

13 June 2018

John Hopkins
General Counsel
Export Finance and Insurance Corporation
Level 10, 22 Pitt St
Sydney NSW 2000

By email only: complaint@efic.gov.au

Dear Mr Hopkins

Complaint – Board assessment of Adani related project not public

1. Environmental Justice Australia is a not-for-profit legal practice. We represent the Australian Conservation Foundation.
2. **We write to complain that EFIC’s Board’s assessment of the approved transaction to provide support to an Adani related supplier has not been made public.**
3. The approved transaction is referred to in Senate Estimates question on notice [no. 189](#), portfolio question number 211, in the 2017-18 Additional estimates of the Foreign Affairs, Defence and Trade Committee, Foreign Affairs and Trade Portfolio.
4. We understand the relevant transaction is support for an entity in the supply chain of a large domestic resource project or related infrastructure, being Adani’s Carmichael coal mine or railway.
5. We note that on Friday 1 June 2018 you provided [testimony](#) during Senate Estimates that, with respect to the project, “there are no transactions that are proceeding at the moment”.
6. Nevertheless, the mere fact that a transaction was approved for a SME in a large project triggers the requirement to make the Board’s assessment of the transaction public. The fact that a transaction may not be proceeding after the assessment is irrelevant.
7. The Minister’s [Statement of Expectations](#) dated 7 September 2018 states:

While prioritising Efic support for SMEs facing challenges accessing finance, the Government recognises that large projects or firms can help SMEs access markets through supply-chain participation. To achieve a balance in the level of support for large transactions, I am introducing some stipulations around the support Efic can provide to large projects or firms.

Efic shall only provide support for domestic or overseas resource projects (and related infrastructure) where the Efic Board is satisfied, after careful review:

- *there is a demonstrated market gap in the availability of finance;*
- *the transaction does not come at the expense of SME transactions;*
- *the project has significant Australian content including through SME supply chain participation; and*
- *the project is financially viable.*

...

Efic may continue to provide support to SME suppliers of domestic resource projects (and related infrastructure) where the SME good or service is integral to the performance of a resource export project (and related infrastructure).

Where Efic approves transactions involving resource projects (and related infrastructure), I expect Efic to provide the Department of Foreign Affairs and Trade (DFAT) with an assessment of the transactions' compliance with the relevant criteria above and to report this publicly (subject to any confidentiality considerations).

8. Relevantly, the Board's assessment is to be made public if the support is "to a large project or firm". Clearly, the decision is for support to a large project. The SOE refers to a "balance in the level of support for a large transaction". Obviously, supporting a SME is a part of this balance, and this is demonstrated by the second and third criteria the Board is to assess.
9. The Minister placed the paragraph referring to EFIC's continual support of SME suppliers of domestic resource projects (and related infrastructure) immediately above the paragraph containing the requirement for EFIC provide the Board's assessment to DFAT and the public. Logically, that paragraph clarifies the context of the assessment. The requirement applies to decisions concerning SME support.
10. Furthermore, the public notification requirement is for "transactions involving resource projects (and related infrastructure)". It is not limited by the size of the transaction itself. The word "involving" demonstrates the breadth of application so as to include decisions regarding SME transactions.
11. It follows that the current SOE continues (and augments) the requirement in the superseded [SOE](#) dated 13 November 2014 to publicly report on SME transaction assessments:

Where EFIC approves transactions involving SME suppliers to domestic resource projects (and related infrastructure) or large overseas resource projects, I expect EFIC to provide the Department of Foreign Affairs and Trade with an assessment of the transactions' compliance with the relevant criteria above and to report this publicly (subject to any confidentiality considerations)

12. Given EFIC's "[aim to be as transparent as possible regarding our operations](#)" we expect EFIC to interpret the SOE requirement to "report [the assessment] publicly" to mean it will make the assessment available to the public. It does not mean that EFIC must simply publish the fact of the assessment being provided to DFAT.
13. The expectation to make the assessment itself public is cemented by the SOE's reference to confidentiality. Confidentiality would not be at issue if EFIC were to report to the public the mere fact that the assessment had been provided to DFAT. Any other interpretation would render confidentiality considerations otiose.

14. We expect EFIC to make public the full assessment document it has provided to DFAT.
15. We note EFIC's statutory obligations regarding confidentiality. However, of importance is EFIC's "aim to be as transparent as possible regarding our operations". Therefore, we expect that the public version of the assessment will have only the bare minimum of confidential information redacted. Information not to be redacted will include the date of the Board's assessment, the date of the document provided to DFAT, the type of support, the relevant part of the project, and fulsome detail in support of the Board's assessment of each of the four criteria in the SOE.
16. This matter is of significant public interest. If no assessment document was provided to DFAT you must tell us. In addition, if EFIC's Board did not perform the assessment prior to the decision being made by EFIC to support the SME, you must tell us.
17. We look forward to your written response within 10 business days of the date of this complaint.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DBO', followed by a horizontal line extending to the right.

David Barnden
Environmental Justice Australia