

28 March 2012

Productivity Commission  
Export Credit Arrangements  
LB2 Collins Street East  
MELBOURNE VIC 8003

By email: [exportcredit@pc.gov.au](mailto:exportcredit@pc.gov.au)

Dear Commissioners Scott and Mundy

**Australia's Export Credit Arrangements: Draft Report**

The Human Rights Law Centre (HRLC) welcomes the opportunity to make this supplementary submission to the Productivity Commission's Inquiry into Australia's Export Credit Arrangements. This submission builds on the HRLC's initial submission (no.13), *Export Finance and Human Rights in Australia*, dated 21 November 2011.

This submission considers the Productivity Commission's draft recommendation 9.7:

Ministerial directions should articulate which international obligations, including human rights obligations, EFIC is required to comply with.

EFIC's compliance with those obligations should be subject to independent audit and compliance review every two years, with outcomes publicly reported, including in its annual report.

The HRLC welcomes draft recommendation 9.7. A Ministerial Direction would provide clarity, leadership and direction around the scope of EFIC's human rights obligations and the way in which these obligations are to be implemented by EFIC. A compliance review would ensure that EFIC is held accountable for the effective implementation of its international human rights obligations.

EFIC's current human rights policy and practice is subsumed within its social and environmental review processes and relies heavily on the IFC Performance Standards. These processes provide insufficient coverage of human rights issues and insufficient scrutiny of certain projects (see pp. 15-16 of the HRLC's initial submission).

A Ministerial Direction should endorse the adoption of the Ruggie Framework and Guiding Principles on Business and Human Rights, which require specific consideration of human rights obligations and impacts in addition to social and environmental impacts.<sup>1</sup>

We note that the Ruggie Framework and Guiding Principles are not treaties, but rather they are Resolutions of the Human Rights Council and are therefore not listed on DFAT's treaty database, nor covered by section 8(2)(iii) of the *Export Finance and Insurance Corporation Act 1991* (Cth) which provides that EFIC must 'have regard to...Australia's obligations under international agreements'. A Ministerial Direction would therefore fill a gap in the existing legal and policy framework.

The HRLC supports Oxfam Australia's comment in its supplementary submission that draft recommendation 9.7 would be complemented by a further recommendation that EFIC develop a specific human rights policy. The HRLC's recommendations concerning the proposed scope and content of a human rights policy are contained on pp. 17-18 of our initial submission.

Yours Sincerely

Rachel Ball  
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Human Rights Law Centre

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Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc A/HRC/9/5 (2008); Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 (2011). See also Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina, Mission to Australia (7–11 February 2011) and Solomon Islands (14–18 February 2011), A/HRC/17/37/Add.1, 25 May 2011.