

Coalition Senators' Dissenting Report

Introduction

1.1 Coalition Senators emphasise the importance of the Northern Australia Infrastructure Facility (NAIF) to the ongoing development of Northern Australia.

1.2 Northern Australia is uniquely positioned due to geography, climate, and sparse population, and thus government intervention may be necessary to catalyse economic development.

1.3 Coalition Senators of the committee are pleased with the conduct of the NAIF Board and management, and congratulate the NAIF team on their diligence and their effective stewardship of taxpayers' funds. This dedication to proper process is now bearing fruit with new loan agreements that will foster development in Northern Australia being announced with regularity.

1.4 Coalition Senators commend NAIF for the work that they have already completed, committing over \$120 million in concessional loans.

1.5 Government Senators note previous criticism of NAIF's slow tempo of contract and are reassured by recent NAIF announcements that the time and diligence applied to each application is in keeping with NAIF's responsibilities to the Australian taxpayer.

Low quality of evidence presented to inquiry

1.6 The Chair's Report states in its Chapter 2 Committee View section that 'the majority of evidence received by the committee was not complimentary of NAIF's governance framework'. Aside from the evidence from Export Finance and Insurance Corporation (EFIC)—which *was* complimentary—there was no authoritative evidence at all from the lending sector that would suggest any deficiencies in the NAIF model. Most lenders would likely agree that the merits of any application for finance should be reviewed unsparingly, and that lenders have a commercial responsibility to protect applicants' details.

1.7 Furthermore, Coalition Senators categorically reject the assertion in the Chair's Report (2.99) that the 'majority of evidence' claimed that the governance framework was 'severely inadequate to ensure effective oversight of the NAIF's performance of its role as a commercial financier'. It is hard to justify such a conclusion, given that there was no input into this inquiry from the commercial lending sector.

1.8 Coalition Senators wish to stress the importance of seeking the views of the community. Nevertheless, it is the preference of Coalition Senators that, when producing a parliamentary report, authoritative sources are used to inform the inquiry. The use of secondary and tertiary sources in the Chair's report is concerning, and the anecdotal, lay-person opinion does not lend a persuasive tone to the arguments being presented.

1.9 Coalition Senators of the committee note that the Chair's report contains numerous alarmist perspectives as to what 'could' occur as a result of perceived inadequacies in NAIF processes. Such statements are conjecture, not evidence, and should be dismissed as lacking in any weight at all. The only useful information that is available to the Parliament and the public is the evidence of exacting standards and due diligence in the formation of contracts between NAIF and Project Proponents—as evidenced by the July 3rd 2018 announcement of a \$96 million loan to James Cook University to expand their Innovation programme.

Political Motivation of Inquiry

1.10 The Senate Standing Committee on Economics' inquiry into the *Governance and operation of the Northern Australia Infrastructure Facility* (the Inquiry) has been a blatantly political enterprise designed to capture Greens/Labor-Left hysteria regarding the proposed Carmichael Mine in the Galilee Basin and use that hysteria to bolster the Labor by-election campaign for the seat of Batman in Victoria in March 2018.

1.11 The inquiry was also used by the Australian Labor Party to assist in securing preferences from the Australian Greens in Queensland—who were outraged at the prospect of the Carmichael Mine and any potential NAIF Loan for the mine's rail infrastructure. The Queensland Labor Party thereby sand-bagged the seat of South Brisbane for Queensland Treasurer Jackie Trad in the State election in 2017. The politicisation of the Adani proposal—and its use by the left as a virtue-signalling device—is evidence of both Bill Shorten and Annastacia Palaszczuk's repeated backflips on the issue of support for the Carmichael Mine, and the potential NAIF loan. The suggestion that consideration of the Adani application constituted some kind of collusion or conspiracy is, of course, pure fiction.

1.12 All parliamentarians and all members of the Australian public have cause to be extremely concerned that the Australian Labor Party and the Australian Greens are able to hijack the Parliamentary committee process for such blatant electioneering. This is compounded by the undue pressure that has been placed upon the operations of the NAIF and the potential for such pressures to interfere with the NAIF executing its remit: fostering development in Northern Australia in a manner that is consistent with the interests of the Australian taxpayer.

Governance of NAIF

1.13 Coalition Senators completely reject the suggestions in the Chair's Report concerning the implementation of layers of additional oversight into NAIF processes. The current customary levels of government and parliamentary oversight are completely adequate and would meet the expectations of the community.

1.14 Coalition Senators note that:

NAIF's governance meets or exceeds the public sector governance standard set by the Australian National Audit Office (in its best practice public sector

Governance Better Practice Guide) and the ASX Governance Council Core Corporate Governance Principles for listed companies.¹

1.15 Coalition Senators wish to highlight that independent, reputable governance experts from Allens Linklaters and the Australian Government Solicitor have reviewed NAIF's core governance documents and confirmed in their view they are best practice. This includes NAIF's Confidentiality Policy and its Conflict of Interest Policy.

Transparency of Investment Decisions

1.16 Coalition Senators note that analysis of eight Australian lending institutions operating in similar projects to NAIF, including the two public and the top five private banks and a regional bank, which demonstrates that none of them disclose publicly their Risk Appetite Statement or credit decision-making governance documents.

1.17 Coalition Senators wish to stress the importance of keeping the identity of prospective borrowers confidential. King & Wood Mallesons state that:

...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. The type of projects that NAIF may finance (being key infrastructure projects) have particular commercial sensitivity due to the scale of investment these projects require and the parties that participate in this market. In our view, the potential for borrowers' commercially confidential information to be disclosed to the public may prevent borrowers from considering applying for finance from NAIF and may reduce the volume of projects in Northern Australia financed by NAIF.²

1.18 Coalition Senators note that Tony Shepherd has stated that sufficient checks and balances, both internal and external, are already in place:

Mr Shepherd: I think the thing is that you've got to look at the internal mechanisms within the NAIF itself to ensure the investments are done wisely and in accordance with the relevant laws, and then you've got to look at the external mechanisms for checking that. They are subject to external audit and they are under the supervision of the ANAO—that to me is sufficient check and balance.

Current and upcoming projects

1.19 Coalition Senators applaud NAIF for its patience and diligence in selecting projects that will increase the productive capacity of Northern Australia. The criticism levelled at NAIF for being slow to pick projects is rash, and rushing Corporate Commonwealth Entities into making decisions with taxpayers' money is of limited utility.

1 Opening statement, Document tabled by Northern Australia Infrastructure Facility at a public hearing in Canberra on 11 August 2017.

2 King & Wood Mallesons, *Submission 90*.

1.20 To date, over \$120 million in loans have been funded by NAIF.³ Projects have now been announced in all three Northern Australian states/territories. These loans include:

- (a) The Onslow Marine Support Base in Western Australia;
- (b) The Humpty Doo Barramundi Farm in the Northern Territory; and
- (c) The JCU Engineering Innovation precinct announced on July 3rd this year.

1.21 A potential \$516 million loan to the Kidston Solar/Pumped Hydro project also appears to be well advanced.

1.22 The NAIF's lending to date is truly 'Northern', encompassing all relevant jurisdictions.

Response to Recommendations

1.23 Coalition Senators reject Recommendation 1 of the Chair's report, noting that the current requirement to consult on alternative financing is undoubtedly sufficient:

Subsection 11(4) specifies that the responsible Minister will seek agreement from the Minister for Finance and the Treasurer, and consult with the relevant jurisdiction(s), prior to agreeing to the use of an alternative Financing Mechanism.⁴

1.24 Coalition Senators further note that Tony Shepherd believes that the current requirements for ministerial consultation are sufficient:

CHAIR: Do you think it would be appropriate for the NAIF to have two responsible ministers?

Mr Shepherd: I'm really not sure of the advantages of having two. If it's working okay, if it's fulfilling its mandate, I don't see the need to bring in another minister.

1.25 Coalition Senators believe that Recommendation 1 is a blatant, politically motivated attempt to undermine the Minister for Resources and Northern Australia.

1.26 Coalition Senators agree-in-principle with Recommendation 2 concerning the Memorandum of Understanding (MOU) between NAIF and the Clean Energy Finance Corporation (CEFC). However, it is important to note that each Corporate Commonwealth Entity has a set of different funding criteria, and will view Project Proponents through a different lens. It is also possible that the MOU may actually cause an increased administrative burden on both corporations, distracting them from their core focuses.

1.27 Coalition Senators note that NAIF and CEFC each have a specific remit; however these will overlap on occasion. In situations where a project can develop

3 State Governments are lenders of record for NAIF loans.

4 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], <https://www.legislation.gov.au/Details/F2018L00567> (accessed 28 June 2018).

infrastructure in Northern Australia *and* provide for cleaner energy outcomes, the best interests of the taxpayer may be served investments from both funds.

1.28 Coalition Senators wholeheartedly support the objective of engaging indigenous members of the community in NAIF projects. NAIF has already demonstrated the ability to effectively engage with the indigenous community in Northern Australia:

- NAIF strongly supports Indigenous communities in northern Australia.
- NAIF is currently engaging with Indigenous led proponents or those partnering with Indigenous communities on projects related to social infrastructure, eco-tourism, agriculture and horticulture, resources and innovative energy solutions for remote communities. In total there are around 18 enquiries. Three of those are in due diligence.
- Further all NAIF finance recipients must develop strategies for Indigenous participation, procurement and employment. This is a mandatory criterion and the NAIF Board will be looking to see identifiable leadership and change and its loans will ensure there is accountability.⁵

1.29 However, Coalition Senators reject Recommendation 3, which includes 'a requirement that within 30 days of an Investment Decision, the Northern Australia Infrastructure Facility publish detailed Indigenous Engagement Strategies (IES) from applicants when an investment decision is taken'. The Commonwealth's commitment to Indigenous engagement and employment is self-evident (such as requirements for Indigenous employment within the Commonwealth Procurement Rules), and imposing additional layers of administrative burden on the NAIF—or any other agency for that matter—does little to progress these objectives.

1.30 Coalition Senators note that the 2018 NAIF Investment Mandate already has a requirement that Project Proponents submit an IES,⁶ however there should not be a blanket requirement that this be published, let alone within 30 days of the Investment Decision. Potential release of each Investment Decision's IES should be assessed on a case-by-case basis. There may be instances in which the IES contains information that is commercial-in-confidence. Such sensitivities should be considered on a case-by-case basis before an IES is made public.

1.31 Coalition Senators note the need for input from the Indigenous community at all levels of NAIF governance, from the board through to the administration of the NAIF. However, there is the need to balance diversity with the need for prudent fiscal management. It would be a 'false economy' to limit the Board's field of expertise or sacrifice relevant skill in the name of a quota.

5 Opening statement, Document tabled by Northern Australia Infrastructure Facility at a public hearing in Canberra on 11 August 2017.

6 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], <https://www.legislation.gov.au/Details/F2018L00567> (accessed 28 June 2018).

1.32 Coalition Senators reject Recommendation 5, noting that it is not appropriate to require disclosure of project-by-project conflicts of interest within 30 days of an Investment Decision. NAIF already has robust systems in place to ensure that conflicts of interest are properly managed and do not lead to questionable Investment Decisions being made due to ulterior motives.

1.33 Indeed, NAIF's investment mandate already contains a provision concerning corporate governance which ensures that 'the Facility has credibility in financial markets and maintains a positive commercial reputation':

Subsection 17(1) provides that in undertaking its investment function, the Facility must have regard to Australian best practice government governance principles and Australian best practice corporate governance for Commercial Financiers.⁷

1.34 Coalition Senators note that, as set out in NAIF's submission to this inquiry, NAIF's processes are consistent with both the ANAO best practice and ASX publicly listed company protocols.⁸

1.35 Coalition Senators reject recommendation 6, noting that the disclosure requirements are excessive and may breach commercial-in-confidence expectations.

1.36 Coalitions Senators note that Recommendation 7 is already a requirement under the Commonwealth's Australian Industry Participation (AIP) Plans, with which the NAIF must comply:

Section 18 provides that Projects must comply with the Commonwealth's Australian Industry Participation (AIP) Plan policy, before the Board can make an Investment Decision on an Investment Proposal. AIP Plans are designed to provide details on the expected opportunities to supply goods and/or services to the Project; how these opportunities will be communicated to potential suppliers; and how Australian businesses will be assisted in longer-term participation, including encouraging capability development and integration into global supply chains. The purpose of this section is to maximise the opportunities for Australian businesses to participate in major Projects.⁹

1.37 Coalition Senators note that Recommendation 8, which calls for a prescriptive portion of the NAIF funding to be allocated to Tourism, is unnecessary, as NAIF is already actively supporting tourism. NAIF CEO Laurie Walker outlined this at Senate Estimates on 1 March 2018:

- I can confirm that NAIF is also focussed on supporting the tourism industry. For example: walkways and eco-tourism infrastructure; airports and heliports;

7 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], <https://www.legislation.gov.au/Details/F2018L00567> (accessed 28 June 2018).

8 Northern Australia Infrastructure Facility (NAIF), *Submission 43*, pp. 27–30.

9 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], <https://www.legislation.gov.au/Details/F2018L00567> (accessed 28 June 2018).

cruise ship ports; marinas; and associated road, power, communications and water all contribute to tourism experiences.

- There are 18 currently active [tourism project-related] enquiries (almost 22 per cent of total active enquiries).
- We expect to be able to contribute strongly to financing tourism assets particularly where there is a differentiated tourist offering. We envisage that bringing together of Indigenous cultural experiences and ecotourism has the potential for NAIF to support the development of iconic attractions.
- Separately NAIF is also looking to support medical and educational tourism with its ability to finance social infrastructure.
- We are cognisant in identifying tourism projects to review that NAIF needs to have an expectation that projects are capable of repaying any NAIF loan or other investment i.e. NAIF is not a grant funder. Proponents interested in NAIF financing of tourism assets need to ensure that mandatory criteria will be able to be satisfied.¹⁰

1.38 Coalition Senators wish to draw attention to the fact that Recommendation 8 is simply a re-statement of a Labor policy announcement from 2017. The response of Coalition Senators has not changed: under the current scheme any amount of lending to the Tourism Industry can take place. There is no need for a prescriptive Tourism fund allocation. Such prescription could limit the total Tourism funding allocation or, alternatively, could have a chilling effect on applications for positive infrastructure developments from outside the tourism industry.

1.39 Coalition Senators reject Recommendation 9 on the grounds that the NAIF is not different to any other Corporate Commonwealth Entity, and thus should be treated like all others.

1.40 Coalition Senators reject Recommendation 10 in light of the evidence given to the committee by Tony Shepherd.

CHAIR: Wouldn't that give the community some knowledge of who is applying to the NAIF and what they're applying for?

Mr Shepherd: Yes, but I think that has the opposite effect in terms of who applies, because many applicants will not wish their name or any details of their proposal to be disclosed until it's been assessed and the NAIF decides it wants to proceed with it. When it does happen, under their legislation they have 30 days to publish the essential details. It would be just like saying to a bank, 'Let's see who's applying for a loan.' That's hardly going to work. Most of the applications are commercial-in-confidence.

...

10 Opening statement, Document tabled by Northern Australia Infrastructure Facility at a public hearing in Canberra on 11 August 2017.

CHAIR: But, if the community is able to see who the proponents are, don't you think that would give them more investment in seeing the NAIF succeed?

Mr Shepherd: I don't think so. I think in the end that would be a discouragement for people coming forward with proposals, particularly those who would wish to remain confidential for strong and valid commercial reasons. I think at the end of the day what we're trying to do is get the north developed, and that's got to be the pre-eminent requirement.

1.41 Coalition Senators note that Recommendation 11 simply mirrors the current Commonwealth Government's policy of decentralisation.

1.42 Recommendation 12 could breach privacy protections of existing employees, and would certainly discourage many highly regarded and qualified professionals from applying to work at the NAIF.

Senator Jane Hume

Deputy Chair