

Chapter 1

Introduction

1.1 On 14 June 2017, the Senate referred matters relating to the governance and operation of the Northern Australia Infrastructure Facility (NAIF) to the Senate Economics References Committee (the committee) for inquiry and report by 7 December 2017.¹ The committee received two extensions to report by 6 July 2018.²

1.2 The terms of references for the inquiry are:

The governance and operation of the Northern Australia Infrastructure Facility (NAIF), with particular reference to:

- a. the adequacy and transparency of the NAIF's governance framework, including its project assessment and approval processes;
- b. the adequacy of the NAIF's Investment Mandate, risk appetite statement and public interest test in guiding decisions of the NAIF Board;
- c. processes used to appoint NAIF Board members, including assessment of potential conflicts of interest;
- d. the transparency of the NAIF's policies in managing perceived, actual or potential conflicts of interest of its Board members;
- e. the adequacy of the Northern Australia Infrastructure Facility Act 2016 and Investment Mandate to provide for and maintain the independence of decisions of the Board;
- f. the status and role of state and territory governments under the NAIF, including any agreements between states and territories and the Federal Government; and
- g. any other related matters.³

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website and wrote to relevant stakeholders and other interested parties to draw attention to the inquiry and invite them to make written submissions.

1.4 The committee received 116 submissions as well as additional information and answers to questions taken on notice, which are listed at Appendix 1.

1.5 A significant number of the submissions received by the committee broadly responded to the inquiry's term of reference g. any other related matters. These

1 *Journals of the Senate*, No. 43, 14 June 2017, pp. 1411–1412.

2 On 27 November 2017, the Senate granted the committee an extension to report by 24 April 2018; *Journals of the Senate*, No. 72, 27 November 2017, p. 2283. On 24 April 2018, the committee tabled a progress report requesting a further extension to 6 July 2018; *Journals of the Senate*, No. 95, 8 May 2018, p. 3026.

3 *Journals of the Senate*, No. 43, 14 June 2017, pp. 1411–1412.

submissions mainly commented on the possible economic and environmental impacts of the Indian multinational Adani Group's (Adani Group) proposal for NAIF funding to build a railway line from the Carmichael coal mine to the Abbot Point port in Queensland, also referred to as the North Galilee Basin Rail Project.⁴

1.6 The committee also received a large number of emails through online campaigns organised by Greenpeace, GetUp and Do Gooder. In total, these three campaigns generated over 15 000 emails. The majority of these emails expressed concern at the possible grant of NAIF funds to Adani.

1.7 The committee held five public hearings:

- Canberra—11 August 2017;
- Cairns—1 February 2018;
- Darwin—2 February 2018;
- Broome—9 April 2018; and
- Canberra—20 June 2018.

1.8 The names of the witnesses who appeared at the hearings are listed at Appendix 2.

1.9 The committee thanks all the individuals and organisations who assisted with the inquiry, especially those who made written submissions and appeared at hearings.

Background

Northern Australia Audit: Infrastructure for a Developing North

1.10 The development of Northern Australia became a particular focus for the Australian Government in 2015. In January of that year, Infrastructure Australia released a report entitled: *Northern Australia Audit: Infrastructure for a Developing North Report* (Infrastructure report). The Infrastructure report identified gaps in the provision of infrastructure in Northern Australia, resulting in 'unmet demand, missed opportunity, excessive pricing or poor service standard'.⁵ It also highlighted that there were a number of sources of market failure in the provision of infrastructure in Northern Australia which could require government investment.⁶

1.11 The Infrastructure report established that there are significant challenges to the creation of infrastructure in the northern part of Australia—specifically its remoteness, its smaller population and its dispersed industries. It suggested that if these challenges could be overcome, Northern Australia represented a significant economic potential, partly due to its proximity to the Asia-Pacific region.

4 See for example: Ms Claire Gronow, *Submission 3*; Climate Council of Australia, *Submission 50*; Dr Elizabeth Moore, *Submission 78*.

5 Australian Government, *Northern Australia Audit: Infrastructure for a Developing North Report*, January 2015, p. 6.

6 Australian Government, *Northern Australia Audit: Infrastructure for a Developing North*, January 2015, p. 15.

Budget announcement

1.12 Shortly after the release of the Infrastructure report, the establishment of NAIF was announced by the government on 12 May 2015 as a measure of the 2015–16 Budget. The then Treasurer, the Hon. Joe Hockey MP, explained:

I announce tonight a new \$5 billion Northern Australia Infrastructure Facility which is the first major step in our plan for our great North.

We will partner with the private sector and governments of Western Australia, the Northern Territory and Queensland, to provide large concessional loans for the construction of ports, pipelines, electricity and water infrastructure that will open our Northern frontier for business.⁷

White Paper on Developing Northern Australia

1.13 Following this announcement, on 18 June 2015, the government released the *White Paper on Developing Northern Australia* (White Paper) which built on the prior Infrastructure report. It furthered the idea of an infrastructure investment facility and outlined how the NAIF might function. It confirmed that the government would partner with the private sector and northern jurisdictions, in order to provide concessional loans to finance infrastructure projects in the north.

1.14 The White Paper proposed that concessional loans could be provided to a range of projects including airports, ports, rail, roads, energy, water, and communications infrastructure. The White Paper also noted that project proposals would be accepted from 1 July 2015.⁸

1.15 The White Paper set broad guidelines for the types of projects that NAIF would fund:

The Facility will provide concessional loans to projects that would not otherwise have been able to be built and will be aimed at infrastructure that will increase the productive capacity of northern Australia. Supported projects should have benefits that flow beyond project proponents.⁹

1.16 The White Paper also outlined elements of the project approval process, noting that 'the Government will assess all projects for financial viability before issuing a loan', and that 'this assessment will ensure that the proponent is capable of repaying the loan'.¹⁰

7 The Hon. J. B. Hockey MP, Treasurer of the Commonwealth of Australia, Budget Speech 2015, <http://www.budget.gov.au/2015-16/content/speech/html/speech.htm> (accessed 27 July 2017).

8 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 86.

9 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 86.

10 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, pp. 86–87.

1.17 The White Paper proposed that projects would have to meet eligibility criteria 'covering geographic eligibility, types of infrastructure and financial criteria', that would be determined following a consultation process.¹¹

1.18 Finally, the White Paper noted that the establishment of a NAIF 'aligns with the recommendations of the Northern Australia Advisory Group',¹² which called for 'mechanisms by which strategic 'game changing' and 'nation building' infrastructure investments in the north can be identified and funded by the public and private sector'.¹³

Consultation Paper

1.19 In November 2015, the government released a Consultation Paper on NAIF which considered NAIF's objectives and delivery model as well as the criteria for a project's loan eligibility and potential loan characteristics.¹⁴ The consultation process drew on expertise from industry, state and territory governments, relevant federal government departments and other stakeholders.¹⁵ At the time of writing, submissions to the consultation paper have not been published.

Legislative framework

1.20 Following this consultation, the Northern Australia Infrastructure Facility Bill 2016 (NAIF bill) was released publically on 28 January 2016.¹⁶ The NAIF bill was introduced into Parliament on 17 March 2016 and referred to the Joint Select Committee on Northern Australia (Joint committee) for inquiry and report.

1.21 The Joint committee tabled its report on 14 April 2016, which recommended that the bill be passed to allow the establishment of NAIF and commented that NAIF 'could potentially make a significant contribution to the development of critical infrastructure in Northern Australia'.¹⁷

1.22 The NAIF bill was passed on 3 May 2016 and received royal assent the following day. The NAIF was then established on 1 July 2016.

11 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, p. 87.

12 The Northern Australia Advisory Group was established in June 2014, to provide expert advice on developing Northern Australia. More information is available on the following website: http://minister.infrastructure.gov.au/wt/releases/2014/June/wt084_2014.aspx (accessed 21 June 2018).

13 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, pp. 86–87.

14 Australian Government, Northern Australia Infrastructure Facility—Consultation Paper, November 2015, <https://industry.gov.au/industry/Northern-Australia-Infrastructure-Facility/Documents/Consultation-Paper.pdf> (accessed 21 May 2018).

15 Department of Industry, Innovation and Science, *Submission 42*, p. 3.

16 Department of Industry, Innovation and Science, *Submission 42*, p. 3.

17 Joint Select Committee on Northern Australia, *Advisory Report on the Northern Australia Infrastructure Facility Bill 2016*, 14 April 2016, p. 9.

1.23 On 17 March 2016, NAIF's draft Investment Mandate was released for public consultation, to which the Department of Industry, Innovation and Science (department) received 11 submissions. These submissions are not currently available on the department's website.

1.24 The Investment Mandate was made and registered on the Federal Register of Legislation on 4 May 2016 and commenced the following day.¹⁸

Purpose of inquiry

1.25 Since its establishment in July 2016, NAIF has been subject to a significant level of public scrutiny, of which the controversial Carmichael coal mine, and associated railway line, proposed by Adani was the prime catalyst.

1.26 Concern over the potential loan to Adani led to a broader interest and scrutiny of NAIF's operations and governance with stakeholders raising the following issues:

- Lack of overall transparency and accountability;
- Inadequate executive oversight by the Minister for Resources and Northern Australia;
- Effectiveness of the NAIF Board—its independence, composition and management of conflicts of interest;
- Public disclosure of information;
- Deficiencies in NAIF's project assessment and approval processes; and
- Absence of clear and effective communication with the public.

1.27 These concerns were echoed by a diverse range of individuals and organisations, which speaks to the broad nature of the criticisms NAIF has encountered. For example, the Arid Lands Environment Centre contended that:

The current structure of the NAIF and its accountability to the Australian government and Australian taxpayers leaves a lot to be desired. The NAIF has not demonstrated it is capable of delivering investment that provides sustainable and equitable benefits to the economies of the north. This is due to a fundamental lack of proper accountability, transparency and integrity, which has left the facility vulnerable to conflicts of interest and opens up the potential for corruption.¹⁹

1.28 In their submission to the inquiry, Professor John Quiggin, Associate Professor Kristen Lyons and Dr Morgan Brigg, argued that:

The establishment of the Northern Australia Infrastructure Facility offers substantial potential benefits and also substantial dangers. The potential

18 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], <https://www.legislation.gov.au/Details/F2016L00654> (accessed 20 June 2018).

19 Mr Jimmy Cocking, Chief Executive Officer, Arid Lands Environment Centre, *Committee Hansard*, 2 February 2018, p. 28.

benefits will arise if the NAIF is used to promote infrastructure investments where the social benefits exceed the commercial returns.

...

The dangers arise first from the possibility of a return to an investment strategy based on an outdated developmentalist strategy and second from the risk that the allocation of funds will be driven by short term political imperatives.²⁰

1.29 Transparency Australia International also commented that:

Through our research, we found that the NAIF processes for investment decision-making lack transparency, accountability and integrity. These weaknesses undermine public scrutiny of its decisions, give rise to conflicts of interests, and could result in companies with a history of noncompliance, criminal or corrupt behaviour gaining access to public funds.²¹

1.30 This inquiry seeks to examine these issues in the context of the adequacy and transparency of the NAIF's governance framework including its Act, Investment Mandate, Board processes and policies.

1.31 Ms Laurie Walker, NAIF's CEO has also acknowledged the importance of this inquiry, commenting that the 'outcome of this inquiry is extremely important, because it goes to the confidence that the market and stakeholders have in the integrity of our process'.²²

Recent developments

Expert Review Report

1.32 In December 2017, Mr Tony Shepherd AO was selected by direct tender by the Department of Industry, Innovation and Science to conduct an independent expert review of the NAIF.²³ Mr Shepherd has considerable experience in the development and management of major infrastructure projects throughout Australia. The review was conducted between 4 December 2017 and 20 January 2018, and was released by government on 18 April 2018.

1.33 The review's aim was to 'recommend ways to accelerate project development' and ensure the NAIF can best meet its legislated objective to enable 'the construction of northern Australia economic infrastructure which provides a basis for economic and population growth in northern Australia'.²⁴

20 Professor John Quiggin, Associate Professor Kristen Lyons and Dr Morgan Brigg, *Submission 66*, p. 23.

21 Transparency International Australia, *Submission 44*, p. [1].

22 Ms Laurie Walker, Chief Executive Officer, Northern Australia Infrastructure Facility, *Committee Hansard*, 11 August 2017, p. 48.

23 Mr Shepherd previously chaired the National Commission of Audit from 2013 to 2014.

24 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 12.

1.34 The review considered NAIF's policy settings, with particular reference to its Investment Mandate, and assessed the implications on NAIF's project identification, selection and assessment processes, including risk settings.

1.35 The review made 15 recommendations. A number of these recommendations proposed changes to NAIF's 2016 Investment Mandate, in particular recommendations 4, 5, 6, and 7. This saw NAIF's original 2016 Investment Mandate repealed and replaced with a new 2018 Investment Mandate which came into force on 3 May 2018.²⁵

Australian National Audit Office review

1.36 On 18 May 2018, the Australian National Audit Office (ANAO) announced that it would undertake a review of the NAIF that was included in the Annual Audit Work Program for 2017–18.

1.37 The ANAO proposes to examine if NAIF has:

- in place a sound governance framework that is fit-for-purpose; and
- implemented arrangements that support effective integrity and transparency in relation to its operations²⁶

1.38 In a letter to the Hon. Wayne Swan MP, the Auditor-General advised that 'the audit report is anticipated to table in December 2018'.²⁷

Scope and structure of report

1.39 The report is divided into five chapters including this introductory chapter:

- Chapter 2 examines NAIF's governance framework, including its Act, Investment Mandate and governance policies. This includes an assessment of the 2018 Investment Mandate.
- Chapter 3 examines NAIF's Board of Directors, including how it deals with conflicts of interest.
- Chapter 4 examines issues in relation to NAIF's project assessment and approval processes.
- Chapter 5 examines issues around NAIF's transparency and accountability, as well as how it communicates and engages with the public.

25 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], <https://www.legislation.gov.au/Details/F2018L00567> (accessed 25 June 2018).

26 Australian National Audit Office, In-Progress Performance Audit, *Governance and integrity of the Northern Australia Infrastructure Facility*, <https://www.anao.gov.au/work/performance-audit/governance-and-integrity-northern-australia-infrastructure-facility> (accessed 21 June 2018).

27 Australian National Audit Office, Request for Audit, Northern Australia Infrastructure Facility, *Auditor-General's follow-up*, 18 May 2018, <https://www.anao.gov.au/work/request/northern-australia-infrastructure-facility> (accessed 21 June 2018).

1.40 Recommendations made by the Shepherd review, which have not yet been implemented, are discussed in the relevant sections in chapters 3, 4 and 5.