

## Chapter 5

### Transparency, accountability, and communication

5.1 A perceived lack of transparency, accountability and communication from the Northern Australia Infrastructure Facility (NAIF) about its activities was the catalyst for the committee's inquiry. As noted in Chapter One, these concerns have been echoed by a diverse range of individuals and organisations across the country.

5.2 This chapter discusses NAIF's practices around transparency and the governance policies that guide its approach to the disclosure of information it receives from project proponents. More generally, this chapter assesses how NAIF communicates and engages with potential proponents, industry stakeholders and the public, to share information about its processes and operations. This chapter also considers recommendations from the review of NAIF conducted by Mr Tony Shepherd AO (Shepherd Review) regarding NAIF's Freedom of Information (FOI) practices.

#### Public disclosure of information

5.3 The public disclosure of information by NAIF in relation to its operations and processes has been an issue that NAIF has been navigating since its establishment in July 2016. NAIF and its board have created and are governed by a number of policies relating to the public disclosure of information including a Confidentiality Policy and a Freedom of Information Policy (FOI Policy).

5.4 The Confidentiality Policy outlines that NAIF will treat any information that concerns a proponent as confidential during all stages of the project assessment process, clarifying that:

The Board has resolved that it is not appropriate to make public statements regarding a proponent's engagement with NAIF, prior to an Investment Decision being made, [except] to the extent required to comply with the NAIF's statutory obligations.<sup>1</sup>

5.5 The NAIF board has also resolved that NAIF will 'not comment on whether any particular proponent has or has not approached the NAIF in regards to potential funding for a project'.<sup>2</sup>

5.6 Since its establishment, NAIF has refused to make public certain information in relation to its operations and processes including at Senate Estimates, through FOI requests, and in response to several Senate Orders.

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1 Northern Australia Infrastructure Facility, Confidentiality Policy, p. 3, <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Confidentiality-Policy.pdf>, (accessed 19 July 2017).

2 Northern Australia Infrastructure Facility, Confidentiality Policy, p. 3, <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Confidentiality-Policy.pdf>, (accessed 19 July 2017).

5.7 For example, on 29 March 2017, a motion was moved and passed in the Senate for the Production of Documents ordering the production of the following NAIF governance documents:

- (a) the contract or Memorandum of Understanding between the Northern Australia Infrastructure Facility (NAIF) and the Export Finance and Investment Corporation (EFIC);
- (b) the NAIF Risk Appetite Statement;
- (c) the NAIF Public Interest Test;
- (d) any policies or other documents to be used by the NAIF Board to satisfy themselves that the project meets each of the mandatory criteria as set out in the NAIF Investment Mandate; and
- (e) any policies or other documents to be used by the NAIF Board to satisfy themselves that the project meets each of the non-mandatory criteria as set out in the NAIF Investment Mandate.<sup>3</sup>

5.8 On 30 March 2017, the Minister for Resources and Northern Australia responded to this order, advising that he was unable to provide the requested documents.<sup>4</sup>

5.9 Submitters to the inquiry advised that they were frustrated by NAIF's refusal to make public governance documents about its operations. A number of these submitters also suggested that NAIF's unwillingness to disclose such information had created a sense that it was not transparent and accountable.<sup>5</sup>

5.10 Professor Thomas Clarke from the University of Technology Sydney informed the committee that there is no effective transparency in NAIF's corporate governance framework, including its project assessment and approval processes:

It's unheard of for a publicly funded body to operate in these conditions of absolute secrecy. All meetings, information and decisions are kept secret until they've been approved. The public is denied any knowledge of specific projects and who is proposing the projects. This is not compatible with accountability and probity in public office and neglects all established principles and protocols in public service in Australia and internationally. Indeed, this is apparently based on an inappropriate and misconceived investment bank business model of commercial and in confidence and actually negates the reforms in public governance of the last 15 years,

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3 *Journals of the Senate*, No. 37, 29 March 2017, p. 1223.

4 Parliament of Australia, Letter from Senator the Hon. Matthew Canavan, Minister for Resources and Northern Australia, 30 March 2017, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22publications%2Ftabledpapers%2Fa09392e5-6e97-4da1-9da8-ecac5820b273%22> (accessed 28 June 2018).

5 See for example: Mr Jonathon Peter, *Submission 2*, p. 1; Dr Clare Smith, *Submission 6*, p. 2; Mr John Price, *Submission 10*, p. 4; Mackay Conservation Group, *Submission 28*, p. 1; Transparency International Australia, *Submission 44*, pp. 1–3.

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commencing with the Uhrig review in 2003 and subsequently added to by a series of important public service governance reviews.<sup>6</sup>

5.11 Mr Geoff Weir, a member of the Concerned Economists Group made a similar assessment of NAIF's approach to transparency, pointing out the 'significant differences between the responsibilities of a commercial lender and the responsibilities of a body like NAIF'. Mr Weir expressed concern that as a public body dealing with taxpayers' money, NAIF is not meeting its requirements and duties.<sup>7</sup>

5.12 Dr Noel Preece, an environmental scientist, businessman, researcher and farmer, also considered that NAIF lacked adequate transparency, commenting:

...it is difficult to determine the adequacy of its governance framework. The decision-making process seems to be opaque, and there is little information available on what NAIF is doing, how it operates and makes decisions, and assesses projects and approves of them.<sup>8</sup>

5.13 In their submission, Professor John Quiggin, Associate Professor Kristen Lyons, and Dr Morgan Brigg advised the committee that there was little evidence to suggest that NAIF was adhering to its established processes:

Thus far, the processes surrounding the establishment and operation of the NAIF give no grounds for confidence that these risks to governance will be managed appropriately. Among the most important concerns:

- There is little if any transparency regarding the operation of the NAIF, the criteria that will be applied in project selection and the way in which risks to public finances will be managed...<sup>9</sup>

5.14 In its submission, NAIF suggested that it was aware of the importance of transparency in its role as an accountable public authority and indicated that it seeks to be as transparent as possible having regard to its other obligations. NAIF advised the committee that it 'has benchmarked itself with other similar public and private organisations and is satisfied it is highly transparent'.<sup>10</sup>

### ***Freedom of Information***

5.15 As a corporate Commonwealth entity, NAIF must comply with the *Freedom of Information Act 1982* (FOI Act). NAIF also has an FOI Policy which sets out the organisation's approach to its legal obligations around disclosure. Notably, the FOI Policy states that there are limits to the information it will disclose:

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6 Professor Thomas Clarke, Professor of Corporate Governance, University of Technology Sydney, *Committee Hansard*, 11 August 2017, p. 1.

7 Mr Geoff Weir, Member, Concerned Economists Group, *Committee Hansard*, 11 August 2017, p. 8.

8 Dr Noel Preece, *Submission 24*, p. 1.

9 Professor John Quiggin, Associate Professor Kristen Lyons and Dr Morgan Brigg, *Submission 66*, p. 9.

10 Northern Australia Infrastructure Facility, *Submission 43*, p. 15.

While NAIF will endeavour to be as open as possible, there are certain provisions in the FOI Act, the Privacy Act and other legislation that may restrict the information the NAIF may be able to provide to applicants. For example, if a person seeks a document containing the personal information of another person, there are provisions in the FOI Act and the Privacy Act that apply to protect that information.<sup>11</sup>

5.16 The FOI Policy also notes that some documents may be exempt from the FOI Act, and that exempt documents may include 'those relating to national security or documents containing material obtained in confidence'.<sup>12</sup>

5.17 In its submission to the inquiry, made in August 2017, NAIF noted that it had received over 1300 enquiries made under the FOI Act. NAIF advised that where it had been able to disclose the information requested it had done so. However, NAIF acknowledged that 'many of the requests have related to information which the NAIF considers to be commercial-in-confidence and which is protected in the public interest'.<sup>13</sup> NAIF's approach to commercial confidentiality is discussed later in the chapter.

#### *Submitters' views*

5.18 A range of submitters expressed concerns about NAIF's FOI processes, and shared with the committee their experiences of receiving limited or no information from NAIF in response to FOI requests.<sup>14</sup> Some of these submitters went so far as to suggest to the committee that there is a perception that NAIF is blocking FOI requests, with Environmental Justice Australia claiming that NAIF has 'routinely rejected [FOI] requests'.<sup>15</sup>

5.19 By way of example, the Australian Conservation Foundation (ACF) informed the committee that NAIF has been 'extremely resistant to requests for information from ACF and other interested parties'. ACF advised that:

FOI requests seeking information about NAIF, Adani and the North Galilee Rail Line have yielded little or no information.<sup>16</sup>

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11 Northern Australia Infrastructure Facility, Freedom of Information Policy, June 2017, p. 4. <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Freedom-of-Information-Policy.pdf> (accessed 15 June 2018).

12 Northern Australia Infrastructure Facility, Freedom of Information Policy, June 2017, p. 3. <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Freedom-of-Information-Policy.pdf> (accessed 15 June 2018).

13 Northern Australia Infrastructure Facility, *Submission 43*, p. 16.

14 See for example: Mr Johnathon Peter, *Submission 2*, p.1; The Australia Institute, *Submission 47*, p. 19; Australian Marine Conservation Society, *Submission 55*, p. 1; Environmental Justice Australia, *Submission 65*, p. 1.

15 Environmental Justice Australia, *Submission 65*, p. 1.

16 Australian Conservation Foundation, *Submission 26*, p. 5.

5.20 Likewise, Market Forces, Greenpeace, and many of Greenpeace's members advised the committee that they had achieved little success obtaining information from NAIF about Adani and the North Galilee Rail Line through FOI requests.<sup>17</sup>

#### *Shepherd review*

5.21 As part of his review of NAIF, Mr Shepherd examined NAIF's FOI practices. Mr Shepherd noted the large number of FOI requests that NAIF had received since its establishment and suggested that they were tantamount to 'targeted environmental activism', and described them as 'vexatious'.<sup>18</sup> Mr Shepherd explained that in his view, the FOI requests had 'placed significant pressure on the day to day operation of the NAIF', and consequentially, 'diverted significant resources from NAIF's core business and likely impacted the morale of the organisation in a negative way'.<sup>19</sup>

5.22 The Shepherd review acknowledged that NAIF does not currently have any exemptions from either the Administrative Decision Judicial Review (ADJR) or the FOI framework. Mr Shepherd speculated that if NAIF were to be granted an exemption from either of these components, there would be advantages, notably that:

- the NAIF would be better able to promise confidentiality to project proponents;
- the ability of environmental and other community action groups to inundate the NAIF with FOI requests (commonly known as 'lawfare') would be greatly reduced; and
- the NAIF would not have to devote resources to requests for statement of reasons and review applications.<sup>20</sup>

5.23 However, Mr Shepherd also acknowledged that an exemption would reduce NAIF's accountability:

...without access to a statement of reasons, information about NAIF's activities and the right to review, the public cannot be certain that the NAIF is acting properly or lawfully within the Act and its Mandate. Allegations of secrecy and lack of accountability when dealing with public funds are a key risk, particularly because the NAIF is currently criticised on the grounds that it acts in an opaque manner.<sup>21</sup>

5.24 In addition, Mr Shepherd drew attention to the following potential drawbacks of an ADJR or FOI exemption:

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17 Market Forces, *Submission 69*, p. [5]; Greenpeace Australia Pacific, *Submission 102*, pp. 2–3.

18 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 14.

19 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 14.

20 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 14.

21 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, pp. 14–15.

- public money would be distributed without the right to request justification through a statement of reasons (NAIF would be seen to be 'above the law');
- a reduction in transparency into how public money is handled;
- the ability to request a statement of reasons generally promotes better decision making and this would be lost;
- without access to a statement of reasons and the right to review, the public cannot be certain that the NAIF is acting lawfully within the Act and its Mandate; and
- without the right to request a statement of reasons, an individual is denied the opportunity to get information that will inform their decision whether or not to launch legal proceedings.<sup>22</sup>

5.25 Unable to quantify whether the benefits or drawbacks of any exemption from FOI or ADJR processes were more significant, the Shepherd review recommended:

Recommendation 3—Freedom of Information

Freedom of Information and transparency within the limits of sensible commercial confidentiality are essential to good government and good governance. However, NAIF is diverting significant resources and cash for a small organisation to deal with FOI requests which can mainly be described as vexatious. The government should review what it can do to alleviate this pressure on NAIF.<sup>23</sup>

5.26 No action has yet been taken by government in relation to this recommendation.

***Commercial-in-confidence***

5.27 NAIF has claimed on a number of occasions—both in relation to Senate Orders and FOI requests—that the main reason it will not disclose information relating to its operations, processes and its project proponents is that it is subject to commercial confidentiality.<sup>24</sup>

5.28 As a general guide, commercial-in-confidence is a classification that identifies information that if disclosed may result in damage to an entity's commercial interests.

5.29 In its submission to the inquiry NAIF states that it is in the public interest for certain information to remain confidential for a number of reasons including:

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22 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 15.

23 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 15.

24 See for example: Ms Laurie Walker, Chief Executive Officer, Northern Australia Infrastructure Facility, *Committee Hansard*, 11 August 2017, p. 49.

- NAIF is a 'gap financier'.<sup>25</sup> As NAIF will only ever be able to lend a maximum of 50 per cent of the infrastructure debt financing of a project, NAIF will always have to work closely with the other financiers. Those financiers will expect and require NAIF as a standard practice to maintain as confidential commercial information.
- NAIF maintains commercial-in-confidence on all potential projects, unless there is agreement from all parties involved that certain aspects that can be released publically. Applying this principle consistently maintains the confidence of stakeholders and project participants in the integrity of NAIF's processes. Any breach of this confidentiality protocol may compromise the project and potentially it may not go ahead prejudicing the public benefit and population and economic growth for Northern Australia and more broadly that NAIF's objectives.
- Project Participants have consistently indicated that they expect NAIF to maintain the commercial-in-confidence position NAIF operates under.<sup>26</sup>

5.30 NAIF's claims that information is commercial-in-confidence has troubled submitters who insinuated that such claims are being used by NAIF as a tool to avoid publicly disclosing details of NAIF's processes.<sup>27</sup>

5.31 Mr Geoff Weir from the Concerned Economists Group considered that NAIF's use of claims of commercial confidentiality was having a negative impact on how NAIF is viewed by the public. Mr Weir explained:

...the point is that by refusing to provide [requested information] NAIF is undermining public confidence in itself, and in the process it's damaging the government's reputation.<sup>28</sup>

5.32 The Australia Institute also raised concerns about NAIF's use of commercial-in-confidence claims to avoid disclosing information, and suggested NAIF develop a 'clear policy for how it will deal with public statements by proponents' to ensure it applies a consistent approach to disclosing information. The Australia Institute pointed out that NAIF's refusal to comment on projects can lead to confusion and frustration, particularly when others (such as project proponents and the

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25 As noted in Chapter 2, NAIF is now able to provide up to 100 per cent of the debt for a project, however will continue to act as a 'gap financier' when providing less than 100 per cent of the debt.

26 Northern Australia Infrastructure Facility, *Submission 43*, pp. 21–22.

27 See for example: Australian Conservation Foundation, *Submission 26*, p. 6; The Australia Institute, *Submission 47*, p. 17; Mr Angus King, *Submission 57*, p. 1.

28 Mr Geoff Weir, Member, Concerned Economists Group, *Committee Hansard*, 11 August 2017, p. 3.

Minister) are making statements that are 'disqualifying, contradictory or damag[ing] NAIF's reputation'.<sup>29</sup>

*Proponent's perspective*

5.33 The Export Finance and Insurance Corporation (Efic) noted that NAIF's approach to commercial-in-confidence material was consistent with its own, however, it pointed out that Efic is partially exempt from FOI legislation. This exemption, Efic explained, 'recognises the need to keep confidential the commercial information obtained from Australian exporters and investors'.<sup>30</sup>

5.34 In relation to issues around commercial-in-confidence, Mr Simon Every from the Clean Energy Finance Corporation (CEFC) commented that trust between the proponent and the lender was a significant consideration:

The clients or counterparties who want to do business with you need to be able to trust that their information is not going to be used by their competitors, the market more broadly or a corporate suitor at their own disadvantage. So there are very important reasons across the Commonwealth why there are a number of provisions in acts protecting individual privacy, financial privacy or commercial considerations, and they apply to the CEFC in the same way that they would apply to Australia Post or to other agencies.

[W]hen the Commonwealth is generally acting commercially or generally in possession of people's or businesses' private information, it is fairly standard across the Commonwealth that it not be disclosed.<sup>31</sup>

5.35 King & Wood Mallesons agreed that 'borrowers expect a rigorous system of confidentiality to be applied to protect their information', stating:

As a major Australian law firm, we frequently work with commercial lenders and major domestic and foreign borrowers. From our perspective, borrowers expect a rigorous system of confidentiality to be applied to protect information relating to any potential or current loans and to any commercial projects these loans relate to.<sup>32</sup>

5.36 The National Australia Bank (NAB) confirmed this approach, acknowledging that in their own work with clients on infrastructure projects, 'the protection of the client's confidential information is paramount, particularly during the planning stage of the project'.<sup>33</sup> However, NAB suggested to the committee that NAIF could do more to increase their organisation's transparency:

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29 The Australia Institute, *Submission 47*, p. 13.

30 Export Finance and Insurance Corporation, *Submission 8*, p. 3.

31 Mr Simon Every, Head of Government and Stakeholder Relations, Clean Energy Finance Corporation, *Committee Hansard*, 1 February 2018, p. 19.

32 King & Wood Mallesons, *Submission 90*, p. 1.

33 National Australia Bank, *Submission 107*, p. 2.

NAB acknowledges the confidentiality requirement of NAIF funding recipients needs to be balanced with the public's interest in NAIF's developments. NAIF could consider creating a more transparent transaction pipeline to assist building momentum in projects that NAIF is evaluating.<sup>34</sup>

5.37 The RDA Northern Alliance shared the view that NAIF needed to '[strike] the right balance' between confidentiality and transparency, noting that 'commercial-in-confidence discussions with prospective proponents [are] critical to establishing and maintaining the appropriate transactional relationships between the two parties'.<sup>35</sup>

## Communication

5.38 Submitters raised concerns about the way in which NAIF communicates to the public on a range of issues including NAIF's own purpose, its progress assessing the various projects in its pipeline and how it interacts with the northern jurisdictions.

5.39 The joint submission made by the Arid Lands Environment Centre, Cairns and Far North Environment Centre, Environment Centre NT, and Environs Kimberley commented that not enough information had been provided about the relationship between NAIF, the Commonwealth Government and the state and territory governments prior to its establishment; pointing out that at the time, the Master Facility Agreements had not been made public:

The constitutional relationship between NAIF, the Federal Government and State/Territory Governments is not clear and NAIF has not made public the Master Facility agreement, which is crucial to understanding this. It seems the Queensland Government itself was confused about its role in granting State consent for funds. These are fundamental governance issues that should have been clearly communicated and understood between all parties before NAIF was announced to the public in December 2016.<sup>36</sup>

5.40 Ms Pip Close from Tourism Tropical North Queensland commented that in her view:

...there is little or no awareness regionally of NAIF, since there is an impression, rightly or wrongly, that this is something that only multibillion-dollar companies or projects could possibly be involved in, and again, rightly or wrongly, a program run out of Canberra with decisions being made by people who are not local.<sup>37</sup>

5.41 Councillor Elizabeth Schmidt, President of the Northern Alliance of Councils Incorporated agreed, suggesting that 'engagement with grassroots is really important

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34 National Australia Bank, *Submission 107*, p. 2.

35 Regional Development Australia (RDA) Northern Alliance, *Submission 109*, p. [4].

36 Arid Lands Environment Centre (ALEC), Cairns and Far North Environment Centre (CAFNEC), Environment Centre NT (ECNT) and Environs Kimberley (EK), *Submission 29*, p. 3.

37 Ms Pip Close, Chief Executive Officer, Tourism Tropical North Queensland for Queensland Tourism Industry Council, *Committee Hansard*, 1 February 2018, p.21.

and that we, as the grassroots representation of the community, need to be more engaged'.<sup>38</sup>

5.42 Several submitters also commented that having more direct engagement with NAIF, perhaps through a NAIF person on the ground in their local area, would be beneficial.<sup>39</sup> For example, Mr Michael Tennant from the NT Government said that:

We are always interested in people who are on the ground living and working here in the Territory to understand the Territory context and the unique circumstances of the Territory. It also provides someone on the ground for more regular engagement by the project proponents. We are also always interested in growing our population in the Northern Territory.<sup>40</sup>

5.43 In its submission, NAIF noted that stakeholder engagement is one of the five pillars of its Corporate Plan. NAIF's submission confirmed that as part of its stakeholder engagement plan, NAIF has identified a significant number of different stakeholder groups with whom it engages. These include equity investors, lenders, financial advisers, contractors, alternative financiers, consultants, and Government and industry associations.<sup>41</sup>

5.44 Further, NAIF set out that it has engaged in direct communication through 'direct engagement (including direct engagement with more than 1630 individuals); conference speaking events (more than 22 events); industry networking, website and media interviews'.<sup>42</sup>

5.45 Ms Jann Crase representing the RDA Northern Alliance observed that NAIF's role balancing the need for transparency and accountability with commercial-in-confidence was a 'tricky gig'. However, Ms Crase suggested that more communication around the time NAIF was established could have improved the community's engagement with NAIF:

If there had been perhaps some more communication when the NAIF was set up, that would have helped the broader community understand what concessional finance is—and it's not free money—and to better understand the parameters within which the NAIF has to operate and where the NAIF

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38 Councillor Elizabeth Schmidt, President, Northern Alliance of Councils Incorporated, *Committee Hansard*, 1 February 2018, p. 49.

39 See for example: Ms Pip Close Chief Executive Officer, Tourism Tropical North Queensland for Queensland Tourism Industry Council, *Committee Hansard*, 1 February 2018, p. 21, p. 22; Councillor Elizabeth Schmidt, President, Northern Alliance of Councils Incorporated, *Committee Hansard*, 1 February 2018, p. 49; Mr Greg Owens, Chief Executive Officer, Northern Territory Farmers' Association, *Committee Hansard*, 2 February 2018, p. 18.

40 Mr Michael Tennant, Chief Executive Officer, Department of Trade, Business and Innovation, Northern Territory Government, *Committee Hansard*, 2 February 2018, p. 6.

41 Northern Australia Infrastructure Facility, *Corporate Plan 2017–18*, <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/09/NAIF-Corporate-Plan-2017-18-Final-update-pipeline-fig-25.9.2017.pdf> (accessed 28 June 2018).

42 Northern Australia Infrastructure Facility, *Submission 43*, p. 55.

fits in with the broader picture of northern Australia. I like information, so I always want more communication.<sup>43</sup>

5.46 RDA Northern Alliance encouraged NAIF to increase its communication with stakeholders:

We support more effective and ongoing communication through media, via website and face-to-face to ensure clarity of messaging around NAIF activities and operations; to build understanding and support for NAIF operations and objectives; and to target potential proponents to engage in the process.<sup>44</sup>

5.47 Regional Development Australia Mackay Isaac Whitsunday agreed that there was room for improvement in NAIF's approach to communication:

To offset some of the criticism that the NAIF has faced in relation to their progress, broader communications that provide some insight into the types of conversations they are having, without breaching commercial confidence, could be improved<sup>45</sup>

5.48 In response to criticisms, Ms Laurie Walker, NAIF's CEO, agreed that communication with all relevant sectors, including with the tourism sector was important.<sup>46</sup> Ms Walker further explained that the NAIF board does have a strategy for communicating and engaging with industries at the 'grassroots level':

We have a practice of when the board meets—and we like to do that in regional areas—we meet with local mayors, local industry stakeholders and potential proponents in those areas.<sup>47</sup>

5.49 Ms Walker also acknowledged that 'there is always going to be room to improve here'; and that NAIF is 'very cognisant of that, but we have met with a number of people and, in some cases, predecessors of the people that are in current roles'.<sup>48</sup>

5.50 The above criticisms of NAIF's engagement and communication differ from the accounts given by some others. In particular, Mr Craig Graham, Under Treasurer of the Department of Treasury and Finance of the NT Government noted that their

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43 Ms Jann Crase, Chief Executive Officer, Regional Development Australia, Far North Queensland and Torres Strait, *Committee Hansard*, 1 February 2018, p. 43.

44 Regional Development Australia (RDA) Northern Alliance, *Submission 109*, p. [6].

45 Regional Development Australia Mackay Isaac Whitsunday, *Submission 31*, p. 2.

46 Ms Laurie Walker, Chief Executive Officer, Northern Australia Infrastructure Facility, *Committee Hansard*, 1 February 2018, p. 52.

47 Ms Laurie Walker, Chief Executive Officer, Northern Australia Infrastructure Facility, *Committee Hansard*, 1 February 2018, p. 53.

48 Ms Laurie Walker, Chief Executive Officer, Northern Australia Infrastructure Facility, *Committee Hansard*, 1 February 2018, p. 53.

communication with NAIF was quite regular and includes the provision of information about their project pipeline at least once a month.<sup>49</sup>

5.51 Mr Ian Kew, Chair of the Darwin Major Business Group, and a project proponent, also commented that his interactions with NAIF had been positive:

...we found them to be open and engaged. They have been constructive; they have been confidential. They have outlined the process that they need to work their way through. They have tried to get a good understanding of our processes and our timelines. In our experience with them so far, I think the projects that we put up are ones that they are quite keen to be involved in as well. They have been very good to date to deal with and we have not had any process problems being presented back to us from the NAIF at this stage.<sup>50</sup>

### *Shepherd review*

5.52 The Shepherd review made a number of other observations and recommendations about NAIF.

5.53 The Shepherd review observed that given the complexity of infrastructure investments, such projects take time to develop and bring to financial close, noting that the period from concept to close can span up to five years. In light of this observation, Mr Shepherd recommended:

#### Recommendation 1—Market Expectations

The Government and NAIF should work together to communicate to the market the time it takes in Australia (and most countries) to bring a properly considered project to market. The role of NAIF as a provider of concessional finance and not as a promoter should also be emphasised.<sup>51</sup>

5.54 Noting that NAIF has a five year life span, the Shepherd review considered that there was uncertainty around NAIF's future, as well as around the upcoming three year review of NAIF, due to commence in mid-2019:

#### Recommendation 2—NAIF Continuation

The Government should assure NAIF and the market that it intends the continuation of NAIF but as foreshadowed will review progress and make any necessary adjustments to ensure it successfully fulfils its goals.<sup>52</sup>

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49 Mr Craig Graham, Under Treasurer, Department of Treasury and Finance, Northern Territory Government, *Committee Hansard*, 2 February 2018, p. 2.

50 Mr Ian Kew, Chair, Darwin Major Business Group, *Committee Hansard*, 2 February 2018, p. 24.

51 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, p. 13.

52 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, p. 14.

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## Committee view

### *Transparency and accountability in NAIF's processes*

5.55 The committee shares submitters' concerns about NAIF's apparent refusal to disclose certain information about its processes, particularly to the Parliament, and agrees that this has created a sense that the organisation is not transparent and accountable. Further, the committee believes that the way NAIF is perceived reflects poorly on the Commonwealth and that the government should act to remedy this.

5.56 The committee agrees with submitters that NAIF's role as a public body ought to take precedent over its role as a commercial financier and considers that NAIF should be held to the accountability standards that are incumbent on a government body responsible for the allocation of \$5 billion of taxpayer money.

5.57 The committee understands that claims of commercial-in-confidence are a legitimate reason not to disclose certain information, however, the committee shares submitters' frustration at the lack of information provided through FOI requests and in relation to NAIF's day-to-day operations. The committee notes the large number of documents that NAIF has not published, including documents relating to NAIF's project assessment processes as well as documents relating to specific projects that NAIF may or may not be assessing. Considering this, the committee disagrees with NAIF's assertion that it is a highly transparent organisation.

5.58 The committee firmly believes that the need for commercial-in-confidence surrounding large investment finance arrangements should not in any way abrogate NAIF or any other Commonwealth backed investment corporations from the necessary scrutiny and accountability to the Australian Parliament and the Australian taxpayer. Further the committee believes that the Office of the Australian Information Commissioner has a role to play in assessing NAIF's practices to ensure that NAIF is as transparent as possible.

5.59 The committee also notes Mr Shepherd's recommendation about exempting NAIF from either the ADJR or the FOI framework. However, the committee is of the view that NAIF's transparency should be increased, not decreased and considers that the implementation of Mr Shepherd's recommendation would have an adverse effect on NAIF's transparency.

### **Recommendation 9**

**5.60 The committee recommends that the Office of the Australian Information Commissioner undertake a review of the Northern Australia Infrastructure Facility's transparency and freedom of information procedures, with a view to removing the veil of secrecy the Northern Australia Infrastructure Facility operates behind.**

### *NAIF's project pipeline*

5.61 The committee shares submitters' concerns about the lack of information that is publicly available relating to NAIF's project assessment and approval processes, and observes that this lack of information raises serious questions about the adequacy and transparency of NAIF's governance framework.

5.62 The committee believes that NAIF could work to assess what information it could share, particularly in relation to its project assessment processes. Specifically, the committee would like to see NAIF develop processes to facilitate the publication of information about project proponents prior to Investment Decisions being made. The committee understands that any such information sharing would require consent from the project proponent and be subject to the standard commercial-in-confidence protections.

5.63 The committee considers that a more transparent transaction pipeline for NAIF projects would facilitate faster passage through the process, which would subsequently increase momentum in NAIF's project pipeline.

### **Recommendation 10**

**5.64 The committee recommends that the government work closely with industry and consumer groups to develop and implement a more transparent transaction pipeline to assist building momentum in projects that the Northern Australia Infrastructure Facility is evaluating.**

#### *Engagement*

5.65 The committee is of the view that communication and engagement is an important aspect of the role of any government agency and shares submitters concerns about the way in which NAIF communicates to the public on a range of issues including NAIF's own purpose, its progress assessing the various projects in its pipeline and how it interacts with the northern jurisdictions.

5.66 The committee believes that NAIF has made a concerted effort to engage with the stakeholder groups it has identified in its stakeholder engagement plan. However, the committee also notes that NAIF has been established to serve the whole of Northern Australia, not only its equity investors, lenders, financial advisers, contractors, alternative financiers, consultants, and government and industry associations.

5.67 The committee is pleased that NAIF agrees that communication with all relevant sectors, including the tourism sector is important, but believes, as NAIF has acknowledged, that there is room to improve in this area.

5.68 Noting this, the committee proposes NAIF should have more staff based in Northern Australia, in particular in the Northern Territory and in northwest Western Australia.

### **Recommendation 11**

**5.69 The committee recommends moving more staff to Northern Australia and basing at least one full-time staff member in Darwin to assist with stakeholder management and investment pipeline development in the Northern Territory and northwest Western Australia.**

#### *Reporting*

5.70 The committee notes that from the 2016–17 reporting period, Efic, along with other Australian Government agencies, will be providing greater transparency of

remuneration of their senior executives and employees earning above \$200,001 per annum. The figures provided in the annual reportable remuneration include gross payments, reportable fringe benefits, reportable employer superannuation, and bonuses.

5.71 The committee considers that NAIF should also be required to provide annual reportable remuneration information for its senior executives and highly paid staff.

### **Recommendation 12**

**5.72 The committee recommends expanding the Northern Australia Infrastructure Facility annual report to include more details on the Northern Australia Infrastructure Facility's board and senior staff remuneration in line with executive remuneration reporting undertaken by agencies such as the Export Finance and Insurance Corporation. This would include details such as gross payments, reportable fringe benefits, reportable employer superannuation and bonuses. The Northern Australia Infrastructure Facility should also report more details relating to procurement and other operating costs generally.**

**Senator Chris Ketter**  
**Chair**

