

# Chapter 3

## Board of Directors

3.1 As required under the *Northern Australian Infrastructure Facility Act 2016* (NAIF Act), the Northern Australian Infrastructure Facility (NAIF) is governed by a Board of Directors (board). This chapter discusses the role of the NAIF board and the process and requirements for board appointments. It examines the criticisms raised during the course of the inquiry about the experience and expertise of NAIF board members, and the board's management and monitoring of potential conflicts of interest. It also considers some of the suggestions made to improve the board's effectiveness.

### Role of the NAIF board

3.2 As NAIF is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), the NAIF board is independent from government. Pursuant to section 14 of the NAIF Act the functions of the NAIF board are:

- (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the Facility; and
- (b) to ensure the proper, efficient and effective performance of the Facility's functions; and
- (c) any other functions conferred on the Board by this Act.<sup>1</sup>

3.3 The principle role of the NAIF board is to make Investment Decisions. An Investment Decision is defined by NAIF as a decision to offer, or not to offer, a financing mechanism.<sup>2</sup> The process of making an Investment Decision is examined in Chapter 4 of this report.

### Appointments

3.4 The process for appointing NAIF board members is set out in the NAIF Act. It specifies that the board will consist of a Chair and no less than four and no more than six other members,<sup>3</sup> and that members of the board are to be appointed by written instrument by the Minister, in this case, the Minister for Resources and Northern Australia, currently Senator the Hon. Matthew Canavan.<sup>4</sup>

3.5 Subsection 15(4) of the NAIF Act also sets out eligibility requirements for appointments to the NAIF board, it explicitly states that:

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1 *Northern Australia Infrastructure Facility Act 2016*, s. 14.

2 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], Section 4, <https://www.legislation.gov.au/Details/F2018L00567> (accessed 6 June 2018).

3 *Northern Australia Infrastructure Facility Act 2016*, ss. 13(2)

4 *Northern Australia Infrastructure Facility Act 2016*, ss. 15(1).

(4) A person is not eligible for appointment as a member unless the person has experience or expertise in one or more of the following fields:

- (a) banking and finance;
- (b) private equity or investment by way of lending or provision of credit;
- (c) economics;
- (d) infrastructure planning and financing;
- (e) engineering;
- (f) government funding programs or bodies;
- (g) financial accounting or auditing;
- (h) law.<sup>5</sup>

### ***Selection process***

3.6 In 2016, the Department of Industry, Innovation and Science (the department), supported the Minister in selecting the NAIF board members, by undertaking a consultative process to identify appropriate candidates. This process identified over 90 candidates. The department provided a list of candidates to the Minister that included input from:

- an executive search agency (conducted by Korn Ferry);
- Queensland, Western Australia and the Northern Territory governments; and
- the department's own research.<sup>6</sup>

3.7 While the Minister has the final decision on the appointment of board members, consistent with the Cabinet Handbook, the Minister's appointments were referred to Cabinet for consideration, after which the Minister appointed the board via written instrument.<sup>7</sup>

### ***Current appointments***

3.8 At the time of writing, the NAIF board is led by Acting Chair, Mr Khory McKormick from Queensland. NAIF's website states:

Mr McCormick is a legal consultant and practicing independent neutral. He was previously a partner at a major Australia Law firm. He has over 35 years' experience across sectors of infrastructure, resource and energy, public sector and private sector, engineering, construction, transportation and other commercial activities.<sup>8</sup>

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5 *Northern Australia Infrastructure Facility Act 2016*, ss. 15(4).

6 Department of Industry, Innovation and Science, *Submission 42*, pp. 9–10.

7 Department of Industry, Innovation and Science, *Submission 42*, pp. 9–10.

8 Australian Government, Northern Australia Infrastructure Facility, About Us, *NAIF Board*, <http://www.naif.gov.au/about-us/naif-board/> (accessed 25 May 2018).

3.9 Mr McCormick was appointed as the Acting Chair of the NAIF board following the resignation of NAIF's inaugural Chair, Ms Sharon Warburton, on 30 April 2018.

3.10 At the time of writing, the other NAIF board members, also referred to as Directors, are:

- Mr Barry Coulter (Northern Territory)
- Mr Justin Mannolini (Western Australia)
- Mr Bill Shannon (Queensland)
- Ms Karla Way-McPhail (Queensland).<sup>9</sup>

3.11 These members represent the three Northern Australian jurisdictions and bring together industry experiences as meets the criteria established in the NAIF Act.

3.12 Dr Sally Pitkin was also appointed as a board member when NAIF was established. However, on 31 July 2017, Dr Pitkin resigned from the NAIF board when she was appointed as Chair of Super Retail Group. At the time of writing, Dr Pitkin had not yet been replaced, however, the department noted in answers to questions on notice in September 2017, that a process to appoint a replacement board member had commenced.<sup>10</sup>

### ***Independence of the NAIF board***

3.13 Submitters raised concerns that the decision to appoint board members is the responsibility of only one Minister, in this instance, Minister Canavan.<sup>11</sup> In particular, the Australian Conservation Foundation expressed concern that the Minister's vocal promotion of coal had 'compromised the NAIF board's independence':

Although the Minister does not have the legal power to unilaterally approve an application, it is possible for him to exert influence over the board's decisions indirectly.<sup>12</sup>

3.14 Similarly, Doctors for the Environment Australia commented:

Unfortunately, the Minister responsible for the NAIF has already undermined the independence of the Board and its deliberations via his sustained promotion of Adani and his public endorsement of their NAIF application.<sup>13</sup>

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9 Short biographies for each member of the NAIF board, including their areas of expertise, can be found on NAIF's website: <http://naif.gov.au/about-us/naif-board/> (accessed 16 April 2018).

10 Department of Industry, Innovation and Science, answers to question on notice, 11 August 2017 (received 5 September 2017).

11 See for example: Dr Donald Gutteridge, *Submission 93*, p. 1; Ms Sandra Williams, *Submission 7*, p. 2; Mrs Nancy Pallin, *Submission 11*, p. 3.

12 Australian Conservation Foundation, *Submission 26*, p. 12.

13 Doctors for the Environment Australia, *Submission 25*, p. 11.

3.15 To address this issue, submitters proposed that the NAIF board needed to be independent from the Minister.<sup>14</sup> Lock the Gate Alliance explained:

We are calling for proper independence of the Board and the process, so that it cannot be used as a political football and is not subject to brazen political grandstanding of the type that has occurred with the Adani project.<sup>15</sup>

3.16 Dr John Davison-Mowle, a private citizen, noted in his submission that 'there is no independent process' for the selection of board members.<sup>16</sup> Dr Davison-Mowle recommended that the board be 'appointed independently of the current government'.<sup>17</sup>

## Composition

3.17 Although the appointed NAIF board members have expertise in the relevant fields, as required by the NAIF Act, submitters generally considered that the NAIF board's effectiveness was hindered as a result of its composition. Submitters concerns in this area focussed on the balance of the skills and expertise of the NAIF board, pointing to a lack of diversity of experience, styles and thoughts; as well as conflicts of interests, including ties to specific industries on the board.

### *Lack of diversity of expertise*

3.18 Submitters suggested that the individuals appointed to the board by the Minister appeared to have considerable interests in the mining industry.<sup>18</sup> This was particularly concerning to submitters given that the NAIF board was, at one time, considering providing a loan to the Adani Group for the development of the Carmichael coal mine. This view was held by a range of individuals and organisations.<sup>19</sup>

3.19 Mr Thomas Swann, Researcher at The Australia Institute acknowledged that the NAIF board had a 'diversity of experience', however, also noted that 'there is certainly a strong bias towards resource extraction'.<sup>20</sup>

3.20 Professor Thomas Clarke from the University of Technology Sydney also commented that 'the board represents in the majority the entrenched interests of the

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14 See for example: Concerned Economists Group, *Submission 48*, p. 6; Mr Hugh Scobie, *Submission 63*, p. 2.

15 Lock the Gate Alliance, *Submission 34*, p. 3.

16 Dr John Davison-Mowle, *Submission 22*, p. 2.

17 Dr John Davison-Mowle, *Submission 22*, p. 3.

18 See for example: Mr Thomas Swann, Researcher, The Australia Institute, *Committee Hansard*, 11 August 2017, p. 23; Dr Noel Preece, *Committee Hansard*, 1 February 2018, p. 9; Ms Shar Molloy, Director, Environment Centre NT, *Committee Hansard*, 2 February 2018, p. 29.

19 See for example: Mr Mark Zanker, *Submission 1*, p. 1; Mr Johnathon Peter, *Submission 2*, p. 1; Dr Clare Smith, *Submission 6*, p. 1; Mackay Conservation Group, *Submission 28*, p. 2.

20 Mr Thomas Swann, Researcher, The Australia Institute, *Committee Hansard*, 11 August 2017, p. 23.

mining industry'.<sup>21</sup> Professor Clarke pointed out that 'other important industries and sectors vital to the regional economy's development, including agriculture, transport and tourism, appear to have been relatively neglected'.<sup>22</sup>

3.21 Dr Noel Preece, an environmental scientist, businessman, researcher and farmer, agreed with this view, emphasising that:

The appointments seem to be all from the finance, legal, mining and infrastructure sectors, several with strong links to mining and mineral resources. There are no representatives of the tourism, indigenous or environmental sectors and only limited representation from the agriculture sector, which leaves a serious gap in the knowledge base on which risk assessments and investment decisions are made.<sup>23</sup>

3.22 Ms Shar Molloy, Director of the Environment Centre NT, similarly commented that:

We have concerns that their backgrounds are strongly skewed towards fossil fuel and mining and potentially have limited expertise in other areas that really need to play a large part in the investment of northern Australia, particularly in regards to renewable energy, agriculture and tourism.<sup>24</sup>

3.23 In order to address the issue of expertise on the NAIF board, submitters proposed that subsection 15(4) of the NAIF Act be amended to include experience or expertise in a wider range of fields relevant to Northern Australia, such as: in tourism, agriculture, renewable energy and environmental science. Submitters considered that these industries ought to be represented on the NAIF board due to their significant presence in Northern Australia.<sup>25</sup>

3.24 Specifically, the Australian Conservation Foundation recommended that the NAIF Act be amended to 'require the appointment of board members with experience in agricultural, renewable, educational and environmental matters'.<sup>26</sup>

3.25 Mr Swann from The Australia Institute agreed and emphasised the need for the NAIF board to have expertise in environmental science:

...it seems to us, as researchers on the issues to do with northern Australian development, that environmental science, water and climate change are of particular concern and particular concern from a financial point of view. If

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21 Professor Thomas Clarke, Professor of Corporate Governance, University of Technology Sydney, *Committee Hansard*, 11 August 2017, p. 2.

22 Professor Thomas Clarke, Professor of Corporate Governance, University of Technology Sydney, *Committee Hansard*, 11 August 2017, p. 2.

23 Dr Noel Preece, *Submission 24*, p. 3.

24 Ms Shar Molloy, Director, Environment Centre NT, *Committee Hansard*, 2 February 2018, p. 29.

25 See for example: Lock the Gate Alliance, *Submission 34*, p. 2; Sunshine Coast Environment Council, *Submission 40*, p. 3; Gecko Environment Council, *Submission 67*, p. 6.

26 Australian Conservation Foundation, *Submission 26*, p. 3.

you're going to be investing in this area, you need to be aware of these risks and considering them closely. It is concerning that the NAIF Act does not list environmental science or climate change expertise as areas of expertise that could be bases for appointment to the board. It also does not require the minister to consider a diversity of experience.<sup>27</sup>

3.26 Ms Bess Murphy, Community Engagement Coordinator of the Cairns and Far North Environment Centre also believed that expertise in environmental science would be crucial to NAIF's decision making processes:

For us, we really would like to see more environment and science representation on the board. That is in the context of northern Australia being mostly unpopulated and covered in natural areas. To us, it seems really quite important that that would be a requirement—to have environment and science representation.<sup>28</sup>

3.27 Ms Pip Close from Tourism Tropical North Queensland suggested that a representative from the tourism industry on the NAIF board would be a welcome addition as tourism is a key industry across all three jurisdictions of Northern Australia.<sup>29</sup>

3.28 Ms Imogen Zethoven from the Australian Marine Conservation Society added that not including tourism as a required field of expertise for eligibility as a NAIF board member was an 'enormous oversight', especially given that the tourism sector is a major employer in Northern Australia.<sup>30</sup>

3.29 The Environmental Defenders' Office went so far as to suggest that the NAIF Act be amended to reflect the legislative requirements for appointments to the Clean Energy Finance Corporation's (CEFC) board, suggesting that this would impose a 'higher threshold for Board members' balance of skills and expertise and members' eligibility'.<sup>31</sup>

3.30 Subsection 16(2) of the *Clean Energy Finance Corporation Act 2012* (CEFC Act) specifies that a person is not eligible for appointment as a board member unless the responsible Ministers are satisfied that the person has:

- (a) substantial experience or expertise; and
  - (b) professional credibility and significant standing;
- in at least one of the following fields:

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27 Mr Thomas Swann, Researcher, the Australia Institute, *Committee Hansard*, 11 August 2017, p. 23.

28 Ms Bess Murphy, Community Engagement Coordinator, Cairns and Far North Environment Centre, *Committee Hansard*, 2 February 2018, p. 29.

29 Ms Pip Close, Chief Executive Officer, Tourism Tropical North Queensland for Queensland Tourism Industry Council, *Committee Hansard*, 1 February 2018, p. 27.

30 Ms Imogen Zethoven, Campaign Director, Great Barrier Reef, Australian Marine Conservation Society, *Committee Hansard*, 1 February 2018, p. 32.

31 Environmental Defenders' Office, *Submission 111*, p. 3.

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- (c) banking and finance;
  - (d) venture capital, private equity or investment by way of lending or provision of credit;
  - (e) economics;
  - (f) engineering;
  - (g) energy technologies;
  - (h) government funding programs or bodies;
  - (i) the environmental sector;
  - (j) financial accounting;
  - (k) law.

3.31 The NAIF Act's eligibility requirements for appointments to the board do not include the fields of 'energy technologies' or 'the environmental sector' as relevant areas of experience or expertise.<sup>32</sup>

#### ***Lack of Indigenous representation***

3.32 Submitters raised concerns that the NAIF board did not have an Indigenous member. This was viewed as an important consideration due to the fact that a significant percentage of Northern Australia's population is Indigenous and further, because a significant amount of land in Northern Australia belongs to Indigenous groups.

3.33 In particular, Mr Shannon Burns, Policy Officer at the Cape York Land Council commented that:

There isn't Indigenous representation on the board and we think that with 15 per cent of the population of northern Australia being Indigenous people, and such a high level of land ownership and native title existing in northern Australia, obviously the Indigenous interest is strong and that would suggest that there could be Indigenous representation on the board.<sup>33</sup>

3.34 Dr Noel Preece also highlighted the significance of the higher Indigenous population noting that 'southern people' often do not recognise that Indigenous people constitute a much higher percentage of the total population in Northern Australia:

A very large proportion of northern Australian people are Indigenous. That's often not recognised by southern people. In parts it's 80 to 90 per cent, sometimes even higher. Across northern Australia it's in the order of 40 to 50 per cent, according to the region you're in. That's a really important aspect. Most of those Indigenous people are disadvantaged, suffering from poor conditions, poor health, lack of jobs and a lot of pressure on them to perform, so to speak, by getting a job or creating a job. I think that needs to be recognised also. That reflects on the constitution and construction of the

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32 *Northern Australia Infrastructure Facility Act 2016*, ss. 15(4).

33 Mr Shannon Burns, Policy Officer, Cape York Land Council, *Committee Hansard*, 1 February 2018, p. 38.

board of NAIF itself. There is no Aboriginal representation at all on the board.<sup>34</sup>

3.35 The Environmental Defenders' Office also viewed the lack of Indigenous representation on the NAIF board as an issue and recommended that the Act be amended to require the NAIF board to have an Indigenous member. The organisation also proposed that, alternatively, the NAIF Act might require the board to include 'a person recognised by Aboriginal and Torres Strait Islander communities as having skills, knowledge and experience working with Aboriginal and Torres Strait Islander people on community engagement, community development or other such relevant issues'.<sup>35</sup>

3.36 Ms Bess Murphy also proposed that an Indigenous member be appointed to the NAIF board as soon as possible:

I really find it absolutely shocking—and I know that I speak for others when I say this—that there is no Indigenous representation on the board. I think that is something that should be rectified really, really soon.<sup>36</sup>

3.37 Mr Joe Morrison, CEO of the Northern Land Council, noted that following the Blue Mud Bay decision, Aboriginal people own half of the Northern Territory land mass and 85 per cent of the coastline. Mr Morrison, explained to the committee that, in his view, Indigenous people wanted to see their lands and waters developed in ways that are culturally and environmentally appropriate, however, they had not often been included in decision making processes. Further, Mr Morrison considered that:

...government policies that guide development in northern Australia have neglected to recognise Aboriginal people as primary and legitimate stakeholders by virtue of their land ownership and demography.<sup>37</sup>

3.38 Mr Morrison believed that NAIF had a role to play in changing this paradigm and assisting the residents of Northern Australia to 'attract foreign investment for Indigenous development objectives'.<sup>38</sup>

### *Understanding the state and territory perspective*

3.39 The Expert Review of the NAIF conducted by Tony Shepherd (Shepherd review) noted that 'it may also be worthwhile appointing Board members that are familiar to and with the State and Territory governments'. Mr Shepherd proposed that this would provide assurance to the jurisdictions that the NAIF board shared their

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34 Dr Noel Preece, *Committee Hansard*, 1 February 2018, p. 7.

35 Environmental Defenders' Office, *Submission 111*, p. 12.

36 Ms Bess Murphy, Community Engagement Coordinator, Cairns and Far North Environment Centre, *Committee Hansard*, 2 February 2018, p. 29.

37 Mr Joe Morrison, Chief Executive Officer, Northern Land Council, *Committee Hansard*, 2 February 2018, p. 8.

38 Mr Joe Morrison, Chief Executive Officer, Northern Land Council, *Committee Hansard*, 2 February 2018, p. 8.

priorities. The Shepherd review made the following recommendation in relation to the NAIF board:

Recommendation 12—NAIF Board

Strengthen the NAIF Board by the inclusion of an additional Director who has successful project development experience in one of the States and Territories and who understands the State and Territory perspective and is respected.<sup>39</sup>

### Conflicts of interest

3.40 The NAIF board must adhere to Commonwealth legislation around conflicts of interest as well as to a number of NAIF policies including the NAIF Board Charter and its Conflict of Interest Policy (COI Policy).

3.41 Under Section 29 of the PGPA Act, NAIF board members have a duty to disclose any material personal interest that relates to the affairs of the NAIF:

(1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.<sup>40</sup>

3.42 Section 14 of the Public Governance and Performance Accountability Rule 2014 prescribes that these interests must be disclosed orally or in writing to each board member. The disclosure must include details of the nature and extent of the interest and how the interest relates to the affairs of the entity. Further, the disclosure must be made at a meeting of the members of the board as soon as practicable after the official becomes aware of the interest, and it must be recorded in the minutes of the meeting.<sup>41</sup>

3.43 In relation to the disclosure of conflicts of interest by NAIF board members, the COI Policy states:

NAIF's approach to managing Director's Conflicts of Interest requires Directors to provide a disclosure of non-portfolio shareholdings and other personal interests upon joining the NAIF Board and to keep this disclosure updated by notifying NAIF's Board Secretary of changes. The Board Secretary tables a summary of all disclosed interests at each Board meeting. The Board Secretary takes into account the disclosed interests when distributing Board papers prior to a meeting to ensure that Directors are not provided with information on a matter where they have a Conflict of Interest. Directors have a duty to disclose material personal interests that

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39 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, p. 10.

40 *Public Governance and Performance Accountability Act 2013*, ss. 29(1).

41 *Public Governance and Performance Accountability Rule 2014*, s. 14.

relate to NAIF's affairs on an ongoing basis and must absent themselves from Board discussions where they have a Conflict of Interest.<sup>42</sup>

3.44 The COI Policy also notes that non-compliance with the above disclosure provision may result in disciplinary action or termination of employment. The responsible minister may remove any board member who does not comply with the policy.<sup>43</sup>

3.45 Potential conflicts of interest of NAIF board members have been raised in many forums over the course of this inquiry, including at Senate Estimates hearings since 2016, and in published media articles.

3.46 These concerns centred around board members' interests in the mining industry and the conflicts of interest these ties raised in the context of the potential Investment Decision to fund the Adani Group for the construction of a railway line from the Carmichael coal mine to the Abbot Point port in Queensland.

3.47 Specifically, submitters were angered by the possibility of board member Ms Karla Way-McPhail, who has significant interests in the mining industry, making an Investment Decision from which she would likely benefit.<sup>44</sup>

3.48 The Australian Conservation Foundation noted that Ms Way-McPhail is the CEO of two companies in the mining industries: Coal Train Australia, a coal industry training company and Undamine Industries, a coal contracting company.<sup>45</sup>

3.49 At a Senate Estimates hearing in June 2017, Ms Laurie Walker, NAIF's CEO, informed the committee that board members were aware of their obligations in relation to declarations of conflicts of interest stating:

Various conflicts have been declared by various directors. I have absolute confidence that those board members have declared conflicts in compliance with the act and the policy, which require disclosure of material personal interests. The NAIF does not publicly disclose which directors have recused themselves, because we are obliged under Privacy Act provisions to maintain that information as personal information and not disclose it. Directorships are publicly disclosed. The other reason that we do not disclose publicly which directors have recused themselves is (1) that it is done as part of board deliberations, which are commercial in confidence

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42 Northern Australia Infrastructure Facility, *Conflict of Interest Policy*, p. 4, <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Conflicts-of-Interest-Policy.pdf>, (accessed 18 July 2017).

43 Northern Australia Infrastructure Facility, *Conflict of Interest Policy*, p. 7, <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Conflicts-of-Interest-Policy.pdf>, (accessed 18 July 2017).

44 See for example: Environmental Council of Queensland, *Submission 60*, p. 3; Greenpeace, *Submission 102*, p. 6; Australian Marine Conservation Society, *Submission 55*, pp. 1–2.

45 Australian Conservation Foundation, *Submission 26*, p. 13.

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and (2) a conflict arising could disclose particular projects that are before the board for deliberation. That would reveal commercial in confidence.<sup>46</sup>

### ***Lack of disclosure***

3.50 Despite the above statement from NAIF, a number of submitters to this inquiry noted the lack of disclosure in relation to board members' conflicts of interest, and raised concerns over the impartiality of the NAIF board and its ability to make responsible investment decisions.<sup>47</sup>

3.51 Submitters suggested that transparency around board members' conflicts of interest should be mandatory given the large amount of public money that is being loaned by NAIF.<sup>48</sup>

3.52 Professor Thomas Clarke argued that there was 'no transparency whatsoever in the NAIF's policies and practices that demonstrates managing perceived, actual or potential conflicts of interests of its board members'. Professor Clarke stated:

Indeed, in the composition, processes and decisions of the NAIF board, conflicts of interests are apparently compounded into normal business practice. This is not an acceptable standard for public bodies in Australia, or for the disbursement of public funds.<sup>49</sup>

3.53 Mr Swann from the Australia Institute acknowledged that given the nature of the expertise required to become a NAIF board member, it was not unexpected that some of the individuals appointed might have conflicts of interest. However, Mr Swann also pointed out that the more troubling issue was how these potential conflicts of interest were perceived and dealt with by NAIF:

It's understandable that people who come from northern Australia, who have expertise in northern Australia, might have conflicts of interest. What's really important is that the NAIF deals with that and is seen to be dealing with that. It seems to me curious that, having acknowledged that there are potential conflicts of interest, the NAIF would not want to be seen to be dealing with them appropriately.<sup>50</sup>

3.54 Ms Shar Molloy from the Environment Centre NT also commented that the perception of transparency and accountability of the NAIF board could be improved:

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46 Ms Laurie Walker, Chief Executive Officer, Northern Australia Infrastructure Facility, *Estimates Hansard*, 1 June 2017, p. 114.

47 See for example: Arid Lands Environment Centre et al., *Submission 29*, p. 3; Lock the Gate Alliance, *Submission 34*, p. 2; Sunshine Coast Environment Council, *Submission 40*, p. 2.

48 See for example: Mackay Conservation Group, *Submission 28*, p. 3; Arid Lands Environment Centre et al., *Submission 29*, p. 3; Lock the Gate Alliance, *Submission 34*, p. 2.

49 Professor Thomas Clarke, Professor of Corporate Governance, University of Technology Sydney, *Committee Hansard*, 11 August 2017, p. 2.

50 Mr Thomas Swann, Researcher, the Australia Institute, *Committee Hansard*, 11 August 2017, p. 23.

We are also concerned about direct conflict of interest and believe that the reputation of the board could actually be increased if there was an increase in transparency and any conflicts of interest declared. Given the extent of taxpayers' money that is involved here, then those potential conflicts of interest need to be treated with the highest level of scrutiny.<sup>51</sup>

3.55 However, Mr Simon Every, Head of Government and Stakeholder Relations at the CEFC noted that NAIF's policy around conflicts of interest disclosure was consistent with their own policy. That is, board members' interests are not disclosed to the public. They are disclosed to the board and minuted; however, these minutes are not publicly disclosed.<sup>52</sup>

3.56 In its 2016–17 annual report, CEFC states the following about conflicts of interest within its organisation:

The CEFC considers matters regarding potential conflicts and related entity transactions in accordance with the CEFC Act and the PGPA Act. Declarations by Board members of any material personal interests are a standing agenda item at each Board meeting.

Executives and staff are also required to declare potential personal conflicts of interest, and comply with a share trading policy which prohibits share trading in entities with which the CEFC may be doing business and/or may hold price sensitive information. The Audit and Risk Committee reviews all related entity transactions which are disclosed in accordance with the relevant accounting standards at Note 5.4 within the Financial Statements.<sup>53</sup>

3.57 NAIF's 2016–17 annual report provided a similar statement in relation to how it manages conflicts of interest:

In addition to statutory requirements under the PGPA Act, NAIF manages conflicts of interest in accordance with its Conflicts of Interest Policy. The Conflict of Interest Policy was first endorsed at the Board's first meeting in August 2016 and is available on the NAIF website.<sup>54</sup>

### *Improved transparency*

3.58 Submitters proposed that one way of addressing the concerns raised in relation NAIF board member's conflicts of interest, would be to require the NAIF board to publicly disclose each member's conflicts of interest.<sup>55</sup>

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51 Ms Shar Molloy, Director, Environment Centre NT, *Committee Hansard*, 2 February 2018, p. 29.

52 Mr Simon Every, Head of Government and Stakeholder Relations, Clean Energy Finance Corporation, *Committee Hansard*, 1 February 2018, p. 18.

53 Clean Energy Finance Corporation, *Annual Report 2016–17*, p. 67.

54 Northern Australia Infrastructure Facility, *Annual Report 2016–17*, p. 21.

55 See for example: Sunshine Coast Environment Council, *Submission 40*, p. 3; Gecko Environment Council, *Submission 67*, p. 6; Transparency International Australia, *Submission 44*, p. 3.

3.59 Mr Swann suggested that 'recusals [be] disclosed to provide confidence that conflicts of interest...are managed by the board member not being involved in a conversation or in the project assessment, it seems to be reasonable that, for the purposes of demonstrating that these conflicts have been dealt with adequately, those are disclosed'.<sup>56</sup>

3.60 Mr Adam Thatcher, General Counsel of NAIF commented that:

I think recusals at board meetings are very standard practice amongst all organisations. As somebody might have raised earlier, the practice then refers potentially to particular projects that might be under consideration. It reveals personal information, under the Privacy Act, of that particular director. In my view, it's best practice. In my long experience as a lawyer and working with a lot of public companies and others, I have never seen recusals at board meetings publicly disclosed to anyone.<sup>57</sup>

3.61 NAIF noted in its submission to the committee that the Australian National Audit Office (ANAO) Guide states that 'given the personal nature of a declaration of private interest, entities must be conscious of privacy arrangements and ensure that such documents are stored securely'.<sup>58</sup> Further, NAIF observed that this approach is 'broadly consistent with the approach taken by Efic [Export Finance and Insurance Corporation]'.<sup>59</sup>

3.62 Acknowledging that conflicts of interest are not disclosed due to board members' privacy as well as the commercial-in-confidence implications for projects being considered by the NAIF board, Mr Swann agreed that one way around the confidentiality of disclosures could be to disclose only the number of recusals that have been made. This would not require the individual who recused themselves to be named publicly, nor to disclose why they recused themselves.<sup>60</sup>

## **Committee view**

### ***Composition of the NAIF board***

3.63 The committee shares the concerns raised by stakeholders about the current composition and lack of diversity of expertise of the NAIF board. While the committee acknowledges that the appointed NAIF board members have expertise in the relevant fields as required by the NAIF Act, the committee is of the view that the NAIF board's effectiveness is hindered as a result of its current composition.

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56 Mr Thomas Swann, Researcher, the Australia Institute, *Committee Hansard*, 11 August 2017, p. 29.

57 Mr Adam Thatcher, General Counsel, Northern Australia Infrastructure Facility, *Committee Hansard*, 11 August 2017, p. 51.

58 Northern Australia Infrastructure Facility, *Submission 43*, pp. 29–30.

59 Northern Australia Infrastructure Facility, *Submission 43*, pp. 29–30.

60 Mr Thomas Swann, Researcher, the Australia Institute, *Committee Hansard*, 11 August 2017, p. 30.

3.64 The committee notes evidence received about the lack of experience and expertise of NAIF board members in the areas of science and the tourism industry. The committee also notes that the NAIF Act's eligibility requirements for appointments to the board do not include experience or expertise in the fields of 'energy technologies' or 'the environmental sector', as is provided for in the CEFC Act. The committee considers that a balance of such skills and expertise on the NAIF board would enhance the board's effectiveness and lead to a more qualified and trusted NAIF.

3.65 The committee notes that a significant percentage of the population of Northern Australia is Indigenous; and a significant amount of land in Northern Australia belongs to Indigenous groups. In addition, the committee is cognisant of the requirement in the Investment Mandate for projects to develop an Indigenous Engagement Strategy. Therefore the committee considers it appropriate that the NAIF Act be amended to require at least one board member of Aboriginal or Torres Strait Islander heritage; as well as to expand the existing eligibility criteria for NAIF board members to include experience in Indigenous development.

#### **Recommendation 4**

**3.66 The committee recommends that the *Northern Australia Infrastructure Facility Act 2016* be amended to require at least one Board member of Aboriginal or Torres Strait Islander heritage and expand the eligibility criteria for Board appointments to include skills or expertise representative of the Northern Australian economy, like experience in Indigenous development, the sciences and the tourism industry.**

#### ***Disclosure of conflicts of interest***

3.67 The committee understands the concerns raised by stakeholders about the potential conflicts of interest on the NAIF board. Board members' personal interests in specific industries are troubling for the community and committee alike.

3.68 The committee acknowledges that conflicts of interest within a corporate Commonwealth entity under the PGPA Act are generally not disclosed due to concerns about board members' privacy. With specific regard to NAIF, the committee also understands the potential commercial-in-confidence implications for projects being considered by the NAIF board.

3.69 Notwithstanding the above, the committee believes that NAIF would benefit from some level of disclosure of NAIF board members' conflicts of interest. The committee is of the view that such disclosure would increase transparency and give the public confidence in the decisions of the NAIF board. While acknowledging the need for any disclosure to be limited to ensure the privacy of board members is protected, the committee considers that following an Investment Decision, NAIF should publish information on its website regarding any conflicts of interest that were disclosed by NAIF board members in relation to the relevant project. The committee believes that such disclosure strikes the right balance between ensuring transparency and public confidence, while maintaining the confidential nature of board deliberations.

**Recommendation 5**

**3.70 The committee recommends that subsection 17(2) of the Northern Australia Infrastructure Facility Investment Mandate Direction 2018 be amended to include a requirement that within 30 days of an Investment Decision, the Northern Australia Infrastructure Facility publish information on its website regarding any conflicts of interest that were disclosed by Northern Australia Infrastructure Facility board members in relation to the relevant project and how they were managed.**

