

Joint submission on the independent review of overseas infrastructure financing powers held by Export Finance Australia

Cover Note

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Authors' Note

The undersigned organisations and individuals welcome the Department of Foreign Affairs and Trade's (DFAT) independent review of the overseas financing powers held by Export Finance Australia (EFA) and the opportunity to provide a submission.

Under each recommendation of the submission the authors have indicated which element of the review's Terms of Reference it applies. This includes reference to items in 'Table 1: Summary of EFIC Act amendments made by the Bill' set out by the review.

The submission is divided as follows:

1. Introduction – Australia: at the heart of a global initiative on quality infrastructure
2. Summary of Recommendations
3. EFA's Overseas Infrastructure Financing Powers and Current Transactions
4. The Impacts of COVID-19 on the Pacific and Timor-Leste
5. EFA's Environmental and Social Safeguards
6. Export Finance Australia's Transparency and Accountability

1. Introduction – Australia: at the heart of a global initiative on quality infrastructure

In November 2019, Australia became a founding partner of the Blue Dot Network¹—an initiative that underpins the more recent announcement of the United States-led Build Back Better World (B3W) agenda at the 2021 G7 Summit in Cornwall.² Alongside the Trilateral Partnership for Infrastructure Investment in the Indo-Pacific (TIP), Australia’s participation in this Network reflects how the country now sits at the heart of an ambitious and far-reaching program to tackle the global investment gap in “quality” and “climate-friendly” infrastructure in low- and middle-income countries.³

In seeking to promote quality infrastructure globally through the development of a voluntary certification scheme, the Network speaks to the exigent need for infrastructure that is “open and inclusive, transparent, economically viable, financially, environmentally and socially sustainable, and compliant with international standards, laws, and regulations”.⁴ It also constitutes a values-driven, geostrategic response to China’s Belt and Road Initiative (BRI) and the sustainability questions that have beleaguered the BRI.

Australia’s newfound status as a ‘rule-maker’ in the infrastructure domain comes with special responsibilities. It also comes with increased scrutiny of the types of infrastructure that Australia supports, how its financing power is used, and the standards that it employs. As a standard-setter, how Australia and Australian companies invest in infrastructure projects overseas matters to the national interest as well as to the sustainable development of host countries in the Indo-Pacific region.

In implementing the Australian Infrastructure Financing Facility for the Pacific (AIFFP), DFAT and the Office of the Pacific have generated welcome guidance on standards, governance, and transparency for overseas infrastructure projects. This work addresses some of the initial concerns expressed by civil society and academics during its creation. But as this submission sets out, the authors remain concerned by how Australia is financing overseas infrastructure—in particular, the types of projects it funds, and the standards and safeguards it uses.

These concerns relate to how Export Finance Australia (EFA) consults, assesses, and reports on infrastructure projects using its Commercial Account. Analysis reveals that the G20 Principles for Quality Infrastructure Investment (hereinafter, G20 Infrastructure Principles), which Australia endorses and the Blue Dot Network is designed to operationalise, are not factored into EFA’s infrastructure-financing approach. This submission makes a series of recommendations to raise the standards, safeguards, governance, and transparency of EFA.

On top of greater scrutiny, the Pacific’s trio of challenges—economic slowdown, the COVID-19 pandemic, and climate change—have vexed the use of Australia’s overseas infrastructure financing

powers. As an export credit agency, EFA has considerable responsibilities in relation to private business. But it does not encompass the more extensive responsibilities and checks or balances like those of multilateral development banks or development assistance agencies.

The critical question for the Australian Government lies in whether Australia's hybrid model (negotiated between DFAT and EFA) is suitable and sustainable, and whether the infrastructure-financing powers of EFA (including to offer non-concessional loans) can sufficiently contribute to building stronger relationships with partners in the Indo-Pacific. As interested parties with a strong focus on development effectiveness, how a project is deemed appropriate for the relevant nation by DFAT and EFA lies at the centre of this submission and, we hope, of this review.

With COVID-19 wreaking economic havoc and piling on greater debt in a debt-vulnerable region, the Pacific's response is clear: "we don't want more debt financing."⁵ To counteract the trend, the Pacific Islands Forum (PIF) has designed the Pacific Resilience Facility (PRF), which does not accrue national debt and focuses on 'soft' rather than 'hard' infrastructure to build community resilience against climate change.

As set out by the Boe Declaration on Regional Security, the single greatest threat to the livelihoods, security, and wellbeing of the peoples of the Pacific is climate change.⁶ It is critical then that infrastructure financing supports the infrastructure needs of our Pacific neighbours, particularly those which intersect with the threat of climate change. Further, considering the Blue Dot Network's mandate (in line with the G20 Infrastructure Principles) to implement climate-friendly infrastructure projects that align with "nationally determined contributions" to realise the Paris Agreement, Australian financing needs to prioritise projects that enhance the Pacific's climate resilience.^{7 8}

The combined challenges of COVID-19, climate change and debt crystalise the importance of Pacific-led regional solutions—and their centrality to Australia's diplomacy and development agenda. At this juncture, the Australian Government should review if it has a greater opportunity to becoming a partner of choice for the Pacific by directing financing through the PRF, rather than privileging infrastructure loan mechanisms in a region where many countries are already experiencing significant debt sustainability challenges.

On the current trajectory, the debt distress of low-to-middle-income countries in Australia's region will continue to rise, meaning the risk of loan write-offs for the Commonwealth will also increase. Continuing to navigate this environment raises the urgent need for Australia to re-examine its overseas infrastructure-financing powers, heighten standards, safeguards and transparency, as well as re-emphasise the role of programming grants for development.

2. Summary of Recommendations

Recommendation 1

The Australian Government should provide transparency on how the EFA's overseas infrastructure financing powers are operating (including under the AIFFP) by:

- Making the system-wide review of the AIFFP publicly available; and
- Making the independent evaluation of AIFFP (set to take place in 2022) publicly available.

For the system-wide review and independent evaluation, the Government should ensure that assessments of the role and performance of EFA's functions and overseas infrastructure financing powers are included.

The present review should closely examine how an infrastructure project is deemed appropriate for the relevant nation and the method for doing so. We would invite the reviewer to clarify this to as full an extent as possible when the report is tabled.

Recommendation 2

The Australian Government should amend the Australian benefit test to include whether the relevant infrastructure financing delivers benefits to the recipient nation and be clear and open in articulating its method of assessment.

Recommendation 3

Australia's support to Pacific neighbours should prioritise grant mechanisms that do not increase countries' debt burdens, such as the Pacific Resilience Fund.

Where EFA is playing a role in offering large loans to public or private entities in highly indebted nations, it should conduct and make publicly available an assessment of sustainability and risks both to the Commonwealth and to the receiving country.

Recommendation 4

Despite the requirement that EFA be satisfied that projects are appropriate for the host country, the method for doing so is unclear. We recommend that the review closely examines how both DFAT and EFA determine that they are satisfied in relation to environment and social safeguards.

Overseas infrastructure projects funded through EFA's Commercial, or National Interest Accounts should not be subject to lower due diligence, safeguard, and accountability requirements than infrastructure projects funded through the Australian aid program.

In particular:

- EFA's overseas infrastructure financing powers should be reviewed and revised to meet Australia's commitment to the G20 Infrastructure Principles, UN Guiding Principles on Business and Human Rights (UNGPs), and OECD responsible business conduct standards.
- In line with the UNGPs, EFA should institute independent human rights and gender equality impact assessments with affected communities, including local women's groups, for all potential projects. It should also invest in technical expertise to ensure that gender analysis and disability inclusion are included across all aspects of financing decisions.
- EFA's Environmental and Social Review Procedure should be expanded to include gender-inclusive and human rights-based engagement with affected communities, including women, throughout the project management cycle of all Category A projects. Consistent with the Equator Principles, the Procedure should also include a climate change risk assessment that considers both physical and transition risks of all new and ongoing Category A and Category B projects.
- Consistent with the goals of Pacific nations, EFA's Statement of Expectations and Environmental and Social Review Policy should be amended to explicitly require it not to finance fossil fuel projects.
- EFA's due diligence should include a comprehensive assessment of the integrity, character, and track record of companies, including any history of environmental, human rights and corruption violations; any association with politically exposed persons; and any sanctions listings. Further, due diligence should include an assessment of who the ultimate beneficiaries are, and what risks that poses for national security and responsible business conduct.

Recommendation 5

EFA should publicly disclose its assessment of projects against international standards, including:

- Benchmarking and assessments of Category A projects against the IFC Environmental and Social Performance Standards (hereinafter, IFC Performance Standards), and any other standards being used;
- Impact assessments of EFA's financing on climate change, in line with the G20 Infrastructure Principles, which specify that "the environmental impact of infrastructure investment should be made transparent to all stakeholders".

Recommendation 6

EFA's partial exemption under Schedule 2 of the *Freedom of Information Act 1982* (Cth) should be revoked as existing general exemptions offer sufficient protection for sensitive information. At a minimum, the following information should be made available through an FOI request:

- Information relating to the detail of projects and operations financed by EFA;
- Project assessments undertaken during due diligence;

- Modification and mitigation measures that EFA has required for specific projects; and
- Project monitoring and evaluation documents generated by proponents and consultants during project implementation.

A requirement that financing will only be granted to projects that have gone through an open and competitive tender process should also be implemented. Projects should comply with the Open Contracting Data Standard and the CoST Infrastructure Data Standard.⁹

Recommendation 7

In addition to conducting due diligence at the project procurement stage, EFA should conduct due diligence on governance processes at the planning, selection, and appraisal stages.

Due diligence at the earliest stages should include:

- Assessments of recipient country governance at the policy and planning levels to ensure projects align with long-term sector policy;
- Multi-year plans or frameworks and near-term pipelines or programs for potential projects;
- Systemic methods for prioritising and selecting candidates; and
- Assessment of the integrity, character, and track record of project proponents with regard to adverse human rights and environmental impacts; involvement in bribery, corruption, and money laundering; allegations of cartel behaviour; beneficial ownership checks; politically exposed persons checks; and sanctions checks.

At the project assessment and appraisal level, due diligence should be focused on recipient country benefit and ensure that preliminary design of candidate projects is subject to appraisal of economic and social value, environmental and social impacts, and community consultation.

As part of Australia's commitment to "transparent, fair, informed and inclusive decision-making, bidding and execution processes", the Australian Government should comply with the G20 Principles for Corruption-Free Infrastructure as set out by Transparency International.¹⁰

3. EFA's Overseas Infrastructure Financing Powers and Current Transactions

The *Export Finance and Insurance Corporation Amendment (Support for Infrastructure Financing) Act 2019* (Cth) (the Act) provided EFA with new overseas infrastructure financing power and an increase to its callable capital.¹¹ Specifically, the Act:

- Expanded EFA's functions to "engage in overseas infrastructure financing", specifically by lending money for the purpose of supporting overseas infrastructure development;
- Gave EFA the power "to encourage and facilitate overseas infrastructure financing" through giving guarantees, encouraging other financial institutions to engage or assist in overseas infrastructure financing, and providing advice;
- Added a proviso that EFA is to perform its overseas infrastructure financing functions "in such a manner as EFIC reasonably believes is likely to result in the maximum Australian benefits"; and
- Increased EFA's callable capital from \$200 million to \$1.2 billion.

The Minister's second reading speech stated:

"The bill will allow Efic to finance essential overseas infrastructure, such as telecommunications, energy, transport and water, where it is commercially viable. This will complement the Liberal-National government's new Australian Infrastructure Financing Facility for the Pacific, which will stretch our aid dollars even further. The demand for infrastructure financing in our region is large. The Asian Development Bank estimates the Pacific region needs US\$3.1 billion in infrastructure investment per year to 2030. It estimates South-East Asia needs a further US\$210 billion in infrastructure investment per year by 2030. Efic can play an important role to help meet these needs."¹²

3.1. EFA Statement of Expectations

EFA's current Statement of Expectations (14 May 2020) provides some guidance on how EFA is to exercise these powers. It provides that EFA must 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".¹³

EFA's Statement of Expectations also clarifies that EFA's infrastructure financing function should prioritise the infrastructure needs of Pacific countries (including Timor-Leste), and can also be used

for infrastructure in the Indo-Pacific region. Any infrastructure financing outside these regions is not to rely alone on the new power.

The statement also clarifies the “Australian benefit” requirement that comes with this financing, stipulating that EFA is to encourage Australian participation in infrastructure transactions, particularly Small and Medium Enterprises (SMEs). The statement also clarifies that EFA’s financing should complement the AIFFP and that, where transactions have “strong commercial prospects”, they should first be considered by EFA on its Commercial Account.

3.2. EFA’s Infrastructure Financing to Date

For reasons that are discussed below, it is challenging to identify which of EFA’s transactions have used its new infrastructure financing power, or have contributed to infrastructure in the region, since the Act was passed; however, the number appears low.

EFA publishes a transaction register pertaining to transactions on its commercial and national interest accounts, including the export industry, goods/services exported, and the export destination.

While there is no separate industry or goods/services category for infrastructure, projects in the ‘construction’ or ‘electricity, gas, water and waste services’ categories are likely to involve some infrastructure development. A review of EFA’s transaction registers from 1 July 2019 to 24 June 2021 suggests that EFA financed approximately \$94 million across its commercial and national interest accounts on construction and energy/waste projects overseas (not including AIFFP transactions).¹⁴ Of this, around \$23 million appears to have gone to transactions in the Pacific region.¹⁵ (In the broader Indo-Pacific region, EFA also notably provided \$41.15 in financing for wind power in Vietnam in 2020-21.) This is a small proportion of EFA’s overall financing during this period, which totalled 1.7 billion (excluding AIFFP).

There may be several explanations for the low levels of infrastructure financing in the Pacific provided on EFA’s Commercial Account. Potential explanations could include that the demand for infrastructure financing in the region through EFA is low, or that there are insufficient projects in the region meeting the criteria of commercial viability and Australian benefits. When the Bill was proposed, ACFID and others raised concerns that EFA was not an appropriate mechanism for financing infrastructure in the Pacific, given EFA’s focus on the commercial viability of projects rather than human development, security and sustainability.¹⁶

3.3. Australian Financing Facility for the Pacific (AIFFP)

The AIFFP (‘the facility’) is a cornerstone of the Australian Government’s Pacific ‘Step up’ and was a major driving force for the Act.

Examining EFA's role in the AIFFP is essential because its overseas infrastructure financing powers will increasingly be called upon to support AIFFP projects. In March 2021, the *Sydney Morning Herald* revealed that the Australian Government would “approve about \$300 million of projects” this year under the AIFFP.¹⁷

The connection between the AIFFP and EFA was set out by the Prime Minister in 2018. Launching Australia and the Pacific's ‘new chapter’, Prime Minister Scott Morrison, said the AIFFP would “significantly boost Australia's support for infrastructure development in Pacific countries and Timor-Leste”. The Prime Minister set out his intention to ask Parliament to give EFIC “new flexible infrastructure financing power to support investments in the region which have broad national benefit for Australia” and which would “enhance Efic's ability to support Australian SMEs to be active in the region.”¹⁸

The AIFFP became operational on 1 July 2019. While transparency of the facility was initially very poor, DFAT has subsequently published the AIFFP's design document, policy framework, investment mandate, monitoring and evaluation (MEL) framework and Board Charter.¹⁹

The MEL framework provides key indicators for the AIFFP, including growing Australia's market share in Pacific infrastructure lending. In articulating EFA's role, key outputs relate to the performance of loans. They are underpinned by aspects such as timely decision-making by the AIFFP and ensuring “the terms of our loans are attractive”.²⁰

Publicly available information (published on the AIFFP website and through Parliamentary Questions on Notice²¹) provide some clarity on how DFAT and EFA jointly operate the AIFFP and how key decisions are taken:

- AIFFP Board members are responsible for “reviewing and making recommendations to the Foreign Minister on the merits of a loan” and monitoring the financial position and performance of loans.²² The Board's recommendations for loans are approved by the Minister for Foreign Affairs in consultation with the Cabinet's Expenditure Review Committee. However, the Australian Government “retains the authority to commit to financing projects through the AIFFP and may do so without prior reference to the Board.”²³
- EFA “conducts credit assessments, establishes and conducts loan transactions, finalises loan agreements, and monitors AIFFP loans including repayments”.²⁴ The AIFFP design document describes these functions as the “back office” of the facility.²⁵ EFA is the lender of record for AIFFP loans and “all existing EFA prudential policies and compliance requirements will apply to loans issued on behalf of AIFFP”.²⁶

- Before loans for the AIFFP are considered to be drawn from the National Interest Account, EFA firstly considers projects “with strong commercial prospects” through its Commercial Account.
- To effectively fulfil the AIFFP’s activities, the MEL Framework highlights the importance of “complementary” DFAT and EFA systems, such as shared information management.

3.4. AIFFP’s Expenditure and Lending to Date

On 4 June 2021, DFAT provided an update on the AIFFP’s progress at Senate Estimates. Officials reported that from the \$2 billion facility there had been \$5.3 million in disbursements under the grant component (\$500 million), and the loan component (\$1.5 billion) had yet to be drawn.²⁷

Despite the low level of disbursements of the AIFFP to date, officials said the facility had a “very substantial pipeline” and by international standards was “making solid progress”.²⁸

The \$5.3 million grant component included:

“Timor-Leste cable design, approximately \$870,000; Fiji, Nadi flood alleviation project scoping study, \$506,300; project preparation for potential PNG electrification investments, \$726,000; project preparation for potential PNG transport investments, \$1,600,000; a branching unit for the Palau cable, \$1.2 million; and the remainder is program implementation support of around \$400,000.”²⁹

Despite officials indicating that loans have not been disbursed, EFA recorded two loans on its transaction register to the Belau Submarine Cable Corporation valued at \$2.27 million and \$9.21 million in the period 1 July 2020 to 25 February 2021 under the AIFFP. These loans were drawn from the National Interest Account.³⁰ The project was reported to be the first under the Trilateral Infrastructure Partnership Investment in the Indo-Pacific between Australia, Japan, and the United States. The loans and grants provided by the AIFFP will contribute to providing financing for the construction of an undersea fibre optic cable connecting Palau to a US-Singapore trunk cable.³¹ EFA has subsequently recorded an additional loan of \$13.8 million to the Solomon Islands Electricity Authority for electricity transmission.³²

3.5. Assessing EFA’s Overseas Infrastructure Financing Powers in the AIFFP

It is impossible to ascertain from existing public information how the performance of EFA and its overseas infrastructure financing powers is affecting the speed and quality of loan agreements and subsequent disbursements under the AIFFP. The low number of case studies to examine where

powers have been used and the low levels of publicly accessible detail make it very difficult to assess.

In addition to the information and analysis of EFA's transaction record contained above, the 2019-2020 EFA Annual Report documents that it continues to "provide operational and technical support to the AIFFP" and "represent Australia in the Trilateral Partnership for Infrastructure Investment in the Indo-Pacific".³³ Under 'Indo-Pacific Infrastructure', the report details activities including: "implementing country strategies for...Papua New Guinea, Indonesia, the Philippines, Sri Lanka and Vietnam" and "conducting briefings with 22 diplomatic officials throughout the Indo-Pacific".³⁴

The 2019-20 EFA Annual Report delivers aggregate performance results for the functions EFA fulfils, but it does not provide any distinct quantitative and qualitative assessment of its work as part of the AIFFP or its support to DFAT beyond its broad functions under Section 9 and Section 26 of the Act.

Parliamentary questions indicate that DFAT intended to recruit new staff to support the AIFFP.³⁵ The AIFFP MEL framework also highlights an assumption that "EFA has sufficient resources to support DFAT with AIFFP" to achieve its objectives.³⁶ Without further evidence, it is very hard to diagnose the resources that have been made available and how effectively EFA is using its overseas infrastructure financing powers as part of the AIFFP.

We note that DFAT commissioned Deloitte Touche Tohmatsu (DTT) in 2020 to conduct a review of DFAT's Pacific Infrastructure Branch, which is responsible for delivering the AIFFP. This review forms part of the system-wide review committed to in the AIFFP design document. This review is welcome.

Recommendation 1

(In relation to items 1-7 in 'Summary of EFIC Act amendments made by the Bill' and whether the powers have supported the Australian Government's aims and the infrastructure needs of our Pacific neighbours.)

The Australian Government should provide transparency on how the EFA's overseas infrastructure financing powers are operating (including under the AIFFP) by:

- Making the system-wide review of the AIFFP publicly available; and
- Making the independent evaluation of AIFFP (set to take place in 2022) publicly available.

For the system-wide review and independent evaluation, the Government should ensure that assessments of the role and performance of EFA's functions and overseas infrastructure financing powers are included.

In the present review, the reviewer should closely examine how the infrastructure project is deemed appropriate for the relevant nation and the method for doing so. We would invite the reviewer to clarify this to as full an extent as possible when the report is tabled.

3.6. DFAT's Stronger Oversight

Despite the AIFFP Board lacking powers to make decisions (rather than recommendations) with respect to loans, it is clear from the arrangements in place for the AIFFP that DFAT, as the senior partner, has implemented a stronger mandate for investment and greater governance, as well as transparency and safeguarding measures, for the AIFFP. In simple terms, DFAT – and specifically, the AIFFP Board – plays a gatekeeping role. DFAT has utilised its own operations to construct a framework for AIFFP projects to pass through that supersedes EFA's own.

In original submissions on the Act, civil society organisations expressed concern regarding EFIC's (now EFA's) expertise, capability, and safeguards; its transparency standards; the governance arrangements of the AIFFP; and the interaction between DFAT and EFIC.

The publicly available information now provided on the AIFFP's website has provided a much clearer picture of how the AIFFP operates, and EFA's role in financing overseas infrastructure through the AIFFP. This is a welcome development. We assume that the substantial investment of staff and resources required to establish the AIFFP and new governance under DFAT are significant factors influencing the low levels of grant expenditure and loan disbursements to date. Despite DFAT's heightened framework and oversight in the creation of the AIFFP, other uses of EFA's overseas infrastructure financing powers outside the AIFFP will now also fall outside the more stringent requirements set by DFAT. We continue to raise our concerns about EFA's policies, standards, and safeguards.

4. The Impacts of COVID-19 on the Pacific and Timor-Leste

4.1. Growing Pacific Debt Burden

The use of the EFA's overseas infrastructure financing powers for the Indo-Pacific currently targets the Pacific and is mobilised through the AIFFP. The use of the powers is contingent upon the capability of Pacific nations and Timor-Leste to absorb greater debt. This is becoming increasingly unsustainable.

Pacific nations are amongst the world's most vulnerable to debt sustainability problems and COVID-19 has dramatically increased budgetary pressures.³⁷ Despite previous concerns over risk and corruption of aid funds, the Australian Government has returned to direct budget support to assist Pacific nations for the first time in 20 years.³⁸ As recently as 2019, the Australian Government had rebuffed requests for direct budget support from Pacific leaders.³⁹

Speaking at the Pacific Small Island Developing States (SIDS) Dialogue on Access to Finance on 9 June 2021, Denton Rarawa, Senior Economic Advisor for the Pacific Islands Forum, highlighted that the World Bank's 2020 debt sustainability assessment categorises Pacific SIDS as at high risk of debt distress.⁴⁰ Mr Rarawa reported that this status was being exacerbated by climate change-induced disasters and the impact of COVID-19. He said COVID-19 has led Pacific SIDS to take on additional debt of US\$1.6 billion. In Fiji alone, Government debt is projected to increase from the equivalent of 49.3% of Gross Domestic Product (GDP) at the end of 2019 to 83.4% by the end of 2021.⁴¹

In response, the PIF Forum of Economic Ministers Meeting (to take place in 13-14 July 2021) will consider a 'Debt for Resilience Swap' and a proposal for a Pacific Debt Conference later in 2021, to discuss these rising concerns. International initiatives have also been created to respond to growing debt. In early 2021, the G20 established the Debt Service Suspension Initiative, through which 73 low-income countries could temporarily suspend debt-service payments owed to their official bilateral creditors.⁴²

Australia's intent has been cautious on lending to highly indebted nations. In 2018, then Minister for Foreign Affairs Julie Bishop:

“...expressed growing concern about Chinese aid to the South Pacific, particularly for infrastructure projects, arguing it might not meet ‘appropriate standards’ and concessional loans to island governments might constitute ‘debt-traps’.”⁴³

In 2019, Minister for Foreign Affairs Marise Payne was unequivocal:

“The Australian Infrastructure Financing Facility for the Pacific will not be lending to governments which are assessed to have high levels of debt.”⁴⁴

As of 18 June 2021, World Bank assessments concluded that Kiribati, Papua New Guinea, Samoa, Tonga, and Tuvalu are among the Pacific countries suffering high debt distress. The International Monetary Fund (IMF) has assessed debt as unsustainable in Palau and Nauru.⁴⁵

Despite the Minister’s statement, the AIFFP has put in place its first loans to the Belau Submarine Cable Corporation, a state-owned public corporation in Palau. On 24 June 2021, *The Australian* reported Australia and Papua New Guinea had signed a memorandum of understanding in which Australia would provide “investment of up to \$400m under PNG’s 30-year port infrastructure masterplan” as part of the AIFFP.⁴⁶ This is in addition to the refinancing of a \$300 million loan and a new \$140 million loan made to Papua New Guinea in 2020.⁴⁷ Put simply, securing Australia’s regional relationships risks trumping concerns of debt sustainability.

4.2. EFA’s Purpose v. Growing Debt

In its usual business, EFA facilitates trade as a way of producing economic growth in both Australian and recipient countries. This approach also creates debt in Australian dollars for recipients. In the Pacific, the primary way that foreign currency debt can be repaid is through resource depletion via mining or fishing (even more so with the decimation of tourism due to COVID-19). The extractive focus had led to problems with the resource curse in PNG to ecological decimation in Nauru and Kiribati.

Export finance is also effectively a form of tied aid, and tied aid increases costs by an average of 20%. In other words, EFA financed projects to the Pacific can be estimated to increase the cost of the purchased goods and services by at least 20% and they may also not be the most context appropriate.

EFA is predominantly driven by an economic logic to advance Australian interests. Its overseas infrastructure financing powers are based on administering non-concessional loans, and even with respect to the National Interest Account, it is a Ministerial expectation that these loans are examined on a commercial basis.⁴⁸ As COVID-19 economic pressures continue to increase, Ministers will have to contend with approving loans of higher risk and cost through the National Interest Account, find alternative means to fund infrastructure development, or cease lending altogether.

Recommendation 2

(In relation to Item 4 in ‘Summary of EFIC Act amendments made by the Bill’ and whether the powers have supported the Government's aims and the infrastructure needs of our Pacific neighbours.)

The Australian Government should amend the Australian benefit test to include whether the relevant infrastructure financing delivers benefits to the recipient nation and be clear and open in articulating its method of assessment.

4.3. Pacific Resilience Facility

Launched in May 2021, the Pacific Resilience Facility (PRF) is a “Pacific-owned, Pacific-led solution” to make investments to “reduce the vulnerability and exposure of Pacific communities to disaster risks, from climate change and other hazards”.⁴⁹ It is designed to deliver grants to local communities to build resilience against climate change and will include ‘soft infrastructure’.

The PIF said it is “the only resilience building model focussed specifically on the people of the Blue Pacific... tailored to the specific needs of Pacific communities.”⁵⁰ The PIF aims to raise US\$1.5 billion for the facility, with a pledging conference due to be held in 2021. The initiative has been supported by PIF members and donors, including the Australian Government, which helped to fund its establishment.

Central to the PRF’s design is funding projects for Pacific nations “without increasing national debt burden”⁵¹. In setting out the facility’s purpose, the PIF states:

“Accessing finance can be expensive, Pacific countries can borrow now and pay back later, but the interest is crippling. We don’t want more debt financing.”⁵²

4.4. Australia as a ‘Partner of Choice’

In 2018, then Minister for Foreign Affairs Julie Bishop described the Australian Government’s approach to becoming a partner of choice and the challenge of debt:

“...We want to be the natural partner of choice. We recognise we’re not the only partner, but we would like the Pacific to see Australia as providing them with the kind of support that maintains their sovereignty, maintains their economic stability and doesn’t become an unsustainable debt burden.”⁵³

Overseas infrastructure financing powers under EFA are guided by creating benefits to Australia, including “stronger relationships with our regional partners”.⁵⁴ Given the growing debt burden and the Pacific’s concerns about debt financing, the Australian Government should now ask whether the risk of creation of greater debt for the Pacific through EFA’s powers will generate stronger relationships.

Recommendation 3

(In relation to Item 8 in ‘Summary of EFIC Act amendments made by the Bill’.)

Australia’s support to Pacific neighbours should prioritise grant mechanisms which do not increase countries’ debt burdens, such as the Pacific Resilience Fund.

Where EFA is playing a role in offering large loans to public or private entities in highly indebted nations, it should conduct and make publicly available an assessment of sustainability and risks both to the Commonwealth and to the receiving country.

5. EFA's Environmental and Social Safeguards

At the time the Bill was proposed, civil society organisations raised concerns over the lack of clarity around how minimum standards and due diligence would be integrated into EFA's lending considerations under its commercial and national interest accounts.⁵⁵ The issuing of a new EFA Statement of Expectations and more AIFFP guidance materials have clarified that commercially viable infrastructure projects in the Indo-Pacific region are to be financed under EFA's Commercial Account, whereas non-commercially viable projects will be financed through AIFFP. This means that projects will be subject to a different regime of environmental and social safeguards, transparency and accountability, depending on the mechanism through which they are financed.

For infrastructure projects only financed through EFA's Commercial Account and not through AIFFP, EFA's Statement of Expectations provides that EFA will satisfy itself through due diligence and "expert advice as needed" that the infrastructure project is appropriate for the relevant nation and the governance surrounding project procurement is sound.⁵⁶

The Statement of Expectations also mandates compliance with:

- The OECD Recommendation on Sustainable Lending Practices and Officially Supported Export Credits and its own additional debt sustainability due diligence procedures;
- The OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence;
- The OECD Recommendation of the Council on Bribery and Officially Supported Export Credits; and
- The Equator Principles.

While these safeguards are welcome, EFA-financed infrastructure projects appear to be subject to lower safeguard and due diligence requirements than those which progress through AIFFP or aid program-funded infrastructure projects.

No guidance is provided as to how EFA will assess "that the infrastructure project is appropriate for the relevant nation and the governance surrounding project procurement is sound", or when EFA is required to seek advice from DFAT or stakeholders in the country where infrastructure is to be built. The Equator Principles only apply to projects over certain financial thresholds, and the IFC Performance Standards only apply to Category A projects.⁵⁷

There are also better practice international standards that would be more appropriate to guide EFA's infrastructure financing, including the UN Guiding Principles on Business and Human Rights. EFA should also take steps to ensure its operations fully comply with Australia's obligations under the International Convention on the Elimination of All Forms of Discrimination Against Women, other international human rights instruments and the Paris Agreement. EFA is also not required to release information about its assessment of projects against these standards (with some exceptions for Category A projects).

5.1. Environmental and Social Risk Assessment

Projects financed through EFA are also required to adhere to EFA's Environmental and Social Review Policy. This policy requires EFA to screen and classify transactions based on potential environmental and social risks. Where it identifies potential environmental and social risks, it benchmarks the project, usually against the IFC Performance Standards. If a project over a certain size has the potential for significant adverse environmental or social consequences (known as a Category A project), EFA is required to disclose its potential involvement in the project.⁵⁸

However, EFA does not publish its due diligence benchmarking information for Category A projects. There is evidence that some Category A projects that EFA has approved have fallen short of the requirements in the IFC Performance Standards. For example, in 2015 EFA approved a financing facility relating to the Oyu Tolgoi mine in Mongolia despite evidence that the project had been undertaken without adequate measures to obtain the free, prior and informed consent (FPIC) of affected Indigenous communities within the project area, and that the project threatened water resources in the South Gobi region.⁵⁹

This would suggest that the project fell short of IFC Performance Standard 7, which requires FPIC for Indigenous communities affected by projects, and Performance Standard 3, relating to resource efficiency and pollution prevention. Similarly, shortcomings in FPIC have been reported in the Papua New Guinea LNG project to which EFA loaned \$350 million in 2009.⁶⁰ In its 2012 report on its review of EFA, the Productivity Commission recommended that EFA should disclose information relevant to its assessment of environmental and social impacts.⁶¹

5.2. Gender Equality, Disability, and Social Inclusion

EFA financing has the potential to have significant impacts on gender equality and women's rights. Due consideration should be given to these risks in EFA's due diligence processes. There is considerable evidence showing the risks to human rights and gender equality of mining and infrastructure projects.⁶² Pacific women's organisations have raised concerns about the gendered impacts of the EFA-financed Papua New Guinea LNG project: in particular, that the project

undermined women's access to and control over land; excluded women from decision-making; and diminished access to justice and services for women who are victims of violence.⁶³

It remains unclear how EFA incorporates a gender analysis across all aspects of its work. The AIFFP is subject to DFAT's gender equality and social inclusion policies, and a procedure has been developed for how these policies will be operationalised. However, improved transparency about AIFFP investments is necessary to assess the effectiveness of these procedures in incorporating a gender analysis into AIFFP's work.⁶⁴ Investments administered by EFA are not subject to these same policies and procedures.

EFA should ensure that financing decisions prioritise investments that are gender-responsive and reflect the priorities and needs of women and their communities. This includes prioritising initiatives that support women to reduce the unpaid care burden they experience; improve their access to health care; and increase their access to markets through a reliable transport system that upholds women's safety and dignity. Technical expertise is required to ensure these considerations are embedded within all stages of EFA's project management cycle.

It is also critical that EFA considers the gendered impacts of its loan financing in a context of rising debt distress across the Pacific region. Women and other marginalised groups bear the brunt of debt distress, as many governments respond to rising debt levels by increasing the privatisation of public services (including public infrastructure) or cutting public spending to vital services such as health and education.

This is particularly concerning in the context of COVID-19, when additional resourcing is needed to strengthen health services and fund social protection measures. Women, girls and people with disabilities are the most severely affected when public services are diminished or out-of-reach. This can reduce their access to education, healthcare and other vital support services. The reduced availability and accessibility of public services also increases women's unpaid care and domestic work as they pick up the burden where services are no longer available or unaffordable.⁶⁵

5.3. Climate Change and the Paris Agreement

EFA's governing policies do not require EFA to restrict project financing based on the project's impact on climate change or consistency with Australia's obligations under the Paris Agreement. The Equator Principles require a climate change risk assessment for certain projects that fall within the scope of the Principles.⁶⁶ The OECD Common Approaches also require some reporting on climate change impacts.⁶⁷ The OECD Arrangement on Officially Supported Export Credits, to which Australia is a party, also restricts member ECAs from financing some coal fired power plants.⁶⁸ However, these instruments continue to allow many types of investments in coal, oil and gas, and related infrastructure and services.

Analysis by Jubilee Australia found EFA provided between \$1.57 and \$1.69 billion in financing for fossil fuel-related projects between 2009-20 and 2019-20. Over the same period, EFA provided

\$20 million to renewables projects, around 80 times less.⁶⁹ In June 2020, EFA reportedly contributed \$164.12 million to the refinancing of the Ichthys LNG project, which emitted 7.62 million tonnes of CO₂ in the preceding 12 months.⁷⁰

The Paris Agreement requires all signatory countries to hold global temperatures at “well below 2°C” and pursue efforts to limit the global average temperature increase to 1.5°C above pre-industrial levels.⁷¹ According to the International Panel on Climate Change (IPCC), capping temperature rises to 1.5°C requires a dramatic reduction in greenhouse gas emissions and rapid and far-reaching transitions in energy use.⁷² The International Energy Authority (IEA) has confirmed that staying below 1.5°C of warming requires an immediate halt to any new fossil fuel supply projects.⁷³ However, EFA’s governing policies currently allow it to finance coal, oil and gas infrastructure in Australia and overseas.

Capping temperatures at 1.5°C is also of pressing concern to Pacific Island countries, many of which are feeling the impacts of extreme weather and sea level rise. In 2018, members of the PIF, including Australia, adopted the Boe Declaration on Regional Security. The Declaration states that climate change remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific. A challenge to regional action on climate change is the ongoing failure of Australia to set out its commitment under the Kainaki II Declaration.

Recommendation 4

(In relation to Item 4 in ‘Summary of EFIC Act amendments made by the Bill’ and whether the powers have supported the Government's aims and the infrastructure needs of our Pacific neighbours.)

Despite the requirement that EFA be satisfied that such projects are appropriate for the host country, the method for doing so is unclear. We recommend that the reviewer closely examines how both DFAT and EFA determine that they are satisfied in relation to environment and social safeguards.

Overseas infrastructure projects funded through EFA’s Commercial, or National Interest Accounts should not be subject to lower due diligence, safeguard, and accountability requirements than infrastructure projects funded through the Australian aid program.

In particular:

- EFA’s overseas infrastructure financing powers should be reviewed and revised to meet Australia’s commitment to the G20 Infrastructure Principles, UN Guiding Principles on Business and Human Rights (UNGPs), and OECD responsible business conduct standards.
- In line with the UNGPs, EFA should institute independent human rights and gender equality impact assessments with affected communities, including local women’s groups, for all

potential projects. It should also invest in technical expertise to ensure that gender analysis and disability inclusion are included across all aspects of financing decisions.

- EFA’s Environmental and Social Review Procedure should be expanded to include gender-inclusive and human rights-based engagement with affected communities, including women, throughout the project management cycle of all Category A projects. Consistent with the Equator Principles, the Procedure should also include a climate change risk assessment that considers both physical and transition risks of all new and ongoing Category A and Category B projects.
- Consistent with the goals of Pacific nations, EFA’s Statement of Expectations and Environmental and Social Review Policy should be amended to explicitly require it not to finance fossil fuel projects.
- EFA’s due diligence should include a comprehensive assessment of the integrity, character, and track record of companies, including any history of environmental, human rights and corruption violations; any association with politically exposed persons; and any sanctions listings. Further, due diligence should include an assessment of who the ultimate beneficiaries are, and what risks that poses for national security and responsible business conduct.

5.4. Australia’s Commitment to the G20 Infrastructure Principles

At the G20 Osaka Summit in 2019, the Australian Government endorsed the G20 Principles for Quality Infrastructure Investment.⁷⁴ In a joint statement between Australia and the United States following AUSMIN talks later in 2019, the two nations reiterated their commitment to the principles, pledging:

“...to apply these principles to projects in the region: through the Australia-Japan-U.S. Trilateral Infrastructure Partnership, the new Australian Infrastructure Financing Facility for the Pacific, and the U.S. Development Finance Corporation.”⁷⁵

Ahead of the Osaka Summit, Prime Minister Scott Morrison emphasised the importance of the principles, stating that the Australian Government would support investments that met “genuine market need and international standards, including on transparency and debt sustainability.”⁷⁶

The principles include:

- The need to consider “ecosystem-based adaptation” for infrastructure projects;
- Particular consideration to how “infrastructure facilitates women’s economic empowerment through equal access to jobs, including well-paying jobs, and opportunities created by infrastructure investments”; and

- The need for a “comprehensive disaster risk management plan [that] should influence the design of infrastructure, the ongoing maintenance and [consideration of] the re-establishment of essential services.”⁷⁷

EFA is currently not required to use the G20 infrastructure principles in its operations and they are not reflected in its current safeguards and policies.

Recommendation

5

(In relation to Item 4 in ‘Summary of EFIC Act amendments made by the Bill’ and whether the powers have supported the Government's aims and the infrastructure needs of our Pacific neighbours.)

EFA should publicly disclose its assessment of projects against international standards, including:

- Benchmarking and assessments of Category A projects against the IFC Environmental and Social Performance Standards (hereinafter, IFC Performance Standards), and any other standards being used;
- Impact assessments of EFA’s financing on climate change, in line with the G20 Infrastructure Principles which specify that “the environmental impact of infrastructure investment should be made transparent to all stakeholders”.

6. Export Finance Australia's Transparency and Accountability

Australian Government-funded development projects, including infrastructure projects in our region, are subject to high standards of transparency, including Freedom of Information, international transparency charter requirements, the publication of information on the DFAT website and on the AusTender website. In contrast, EFA operates in an environment of very limited transparency.

A 2012 report from the Productivity Commission made a number of recommendations aimed at improving EFA's accountability and transparency; however, many of these recommendations are yet to be implemented.⁷⁸ The Act's review provides an opportunity to reconsider some of these important recommendations and to strengthen EFA's transparency and accountability.

6.1. Transaction Disclosure

EFA produces an Annual Report each year and provides an up-to-date transaction register which provides information on EFA transactions, including the customer, type of financing facility provided, and volume of financing.⁷⁹ In practice, it is difficult to ascertain from these transaction registers which specific projects EFA's financing is supporting, as projects are classified into broad industry and good/service categories.

Other than the limited cases in which EFA has published a case study on its website, or its handful of Category A projects, little information is provided to inform taxpayers about the work that EFA is financing. For example, Jubilee Australia's analysis of EFA's transaction registers from 2009-10 to 2019-20 identified 101 transactions with companies involved in the fossil fuel industry, but where the project or funding purpose was unclear. This included funding for construction, engineering and mining companies engaged in both coal and non-coal mining or with significant interests in gas but also projects in other industries.⁸⁰

In practice, this lack of transparency makes it extremely challenging to assess how EFA financing has contributed to infrastructure development in the Asia-Pacific region. It also prevents communities affected by EFA-funded infrastructure developments from bringing concerns to the EFA's attention. In contrast, the IFC provides a basic project description and information against the following criteria: Environmental and Social Project Categorisation and Applicable Standard; Environmental and Social Mitigation Measures; Stakeholder Engagement; Broad Community Support; and the Environmental & Social Action Plan.⁸¹ However, the IFC's transparency is lacking when it comes to its many investments in financial intermediaries.

6.2. Freedom of Information Act Exemption

All organs of the Australian Government should be subject to the *Freedom of Information Act 1982* (Cth) (FOI Act). However, under Schedule 2 of the FOI Act, documents relating to anything done by EFA under part 4 (Insurance and Financial Service Products) or Part 5 (National Interest Transactions) of the EFIC Act are exempt from public disclosure. This partial exemption is in addition to the general exemptions in the Act covering disclosure that could damage Australia's national security or release commercially sensitive information.

The Australian Government has the ultimate fiscal responsibility for the operation of EFA. Not only is the Government its financial guarantor, providing \$1.2 billion in callable credit, the Government is EFA's sole shareholder and beneficiary, receiving an annual dividend payment. This makes EFA a *de facto*, if not *de jure*, organ of government. As such, it should be subject to the same transparency and accountability mechanisms as other state bodies.

In its 2012 review, the Productivity Commission argued that this exemption should be removed:

“The Australian Government should remove Efic's special exemption in relation to matters done under part 4 and 5 of the Export Finance and Insurance Corporation Act 1991 from *Freedom of Information Act 1982* (while retaining protection for Cabinet and commercial in confidence material).”⁸²

The Productivity Commission also stated that since public sector entities rely on public funds, a higher standard of operational accountability is to be expected, and that the cost of releasing material that may compromise a firm's commercial advantage must be weighed against the reputational risk to the Australian Government of supporting projects with potentially serious environmental and social impacts. Indeed, there has been reputational damage to Australia for example, with the Weller dairy cow export program to Sri Lanka.⁸³

The removal of EFA's FOI exemption is also consistent with the UN Guiding Principles on Business and Human Rights, which emphasise the need for transparent operations and public reporting on how human rights issues are addressed.⁸⁴ EFA's partial exemption is also out of step with its international peers. In the UK and the US, for example, the export credit agencies are covered under their respective countries' freedom of information laws and they do not enjoy blanket exemptions (although they do have specific exemptions in discrete categories).⁸⁵

Recommendation 6

(In relation to whether the powers have supported the Government's aims and the infrastructure needs of our Pacific neighbours.)

EFA's partial exemption from the *Freedom of Information Act 1982* (Cth) should be revoked, as existing general exemptions offer sufficient protection for sensitive information. At a minimum, the following information should be made available through an FOI request:

- Information relating to the detail of projects and operations financed by EFA;
- Project assessments undertaken during due diligence;
- Modification and mitigation measures that EFA has required for specific projects; and
- Project monitoring and evaluation documents generated by proponents and consultants during project implementation.

A requirement that loans will only be granted to projects that have gone through an open and competitive tender process should also be implemented. Projects should comply with the Open Contracting Data Standard⁸⁶ and the CoST Infrastructure Data Standard.⁸⁷

6.3. Protection against Corruption

Infrastructure projects are known to be vulnerable to corruption. This is due to their uniqueness; the difficulties of comparative pricing; the multiple actors involved; the complexity and long gestation period for projects; and a culture of secrecy that contributes to higher corruption risks and vulnerabilities. Losses attributed to inefficiencies including corruption are estimated to be as high as one-third of all infrastructure spending.⁸⁸

The Asia-Pacific is one of the most corruption-prone regions. Transparency International's 2020 Corruption Perceptions Index average score for the region was 45/100 (on a scale from 0-100 where 0 is highly corrupt and 100 is very clean.⁸⁹ Several countries in the region received even lower scores, including Vanuatu (43/100), Solomon Islands (42/100), Timor-Leste (40/100) and Papua New Guinea (27/100).⁹⁰

While corruption can occur at any stage of a project, corruption at the planning, design and appraisal stages has arguably the greatest consequences. Corruption at this point can give rise to projects that are unnecessary, unsuitable, defective, dangerous, and not fit-for-purpose.⁹¹ An entire investment can be wasted, with significant negative economic, social and environmental consequences for communities, particularly in areas prone to natural disasters. With this context in mind, the risks or vulnerabilities that could allow corruption to occur should be front of mind for EFA and the AIFFP when selecting projects to be financed.

While EFA's Statement of Expectations clarifies that EFA's infrastructure financing function should prioritise the infrastructure needs of Pacific Island countries, the 'Australian benefit' requirement that encourages Australian participation in infrastructure transactions is concerning in terms of corruption risk. The fact that projects financed by EFA do not tend to be initiated by recipient countries (as noted under 'The Australian Benefit Issue' above) undermines Pacific priorities and good governance processes that would mitigate corruption in the project planning, selection, and appraisal phases of infrastructure projects. Additionally, while the EFA's Statement of Expectations notes that it will conduct due diligence in the project procurement stages, lack of

focus on good governance at the earlier stages of the infrastructure life cycle is a significant gap that could allow corruption to take hold.

Transparency International Australia's Accountable Infrastructure project has identified common corruption risks in the planning, design and appraisal stages of infrastructure projects.⁹² In the project identification stage, corruption can occur through poor or manipulated assessments of the actual benefits and costs of a project; through improper influence by public or private agents motivated by political or personal gains; or through limiting the scope of project screening to bias the outcome of technical assessments and favour specific interests.

Where the 'Australian benefit' is prioritised over recipient country benefit –where EFA-financed projects are not typically initiated by recipient countries and in a context of Pacific countries with low or inadequate governance and higher levels of corruption – there is a significant risk of undue influence in the project identification stage. The focus on Australian benefit could also undermine the development of good project identification processes in Pacific countries and skew the approval process away from the infrastructure that is most needed in the Pacific.

Similarly, corruption risks in project authorisation can occur through manipulating needs assessments; preliminary designs; cost estimates; or by bypassing budget processes. As stated above under 'EFA's Environmental and Social Safeguards', EFA is not required to release information about its assessment of whether an infrastructure project is appropriate for the relevant nation and whether its governance is sound, or to indicate what information (including due diligence) it relied on for this assessment. This is a significant transparency gap that could easily enable corruption and undue influence to remain undetected.

Additionally, we note that reliance on information about companies listed on the Australian corporate register for due diligence purposes is not adequate to detect criminal or corrupt conduct, including money laundering. The corporate registry is flawed, and information is not reliable or verified. It allows business to register without adequate due diligence checks; beneficial ownership disclosure; identification of potential links to politically exposed persons; or a robust assessment of business activities and legitimacy.

Recommendation 7

(In relation to whether the powers have supported the Government's aims and the infrastructure needs of our Pacific neighbours.)

In addition to conducting due diligence at the project procurement stage, EFA should conduct due diligence on governance processes at the planning, selection, and appraisal stages.

Due diligence at the earliest stages should include:

- Assessments of recipient country governance at the policy and planning levels to ensure projects align with long-term sector policy;
- Multi-year plans or frameworks and near-term pipelines or programs for potential projects;
- Systemic methods for prioritising and selecting candidates; and
- Assessment of the integrity, character, and track record of project proponents with regard to adverse human rights and environmental impacts; involvement in bribery, corruption, and money laundering; allegations of cartel behaviour; beneficial ownership checks; politically exposed persons checks; and sanctions checks.

At the project assessment and appraisal level, due diligence should be focused on recipient country benefit and ensure that preliminary design of candidate projects is subject to appraisal of economic and social value, environmental and social impacts, and community consultation.

As part of Australia's commitment to "transparent, fair, informed and inclusive decision-making, bidding and execution processes", the Australian Government should comply with the G20 Principles for Corruption-Free Infrastructure as set out by Transparency International.⁹³

Endnotes

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