the inherent risks.

Maximising Australia's national interests?

It has been argued elsewhere⁵⁴ that, especially in the Pacific, it is in Australia's interests to present itself to developing country governments as a long-term partner prepared to offer a range of 'joined up' interventions in conjunction with its infrastructure investments appropriate to assisting the government to achieve its development objectives. EFA is a commercial entity. It has neither the remit nor the organisational capability to function as a development institution. AIFFP's ability to offer grants takes it closer to a development finance institution (DFI), but both its scale and remit are much less than is required of a fully-fledged DFI. Nonetheless, EFA's evidence to the Review is that the 2019 Amendments – in respect of both callable capital and the revised Australian benefits test – is enabling consideration of a larger and a broader range of infrastructure financing opportunities than previously. That may present Australia with additional opportunities to leverage those investments in ways that substantially increase their development impact in the recipient country and help Australia to position itself as the preferred development partner of several key countries, especially in the Pacific.

Since April 2019, the Ministerial SoE has required EFA to undertake infrastructure financings that are in a recipient country's interests. As previously noted, DFAT is well placed to advise EFA on such matters. Indeed, DFAT is responsible for the administration of Australia's overseas aid programme and develops tailored country strategies, in consultation with the recipient government. EFA's expanded remit and the creation of AIFFP provide new opportunities for DFAT to promote Australia's claim to be the preferred development partner for key countries of interest, especially in the Pacific. Such a partner would match a commitment to the provision of quality infrastructure with supplementary interventions to leverage those investments and maximise the development outcomes achievable from them. To a degree, AIFFP has such an option available to it currently, because it may attach grants to an infrastructure financing that is otherwise commercial (though possibly more risky than is compatible with EFA's risk appetite). However, the aid budget provides DFAT with additional options in this respect.

If the government is so inclined, for example, DFAT could in years to come leverage some EFA infrastructure financings through parallel projects funded under the aid budget to demonstrate Australia's interest in being a long term, broadly-based development partner of key countries

⁵⁴ *Executive Report on the Evaluation Of Australia's Pacific Economic Infrastructure Assistance 2008-2018: Achieving sustainability and development impact*, Stephen Sedgwick AO FIPAA, David Bray, Irene Wettenhall, 2021 [Executive Report on the Independent Evaluation of Australia's Pacific Economic Infrastructure Assistance 2008–2018 | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](#). Such an approach is referred to as "infrastructure ++" in this Executive Report.

(especially but not only in the Pacific). The options are many. For example, DFAT could propose assistance to develop microcredit facilities or to make available improved marketing know-how in remote villages that become better linked to markets because of EFA financing of enhanced telecommunications infrastructure. Or it could offer support to fund the construction of local markets, say with female-safe toilets, and/or a rudimentary health clinic and/or bus shelters, and/or grants to encourage more effective maintenance linked to EFA roads or ports infrastructure projects. Such options could be funded by DFAT either directly or in conjunction with other development partners such as MDBs, possibly including EFA's partners in the original project in some circumstances. Alternatively, DFAT may propose investments in technical assistance or policy dialogue intended to improve the regulatory environment (for example in respect of road safety or load limits or the competitive environment). DFAT would need reasonable certainty that an EFA proposal would proceed before investing resources to this end, which implies that any DFAT consideration would most likely occur relatively close to financial close. The execution of any parallel work may therefore significantly lag commencement of the EFA project⁵⁵. Not every overseas infrastructure project would be suitable for such parallel investments. But, in time, it may well repay DFAT's in-country representatives and others responsible for (country-specific) aid programming to examine EFA's near-term pipeline for such opportunities⁵⁶. One submission explicitly supported funding for parallel Australian projects such as this approach would encourage; some others did so implicitly.

Finding 12 DFAT (including DFAT's in-country representatives) should routinely examine EFA's Pipeline for opportunities to leverage enhanced development outcomes from EFA financings, especially when a sovereign government is involved as an EFA client, by designing and proposing appropriate parallel investments that are consistent with a country's and Australia's interests and the agreed country strategy.

Consideration of Issues raised in Submissions

In response to 31 invitations issued to organisations or individuals, 10⁵⁷ submissions have been received addressing the TOR of this Review. Substantive issues raised in those submissions that are relevant to the TOR are addressed in this chapter under 4 broad headings:

- Additional Instruments that should be available to EFA
- Safeguards
- Recipient Country Benefits
- Other matters

Additional Instruments that should be available to EFA.

Submissions argued that EFA should have access to three additional financial instruments, namely options to take equity positions, to undertake local currency financing and to provide guarantees when a transaction does not involve EFA as a lender. Each of these is considered in the following sub-sections. In short, legislation is currently before the Parliament to enable EFA to provide the first and third of these instruments, while the second is currently available to EFA (though resorted to infrequently in the case of loan financing).

⁵⁵ This is consistent with the thinking canvassed in Sedgwick, Bray and Wettenhall, op cit.

⁵⁶ Sedgwick, Bray and Wettenhall, op cit, makes several suggestions for consideration by DFAT's leadership that are broadly consistent with such an approach.

⁵⁷ In two instances a submission was made on behalf of several organisations and/or individuals

The option to take an equity position

When this Review was commissioned, EFA did not have legislated authority to take an equity position within the menu of financial solutions it could offer a client. The option to provide equity or to offer debt with an option(s) to convert to equity in certain circumstances, however, would be a sensible addition to EFA's armoury. Amongst other things, EFA taking an equity position could be seen as sign of EFA's confidence in the future viability of the transaction and the underlying business model. EFA having 'skin in the game' may assist to 'crowd in' other investors (including in-country investors) that are unfamiliar with the business, the sector or the country. One submission argued that an EFA equity position could enable it to actively pursue better business case development and governance in the target entity, improving their commercial viability.

An option to convert debt to equity may enable EFA to achieve a better though delayed return from a debt challenged investment than simply foreclosing and receiving a heavily discounted repayment as a debt falls due. This option is not viable in every instance of likely default. But it may be an attractive option if the entity has a reasonable prospect of trading out of its default position.

Taking an equity position raises different issues for EFA than extending a loan or guarantee. EFA needs to build additional capabilities to assess and, subsequently, to manage an equity position. This includes decisions about whether EFA should be an active or passive shareholder. The more active a shareholder EFA seeks to be the more challenging is the additional capability it needs to acquire to perform such a role well. Moreover, the inherent risks are typically greater when providing equity than with EFA's traditional financing instruments. EFA is required to operate in 'market gaps'. In addition, therefore, to a conducive assessment of relative risks, EFA would need to be satisfied that taking an equity position does not 'crowd out' potential private sector involvement. On all these grounds, any empowerment of EFA to take an equity position should be applied selectively.

The government has recently (4 August 2021) introduced amendments to the EFIC Act to enable equity investments for overseas infrastructure projects, but only on the NIA. Limiting this power to the NIA will enable EFA and the government to gather experience and the government to exercise tight control over the nature of the risks it assumes. The question of whether EFA should have a broader power to adopt an equity option on a CA transaction should be considered in some years' time, in the light of EFA's experience with overseas infrastructure transactions under the revised Australian benefits test and the financing best suited to them.

***Finding 13:** it is sensible to allow EFA to take an equity position in limited circumstances, consistent with the amendments recently (4 August 2021) proposed to the EFIC Act. Whether EFA should have a broader power to assume equity in a CA transaction should be considered in the light of more substantial experience of overseas infrastructure transactions under the revised Australian benefits test and the financing best suited to them.*

The option to provide local currency financing

One submission argued that EFIC should have the ability to provide financing in local currency, especially in debt-stressed Pacific countries, noting that foreign exchange can be in short or unreliable supply in some Indo-Pacific countries.

The Review has established there is no current legislative or other prohibition on EFA offering such financing if the circumstances justify it. Indeed, in 2021, EFA provided bonds and guarantees to customers in United Arab Emirates Dirham, Euros, Hong Kong Dollars, PNG Kina and US\$. Local

currency loan financing has occurred in the past, albeit infrequently because of the challenges EFA faces in appropriately managing the associated local currency exposure⁵⁸.

EFA is investigating efficient ways of accessing local currency so it can provide local currency loans directly, which may be more efficient. However, EFA's current main approach is to guarantee a local currency loan provided by a locally operating financier rather than provide local currency directly⁵⁹. In such cases EFA bears the risk that it would need to source local currency should the lender default on their payments. EFA seeks to mitigate this risk using devices such as requiring repayments in spaced tranches, to minimise the risk that its need to acquire currency for a loan in default would move the market price. Additionally, EFA may require the lender to itself assume some of the risk of default by providing a guarantee for less than the full amount of the loan, encouraging close pre-emptive monitoring of the loan default risk by the lender. On 3 August 2021 the government⁶⁰ announced that AIFFP had agreed to guarantee FJD financing for the Fiji Airport loan

***Finding 14:** There is no current legislative or other prohibition on the provision of local currency financing by EFA in respect of infrastructure in the Indo-Pacific. However, some foreign exchange markets are not very deep and foreign exchange shortages or controls may at times inhibit the timely or cost-effective supply of necessary currency. EFA is more likely to provide bonds or guarantees in local currency than direct loans. The loans option is exercised infrequently.*

The option to provide guarantees when not a lender

One submission argued that EFA should be able to provide guarantees in relation to overseas infrastructure projects in the Indo-Pacific when EFA is not itself a lender. It noted that EFA has this flexibility in respect to its other activities. This may assist EFA, for example, to 'crowd in' an investor that was otherwise unwilling or unable to accept outright the risk of default on a loan or similar financing vehicle.

An examination of the Act and the 2019 Amendments suggests that this may have been an inadvertent limitation on EFA's infrastructure financing transactions compared to other EFA activities. The government introduced amendments to the EFIC Act on 4 August 2021 that would remove this restriction, which should be supported.

***Finding 15:** The restriction on EFA's ability to offer guarantees to overseas infrastructure transactions only when EFA is itself providing loan finance is unnecessary, inconsistent with EFA's powers in respect to its other activities and should be removed. The government introduced amendments to the EFIC Act on 4 August 2021 to enable this.*

Safeguards

Some submissions to the Senate Inquiry in 2019 and to the current Review argue that EFA should be subject to stronger and legislated safeguards requirements. One submission to the Review (submitted on behalf of multiple parties) argued that EFA's approach to safeguards should be broadened beyond 'do no harm' to require EFA to more actively and/or more transparently pursue improved economic and social policy outcomes. These improvements related to a range of matters including disaster risk or climate resilience, gender and disability inclusiveness, human rights, and

⁵⁸ Hedge and forward markets are typically underdeveloped in many of these currencies, for example.

⁵⁹ This was also the option nominated in the relevant submission.

⁶⁰ <https://www.aiffp.gov.au/news/aiffp-and-anz-fiji-sign-investment-airports-fiji-afl-support-regions-aviation-sector>.

environmental outcomes. In effect, this amounts to an argument that EFA should act more like a development institution in the application of safeguards and similar policies.

Safeguard policies applicable to EFA

The environmental and social safeguards that EFA should comply with are not currently legislated. They arise from the terms of the Minister's SoE. Both the Minister's Statement and EFA's responses to it are published, providing transparency about EFA's safeguards requirements. These processes are consistent with certain provisions of the *PGPA Act 2013*⁶¹. The current SoE stipulates that EFA should 'ensure there is appropriate compliance, as applicable, with:

- i. the OECD Recommendation on Sustainable Lending Practices and Officially Supported Export Credits and its own additional debt sustainability due diligence procedures;
- ii. the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence;
- iii. the OECD Recommendation of the Council on Bribery and Officially Supported Export Credits
- iv. the Prague Proposals; and
- v. the Equator Principles.'

The 'Common Approaches'

The objectives of 'Common Approaches'⁶², which were adopted by OECD countries in 2003, include to:

'i) promote coherence between Adherents' policies regarding officially supported export credits, their international environmental, climate change, social and human rights policies, and their commitments under relevant international agreements and conventions thereby contributing towards sustainable development.

...

'iii) promote good practice and consistent review and assessment processes for projects and existing operations benefitting from officially supported export credits, with a view to achieving a high level of environmental and social performance as measured against the relevant international standards.'

The 'Common Approaches' requires ECAs to screen and, as necessary, undertake appropriate environmental and social reviews and assessments for projects and existing operations respectively, as part of their due diligence relating to applications for officially supported export credits. The 'relevant international standards' include what are known as the 'IFC Performance Standards'. The

⁶¹ Under s34 of the PGPA Act, the Australian Government may, from time to time, publish a statement setting out its key priorities and objectives. Such a statement does not have the force of a legislative instrument. However, it does create obligations to which EFA must respond. For example, s35 of the PGPA Act requires that EFA's Corporate Plan must set out how it will contribute to achieve the priorities and objectives outlined in the SoE. EFA's Board also responds to each SoE with a Statement of Intent, which is published together with the SoE. The Chairman of the EFA Board has typically made a public declaration to the Minister in the Statement of Intent along lines that 'we will direct our operations to meet your expectations' (see, for example, [exportfinance.gov.au/media/6883/statement-of-intent-june-2020.pdf](https://www.exportfinance.gov.au/media/6883/statement-of-intent-june-2020.pdf)).

⁶² <https://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>. The "Common Approaches" were first adopted on 28 June 2012 and revised by the OECD Council on 6 April 2016 ([OECD/LEGAL/0393](https://www.oecd.org/legal/0393)).

IFC is the private sector financing arm of the World Bank Group. The IFC standards referenced by the 'Common Approaches' are: Assessment and Management of Environmental and Social Risks and Impacts (PS1); Labor and Working Conditions (PS2); Resource Efficiency and Pollution Prevention (PS3); Community Health, Safety, and Security (PS4); Land Acquisition and Involuntary Resettlement (PS5); Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6); Indigenous Peoples (PS7); and Cultural Heritage (PS8). The Approaches also reference certain World Bank safeguards, including in respect of environmental assessment, Indigenous peoples, and involuntary resettlement, amongst others. The 'Common Approaches' explicitly require that ECAs should encourage protection and respect for human rights, particularly in situations where the potential impacts from projects or existing operations pose risks to human rights.

The 'Common Approaches' do not apply to military equipment. They require a formal assessment to be conducted when EFA's exposure is valued at SDR 10 million or more (approx. \$20 million) or if a project is in or near a 'sensitive area' or, in the case of an existing operation, where screening has identified that there may be a high likelihood of severe project-related human rights impacts occurring. Except for activities involving military equipment, some Australian domestic transactions subject to domestic safeguards or some transactions subject to at least equivalent safeguards applied by a funding partner such as an MDB, EFA applies the principles of these policies to all transactions irrespective of value.

The Equator Principles

The Equator Principles⁶³, which EFA signed in 2009, are described as 'a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making. Amongst other things they oblige EFA to 'require the client to conduct an appropriate Assessment process to address, to [EFA's] satisfaction, the relevant environmental and social risks and scale of impacts of the proposed Project ... The Assessment Documentation should propose measures to minimise, mitigate, and where residual impacts remain, to compensate/offset/remedy for risks and impacts to Workers, Affected Communities, and the environment, in a manner relevant and appropriate to the nature and scale of the proposed Project'⁶⁴.

The Equator Principles may require the engagement of an Independent Environmental and Social Consultant in some instances. Assessments are conducted either against the host country's standards, if they are deemed to have robust environmental and social governance, legislation systems and institutional capacity, or the applicable IFC Performance Standards on Environmental and Social Sustainability and the World Bank Group Environmental, Health and Safety Guidelines. The Equator Principles also require carrying out human rights due diligence in line with the United Nations Guiding Principles on Business and Human Rights.

EFA conducts an assessment in accordance with the principles of the Equator Principles as part of its due diligence for all transactions, irrespective of whether an assessment is technically required under the Equator Principles (subject to equivalent exclusions to those noted above in respect of the 'Common Approaches').

⁶³ <https://equator-principles.com/>

⁶⁴ Principle 2: Environmental and Social Assessment.

Bribery and debt sustainability

EFA is also required to comply with the OECD Recommendation on Sustainable Lending Practices and Officially Supported Export Credits (which apply specifically to lower income countries) and the OECD Recommendation of the Council on Bribery and Officially Supported Export Credits. In addition, EFA notes their specific concerns to ensure debt sustainability are reflected in their adherence to the Joint World Bank-International Monetary Fund (IMF) Debt Sustainability Framework for Low Income Countries, which seeks to mobilise the financing of development needs of lower income countries while at the same time reducing the chances that these countries build-up excessive debt in the future. EFA's approach also includes consideration of the IMF's Debt Limit Policy, which guides the use of quantitative limits on public debt in IMF-supported programs, and the World Bank's Sustainable Development Finance Policy, which helps countries address issues in debt transparency, fiscal policy, and debt management.

EFA's due diligence assesses bribery and corruption risks, including having regard to reputational and legal exposures. It is also subject to anti-money laundering and counter-terrorism financing laws and similar "know-your-customer" requirements⁶⁵.

The Prague Proposals

The SoE has required formal compliance with the Prague Proposals since November 2020. The Prague Proposals and the standards they promote relate to the development of secure 5G networks. They outline a set of principles countries should consider when developing, deploying and maintaining 5G and future communications technologies. The principles include: ensuring networks are designed with resilience and security in mind; managing risks that a third country may have influence over a supplier; and ensuring security and risk assessments of vendors take into account the rule of law and the security environment. DFAT has advised: 'The Australian Government supports the Prague Proposals and the standards they promote for the development of secure 5G networks. The Prague Proposals provide a constructive basis for countries to make sovereign decisions on 5G.'

EFA's Implementation of safeguards requirements

A range of policies and procedures has been developed to give effect to EFA's safeguards requirements. These include the Environment and Social Review (ESR) Policies and Procedures, which mandate such a review as a component of EFA's due diligence for any project that is to be recommended for financial support. EFA maintains a comprehensive mapping of its obligations, including those reflected in the SoE, as amended from time to time, and its policies and control framework.

EFA has reported: 'The EFA Board has oversight of EFA's compliance with our Environmental & Social Review and Australian Benefit policies and procedures. Our policies and procedures are also subject to external auditor monitoring and oversight. The application of these policies and procedures is the responsibility and prerogative of EFA management.' It is supported in this endeavour by the role of

⁶⁵ EFA has advised: 'EFA has in place a comprehensive framework of policies and procedures to ensure all our transactions adhere to our international and domestic obligations surrounding bribery, corruption, anti-money laundering and counter terrorism financing. These policies and procedures impact all areas of our business, with particular impacts including: obligations on staff to deter and prevent bribery and corruption; requirement for certain anti-bribery and corruption provisions in our financing transaction documentation; completion of 'know your customer' review in accordance with Anti-Money Laundering and Counter Terrorism Financing laws; a program for identification and reporting of suspicious activities; and ongoing customer due diligence.'

the Chief Risk Officer, who has responsibility to oversight compliance, and the work program of the Internal Audit function. Policies are subject to periodic review by the Board to ensure continued relevance and compliance with the SoE and other requirements.

EFA has two staff dedicated to the oversight of the ESR process. Consistent with their international obligations the proponent has a large responsibility to provide EFA the data and analysis required. During an interview relevant staff stated that EFA can and regularly does seek independent advice in completing their ESR due diligence in respect of overseas infrastructure proposals, especially for transactions conducted by the PSF team and for all projects designated as 'Category A' (those with the potential for significant adverse environmental and/or social impacts) under the Common Approaches⁶⁶. The approach to due diligence has regard, amongst other things, to the nature of the financial support that EFA is considering, the significance of EFA's investment to the whole project, the point at which EFA is involved in the lifecycle beginning with project origination and through to implementation, and the degree of influence the proponent and/or EFA can bring to bear on project design and execution.

EFA says that it can and does exercise influence to address ESR-related risks embedded in transactions seeking EFA financing, but the scope for EFA to insist on changes to the project or to insist on the introduction of ESR-related risk mitigation strategies is highly variable. Moreover, unlike many MDB or a bilateral aid projects, EFA financing is typically provided 'upfront' such that any remediation required to satisfy ESR due diligence conditions needs to be identified and delivered 'upfront' rather than during implementation. EFA provided assurances that gender, disability, human rights and similar matters are considered as part of their ESR processes. EFA argues that it monitors the implementation of conditions covering ESR-related risks, which could include monitoring by independent environmental and social experts, depending on the nature of the transaction.

Disaster and climate change vulnerability

Sustainability issues are especially important for many countries of interest to Australia in the Indo-Pacific. A previous section addressed debt sustainability issues, which are especially pressing for many low-income countries in the Pacific. In addition, many countries of interest to EFA are highly vulnerable to climate change and natural disasters⁶⁷. During an interview, EFA said that its ESR due diligence is sensitive to the fact that some Indo-Pacific infrastructure investments are particularly vulnerable to a range of sustainability issues, requiring an assessment of their consistency with appropriate climate change adaptation (CCA) and resilience requirements, and disaster risk reduction (DRR) practices, and of the incentives inherent in a project to ensure effective maintenance is undertaken over time.

Maintenance is a significant issue. The Pacific, for example, is renowned for what has become known as the 'Build, Neglect, Rebuild' paradigm⁶⁸ in respect of maintenance. Commercial enterprises may be expected to face intrinsic incentives to undertake appropriate maintenance so as to maintain

⁶⁶ EFA is the 'lender of record' for AIFFP loans, which are undertaken under the NIA. AIFFP has advised that 'AIFFP investments are also required to comply with DFAT Safeguards Policy and associated Strategies. This ensures consideration of projects also in relation to specific DFAT Safeguards requirements including DFAT Prevention of Sexual Exploitation, Abuse and Harassment Policy 2019, Child Protection Policy 2017, and includes requirements in relation to gender equality, disability and social inclusion (GEDSI), local content, and Climate and Vulnerability assessments'.

⁶⁷ See, for example, Sedgwick, Bray and Wettenhall, op cit, for a discussion of these issues. Attachment 6 to that report provides some 'Best Practice Principles to achieve sustainable construction and maintenance'.

⁶⁸ Alejandrino-Yap, M., Dornan, M., and McGovern, K. 2013. *Infrastructure Maintenance in the Pacific: Challenging the Build-Neglect-Rebuild Paradigm*. Pacific Infrastructure Advisory Centre. Sydney.

service standards appropriate to sustaining the requisite revenue streams. However, the performance of even corporatised SOEs in some PICs is patchy in this respect, requiring vigilance if EFA is proposing to provide long term loan financing⁶⁹.

Assessment of the appropriateness of EFA's safeguard policies

EFA is an officially sponsored Export Credit Agency. It has a commercial orientation and is required to be self-sustaining. Its primary purpose is to provide financing on commercial terms. The 2019 Amendments have expanded EFA's remit by broadening the scope of the Australian benefits test applicable to potential infrastructure financings in the Indo-Pacific. The broadened test allows EFA to take account of prospective benefits likely to accrue to Australia in the longer term from an investment (including any that are consistent with Australia's broader interests rather than the interests of individual Australians or entities). However, such projects are still expected to earn a commercial return, while operating in 'market gaps' not adequately serviced by domestic private sector financiers.

EFA serves distinct public policy purposes. Although it is required to have regard to the interests of the recipient government (and it is careful to protect its reputation in this respect, noting that its reputation is a major business asset in the quest for both clients and financing partners), EFA is not a development finance institution (DFI), per se. The primary purpose of a DFI is to undertake regional investments in ways that promote the highest achievable development outcomes⁷⁰. Australia has not established a DFI. AIFFP is closer to that model than EFA because of its ability to offer grants to improve the concessionality of its lending terms but it also is not of sufficient scale or scope to qualify as a DFI. It is notable that countries that have established a DFI also typically support an official ECA.

EFA's approach to safeguards since its establishment have been broadly consistent with international practices applied by comparator governments in respect of officially supported ECAs. They incorporate compliance with the IFC Performance Standards and the OECD Guidelines for Multinational Enterprises. Moreover, under the Equator Principles, they include Human Rights due diligence in line with the UN Guiding Principles on Business and Human Rights. Indeed, EFA applies the principles of the 'Common Approaches' and the Equator Principles to a broader range of transactions than international norms would require.

It is to be noted that EFA is but one component of the array of financial interventions available to Australia in support of infrastructure investments and the pursuit of its objectives in the Indo-Pacific. For example, Australia pursues its development objectives in respect of the Indo-Pacific through the operations of AIFFP, its bilateral and other aid programs (for example P4I) and its support for and interactions with the major development financiers operating in the region, including the MDBs and other regional groupings such as the TIP. It is neither necessary nor sensible to recast EFA as a DFI in order to pursue those broader interests.

Assessment of EFA's Transparency and Publication obligations

Finally, the relevant submission recommends that EFA publish much more information, especially in respect of how each of its investments satisfies their preferred safeguards policies. The submission expresses strong support for approaches recommended by Transparency International, for example.

⁶⁹ See Sedgwick, Bray and Wettenhall, op cit, p15 for a relevant discussion.

⁷⁰ The recitals to the OECD "Common Approaches", include: 'the primary role of ECAs is to promote trade in a competitive environment, whereas multilateral development banks and development agencies focus primarily on development assistance', op cit, p2.

The EFIC Act and the SoE currently specifically safeguard commercial in confidence information held by EFA in respect of its financings. EFA publishes information about potential Category A transactions (those with the potential for significant adverse environmental and/or social impacts) well in advance of its decision making to enable interested parties to bring issues to the attention of those undertaking the relevant due diligence. However, EFA does not publicly reveal commercially sensitive details of its transactions and Parliament has enacted specific legislative provisions that exclude commercially sensitive information from public release under FOI legislation. There has not been time to examine whether it is desirable to pursue legislative or SoE changes that would require greater transparency in respect of EFA's ESR assessments of concluded transactions. Detailed examination would be required if the government is of a mind to pursue this element of the recommendations of that submission.

Findings in respect of this section

Finding 16: EFA's approach to safeguards since its establishment has been broadly consistent with international practices applied by comparator governments in respect of officially supported ECAs. EFA policy requires it to apply the principles of these safeguards (or better) in respect of all transactions, not simply those to which the relevant international standards technically apply (apart from military equipment, some Australian domestic transactions subject to domestic safeguards or some transactions subject to at least equivalent safeguards applied by a funding partner such as an MDB).

Finding 17: The EFA Board has checks and balances in place to ensure compliance with its ESR policies and to regularly (and independently) review their applicability. Although heavily dependent on client-supplied data and analysis, EFA reserves the right to appoint independent expert consultants to provide the advice necessary to support an informed decision.

Finding 18: EFA has scope to negotiate improvements designed to address ESR-related risks in investments submitted for financing – these are typically conditions precedent to the disbursement of funds. EFA monitors the implementation of conditions covering ESR-related risks, which could include monitoring by independent environmental and social experts, depending on the nature of the transaction. However, the ability of EFA or its client to control the behaviour of the project principal(s) can vary widely.

Finding 19: EFA's legislation specifically protects commercially sensitive information from public release. Any proposal to require EFA to publish detailed project level information about safeguards assessments should not be entertained without detailed analysis.

Recipient country benefits

Submissions to the Review and to the 2019 Senate Inquiry argued that benefits assessment should go beyond whether a proposal is in Australia's interests to also consider whether a proposal is in the recipient country's interests.

The Review notes that it is not currently a legislated requirement that EFA should formally assess whether a proposal is in the recipient country's interests nor that EFA should have regard to that assessment when deciding whether to proceed to offer finance on the CA. However, the SoE stipulates that 'In respect of overseas infrastructure projects, I expect Export Finance Australia to

reasonably satisfy itself through due diligence, consistent with its existing processes, and expert advice as needed, including from the Department of Foreign Affairs and Trade, the infrastructure project is appropriate for the relevant nation and the governance surrounding project procurement is sound.⁷¹ Equivalent provisions have been in place since April 2019. EFA is similarly required to comply with the OECD Recommendations⁷² on Sustainable Lending Practices and Officially Supported Exports Credits and EFA's own debt sustainability policies.

EFA has observed to the Review that its assessments in this respect have regard to the circumstances of each case. Its principal point of contact is DFAT, including DFAT's in-country expertise (and other Australian government in-country representation as appropriate). However, EFA will also consult other stakeholders (for example financing partners) and the proponent. At times the sovereign government is a party to the transactions, which can become a direct source of advice about such matters.

Some submissions to the 2019 Senate Inquiry⁷³ argued that EFA (EFIC at the time) can face an inherent tension between its requirement to achieve commercial returns and an Australian government aspiration to maximise the development outcomes achievable from the investment of Australian resources. In some circumstances the commerciality of the project may rely on a regulatory environment or other factors that inhibit the country's long term development potential or impose unnecessary costs on consumers. Some argue that EFA should decline to participate in a project if such is the case.

However, as previously noted, EFA has been established as a commercial entity that provides export credits and similar financing. It is not a DFI and does not have in-house capability to assess, for example, whether the policy environment in-country is the most appropriate in the long term or whether alternative proposals to those put forward by the proponent would secure larger development outcomes for an equivalent investment of resources. Those aspects of the Australian government's relationship with a recipient government are best pursued by DFAT, to the extent that they can be, in conjunction with its development partners such as the MDBs, as part of its policy dialogue and other interactions with the relevant government. That said, it is to be expected (and certainly desirable) that DFAT should alert EFA if there is a policy discussion in place or in prospect within a timeframe relevant to EFA's decision making that bears on the appropriateness of EFA's participation in the venture under consideration.

***Finding 20:** Although its legislation is silent, the Minister's Statement of Expectations stipulates that EFA should reasonably satisfy itself through due diligence that an overseas infrastructure project is appropriate for the relevant nation and the governance surrounding project procurement is sound.*

⁷¹ SoE, May 2020, p3.

⁷² <https://www.oecd.org/trade/topics/export-credits/sustainable-lending/>

⁷³ For example, S Howes, op cit.

Other matters raised in submissions

Five other matters were raised in submissions:

- EFA's definition of Infrastructure
- EFA's range of partners
- EFA's resourcing
- EFA's support for Australian branch offices
- EFA's fees

EFA's definition of Infrastructure

One submission argued that EFA should adopt a broad definition of 'infrastructure' to encompass social as well as economic infrastructure. EFA has advised that infrastructure is defined as 'a country's physical facilities necessary for the social and economic wellbeing of a society. This includes the maintenance and upgrade of such facilities.' Commercially viable projects in the social sectors may be difficult to find, especially in PICs. Nonetheless, Attachment 4 includes one such example, a medical facility funded some years ago, and the Review has been informed that some projects in the social sectors are included in EFA's current pipeline. It is not possible to predict at this point whether such projects will ultimately reach financial close, however.

Finding 21: EFA's definition of infrastructure is sufficiently broad to include both economic and social infrastructure. However, bankable opportunities in respect of social infrastructure may be limited, especially in Pacific.

EFA's range of partners

One submission argued that EFA should seek to solicit a wider range of partners, including in-country provident or super funds and well rated local corporates or multinationals. The Review has established that there is no legislative or other prohibition on EFA partnering with appropriate local or multinational corporates or Pacific based super or provident funds as potential co-investors. EFA has told the Review it is open to such possibilities, consistent with its mandate, if appropriate partners and projects are identified.

Part of EFA's role is to 'crowd in' other investors by demonstrating the viability of projects that would otherwise fail to attract finance. EFA does not typically enjoy an abundance of prospective financing partners. Particularly in the Pacific, bankable propositions may be difficult to find. Infrastructure projects may be small scale, with uncertain, if any, cashflows. The state (possibly through state-owned enterprises) is often the dominant holder of infrastructure assets. Some proposals may require ready access to the legal and analytical capabilities necessary to work across multiple jurisdictions and execute complex financing arrangements, which may be in short supply in some countries of interest. Financiers may be reluctant to enter a market with which they are unfamiliar in the presence of such factors.

EFA has acknowledged to the Review that locally operating superannuation funds are possible partners, and their long-term goal is to work with Pacific superannuation funds. EFA sees a potentially strong alignment of interest since both parties are seeking assets that can generate a return to repay investors (either debt or equity). An investment by a local superannuation fund can also be viewed as providing a degree of risk mitigation for foreign investors. However, identifying

suitable superannuation partners may be challenging due to the nature of the assets currently available for investment.

Similarly, EFA has informed the Review that its origination strategy includes working with corporate partners with an established presence in the region, as larger corporates are more likely to have the financial and technical capability to progress transactions. However, corporate involvement is unlikely to be suitable in all instances. EFA notes that in some markets potential corporate partners are already well banked and their attention is most likely to be caught by large projects. This means that opportunities for such involvement in the smaller economies of the Pacific may be less than in other markets and sectors.

***Finding 22:** There is no legislative or other prohibition on EFA partnering with appropriate local or multinational corporates or Pacific based super or provident funds as potential co-investors. EFA has told the review it is open to such possibilities, consistent with its mandate, if appropriate partners and projects are identified. Such partnerships may, in time, assist in accessing sources of local currency financing.*

EFA's resourcing

One Submission argued that sufficient resources should be made available to enable EFA to discharge its enhanced mandate in respect of infrastructure deals, including to involve SMEs when possible. The Review has established that EFA is not subject to the controls over staffing that apply to departments of state such as DFAT. Rather, resourcing is a decision of the EFA Board and management. Together, they exercise commercial judgements to ensure that adequate resources are made available, consistent with their assessment of the likelihood that resourcing will lead to the identification and conclusion of sufficiently profitable financing opportunities. As [previously noted](#), EFA has considerably increased its headcount and access to specialised consulting resources since passage of the 2019 Amendments. Moreover, the SoE requires EFA to charge government agencies to which it supplies administrative or other support if they seek advice or other support from EFA. Such activities are therefore self-financing.

***Finding 23:** There is no evidence available to the Review that EFA is currently constrained by inadequate resources.*

EFA's Support for Australian branch offices etc

One submission argued that EFA should support Australian branch offices and equipment purchases for infrastructure related companies. EFA has responded that financing is available to support businesses to establish offshore operations or to purchase equipment to support overseas infrastructure transactions, subject to the relevant benefits tests and on commercial terms. However, unlike some North Asian export credit agencies EFA does not have a concessional lending facility for such purposes.

***Finding 24:** There is no legislative or other prohibition on EFA providing appropriate support for Australian branch offices and for equipment for infrastructure related companies that meet the established criteria for funding.*

EFA's fees

One submission argued that EFA should lower fees for unused lines of credit, which are higher than those charged by banks. The review is not well placed to judge this matter in detail. Arguably, forming a judgement about such a matter is outside the scope of the TOR. However, in principle, EFA

is established to operate in gaps in which existing financial institutions do not operate. EFA assumes commensurate risks, which should be reflected in its pricing strategies. The SoE includes:

‘... the pricing of [EFA’s] products and services should not undercut the private sector where private sector support is present, nor undercut pricing for comparable risks when private sector support is absent. ...

‘... I expect [EFA] to share the pricing and terms of its transactions with relevant financiers operating in the domestic market. This will help demonstrate that commercial returns are possible and encourage private sector financiers to take on [EFA] clients’.⁷⁴

Finding 25: The Review’s TOR do not extend to forming a view about the appropriateness of EFA’s pricing. In principle, however, EFA is established to operate in gaps in which existing financiers do not operate. EFA assumes commensurate risks, which should be reflected in its pricing.

⁷⁴ SoE, November 2020, P4.

Conclusions

In conclusion, the Review makes 25 findings, which may be summarised:

- EFA has promulgated appropriate strategies, policies and procedures to give effect to its revised remit, supported by specific strategies for countries that seem prospective. It has increased resourcing and applied its internal processes to monitor and report on compliance to the Board. In time it may be sensible for the government and the Board selectively to institute more systematic monitoring and evaluation of the benefits actually secured from financings occasioned by the expanded Australian benefit test.
- The increased callable capital has enabled EFA to increase its project, client and country lending limits within an unchanged aggregate maximum exposure limit (set by regulation at \$6.5 billion).
- Infrastructure is broadly defined to include both economic and social infrastructure. EFA has begun to undertake infrastructure financing activities in the region that are only possible after the 2019 amendments to the EFIC Act (including the expanded Australian benefits test) and has a significant pipeline of work under consideration. The pipeline includes both economic and social assets across several countries. The probability that projects will proceed to financial close cannot be estimated reliably. The time taken to reach close varies considerably, but is typically 3 to 5 years (with particular cases requiring more or less years depending on circumstances that may be outside of EFA's control).
- EFA maintains substantial outreach activities, both domestically and in-country, to assist it to identify possible projects, clients and financing partners and to support its decision making with good information about local conditions etc.;
- The relationship between EFA and DFAT is fundamental to enabling EFA to discharge its expanded remit properly informed and in ways that maximise the benefits to Australia. The relationship is currently very close, playing out at multiple levels in both organisations and including DFAT's in-country representatives and a number of DFAT programs (e.g., the recently introduced P4I initiative). However, there is scope in the longer term to further develop that relationship, possibly including through DFAT undertaking parallel investments for selected EFA investments, in support of Australia's national interests.
- Desirable further amendments to the Act have been presented to Parliament (early August 2021) to enable EFA to take an equity position in limited circumstances and to provide guarantees to overseas infrastructure clients in circumstances in which they would be available for EFA's other clients. EFA already has scope to engage in local currency financing. These are more likely to involve guarantees or bonds rather than loans because of the risks.
- The relevant Minister sets out the safeguard policies required of EFA through the SoE, which is revised from time to time. EFA is an export credit agency, not a development finance institution. Current policies and publication practices are consistent with the commercial nature of EFA's remit and the practices of comparator officially supported export credit agencies. Any proposal to adopt stronger safeguards or greater transparency would require detailed analysis.
- EFA is open to seeking financing partnerships with superannuation /provident funds and cashed up multinational companies that operate in the region – there is no legal or policy

prohibition against such arrangements. However, the opportunities are reported to be limited currently.

Details of the Review's findings follow.

Consolidated Findings

Finding 1: it is too early to conduct a meaningful review of the effectiveness of the 2019 amendments in advancing Australia's trade and other interests in the Pacific. The principal focus of the Review, rather, is an assessment of the appropriateness of EFA's responses to the 2019 amendments. A secondary focus is to canvass and consider the views of a range of stakeholders regarding the operations of the Amended Act.

Finding 2: EFA's strategy, policies and procedures have been revised appropriately, including the development of an Australian benefits policy in line with legislation and the Minister's Statement of Expectations.

Finding 3: EFA has internal governance checks and balances in place, including Board and internal audit oversight, to ensure that policies are appropriately applied and are periodically reviewed.

Finding 4: EFA has undertaken a substantial investment in expanded capacity to enable it to implement its new powers (and to support establishment of AIFFP).

Finding 5: revised country strategies have been developed that identify five priority Indo-Pacific countries in which to concentrate EFA's initial effort, with accountable staff assigned to pursue opportunities in these countries and, as opportunities arise, elsewhere.

Finding 6: EFA has undertaken systematic outreach to DFAT and Austrade in-country representatives, key governments and a wide range of contacts, prospective partners and clients, especially in respect of the five priority countries, to raise awareness of what EFA has to offer and to gather market intelligence. It has built a substantial pipeline of possible investments that appear to warrant further investigation.

Finding 7: the 2019 Amendments (especially the Australian benefits test) provide greater certainty to EFA and its prospective clients, financing and other partners about the breadth of EFA's role, enabling earlier engagement in the project lifecycle and enhanced leverage over both project design, in some circumstances, and financial engineering by EFA, potentially to Australia's long-term benefit.

Finding 8: seven projects have already reached financial close that rely, at least in part, on the new Australian benefits test.

Finding 9: EFA and the government should consider selectively introducing and resourcing post project monitoring to report to the Board (and the government as appropriate) on whether expected Australian benefits were realised in practice for financings authorised under the 2019 Australian benefits test, acknowledging such benefits may take some years to materialise fully and may be costly and difficult to quantify.

Finding 10: Both DFAT and EFA agree that their collaboration is multi-faceted and traditionally close, especially for countries in which EFA has an established track record (which can more tangibly demonstrate what EFA can provide). This collaboration facilitates (a) in-country awareness of EFA's service offering, (b) referral of potential projects, partners or leads to EFA to inform the development of EFA's deal pipeline, and (c) advice about whether potential investments meet

certain elements of the Australian benefit test, are consistent with the recipient country's priorities and needs, and/or raise concerns relevant to EFA's due diligence.

Finding 11: DFAT is EFA's principal source of advice about the implications of potential financings for Australia's national interests and the government's objectives.

Finding 12: *DFAT (including DFAT's in-country representatives) should routinely examine EFA's Pipeline for opportunities to leverage enhanced development outcomes from EFA financings, especially when a sovereign government is involved as an EFA client, by designing and proposing appropriate parallel investments that are consistent with a country's and Australia's interests and the agreed country strategy.*

Finding 13: it is sensible to allow EFA to take an equity position in limited circumstances, consistent with the amendments recently (4 August 2021) proposed to the EFIC Act. Whether EFA should have a broader power to assume equity in a CA transaction should be considered in the light of more substantial experience of overseas infrastructure transactions under the revised Australian benefits test and the financing best suited to them.

Finding 14: There is no current legislative or other prohibition on the provision of local currency financing by EFA in respect of infrastructure in the Indo-Pacific. However, some foreign exchange markets are not very deep and foreign exchange shortages or controls may at times inhibit the timely or cost-effective supply of necessary currency. EFA is more likely to provide bonds or guarantees in local currency than direct loans. The loans option is exercised infrequently.

Finding 15: The restriction on EFA's ability to offer guarantees to overseas infrastructure transactions only when EFA is itself providing loan finance is unnecessary, inconsistent with EFA's powers in respect to its other activities and should be removed. The government introduced amendments to the EFIC Act on 4 August 2021 to enable this.

Finding 16: EFA's approach to safeguards since its establishment has been broadly consistent with international practices applied by comparator governments in respect of officially supported ECAs. EFA policy requires it to apply the principles of these safeguards (or better) in respect of all transactions, not simply those to which the relevant international standards technically apply (apart from military equipment, some Australian domestic transactions subject to domestic safeguards or some transactions subject to at least equivalent safeguards applied by a funding partner such as an MDB).

Finding 17: The EFA Board has checks and balances in place to ensure compliance with its ESR policies and to regularly (and independently) review their applicability. Although heavily dependent on client-supplied data and analysis, EFA reserves the right to appoint independent expert consultants to provide the advice necessary to support an informed decision.

Finding 18: EFA has scope to negotiate improvements designed to address ESR-related risks in investments submitted for financing – these are typically conditions precedent to the disbursement of funds. EFA monitors the implementation of conditions covering ESR-related risks, which could include monitoring by independent environmental and social experts, depending on the nature of the transaction. However, the ability of EFA or its client to control the behaviour of the project principal(s) can vary widely.

Finding 19: EFA's legislation specifically protects commercially sensitive information from public release. Any proposal to require EFA to publish detailed project level information about safeguards assessments should not be entertained without detailed analysis.

Finding 20: Although its legislation is silent, the Minister’s Statement of Expectations stipulates that EFA should reasonably satisfy itself through due diligence that an overseas infrastructure project is appropriate for the relevant nation and the governance surrounding project procurement is sound.

Finding 21: EFA’s definition of infrastructure is sufficiently broad to include both economic and social infrastructure. However, bankable opportunities in respect of social infrastructure may be limited, especially in Pacific.

Finding 22: There is no legislative or other prohibition on EFA partnering with appropriate local or multinational corporates or Pacific based super or provident funds as potential co-investors. EFA has told the review it is open to such possibilities, consistent with its mandate, if appropriate partners and projects are identified. Such partnerships may, in time, assist in accessing sources of local currency financing.

Finding 23: There is no evidence available to the Review that EFA is currently constrained by inadequate resources.

Finding 24: There is no legislative or other prohibition on EFA providing appropriate support for Australian branch offices and for equipment for infrastructure related companies that meet the established criteria for funding.

Finding 25: The Review’s TOR do not extend to forming a view about the appropriateness of EFA’s pricing. In principle, however, EFA is established to operate in gaps in which existing financiers do not operate. EFA assumes commensurate risks, which should be reflected in its pricing.

Attachment 1: Terms of Reference - Export Finance Australia: infrastructure mandate review

Background

In its July 2019 response to the Senate Foreign Affairs, Defence and Trade Legislation Committee Report on the proposed amendments, the Government confirmed it would commission an independent review of EFA's overseas infrastructure financing functions, starting within 18 to 24 months after the Bill's assent (which occurred on 5 April 2019), subject to prevailing circumstances.

Terms of Reference

The Terms of Reference include that the review will:

- Consider the operation of EFA's overseas infrastructure financing functions and the extent to which it has supported the Government's aims and the infrastructure needs of our Pacific neighbours.
- Examine the impact of amendments made by items 1, 2, 4 to 9, 11 and 12 of the Bill on EFA's ability to finance overseas infrastructure projects. [The table at Attachment 2 summarises these amendments.]
- Consider the views of a wide range of stakeholders, including those who provided submissions to the 2019 Senate Committee inquiry into the Bill.

Attachment 2: Summary of Amendments proposed by the SIF Bill.

Item number in the Bill	Summary of amendment
Item 1	Amends the title of the EFIC Act to include 'overseas infrastructure development.' The EFIC Act title now reads as 'An Act to establish an Export Finance and Insurance Corporation for the purpose of facilitating and encouraging Australian export trade and overseas infrastructure development, and for related purposes'.
Item 2	Adds new definitions to the EFIC Act, including 'Australian benefit', 'EFIC's overseas infrastructure financing functions', 'overseas infrastructure development', 'overseas infrastructure financing', and ADI (authorised deposit-taking institution).
Item 4	Adds 'to encourage and facilitate overseas infrastructure financing' to EFA's functions.
Item 5	Adds 'overseas infrastructure financing that results in Australian benefit' as one of EFA's duties.
Item 6	Enables EFA to provide guarantees to co-lenders in connection with its new infrastructure financing power.
Item 7	Clarifies EFA's ability to provide financial accommodation, in any form, to eligible export transactions under its new infrastructure financing power.
Item 8	Inserts a new section (23A), which enables EFA to provide financial accommodation, in any form, under its new overseas infrastructure financing power.
Item 9	Enables the Minister for Trade, Tourism and Investment (the Minister) to approve EFA providing finance for overseas infrastructure projects on the National Interest Account under EFA's new infrastructure financing power.
Item 11	Expands the Minister's existing authority to determine principles under which the Commonwealth will pay EFA a subsidy for eligible export transactions to also include exercise of EFA's new overseas infrastructure financing power.
Item 12	Expands existing authority for the Commonwealth to pay EFA a subsidy – in line with the principles described in Item 11 above – beyond eligible export transactions to also include overseas infrastructure development.

Attachment 3: List of submissions

Sub No.	Name of organisation	Public?#
1	ANZ Bank	R
2	Austrade	Y
3	Australian Council for International Development, ActionAid, several individuals etc	Y
4	Business Councils (Australia- PNG, Australia – Pacific Islands, Australia-Fiji)	Y
5	DFAT	Y
6	EFA	Y
7	JBIC	N
8	NEXI	N
9	Reeves Envico Group	R
10	Rhodes Project Services Ltd	Y

Y = Public submission; N = In confidence submission; R = redacted version available

Attachment 4: CA Projects Supported by EFA (3 April 2019 – end-June 2021)

EXPORTER / INVESTOR / CLIENT	EXPORT DESTINATION	NATURE OF FINANCING PROVIDED	AMOUNT OF FINANCING (AUD MILLIONS)	DATE SIGNED	COMMENTS
AVIONICS	Hong Kong	Loan	2.00	31/08/2020	Supply and installation of airfield ground lighting transformer housing systems for a new airport runway.
	Hong Kong	Bond	1.52	14/10/2020	Supply and installation of airfield ground lighting transformer housing systems for a new airport runway.
	Hong Kong	Bond	2.59	14/10/2020	Supply and installation of airfield ground lighting transformer housing systems for a new airport runway.
CCB ENVICO	Kiribati	Bond	0.33	16/04/2019	Construction of a terminal building for an airport.
	Kiribati	Bond	0.09	9/10/2019	Construction of a terminal building for an airport.
	Kiribati	Bond	0.08	18/11/2019	Construction of a sea wall to protect the runway at an airport.
	Marshall Islands	Bond	0.30	18/11/2019	Rehabilitation and construction of water supply and sanitation.
	Marshall Islands	Bond	0.30	18/11/2019	Rehabilitation and construction of water supply and sanitation.
	Kiribati, PNG, Solomon Islands	ELOC	5.00	19/02/2020	Construction of diplomatic residences (Kiribati), a health centre (PNG) and water treatment (Solomon Islands)
	Kiribati, PNG, Solomon Islands	ELOC	6.00	19/02/2020	Construction of diplomatic residences (Kiribati), a health centre (PNG) and water treatment (Solomon Islands)

EXPORTER / INVESTOR / CLIENT	EXPORT DESTINATION	NATURE OF FINANCING PROVIDED	AMOUNT OF FINANCING (AUD MILLIONS)	DATE SIGNED	COMMENTS
CITYGREEN SYSTEMS	United States of America	SBEL	0.18	19/09/2019	Manufacture and installation of a pavement support system for trees at Centennial Park in Texas.
CONTRACT ELECTRICAL (QLD)	Papua New Guinea	SBEL	0.35	10/12/2019	Electrical works provided in the redevelopment of a hospital.
CRYOPERL	United States of America	Bond	0.67	11/08/2020	Construction of insulation for storage tanks for three LNG gas trains.
	United States of America	Bond	0.67	1108/2020	Construction of insulation for storage tanks for three LNG gas trains.
DISCOVERY BUSINESS INDUSTRIAL ZONE LDA	#Timor-Leste	ECL	5.67	29/10/2020	Construction of 14 warehouses to create a business park in Dili.
DXN LIMITED	Fiji, Niue, Papua New Guinea, Mozambique	Loan	0.50	3/09/2020	Design and manufacture of modules for data centres to support telecommunications networks.
ENSIGHT	United States of America	ECL	0.50	29/06/2020	Project management to delivery energy to public schools in Florida.
GEOVERT GROUND ENGINEERING	United States of America	Bond	0.81	4/04/2019	Maintenance works on the walls of the Hoover Dam.
	United States of America	Bond	0.27	12/04/2019	Works on a rockwall adjacent to a road.
	United States of America	Bond	0.32	18/05/2020	Works on a rockwall adjacent to a road.
	United States of America	Bond	0.32	18/05/2020	Works on a rockwall adjacent to a road.
LOTUS WIND POWER PROJECT	#Vietnam	Loan	41.15	21/05/2021	Three wind power plants in Vietnam.

EXPORTER / INVESTOR / CLIENT	EXPORT DESTINATION	NATURE OF FINANCING PROVIDED	AMOUNT OF FINANCING (AUD MILLIONS)	DATE SIGNED	COMMENTS
MARHAND PRECISION ENGINEERING	New Zealand	Bond	2.47	5/02/2021	Delivery and installation of a semi-automated railway wheel repair facility for KiwiRail.
PACIFIC WELDING INSTALLATIONS	Solomon Islands	SBEL	0.08	7/02/2020	Fabrication and installation of steel marine mooring buoys for a fuel terminal.
REEVES INTERNATIONAL PTY LTD	Kiribati	Bond	0.26	5/04/2019	Construction of a terminal building for an airport.
	Tonga	Bond	0.34	9/10/2019	Refurbishment of an international airport terminal.
	Tonga	Bond	0.17	9/10/2019	Refurbishment of an international airport terminal.
	Tonga	Bond	0.17	17/02/2020	Refurbishment of an international airport terminal.
	Kiribati	Bond	0.82	16/04/2020	Construction of a new High Commission and four diplomatic residences and facilities.
	Kiribati	Bond	0.82	16/04/2020	Construction of a new High Commission and four diplomatic residences and facilities.
	Papua New Guinea	Bond	0.46	15/10/2020	Construction of a hospital and mortuary.
	Papua New Guinea	Bond	0.46	15/10/2020	Construction of a hospital and mortuary.
	Tuvalu	Bond	0.12	15/10/2020	Construction of a primary school.
RHODES PROJECT SERVICES	#Papua New Guinea	ECL	2.50	7/11/2019	Construction of warehouses, a supermarket and accommodation facilities.

EXPORTER / INVESTOR / CLIENT	EXPORT DESTINATION	NATURE OF FINANCING PROVIDED	AMOUNT OF FINANCING (AUD MILLIONS)	DATE SIGNED	COMMENTS
	Papua New Guinea	ELOC	1.70	29/04/2020	Construction of school facilities and accommodation for government workers.
	Papua New Guinea	ECL	0.77	29/04/2020	Purchase of inventory for ongoing infrastructure projects in country.
	Papua New Guinea	ELOC	0.88	11/05/2021	Ongoing works for various government projects.
	Papua New Guinea	ELOC	1.01	11/05/2021	Ongoing works for various government projects.
	Papua New Guinea	ELOC	1.61	11/05/2021	Ongoing works for various government projects.
	Papua New Guinea	Bond	0.12	14/05/2021	Construction of a justice centre for government departments and administrative services.
	Papua New Guinea	Bond	0.37	14/05/2021	Construction of a justice centre for government departments and administrative services.
	Papua New Guinea	Bond	0.12	14/05/2021	Construction of a justice centre for government departments and administrative services.
RJE GLOBAL	Myanmar	ECL	1.52	28/08/2020	Design and construction of a substation to power a business park/city quarter.
SUN ENGINEERING	Fiji	Bond	0.06	17/12/2020	Design and construction of a tank for a fuel terminal.
	Fiji	Bond	0.06	17/12/2020	Design and construction of a tank for a fuel terminal.

EXPORTER / INVESTOR / CLIENT	EXPORT DESTINATION	NATURE OF FINANCING PROVIDED	AMOUNT OF FINANCING (AUD MILLIONS)	DATE SIGNED	COMMENTS
	Fiji	Bond	0.05	17/12/2020	Design and construction of a tank for a fuel terminal.
	Fiji	Bond	0.05	17/12/2020	Design and construction of a tank for a fuel terminal.
	Papua New Guinea	Bond	0.06	26/03/2021	Engineering, procurement and construction services for a water storage and treatment plant at a refinery.
	Papua New Guinea	Bond	0.06	26/03/2021	Engineering, procurement and construction services for a water storage and treatment plant at a refinery.
	Papua New Guinea	Bond	0.15	26/03/2021	Engineering, procurement and construction services for a water storage and treatment plant at a refinery.
	Papua New Guinea	Bond	0.15	26/03/2021	Engineering, procurement and construction services for a water storage and treatment plant at a refinery.
UAP AUSTRALIA	United States of America	Bond	1.46	19/09/2019	Design of a bridge over a river in a major city.
	United States of America	Bond	1.48	15/10/2019	Design of a bridge over a river in a major city.
VELNAH	New Zealand	SBEL	0.09	1/10/2020	Supply of fibre optic distribution points for New Zealand's national broadband network.
VIX MOBILITY	United States of America	Bond	3.24	5/01/2021	Implementation of an automated fare collection technology across a city's public transit system.

denotes transactions that rely on the new powers.

**Types of facilities:

- An ECL is an export contract loan, while an ELOC is an export line of credit and an SBEL is a small business export loan.

- *Bonds are performance bonds/guarantees, which guarantee an exporter's performance obligations under a contract.*

**** the table has been updated from Appendix 4 of the EFA submission, noting here were no additional CA transactions in June 2021*

Attachment 5: List of Stakeholders invited to make submissions

The following lists stakeholders invited to make a submission to this Review. It principally comprises those who provided submissions to the 2019 Senate Committee inquiry.

1. Oil Search Limited
 2. ESS Weathertech Pty Ltd
 3. Aspen Medical
 4. Rhodes Project Services Pty Ltd
 5. Dr Susan Engel
 6. McKell Institute
 7. World Vision Australia
 8. Export Finance Australia
 9. Department of Foreign Affairs and Trade
 10. International Women's Development Agency
 11. National Australia Bank
 12. Jubilee Australia
 13. ActionAid Australia
 14. Export Council of Australia
 15. The Australia Institute
 16. Asian Development Bank
 17. Development Policy Centre, Crawford School of Public Policy,
The Australian National University
 18. Oxfam Australia
 19. ANZ Banking Group Limited (ANZ)
 20. Australian Council for International Development (ACFID)
 21. Australia-Papua New Guinea, Australia-Fiji and Australia-Pacific Islands Business Councils
 22. CCB Envico
 23. Australian Trade and Investment Commission (Austrade)
 24. Dr Jolyon Ford
 25. CIMIC Group
- Additional stakeholders*
26. Japan Bank for International Cooperation (JBIC)
 27. U.S International Development Finance Corporation (US DFC)
 28. Nippon Export and Investment Insurance (NEXI)
 29. International Finance Corporation (IFC)
 30. Macquarie Bank
 31. Northern Territory State Government