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Export Finance and Insurance Corporation Amendment Bill 2006

Fiona Childs
Politics and Public Administration Section

Jeffrey Robertson
Foreign Affairs, Defence and Trade Section

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Export Finance and Insurance Corporation Amendment Bill 2006

Date introduced: 16 August 2006

House: Senate

Portfolio: Trade

Commencement: The formal provisions of the Act commence on Royal Assent; the substantive provisions commence on a day to be fixed by Proclamation or six months after Royal Assent (whichever occurs first).

Purpose

To implement changes to the board management structure of the Export Finance and Insurance Corporation (EFIC) in accordance with the Uhrig Review.

Background

The *Export Finance and Insurance Corporation Act 1991* (the Act) commenced on 1 November 1991. The Act establishes the Export Finance and Insurance Corporation (EFIC)¹ as a statutory corporation charged with increasing Australia's export trade.

The EFIC Act provides for four key functions, to:

- facilitate and encourage Australian export trade by providing insurance and financial services and products to persons involved directly or indirectly in such trade;
- encourage banks and other financial institutions in Australia to finance or assist in financing exports;
- manage the Australian Government's aid-supported mixed credit program (a facility which has now been discontinued, although loans are still outstanding under it); and
- provide information and advice regarding insurance and financial arrangements to support Australian exports.²

EFIC forms part of the portfolio of the Department of Foreign Affairs and Trade. The Minister for Trade, the Hon. Mark Vaile, MP, appoints the members of the EFIC Board and, on the recommendation of the Board, appoints the Managing Director. The majority of the members of the board are from the private sector.³

The EFIC Board Audit Committee monitors compliance with obligations under the Act, the *Commonwealth Authorities and Companies Act 1997*, and any other applicable legislation.⁴

On 17 August 2006, the Senate referred the Bill 2006 to the Senate Foreign Affairs, Defence and Trade Committee for examination and report by 9 September 2006.⁵

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Because of the lack of any substantial criticism of the proposed legislation and the comprehensive submission from EFIC and the Department, the committee decided not to hold a public hearing.⁶ The Committee received a joint submission on behalf of the Department of Foreign Affairs and Trade and EFIC. The submission states that the Bill will have no financial or regulatory impact and EFIC's mandate and functions will not be affected; the EFIC board has been consulted on the proposed changes and has agreed to them.⁷

The committee considered the bill and decided the provisions of the bill were consistent with the recommendations of the Uhrig Report. It recommended that since EFIC is a commercial organisation, it is appropriate that EFIC be aligned more closely with the board template as intended by the bill.⁸

Basis of policy commitment

The Bill will make changes to the governance arrangements of EFIC, which are contained in sections 32–47 of the Act. These changes will result in the current board management structure reflecting more closely the corporate governance model detailed in the *Review of Corporate Governance of Statutory Authorities and Office Holders* (Uhrig Review) conducted by Mr John Uhrig AC in 2003.⁹

The Coalition had flagged its intention to examine statutory authorities and office holders in its 2001 election platform. On 14 November 2002, the Prime Minister, the Hon. John Howard, appointed Mr John Uhrig AC to review the governance practices of statutory authorities and office holders, particularly those agencies which impact on the business community.

The objective of the review was to identify issues concerning existing governance arrangements and to provide policy options for Government to gain the best from statutory authorities and office holders and their accountability frameworks.¹⁰

The Prime Minister received the Uhrig Review in June 2003, and it was released by the Minister for Finance and Administration on 12 August 2004.

The review concluded that there was no universally agreed definition of corporate governance. The report provides the following definition:

in general terms, corporate governance encompasses the arrangements by which the powers of those who implement the strategy and the direction of an organisation are delegated and limited to ensure the organisation's success, taking into account the environment in which the organisation is operating.¹¹

The Report recommended that two templates should apply to ensure good governance of statutory authorities: agencies should either be managed by a Chief Executive Officer (CEO) or by a board structure. Both templates detail measures for ensuring the boundaries

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of responsibilities are better understood and the relationship between Australian government authorities, Ministers and portfolio departments are made clear.¹²

Uhrig recommended that the selection of the management template and financial frameworks to be applied should be based on the governance characteristics of a statutory authority.¹³

The *Financial Management and Accountability Act 1997* (FMA Act) should be applied to statutory authorities where it is appropriate they be legally and financially part of the Commonwealth and do not need to own assets. The FMA Act applies to budget-funded authorities managed by a CEO. The FMA Act establishes various management and reporting responsibilities for the CEO (sections 44–46, 49 and 51), as well as allowing the Minister to give guidelines to the CEO (s. 64). Furthermore, the FMA Act provides an accountability framework for CEOs to manage agency resources.

The *Commonwealth Authorities and Companies Act 1997* (CAC Act) should be applied to statutory authorities where it is appropriate that they be legally and financially separate from the Commonwealth. The CAC Act applies to authorities that are corporate entities managed by a board. It requires the head of the board to report to the responsible Minister (sections 15–16), and to ensure that the authority's activities comply with government policies (s. 28). A board structure is favoured if there is a strong commercial focus to the organisation, or if the agency is intergovernmental. EFIC is a Commonwealth authority under the CAC Act.

On 9 March 2006, the Minister for Trade announced a review of EFIC was to be held.¹⁴

Commentary by interest groups

EFIC serves as Australia's Export Credit Agency (ECA). ECAs facilitate and encourage export activity by providing government-backed insurance and financial services to exporters covering commercial and political risk. ECAs primarily cover market sectors which are not served by the private sector, and accordingly fill a 'gap in the market' that otherwise would prevent export activity.¹⁵ This has led to criticism, particularly from the non-government organization (NGO) sector. It has been claimed that ECAs do not take into consideration the environmental, social, or political impacts of the projects which they support.¹⁶

The countervailing argument is that if ECAs did not provide services, development in high risk markets would not be possible. It is suggested that without the role of the ECA high risk markets would be untapped. EFIC has at times come under similar criticism for projects it has supported in Indonesia, Papua New Guinea and the Lao Democratic People's Republic.¹⁷ However, since 2000, EFIC has become a leader amongst the ECAs for its recognition of the need for environmental and social standards in supporting projects.¹⁸ EFIC has an environment policy which implements Organization for Economic Cooperation and Development (OECD) standards, which aims to ensure its export

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transactions and investments address the fundamental principle of an ecologically sustainable environment.¹⁹

Pros and cons

To the end user, there is likely to be little obvious manifestation of the Uhrig changes. The Bill repeals the requirement for the Chief Executive Officer of the Australian Trade Commission to be a member of the EFIC Board. As a result of the amendments, the total size of the EFIC board will be reduced from 9–11 members to 6–9 members. This reduction in the size of the EFIC Board is consistent with the Uhrig Review which recommends a board of 6–9 members.²⁰

The Bill provides that an appointed member (other than the government member) shall hold office for three years. Additionally, no appointed member will be permitted to hold office for more than two terms (six years) or if serving as the Chairperson, for more than three terms (nine years). These changes are consistent with the Uhrig Review recommendations.²¹

Savings provisions in the Bill provide that an appointed member—other than the government member whose appointment is in force immediately before the commencement of the Schedule—continues to hold office for the balance of the period of the appointment as if the amendments had not been made. The Minister may terminate or revoke the appointment. Similarly, the Managing Director of EFIC whose appointment is in force immediately before the commencement of the Schedule continues to hold office as if the amendments had not been made. However, the Board is not prevented from terminating the appointment.

The amendments will not impact on EFIC's ability to deliver export facilitation services to Australian businesses. The corporation's mandate will continue to be to focus on profitably supporting the growth of Australian businesses internationally.

Financial implications

The Bill will have no financial impact on the Commonwealth.

Main provisions

Schedule 1 to the Bill contains amendments to the *Export Finance and Insurance Corporation Act 1991*, including amendments relating to the definition of appointed member, composition of the Board, and changes to term appointments.

Concluding comments

The Bill amends the *Export Finance and Insurance Corporation Act 1991*. It makes changes to the governance arrangements of EFIC. These changes will result in its current

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board management structure more closely reflecting the board corporate governance model detailed in the *Review of Corporate Governance of Statutory Authorities and Office Holders* conducted by Mr John Uhrig AC in 2003.

The change in the governance arrangements will not impact on EFICs' functions or services to Australian business seeking to enter or develop export markets.

Endnotes

1. Export Finance and Insurance Corporation website, <http://www.efic.gov.au/>.
2. Export Finance and Insurance Corporation, 'Governance: Overview of EFIC's role', <http://www.efic.gov.au/static/efi/corporateinfo/governance.htm>.
3. Export Finance and Insurance Corporation, 'Principal Accountabilities', <http://www.efic.com.au/static/efi/corporateinfo/accountabilities.htm>.
4. *ibid.*
5. Senate Foreign Affairs, Defence and Trade Committee, *Export Finance and Insurance Corporation Amendment Bill 2006*, Canberra, September 2006, p. 1.
6. *ibid.*, p. 2.
7. *ibid.*, [Appendix 1: Joint submission on behalf of the Department of Foreign Affairs and Trade \(DFAT\) and the Export Finance and Insurance Corporation \(EFIC\)](#).
8. *ibid.*, p. 19.
9. J. A. Uhrig, AC, *Review of Corporate Governance of Statutory Authorities and Office Holders*, June 2003, http://www.finance.gov.au/GovernanceStructures/docs/The_Uhrig_Report_July_2003.pdf.
10. *ibid.*
11. *ibid.*, p. 17.
12. Sen. the Hon. N. Minchin (Minister for Finance and Administration), *Australian Government Response to Uhrig Report*, media release, 12 August 2004, <http://www.finance.gov.au/scripts/Media.asp?Table=MFA&Id=550>.
13. Uhrig, *op.cit.*, p. 12, point 6.
14. Hon. M. Vaile (Minister for Trade), *Review of the Export Finance and Insurance Corporation*, media release, 9 March 2006, http://www.trademinister.gov.au/releases/2006/mvt018_06.html. See also Department of Foreign Affairs and Trade, 'EFIC Review 2006: Terms of Reference', http://www.dfat.gov.au/trade/efic_review_2006.html.
15. Senate Foreign Affairs, Defence and Trade Committee, *op. cit.*, p. 13.
16. ECA-Watch, 'The newer, bigger, badder banks', <http://www.eca-watch.org>.
17. Aidwatch, 'Campaigns/Export Credit Agencies/Resources', <http://www.aidwatch.org.au/index.php?current=43>.
18. Malaika Culverwell, Bernice Lee and Izabella Koziell, 'Towards an improved governance agenda for the extractive sector', *Report based on RIIA workshop: sustainable relationships: financing and monitoring responsibilities*, Royal Institute of International Affairs, October 2002.

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19. EFIC, 'Environment policy', <http://www.efic.gov.au/static/efi/environment/environstd.htm>.
20. Explanatory Memorandum, p. 5.
21. *ibid.*, p. 6.

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