National Reconstruction Fund – Department of Industry, Science and Resources Inquiry

Australian Council of Trade Unions submission

ACTU Submission, 06 February 2023
ACTU D No. 04/2023

About the ACTU

Formed in 1927, the ACTU is the peak trade union body in Australia. There are 43 trade unions affiliated to the ACTU which together have nearly 1.8 million members engaged across all industries and occupations in the public and private sector. For 95 years, the ACTU has played the leading role in advocating for, and winning, the improvement of working conditions.

1. Introduction

The ACTU warmly welcomes the establishment of the National Reconstruction Fund (NRF), and the chance to provide its views to this inquiry. The NRF can play a key role in addressing four fundamental weaknesses in the Australian economy:

Firstly, Australia lacks economic complexity. The Harvard University Atlas of Economic Complexity measures the industrial capabilities of a country as a key driver of its growth prospects. It ranked Australia a lowly 91st in 2020, on the Index down from 55th back in 1995, but even worse, we are projected to keep sliding down to 112th position by 2030. Australia's lack of economic complexity leaves it highly exposed to change. As the authors of the Index comment: "Australia's worsening complexity has been driven by a lack of diversification of exports."[1]

Secondly, Australia's manufacturing output as a percentage of our GDP in 2021 was just 6% in 2021, less than half of the OECD average of 13%. Only Luxembourg and Norway have lower levels of manufacturing among developed countries. Yet, manufacturing and the extensive supply chains it relies on and supports, are key drivers of secure, well-paid work and rewarding careers as well as national wealth, productivity and innovation.

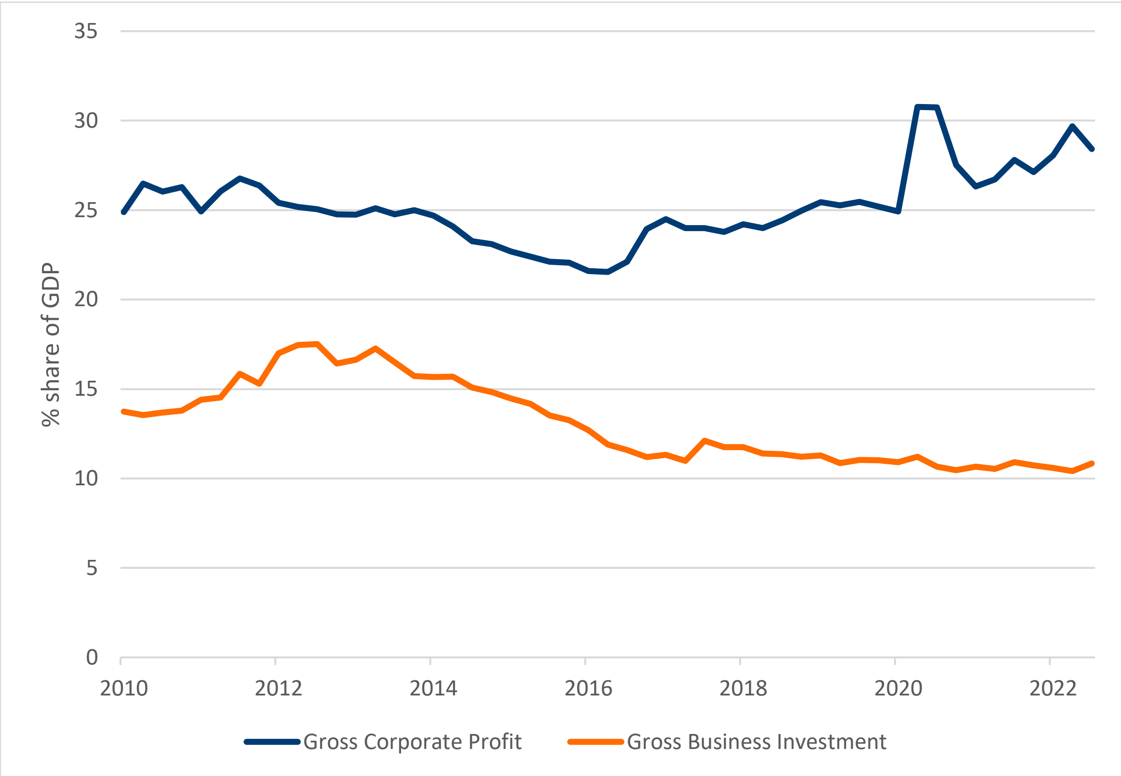
Thirdly, our research and development spending as a % of GDP in 2019, also languishes at 1.83% compared to 2.96% across the OECD. It hasn't always been this way. Ten years earlier our spend was higher than the OECD average at 2.37% vs 2.34%. Given how innovation rich manufacturing is, it is not surprising that our levels of overall research and development are

[1] Harvard Atlas of Economic Complexity – Australia: https://atlas.cid.harvard.edu/countries/14

declining. Research and development spearheads the creation of value and improvements in productivity.

Finally, Australia clearly has the capital to tackle these structural weaknesses by investing in the industries of the future: corporate profit at as a percentage of GDP is almost at a record high. But the private sector is not playing its part: with levels of business investment almost at record lows.

Figure 1: Corporate profit and business investment as a share (%) of GDP 2010-2022



Source: ACTU calculations from ABS National Accounts, Tables 3 and 7.

These structural weaknesses will only deepen if we don't act now, undermining national prosperity and our ability to thrive in a changing world. For example, the energy transition needs to be well planned with workers fully supported, especially in the regions that have powered this country for so long. Eight of our top ten exports are either in fossil fuels or have fossil fuels embedded within them. That can't remain the case for ever as the world transitions to renewable sources of energy. And as the pandemic showed, Australia lacks basic sovereign manufacturing capabilities in a wide range of areas, from face masks to ventilators.

Our ability to turn this around is tremendous. We have the people, the motivation and the capital. What we need is government to play a leading role to:

(i) Coordinate: to understand and address the bottlenecks to strengthening our sovereign capabilities and industrial resilience, particularly in building and strengthening local supply chains, beyond just the "primes" to smaller component manufacturers.

(ii) Catalyse: use finance to "crowd in" in private sector investment, and

(iii) Drive the creation of good, secure and well-paid jobs, particularly for regional Australian and underrepresented groups.

The National Reconstruction Fund, designed properly, is well placed to help deliver on all of these goals. However, the National Reconstruction Fund Corporation Bill ("the Bill") introduced into Parliament on 30 November 2022 has a number of key weaknesses that need to be addressed. This submission principally focuses on them.

2. Purpose of the NRF Corporation.

The Bill should include a legislated purpose for the proposed National Reconstruction Fund Corporation (NRFC) to ensure that its functions and investments achieve the stated objectives of the Government, which are shared and welcomed by the ACTU.

At the moment that is intended to be achieved through the Minister declaring a "priority area of the Australian economy" for investment (s.6) and issuing an "investment mandate" to guide the NRFC's work (s.71). There are three problems with this approach.

Firstly, this places almost complete control in the hands of the Minister of the day as to the purpose and objectives of the NRFC. This is a significant risk. A future Government hostile to the goals of the NRF, could easily treat it as a slush fund, or redirect its purpose and investment into unhelpful areas. If the NRFC is created by Parliament, its purpose should only be altered by Parliament. Secondly, declarations or instruments under ss.6 and 71 are limited in what they can achieve and very easily overturned or replaced. Thirdly and finally, the NRFC risks organisational drift without a clear legislative mandate, as can be seen in organisations such as Infrastructure Australia.

Instead, the NRCF should have clear legislated objectives to "future proof' it as best as possible, and to give it clear direction The Bill should be amended to ensure that it is meeting the Government's stated policies of using investment to:

- Creating secure, well-paid jobs, and unionised jobs (and ESG generally).
- Generating a high-skilled and adaptable manufacturing workforce with transferable qualifications.

- Diversify Australia's industrial base, especially through regional economic diversification and development,
- Developing Australia's national sovereign capabilities,

- Promoting gender equality and workforce diversity
- Supporting a fair energy transition to renewable energy, and meeting commitments of the Climate Change Act,
- Supporting projects that add value, improve productivity and support economic transformation.
- Making it easier for industry to commercialise innovation and technology.

These objectives should be included in s.3 Object of the Act.

Several other sections of the Act should also be explicitly subject to s.3. These include:

- s.6 Priority Areas of the Australian Economy,
- s.71 Investment Mandate (which it is as s.71(2)(a)), and
- s.75 Investment Policies

3. Governance of the NRFC

The Bill puts forward a model of independent directors that are appointed by the Minister (s.19). The ACTU does not support this model. The Board of the NRFC should have equal representation from trade unions, industry and other expertise. This model of tripartite governance is widespread, well tested and a strong way to ensure informed and robust decision making. The ACTU view is strongly informed by the positive experience of union trustee directors helping industry super funds deliver far superior performance, than for-profit funds governed by so-called "independent" directors.

The difference union board members make: Industry Super

Industry super funds manage more than $1 trillion in assets for the benefit of working people, with public sector and corporate funds managing an additional $680 billion in assets under management. Due to the representative board, industry super funds have consistently outperformed for-profit funds often governed by unrepresentative "independent" directors. The 2018 Productivity Commission report found that industry super funds systematically outperform for profit retail funds, and the Financial Services Royal Commission found them to be better governed and more consistently made decisions in the best interests of members. Industry super funds have outperformed for profit funds over the past five, ten and 20 years. Conversely, more than 80 per cent of funds which failed the most recent performance test were for-profit funds governed by ‘independent’ boards. The equal representation model has led to funds which are more likely to invest in the real economy, with industry super funds holding a greater proportion of their assets in job-creating assets like infrastructure, direct property construction and private equity.

The criteria for selecting directors in the current Bill are mostly based on financial expertise although there are fields for “industrial relations” and “industry growth”. This however will not be enough to ensure a diversity of perspectives because these final two fields are not mandatory and are vaguely defined.

The risk is that the Board is predominantly drawn from the finance sector and private business, rather than having a fair representation of worker voices. Again, this is a mistake also made with Infrastructure Australia where the lack of a tripartite structure has led to flawed decision making.

The ACTU instead calls for replacing s.19(2) with a new section requiring board appointments to be:

- Two positions for representatives from trade union organisations as nominated by the Australia Council of Trade Unions
- Two positions from industry.
- Two positions for other experts or Government representatives

For an example of a body with similar functions to the proposed NRF, but with tripartite governance, see the NSW Renewable Energy Sector Board which has union and industry representation.[2]

[2] NSW Renewable Energy Sector Plan (September 2022), Page 5: https://www.energy.nsw.gov.au/sites/default/files/2022-09/nsw-renewable-energy-sector-board-plan.pdf

All six positions could additionally be required to meet some of the criteria/fields listed in original s.19(2).

4. Ensuring respect for labour and ESG standards

The NRFC will need to take active steps to ensure that the companies it invests in are creating secure, well-paid jobs, along with other Environmental, Social and Governance (ESG) criteria. The experience of similar investment vehicles (see example of Snowy Hydro 2.0 and the CEFC included in Appendix 1 below) shows that in the absence of clear rules this will not happen. Accordingly, the ACTU recommends the following changes to the Bill, illustrated with the example of "Secure Jobs":

Requirement	Detail	Section of the Bill or other instruments.
1. A clear legislative commitment in the Act to Secure Work.	Include an overarching commitment to create "Secure jobs"	Amend: s.3 Objects, s.71 Investment mandate and s.75 Investment policies.
2. Companies receiving NRFC investment bound by its labour standards and ESG policy	Requirements for companies receiving NRFC investment to meet labour standards and ESG policy commitments, including, among other areas: 1. Secure work 2. Gender equality 3. Requirement for collective bargaining,[2] 4. Adherence to labour standards, and WHS.[3] 5. Collaborative approach and respect for unions delegates 6. Other ESG standards including pay fair share of tax, tax transparency, and not using low tax jurisdictions. 7. Taking remedial action in event of a breach, where appropriate	s.71 Investment mandate and s.75 Investment policies include a new section 75(1)(h): "Labour standards policy including promotion of secure work, gender equality, requirement for collective bargaining and adherence to labour and WHS laws." Ensure that "terms and conditions" of investments referred to in sections 64 to 66 contain binding commitments to labour standards policy.

3.	Monitoring and reporting on labour and other ESG standards.	Labour and ESG reporting indicators developed. Companies receiving investment from the NRFC should be: 1. publicly listed on the NRFC website, 2. be required to report against key indicators on labour standards and ESG, 3. be required to consult with workplace union representatives (through Workplace Organising Committees) on reporting including by providing them with information necessary for them to perform their role, and 4. the NRFC should be required to report on these results at both firm level and overall.	Amend investment policies (s.71 and s.75) to ensure requirements to develop indicators along with points (i) to (iv). Amend ss.82 and 83 to explicitly require NRFC to report on these matters, as per point (iv).
4.	Enforcement and Complaints mechanism	Investment policy needs to provide that: • where labour standards and ESG policy is not being met, appropriate remedial action must be taken. • an accessible and credible complaints mechanism for people alleging a company associated with the NRFC has breached an NRFC policy on labour or ESG.	New section 75(1)(j) (or a standalone section) to require development and implementation of a complaints mechanism.

To help guide all of this work, it could either be an explicit responsibility of the Board, or the Bill could also establish a "Labour Standards and ESG Committee" that is tripartite and would have responsibility for developing policy on points 2, 3 and 4 as listed above. The Committee would report to the Board which would be required to consult with it.

These are common sense changes adopted and applied in other similar contexts. For example, the NSW Renewable Energy Sector Board has a plan that has eligibility criteria that requires "a current certified industrial agreement with the Fair Work Commission", as well as other commitments in work health and safety, gender equality, and compliance with the modern slavery act.[3] This plan was developed by a tripartite board involving trade unions.

The NRFC should also adopt the procurement standards being rolled out through the Government's Buy Australia Plan and delivered by the Future Made in Australia Office in the Department of Finance.[4] This includes targets for apprenticeships, gender equity, First Nation's workers and local content requirements, among others.

Further, the NRFC along with all specialist investment vehicles of the Federal Government should adhere to best practice with sustainable finance. This includes becoming signatories to the UN Principles for Responsible Investment (PRI), especially in terms of ESG and global leadership, and ensuring that it's policies and procedures are consistent with the UN PRI standard, as well as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises.

Finally, the Explanatory Memorandum is silent on the issues of standards, compliance, monitoring and enforcement. An updated EM should include this.

5. Supporting our national goals

The NRFC will have to work closely in coordination with a range of bodies to meet shared objectives. Two examples here are key. Firstly, effective industry policy will need to drive coordination in investment, that the private sector alone is failing to do. This includes the development of common user facilities and infrastructure that makes little sense for one company acting alone to invest in. A key example is in the energy sector, where Australia has ample opportunity to develop a world leading offshore wind industry yet lacks the port infrastructure to support its development.

Secondly, the energy transition will require tremendous coordination and support to ensure that Australia' seizes its chance to become a renewables super power and that economic

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[3] Ibid, Page 28.

[4] For more information on the Future Made in Australia Office and Buy Australian Plan see https://www.finance.gov.au/business/buyaustralianplan#future-made-in-australia-office

transformation can create secure and well paid jobs, especially in those regions that have powered Australia for so long. The NRF will therefore need to work closely with the national Energy Transition Authority (ETA) proposed by the unions to support local transition plans, rather than cut across or ignore them. It will also need to work with a range of other bodies, including the newly established Jobs and Skills Australia and Infrastructure Australia, among others.

The requirement that the NRFC supports these broader efforts should be clarified in the functions of the NRFC (see s12(b) in particular) as well as in the Investment mandate. The Minister should be able, by regulation, or within the investment mandate, determine those entities which the NRFC should coordinate with in making investment decisions. In the absence of such direction, there is a significant risk that the NRF will behave more like any other private investment actor, that fails to address the key structural challenges outlined at the beginning of this submission.

6. Ensuring investments are strengthening Australia’s economy.

The Bill requires investments to be “solely or mainly Australian-based" (s.69) but does not set an objective test for how this should be determined. It is set by a Board decision made in accordance with guidelines it has made (s.70). There should instead be an objective test of whether or not an investment is solely or mainly Australian-based within the Act.

Appendix 1: The pitfalls of the CECF model: Snowy Hydro 2.0

In developing the NRFC Bill, the Department of Industry, Science and Resources has said that it is emulating the successful model used by the Clean Energy Finance Corporation (CEFC). The ACTU however has concerns with this model. As with the current NRFC Bill, the CEFC has no statutory responsibilities to ensure it is creating secure jobs with decent working conditions. For example, it has invested $125 million in Snowy Hydro 2.0.[5] Unions involved in Snowy Hydro report the following workplace issues:

- No safe access and egress to site
- Noncompliance issues with AS3012
    - Not mechanically protecting electrical cables
    - No emergency lighting installed
    - Switchboard non-compliant with exposed live electrical parts
    - No lighting
- A High Voltage switch room exploded after unqualified workers were allowed on site to work on high voltage equipment
- No cleaning of toilets, no running water
- Power outages in the site camp because the company failed to fill generators leaving workers to have to go sleep in their cars for heating
- Rodent infestation so severe that workers were getting bitten by mice in their sleep at night in the camp
- Poor fatigue management, workers doing long rosters because they are forced to travel to and from the job in their own time
- Lunch rooms with not enough seats, not cleaned regularly and the food provided on site at the camp is often old, spoiled and at times has been rotten
- Amenities for women are non-existent – no sanitary bins. Company was charging $7.50 for a box of 6 tampons out of a vending machine
- Some subcontractors failing to supply winter jackets
- The emergency access is flooded and the company has done nothing to find an alternative access

Safework NSW has also issued a series of enforcement notices concerning work health and safety relating to the Snowy 2.0 project.

There is no meaningful way to raise these concerns with the CEFC, nor any conditions tied to its investment requiring Snowy Hydro to address these issues. The same mistake should not be made with the NRF Corporation.

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