

# Submission to the Review of Export Finance Australia's *Environmental and Social Review Policy*

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## Provided by:

Jubilee Australia Research Centre

ActionAid Australia

Australian Conservation Foundation

Dr Pichamon Yeophantong, Australian Research Council DECRA Fellow and Senior Lecturer in International Relations and Development, UNSW, Canberra

Dr Susan Engel, Associate Professor, Politics & International Studies, University of Wollongong

## Contact:

Dr Luke Fletcher,

Executive Director

Jubilee Australia Research Centre

Email: [luke@jubileeaustralia.org](mailto:luke@jubileeaustralia.org).

## Introduction

The above organisations and individuals welcome the opportunity to input on the review of Export Finance Australia's (EFA) Environmental and Social Review Policy (the Policy). The review of the Policy is very timely, coming at a time when the threat posed by climate change is clearer than ever before, and the role of the financial sector in addressing climate change and human rights is in the spotlight. This review provides an opportunity for the Policy to be updated to provide clear guidance that is in step with international best practice on environmental and social review.

This submission will focus on four interrelated areas:

- The global approaches implemented by EFA, and the opportunity to adopt stronger global standards in the Policy;
- The need to address the urgent threat posed by climate change and how the Policy can assist in ensuring EFA's operations are aligned with Australia's Paris Agreement commitments;
- The opportunity to strengthen gender, disability and social inclusion in the Policy; and
- Areas in which the Policy could better promote transparency and accountability.

# 1. Global approaches

The Policy provides that EFA incorporates two globally recognised approaches in its environmental and social review of transactions:

- The OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence; and
- The Equator Principles.

In addition, the International Finance Corporation (IFC) Performance Standards are used for the benchmarking of Category A and B projects. While these safeguards are welcome, the authors note that there are significant limitations to these standards, which impact on the ability of the EFA to identify and prevent any negative social, environmental and human rights impacts in the projects its finances.

## 1.1. ***The OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the Common Approaches)***

*The Common Approaches* are a set of recommendations for addressing environmental and social aspects of projects financed by Export Credit Agencies (ECA) based in OECD countries. The *Common Approaches* have several shortcomings, which limits the safeguards and due diligence requirements placed on projects financed by ECAs (including those financed by the EFA). These shortcomings may result in ECAs violating the OECD Guidelines for Multinational Enterprises.

### *Limited scope*

The limited scope of the *Common Approaches*, which is restricted to addressing the environmental and social impact of exports of capital goods and/or services that have a repayment term of two years or more,<sup>1</sup> means that not all ECA products are covered by the recommendations. Footnote 1 notes that:

It is recognised that not all ECA products fall within the scope of this Recommendation, for example, those where the risk is on the exporter (such as, but not limited to, support for bonds and working capital) and there is no application relating to the same project for a product where the risk of non-payment is on the buyer<sup>2</sup>

Products with a repayment term of less than two years are also excluded from the *Common Approaches*.

### *Poor disclosure of information*

Disclosure of information rules within the Common Approaches are limited by concerns about the “competitive context in which [ECAs] operate and constraints of business confidentiality.”<sup>3</sup> As a result ECAs are only required to disclose information to other adherents to the Commons Approaches rather than making this information publicly available. The only information that ECAs are required to publicly disclose is:

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<sup>1</sup> OECD (2016) Recommendation of the Council on OECD Legal Instruments Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (The “Common Approaches”). Para 2, p. 6, <https://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>

<sup>2</sup> Ibid. Footnote 1, p. 21

<sup>3</sup> Ibid, Para 31, p. 11

- limited project information for Category A projects (project name, location, environmental and social impact assessment)<sup>4</sup>; and
- environmental and social information on projects classified in Category A and Category B.<sup>5</sup>

### *Weak human rights and environmental safeguards*

The Common Approaches has incorporated language calling on ECAs to respect human rights and makes reference to the *UN Guiding Principles on Business and Human Rights*. However, human rights due diligence is only recommended for projects with “a high likelihood of severe project-related human rights impacts occurring”<sup>6</sup>, and there is no additional guidance on how ECAs should ensure that due diligence is effective in preventing negative human rights impacts.<sup>7</sup> Similarly, consideration of environmental impacts is also recommended during the screening of projects, including benchmarking against international standards such as the World Bank Safeguard Policies and the IFC Performance Standards. However, ECAs are still able to provide support to a project that does not meet these standards, with the Common Approaches allowing ECAs to apply additional conditions to this project, and ensuring that appropriate monitoring procedures are in place to ensure compliance with these conditions.<sup>8</sup>

## **1.2. The Equator Principles**

The Equator Principles are the risk management framework developed by the finance sector to assess and manage environmental and social risks for large-scale infrastructure projects. They require that high-risk projects are subject to stakeholder engagement processes and have grievance mechanisms in place.

The Equator Principles have received persistent criticism for inconsistent reporting standards and for their poor compliance. Research by BankTrack in 2020 into 37 large-scale infrastructure projects, found that only 49% had undertaken stakeholder engagement; 46% had a project-level grievance mechanism and only 19% had publicly released the number, type and outcomes of grievances.<sup>9</sup> Moreover, they only apply to some of EFA’s transactions (see below).

## **1.3. IFC Environmental and Social Performance Standards**

The International Finance Corporation’s Environmental and Social Performance Standards provide a framework for finance agencies to manage their environmental and social risks. The Performance Standards are an important international standard for the review of social and environmental risks and cover a wide range of social and environmental issues:

- The Assessment and Management of Environmental and Social Risks and Impacts
- Labor and Working Conditions

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<sup>4</sup> Ibid. Para 39, p. 12

<sup>5</sup> Ibid. Para 41, p. 12

<sup>6</sup> Ibid. Para 6, p. 7

<sup>7</sup> Both Ends (2016) *Gaps between the Common Approaches and the OECD Guidelines*,

[https://www.oecdwatch.org/wp-content/uploads/sites/8/dlm\\_uploads/2021/03/160609%20Common%20Approaches%20vs%20OECD%20Guidelines%20\(logo\).pdf](https://www.oecdwatch.org/wp-content/uploads/sites/8/dlm_uploads/2021/03/160609%20Common%20Approaches%20vs%20OECD%20Guidelines%20(logo).pdf)

<sup>8</sup> OECD (2016) Recommendation of the Council on OECD Legal Instruments Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (The “Common Approaches”). Para 30-36, p. 11.

<sup>9</sup> BankTrack (2020) “Trust Us, We’re Equator Banks”, p. 4,

[https://www.banktrack.org/download/trust\\_us\\_were\\_equator\\_banks\\_briefing\\_paper/201124\\_part\\_1\\_trust\\_us\\_were\\_equator\\_banks.pdf](https://www.banktrack.org/download/trust_us_were_equator_banks_briefing_paper/201124_part_1_trust_us_were_equator_banks.pdf)

- Resource Efficiency and Pollution Prevention
- Community Health, Safety, and Security
- Land Acquisition and Involuntary Resettlement
- Biodiversity Conservation and Sustainable Management of Living Natural Resources
- Indigenous Peoples
- Cultural Heritage

However, the Performance standards continue to have limitations, particularly in relation to human rights, gender equality, free, prior and informed consent (FPIC) and climate change.<sup>10</sup> Additionally, EFA only applies the Performance Standards to Category A or B projects, and there is evidence that some Category A projects that EFA has approved have fallen short of the requirements in the IFC Performance Standards (see below). Very few projects are classified Category A or B: in 2020-21 there was only one Category A project and six Category B projects from 184 transactions. As a result, the Performance Standards appear to be rarely used to benchmark EFA's projects.

#### **1.4. Best practice international standards**

There are also better practice international standards that would be more appropriate to guide EFA's work, including the Task Force on Climate-related Financial Disclosures, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. EFA should also take steps to ensure its operations fully comply with Australia's obligations under the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), other international human rights instruments, and the Paris Agreement.

Other ECAs apply some of these standards: for example, the Danish ECA (Eksport Kredit Fonden) and Atradius (the Netherlands' ECA) both include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises among the standards that guide their operations.<sup>11</sup>

##### *The Task Force on Climate-related Financial Disclosures (TCFD)*

The TCFD recommendations on climate-related financial disclosures have been developed to improve and increase reporting of climate-related financial information and to enable more informed investment decisions that take into consideration exposure to climate-related risks. The recommendations cover organisational governance, strategy, risk management and metrics and targets in order to provide a comprehensive approach to climate-related disclosure.

The TCFD has 2,300 supporters across 88 countries, and its recommendations have already been endorsed by Export Development Canada and UK Export Finance, with both organisations using the TCFD recommendations to develop a stronger understanding of climate-related risk and to support the alignment of investment, credit and underwriting decisions with their climate change strategies and goals.<sup>12</sup>

<sup>10</sup> Bretton Woods Project (2011) *IFC updated performance standards: weak on human rights, other shortcomings*, <https://www.brettonwoodsproject.org/2011/09/art-568878/>

<sup>11</sup> EKF, "International Principles and Standards", <https://www.ekf.dk/en/about-ekf/csr-at-ekf/international-principles-and-standards> (accessed 10 August 2021); Atradius DSB, *Environmental and Social Policy Document* <https://atradiusdutchstatebusiness.nl/en/article/environmental-and-social-review.html>

<sup>12</sup> UK Export Finance (2021) *Task Force on Climate-related Financial Disclosures: UK Export Finance direction statement*, March 19, <https://www.gov.uk/government/publications/task-force-on-climate-related-financial-disclosures-uk-export-finance-direction-statement/task-force-on-climate-related-financial-disclosures-uk-export-finance-direction-statement>; Export Development Canada (2021) *EDC commits to net zero emissions by 2050*, July 22, <https://www.edc.ca/en/blog/edc-net-zero-emissions-2050.html>

### *The UN Guiding Principles on Business and Human Rights*

The United Nations Guiding Principles on Business and Human Rights (UNGPs) were unanimously endorsed by the UN Human Rights Council in 2011, and the Australian Government was a co-sponsor to the resolution. The UNGPs are a guide to implementing the UN “protect, respect and remedy” framework, which outlines the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the state duty to provide greater access by victims to effective remedy, both judicial and non-judicial.

The UNGPs recognise the state-business nexus as an area requiring additional due diligence and call on governments to take steps “to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”<sup>13</sup>

### *The OECD Guidelines for Multinational Enterprises*

The OECD Guidelines for Multinational Enterprises are non-binding principles and standards for responsible business conduct that governments, including the Australian Government, have committed to promoting. The Guidelines cover a broad range of business responsibilities including information disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition and taxation, with the intention of ensuring businesses have positive social, economic and environmental impacts. The Guidelines recognise the responsibilities of both states and business to protect human rights and include specific recommendations for human rights due diligence.<sup>14</sup> Environmental impacts are also addressed, with businesses advised to “establish and maintain a system of environmental management,” including through “regular monitoring and verification of progress.”<sup>15</sup> The Guidelines also encourage businesses to “Continually seek to improve corporate environmental performance”<sup>16</sup>

In 2016, the OECD Council adopted a recommendation that adherents to the Common Approaches “Promote awareness of the OECD Guidelines for Multinational Enterprises among appropriate parties involved in applications for officially supported export credits as a tool for responsible business conduct in a global context.”<sup>17</sup>

#### **Recommendation 1**

Amend Section 1 of the Policy to provide that EFA will also incorporate the following globally recognised approaches into its environmental and social assessment of transactions:

- The Task Force on Climate-related Financial Disclosures;
- The UN Guiding Principles on Business and Human Rights; and
- The OECD Guidelines for Multinational Enterprises

<sup>13</sup> OHCHR (2011) *Guiding Principles on Business and Human Rights*, p. 6,

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>14</sup> OECD (2011) *OECD Guidelines for Multinational Enterprises*, IV. Human Rights, p. 31-34,

<https://www.oecd.org/daf/inv/mne/48004323.pdf>

<sup>15</sup> Ibid. VI. Environment, para 1, p. 42,

<sup>16</sup> Ibid, para 6, p. 43.

<sup>17</sup> OECD (2016) Recommendation of the Council on Common Approaches for officially supported export credits and environmental and social due diligence (the “Common Approaches”), Working Party on Export Credits and Credit Guarantees, TAD/ECG(2016)3, Para 4(iii), p 6. <https://media.business-humanrights.org/media/documents/files/documents/TAD-ECG20163.pdf>

### **1.5 Lack of clarity around the application of global standards**

The Policy and EFA's *Procedure for environmental and social review of transactions* both note that the OECD Common Approaches and the Equator Principles apply to only some of the transactions EFA could be asked to consider, but that EFA "chooses to extend the principles they embody to all transactions it considers". However, it is difficult to establish when the environmental, social and risk assessment processes set out in these instruments are, in practice, applied to all transactions and if so, how.

The *Procedure for environmental and social review of transactions* details which transactions are subject to the Equator Principles and suggests they are only applied to some loans and export finance guarantees.<sup>18</sup> The Equator Principles themselves also only apply to projects over certain financial threshold, generally US\$10 million. Few EFA projects meet this threshold – for example, in 2020-21, of 184 transactions across EFA's Commercial and National Interest Accounts, only nine were over US\$10 million.<sup>19</sup> It is not clear from the Policy and Procedures whether the full suite of due diligence measures set out in the Equator Principles (for example, assessment of Scope 1 and Scope 2 emissions and analysis of alternatives where emissions are high) are applied to projects that fall under this financial threshold.

EFA has also published a Statement on Human Rights, which states that EFA is required to have regard to Australia's obligations under international agreements. This statement notes that "Consideration and assessment of human rights are integrated into our management processes and systems, which are subject to ongoing review. These processes include a publicly available policy and procedure for environmental and social review of transactions and a mechanism for handling complaints or grievances."<sup>20</sup> While this Statement is welcome, it is unclear from the Policy and supporting procedures how EFA assesses human rights impacts for its projects in practice.

The vast majority of EFA transactions are classified Low Potential – Note 1. Note 1 denotes a transaction that is associated with either a non-project or a bond. Section 2.3 of the *Procedure for Environmental and Social Review of Transactions* sets out how risks of these projects will be evaluated, including that the risk evaluation will consider "potential environmental and social issues associated with the industry and, where relevant, location of the transaction". However, there is a lack of detail about which environmental and social issues are considered or how these are assessed. The outcomes of this systems are clearly perverse as a multitude of projects supporting the fossil fuel industry (see Section 4) are classified as Low Potential.

Where a project is deemed to have a potential environmental or social impact, EFA may then benchmark the project against the IFC Performance Standards but reserves the right to use a different standard, including "good international industry practice".<sup>21</sup> Overall, the Policy and Procedure offer little clarity regarding the environmental and social review of transactions associated with non-projects and bonds, which make up the bulk of EFA's financing.

#### **Recommendation 2**

<sup>18</sup> Export Finance Australia (2021) *Procedure for environmental and social review of transactions*, p. 4, <https://www.exportfinance.gov.au/media/7397/procedure-for-environmental-and-social-review-of-transactions-dec-2019-v2.pdf>

<sup>19</sup> Export Finance Australia, Transaction Register 2020-2021; available at: <https://www.exportfinance.gov.au/our-organisation/our-organisation/reporting/transaction-register/transaction-register-20202021/>

<sup>20</sup> Export Finance Australia, Human Rights Statement, 3 December 2015, available at: <https://www.exportfinance.gov.au/our-organisation/our-corporate-responsibility/business-ethics/human-rights-statement> (accessed 10 August 2021).

<sup>21</sup> EFA (2021) *Procedure for Environmental and Social Review of Transactions*, p. 7.

The Policy and associated Procedure should clarify in more detail:

- when and how the global standards adopted in the Policy are applied to EFA's transactions;
- which environmental and social issues will be included in the initial screening of all transactions; and
- how consideration and assessment of human rights is integrated into EFA's processes.

All transactions financed by EFA should be subject to some level of screening against best practice global standards.

## 2. Climate change and the need to restrict fossil fuel investment

### ***The need for EFA's Environmental and Social Policy to address climate change***

The Policy is silent on climate change and does not provide guidance on how EFA will ensure that its projects do not contribute to climate change or how it will manage the financial risks associated with climate change (although some of the instruments it references in turn address climate change). Given the pressing global threat posed by climate change and Australia's commitments under the Paris Agreement, it is important for the Policy itself to clearly address this issue.

The Paris Agreement requires all signatory countries (including Australia) 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. Financing fossil fuel projects is incompatible with this goal. The International Energy Agency (IEA) has recently stated that staying below 1.5°C of warming means an immediate halt to any new fossil fuel supply projects.<sup>22</sup> Research from Oil Change International has found that the potential carbon emissions from utilising the oil, gas and coal in the world's currently operating fields and mines would take us beyond 2°C of warming. Even if coal use were phased out overnight, the emissions from oil and gas in existing fields alone would push average global temperature rise beyond 1.5°C.<sup>23</sup>

The Australian public is increasingly concerned about climate change. According to The Australia Institute's *Climate of the Nation* report, four in five Australians (79%) agree that climate change is occurring and 74% are concerned about climate change.<sup>24</sup> Most Australians (52%) oppose the Australian Government putting public funds into infrastructure to subsidise the expansion of the coal, oil and gas industries (an increase from 45% in 2019).<sup>25</sup> Despite falling support for fossil fuel subsidies, Australia increased its fossil fuel

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<sup>22</sup> IEA (2021) *Net Zero by 2050: A roadmap for the global energy sector*, <https://www.iea.org/reports/net-zero-by-2050>

<sup>23</sup> Oil Change International, *The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production* (2016) [http://priceofoil.org/content/uploads/2016/09/OI\\_the\\_skys\\_limit\\_2016\\_FINAL\\_2.pdf](http://priceofoil.org/content/uploads/2016/09/OI_the_skys_limit_2016_FINAL_2.pdf) (accessed 17 May 2021).

<sup>24</sup> The Australia Institute (2020) *Climate of the Nation 2020: tracking Australia's attitudes towards climate change and energy*, p. 4, available at: <https://australiainstitute.org.au/post/climate-of-the-nation-climate-change-concern-hits-82/> (accessed 6 August 2021).

<sup>25</sup> *Ibid* at p. 24.

subsidies by 48% between 2015 and 2019.<sup>26</sup> In the 2020-21 financial year, Australian fossil fuel subsidies hit \$10.3 billion.<sup>27</sup>

Export Finance Australia is part of this picture. Jubilee Australia's research has found that between 2009 and 2020, EFA provided between \$1.57 and \$1.69 billion in financing to coal, oil and gas projects (including refinancing). This includes direct financing for fossil fuel projects as well as financing to support Australian companies providing a range of services to the fossil fuel industry, including engineering, construction, pipeline manufacturing, software and technical advice.<sup>28</sup>

As the impacts of climate change make themselves felt, and public concern grows, financial institutions around the world are increasingly moving away from investing in fossil fuels. Export Credit Agencies (ECAs) are no exception. Recent ECA commitments to decarbonise include:

- The UK issued a policy in March 2021 committing to end public finance for fossil fuel projects overseas, including export finance.<sup>29</sup>
- In June 2021, G7 Leaders announced they will commit to an end to new direct government support for unabated international thermal coal power generation by the end of this year.<sup>30</sup>
- In April 2021, six governments from Europe and the UK launched the [Export Finance for Future \(E3F\) coalition](#), agreeing to end trade and export finance to unabated coal power and related infrastructure and to phase out support for other fossil fuel sectors.<sup>31</sup>
- US President Biden's Executive Order on the Climate Crisis in January 2021 and April 2021 International Climate Finance Plan directed departments to consider ending overseas support for carbon-intensive energy projects and reorient OECD ECA financing away from carbon-intensive activities.<sup>32</sup>
- South Korea has committed to end public financing for overseas coal-fired power plants.<sup>33</sup>

A legal opinion prepared and published for Oil Change International has also found that ECAs – and the governments that oversee them – could be in violation of their international legal obligations if they do not take action to reduce their financing of fossil fuel-related

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<sup>26</sup> Damian Carrington, "Reckless: G20 states subsidised fossil fuels by \$3tn since 2015, says report", *The Guardian*, 20 July 2021, available at: <https://www.theguardian.com/environment/2021/jul/20/g20-states-subsidised-fossil-fuels-2015-coal-oil-gas-climate-crisis> (accessed 6 August 2021).

<sup>27</sup> The Australia Institute (2021) *Fossil Fuel Subsidies in Australia*, available at: <https://australiainstitute.org.au/wp-content/uploads/2021/04/P1021-Fossil-fuel-subsidies-2020-21-Web.pdf> (accessed 6 August 2021).

<sup>28</sup> Jubilee Australia (2021) *Hot Money: Australian taxpayers financing fossil fuels*, available at: <https://www.jubileeaustralia.org/resources/publications/hot-money-2021> (accessed 6 August 2021).

<sup>29</sup> UK Government, "Aligning UK international support for the clean energy transition", March 2021, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/975753/Guidance\\_-\\_Aligning\\_UK\\_international\\_support\\_for\\_the\\_clean\\_energy\\_transition\\_-\\_March\\_2021\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975753/Guidance_-_Aligning_UK_international_support_for_the_clean_energy_transition_-_March_2021_.pdf)

<sup>30</sup> The White House, "Fact Sheet: G7 to Announce Joint Actions to End Public Support for Overseas Unabated Coal Generation by End of 2021", 12 June 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/12/fact-sheet-g7-to-announce-joint-actions-to-end-public-support-for-overseas-unabated-coal-generation-by-end-of-2021/>

<sup>31</sup> Director General of Treasury, France, "Seven countries launch international coalition "Export Finance for Future" (E3F) to align export finance with climate objectives", 14 April 2021, <https://www.tresor.economie.gouv.fr/Articles/2021/04/14/seven-countries-launch-international-coalition-export-finance-for-future-e3f-to-align-export-finance-with-climate-objectives>

<sup>32</sup> White House, *U.S. International Climate Finance Plan*, 22 April 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/04/U.S.-International-Climate-Finance-Plan-4.22.21-Updated-Spacing.pdf>

<sup>33</sup> Heesu Lee, "South Korea Shuns Coal-Power Financing Amid Rising U.S. Pressure" *Bloomberg*, 22 April 2021, <https://www.bloomberg.com/news/articles/2021-04-22/south-korea-shuns-coal-power-financing-amid-rising-u-s-pressure?sref=qm26bHqj>



activities.<sup>34</sup> The opinion considers States' obligations under customary international law, as well as human rights, climate change agreements and OECD instruments, and holds that the conduct of ECAs is directly or indirectly governed by these international legal obligations because their conduct may be attributed to the State and/or because States may be required under international law to regulate their conduct. It concludes that "given the substantial contribution of ECAs to enable the emissions of greenhouse gases associated with existing and new fossil fuel-related projects/activities, in principle, States comply with their duty of due diligence only if they do their utmost to reduce their contribution to the problem, rather than extending it or increasing it."<sup>35</sup>

EFA's financing of fossil fuels (including non-project financing for companies active in the fossil fuel sector or its supply chain) also represents a missed opportunity for export finance to be used to build Australia's renewable energy sector and position Australia to become a renewables superpower. A 2021 report from WWF found that there are a range of renewable export and industries in which Australia could have an advantage, including solar-powered commodities and manufacturing, components of green energy, software, or expert advisory services. However, the full range of potential renewable export products are not yet receiving significant government support, apart from renewable hydrogen.<sup>36</sup> Restricting EFA's financing of fossil fuels, or emissions intensive projects, would free up financing for these low-emissions export technologies that could position Australia well for the future.

In light of the above, it is essential for EFA to eliminate fossil fuels from its financing portfolio.

### **Recommendation 3**

Amend EFA's Environmental and Social Review Policy to restrict EFA from providing financing that is inconsistent with Australia's commitments under the *Paris Agreement*. In particular, EFA should not provide finance to projects that involve extraction of fossil fuels (including coal, oil and gas) or the use of fossil fuels for energy generation (including support for all new and existing coal and gas fired power plants).

### ***The increasing risk of stranded fossil fuel assets***

Australia is currently the world's largest exporter of coal and gas. However, some of Australia's largest customers have started to phase out fossil fuels. For example, in July 2021, Japan – Australia's largest market for LNG and thermal coal – committed to halve gas-fired electricity generation and reduce coal-fired power by more than a third by 2030.<sup>37</sup> This fast-moving international policy environment is a clear risk to the financial viability of coal and gas projects. This risk should be a key consideration in approving new projects.

Some of the projects that EFA has financed in the past are already in danger of becoming stranded assets. For example, EFA provided a guarantee worth \$94.2 million to the Wiggins Island Coal Export Terminal (WICET) in Gladstone, which has since resulted in billions in losses for its investors.<sup>38</sup> Three project partners have gone bankrupt and, in 2016, Lloyds

<sup>34</sup> Kate Cook and Jorge E Vinales (2020) *Legal Opinion: International obligations governing the activities of Export Credit Agencies in connection with the continued financing of fossil fuel-related projects and activities*, available at: <https://www.jubileeaustralia.org/storage/app/media/uploaded-files/Legal-opinion-K.-Cook- -J.-Vinales-FINAL.pdf>

<sup>35</sup> Ibid at paragraph 49.

<sup>36</sup> WWF Australia (2021) *Renewable Superpower Scorecard 2021*, available at: <https://www.wwf.org.au/what-we-do/climate/renewables#gs.819cuz> (accessed 10 August 2021), at p. 5 and 7.

<sup>37</sup> Adam Morton, "Australia's reliance on gas exports questioned as Japan winds down fossil fuel power", *The Guardian*, 23 July 2021, available at: <https://www.theguardian.com/environment/2021/jul/23/australias-reliance-on-gas-exports-questioned-as-japan-winds-down-fossil-fuel-power> (accessed 6 August 2021).

<sup>38</sup> Market Forces, "Ten dodgy fossil fuel deals hurting the banks" <https://www.marketforces.org.au/ten-dodgy-deals-dragging-down-the-banks> (accessed 12 May 2021).

Bank sold \$146 million of WICET debt at a reported loss of 21%.<sup>39</sup> As part of a debt refinancing plan, Export Finance Australia reportedly extended a further loan of AUD\$124.65 million to WICET.<sup>40</sup> Since then, Glencore (which owns 40% of WICET) has signalled its intention to cap its coal production, raising questions about whether investors will be left with a stranded asset.<sup>41</sup>

In 2012, EFA provided another guarantee, for \$254.7 million, to Santos for its Gladstone LNG project, located on the edge of the Great Barrier Reef World Heritage Area. Santos has since written down the project by \$7 billion.<sup>42</sup> As at 2020, the plant was still not making an economic return.<sup>43</sup>

Despite the significant stranded asset risks associated with fossil fuel investments, the Policy does not instruct EFA to consider the potential emissions of a project, its potential impact on climate change, or the risk of infrastructure built by the project becoming a stranded asset. In contrast, the Northern Australia Infrastructure Facility's (NAIF) Environmental and Social Review Policy instructs NAIF to consider "how Project Proponents have assessed and provided for climate related physical and transition risks" as part of project-related due diligence.<sup>44</sup> The latest version of the Equator Principles (EP4) requires a climate change risk assessment for all projects when combined Scope 1 and Scope 2 Emissions are expected to be more than 100,000 tonnes of CO<sub>2</sub> equivalent annually.<sup>45</sup> While this will apply to some EFA projects by virtue of EFA's adherence to the Equator Principles, these Principles only apply to a small number of transactions that exceed the designated financial thresholds.

One potential approach to address this would be for EFA to designate fossil fuel extraction and coal, oil and gas-fired power as "sensitive sectors", and require an assessment of estimated emissions, stranded asset risk and environmental impacts for all projects relating to those sectors. Other high-emissions sectors (such as aviation, shipping and mining) could also be included as "sensitive sectors". This approach is employed by Atradius DSB, the Dutch Export Credit Insurance provider, which designates eleven sectors as sensitive including oil and gas, dredging, mining and nuclear.<sup>46</sup>

#### **Recommendation 4**

Amend Section 2 of the Policy (Screening and Classification) to clarify in more detail that climate change impact is included among the environmental and social issues that EFA will consider in screening potential transactions.

In particular, project screening should consider:

<sup>39</sup> Sarah Thompson, Anthony McDonald and Joyce Moullakis, "Wiggins Island Coal Export Terminal debt trades; Lloyds Bank seen as seller", *Australian Financial Review*, 6 October 2016, available at:

<https://www.afr.com/street-talk/wiggins-island-coal-export-terminal-debt-trades-lloyds-bank-seen-as-seller-20161006-grwoqr> (accessed 12 May 2021).

<sup>40</sup> Market Forces, "Public Finance", available at: <https://www.marketforces.org.au/campaigns/ffs/public-finance/> (accessed 12 May 2021); IJ Global data.

<sup>41</sup> Nassim Khadem, "Glencore moves to cap global coal output after investor pressure on climate change", *ABC News*, 20 February 2019, <https://www.abc.net.au/news/2019-02-20/glencore-moves-to-cap-global-coal-output-post-investor-pressure/10831154> (accessed 10 August 2021).

<sup>42</sup> Bruce Robertson, "Flogging a Dead Horse: Why the Gas Industry Can't Stimulate the Economy" (2020) IEEFA, available at: [https://ieefa.org/wp-content/uploads/2020/10/Why-the-Gas-Industry-Cannot-Stimulate-the-Economy\\_October-2020.pdf](https://ieefa.org/wp-content/uploads/2020/10/Why-the-Gas-Industry-Cannot-Stimulate-the-Economy_October-2020.pdf) (accessed 12 May 2021);

<sup>43</sup> Bruce Robertson and Tom Lawson, "Santos Racked Up Nearly \$7 billion in Unconventional Gas and LNG Losses in 5 Years" (2020) IEEFA, available at: [https://ieefa.org/wp-content/uploads/2020/02/Santos-Racked-Up-Nearly-7bn-in-Unconventional-Gas-and-LNG-Losses-in-5-Years\\_Feb-2020.pdf](https://ieefa.org/wp-content/uploads/2020/02/Santos-Racked-Up-Nearly-7bn-in-Unconventional-Gas-and-LNG-Losses-in-5-Years_Feb-2020.pdf) (accessed 12 May 2021).

<sup>44</sup> NAIF, *Environmental and Social Review of Projects Policy*, March 2021, [https://naif.gov.au/wp-content/uploads/2021/05/NAIF-ESR-Policy\\_Final-March-2021.pdf](https://naif.gov.au/wp-content/uploads/2021/05/NAIF-ESR-Policy_Final-March-2021.pdf)

<sup>45</sup> Equator Principles 4, p. 9.

<sup>46</sup> Atradius DSB, *Environmental and Social Policy Document* <https://atradiusdutchstatebusiness.nl/en/article/environmental-and-social-review.html> at p. 15.

- The estimated carbon emissions to be generated by the project or activities funded by the transaction
- Whether there is a stranded asset risk associated with the activities.

EFA should consider adopting an approach of designating sensitive sectors for more stringent review of their environmental and climate change impacts.

### 3. Gender equality, disability and social inclusion

EFA financing has the potential to have significant impacts on gender equality and women's rights and due consideration must be given to these risks in EFA's due diligence processes. There is considerable evidence showing the human rights and gender equality risk related to mining and infrastructure projects.<sup>47</sup> Pacific Women's organisations have raised concerns about the gendered impacts of the EFA (Efic) financed PNG 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.<sup>48</sup>

It remains unclear how EFA incorporates a gender analysis across all aspects of its work. While the IFC performance standards may be used as a benchmarking tool for Category A and B projects, these standards have significant weaknesses in relation to human rights, gender equality, and free, prior and informed consent. EFA should take steps to ensure its performance standards fully comply with Australia's obligations under the CEDAW Convention as well as best practice international standards such as the UN Guiding Principles on Business and Human Rights.

EFA should also 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 work burden they experience; improve their access to health care and other facilities; and increase their equitable access to markets through a reliable transport system and appropriate water, sanitation and hygiene (WASH) facilities that uphold women's safety and dignity. As part of meeting the needs of diverse women, there is also an opportunity to make strategic investments in disability inclusive infrastructure. Technical expertise is required to ensure these considerations are embedded within all stages of EFA's project management cycle.

#### **Recommendation 5**

Amend the Policy to:

- require independent human rights and gender equality impact assessments with affected communities, including local women's groups, for all projects with potential impacts.
- include gender-inclusive and human rights-based engagement with affected communities, including women, throughout the project management cycle of all Category A projects

<sup>47</sup> OHCHR (2017) *Baseline Study on the Human Rights Impacts and Implications of Mega-Infrastructure Investment*, [https://www.ohchr.org/Documents/Issues/Development/DFI/MappingStudyontheHRRiskImplications\\_MegaInfrastructureInvestment.pdf](https://www.ohchr.org/Documents/Issues/Development/DFI/MappingStudyontheHRRiskImplications_MegaInfrastructureInvestment.pdf)

<sup>48</sup> DAWN et al (2018) Shadow report to the 70th Session of CEDAW: Review of Australia Extraterritorial Obligations, [https://dawnnet.org/wp-content/uploads/2018/06/CEDAW-Australias-ETO\\_PNG-Extractive-Industries\\_June-11-Final-version.pdf](https://dawnnet.org/wp-content/uploads/2018/06/CEDAW-Australias-ETO_PNG-Extractive-Industries_June-11-Final-version.pdf)

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

## 4. Transparency and accountability

### *Publication of due diligence benchmarking information*

The Policy requires that EFA screens and classifies 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.<sup>49</sup>

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 of affected Indigenous communities within the project area and that the project threatened water resources in the South Gobi region.<sup>50</sup> This would suggest that the project fell short of IFC Performance Standard 7, which requires FPIC for Indigenous communities affected by projects. Similarly, shortcomings in FPIC have been reported relating to the PNG LNG project, to which EFA loaned \$350 million in 2009.<sup>51</sup>

In 2012, the Productivity Commission undertook a review of EFA. Among its recommendations was a recommendation that:

“Information relating to the environmental and social classification of projects and the reasons for their approval should be predictable and disclosed in the annual report and on Efic’s website. This information should include assessment benchmarking and processes, conditions of approval and consequences for non-compliance. Information that is relevant to Efic’s assessment of environmental and social impacts should be made public.”<sup>52</sup>

### **Recommendation 6**

Amend Section 4 of the Policy (Disclosure) to provide that EFA will publicly disclose its benchmarking against the IFC Performance Standards (and any other standards being used) for scrutiny before approving a Category A or B project.

### *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

<sup>49</sup> EFA, *Environmental and Social Review Policy*, available at: <https://www.exportfinance.gov.au/our-organisation/our-corporate-responsibility/transactions/environmental-and-social-review/policy/>

<sup>50</sup> See Jubilee Australia, “Submission: You Tolgoi Copper Gold Mine”, <https://www.jubileeaustralia.org/storage/app/media/downloads/sibmissions/oyu-tolgoi-copper-gold-mine-in-mongolia-2012.pdf>

<sup>51</sup> See: Jubilee Australia Research Centre, *On Shaky Ground - PNG LNG and the Consequence of Development Failure*, <https://jubileeaustralia.org/resources/publications/shaky-ground-report-png>

<sup>52</sup> Productivity Commission Report, p. 288.

facility provided and volume of financing.<sup>53</sup> 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 the 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.<sup>54</sup>

This lack of transparency prevents communities that may be affected by EFA-funded projects from bringing concerns to EFA's attention. In contrast, the IFC provides a basic project description and information against the following criteria for each project: Environmental and Social Project Categorization and Applicable Standard; Environmental and Social Mitigation Measures; Stakeholder Engagement; Broad Community Support; and the Environmental & Social Action Plan.<sup>55</sup>

As well as increasing the information made available through EFA's Transaction Register, EFA should also make key project consideration documents and risk assessments publicly available on its website in advance of approving transactions, particularly where these transactions relate to a sector with potential for environmental harms, such as fossil fuels or mining. Providing this information as a matter of course would increase transparency and accountability, as well as ensuring public confidence in EFA's due diligence processes. Providing these documents well in advance of a decision (eg: 120 days) would also allow potentially affected communities to share relevant information with EFA.

EFA also does not disclose project refinancing transactions as part of its transaction disclosure. Jubilee Australia's research identified two large fossil fuel project refinancings in 2018 and 2020 that were reported in the financial media but not disclosed by EFA. Lack of transparency on project refinancing makes it very challenging to monitor where EFA's taxpayer-backed funds are spent.

#### **Recommendation 7**

Amend Section 4 of the Policy (Disclosure) to specify the information that EFA must disclose for each project financed. This should include the information currently provided in EFA's Transaction Register, as well as information on:

- all project refinancing transactions
- the project to be financed by each transaction, or indicative set of projects where the financing is not linked to one specific project
- whether the proposed project or activities to be financed relate to fossil fuels or another high-emissions activity
- key project consideration documents and risk assessments.

#### *Freedom of Information Act Exemption*

<sup>53</sup> EFA, Our Corporate Responsibility, <https://www.exportfinance.gov.au/our-organisation/our-corporate-responsibility/transactions/transaction-disclosure/>

<sup>54</sup> See forthcoming briefing paper by Jubilee Australia.

<sup>55</sup> See for example, the Tabreed District Cooling Company project, available at: <https://disclosures.ifc.org/project-detail/ESRS/44700/tabreed-district-cooling-company> . However, note that the IFC's transparency is lacking when it comes to their many investments in financial intermediaries.

In addition to the disclosure mechanisms provided in the Policy, Australia's freedom of information regime provides a mechanism that allows citizens to request information about the operation of bodies acting on behalf of the taxpayer. However, under Schedule 2 of the *Freedom of Information Act 1982* (Cth) (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.

The Australian Government has the ultimate fiscal responsibility for the operation of EFA. Not only is the government its financial guarantor, providing a \$1.2 billion in callable credit, the government is also EFA's sole shareholder and beneficiary, with the Commonwealth 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. Removal of EFA's FOI exemption was also a recommendation of the 2012 Productivity Commission review of EFA's operations.<sup>56</sup>

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.<sup>57</sup> EFA's 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.<sup>58</sup>

#### **Recommendation 8**

To complement the disclosure requirements in the Policy and ensure its effective implementation, EFA's partial exemption from the *Freedom of Information Act 1982* (Cth) should be revoked. At minimum, the following information should be 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.

#### **Complaints mechanism**

EFA has a formal complaints mechanism, which allows members of the public (including community members affected by EFA-financed projects) to submit a complaint to EFA. While not part of the Policy, the Complaints Mechanism is another important safeguard to address environmental and social concerns relating to EFA transactions. Complaints are investigated by EFA, and it undertakes to provide a written response within ten days. While it is positive that EFA has such a complaints mechanism, this mechanism would be strengthened by considering the following measures:

- Providing for an independent complaints investigator
- Establishing an independent advisory panel to review complaints;
- Ensuring adequate measures are in place to promote complaints process with local communities, both men and women, in all projects; and

<sup>56</sup> Productivity Commission Report, p. 299

<sup>57</sup> [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>58</sup> See US Exim, "Freedom of Information Act", <https://www.exim.gov/about/foia> (accessed 30 June 2021);

- Publishing a register of complaints on the EFA website (where the complainant gives permission), including information on how the complaint was resolved.

The Australian National Contact Point (ANCP) on the OECD Guidelines on Multinational Enterprises provides a good example. The ANCP is a Treasury official, but is supported by a Governance and Advisory Board which comprises representatives from government and non-government organisations. Complaints are made available online along with information on the status of the complaint and the findings of the ANCP. These measures ensure transparency and accountability for all involved in the process.

**Recommendation 9**

Strengthen EFA's complaints mechanism by:

- Providing for an independent complaints investigator
- Establishing an independent advisory panel to review complaints;
- Ensuring adequate measures are in place to promote complaints process with local communities, both men and women, in all projects; and
- Publishing a register of complaints on the EFA website (where the complainant gives permission), including information on how the complaint was resolved.

**Conclusion**

EFA's Environmental and Social Review Policy is an important guidance document that ensures that investments financed with taxpayer-backed funds do not cause harm for the environment, the climate or communities. The review of the Policy offers an opportunity to update this important document and ensure it is in step with best practice approaches to environmental and social review and risk management.

Should you wish to discuss these recommendations further, please feel free to contact Dr Luke Fletcher, Executive Director, Jubilee Australia Research Centre at [luke@jubileeaustralia.org](mailto:luke@jubileeaustralia.org).