

The Senate

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Economics  
References Committee

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Governance and operation of the Northern  
Australia Infrastructure Facility (NAIF)

July 2018

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# Senate Economics References Committee

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# Table of Contents

<b>Membership of the Committee .....</b>	<b>iii</b>
<b>Chapter 1.....</b>	<b>1</b>
<b>Introduction .....</b>	<b>1</b>
Conduct of the inquiry.....	1
Background.....	2
Purpose of inquiry .....	5
Recent developments.....	6
Scope and structure of report.....	7
<b>Chapter 2.....</b>	<b>9</b>
<b>Governance Framework .....</b>	<b>9</b>
Legislative framework.....	9
Investment Mandate .....	11
Governance policies .....	23
Resourcing.....	25
State and territory governments.....	26
Committee view.....	29
<b>Chapter 3.....</b>	<b>33</b>
<b>Board of Directors .....</b>	<b>33</b>
Role of the NAIF board.....	33
Appointments .....	33
Composition .....	36
Conflicts of interest .....	41
Committee view.....	45
<b>Chapter 4.....</b>	<b>49</b>
<b>Project assessment process .....</b>	<b>49</b>
Selecting projects for funding .....	49
Risk Appetite Statement.....	51
Public Benefit .....	56
Investment Decisions.....	63
Committee view.....	69

<b>Chapter 5.....</b>	<b>73</b>
<b>Transparency, accountability, and communication.....</b>	<b>73</b>
Public disclosure of information .....	73
Communication .....	81
Committee view.....	85
<b>Coalition Senators' Dissenting Report.....</b>	<b>89</b>
<b>Australian Greens' Additional Comments .....</b>	<b>97</b>
<b>Appendix 1 .....</b>	<b>99</b>
Submissions and additional documents.....	99
<b>Appendix 2.....</b>	<b>105</b>
Public hearings.....	105

# Chapter 1

## Introduction

1.1 On 14 June 2017, the Senate referred matters relating to the governance and operation of the Northern Australia Infrastructure Facility (NAIF) to the Senate Economics References Committee (the committee) for inquiry and report by 7 December 2017.<sup>1</sup> The committee received two extensions to report by 6 July 2018.<sup>2</sup>

1.2 The terms of references for the inquiry are:

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

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

### Conduct of the inquiry

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

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

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

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

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

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

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

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

1.7 The committee held five public hearings:

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

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

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

## **Background**

### ***Northern Australia Audit: Infrastructure for a Developing North***

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

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

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

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

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

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### ***Budget announcement***

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

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

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

### ***White Paper on Developing Northern Australia***

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

1.14 The White Paper proposed that concessional loans could be provided to a range of projects including airports, ports, rail, roads, energy, water, and communications infrastructure. The White Paper also noted that project proposals would be accepted from 1 July 2015.<sup>8</sup>

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

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

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

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

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

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

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

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

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

### ***Consultation Paper***

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

### ***Legislative framework***

1.20 Following this consultation, the Northern Australia Infrastructure Facility Bill 2016 (NAIF bill) was released publically on 28 January 2016.<sup>16</sup> The NAIF bill was introduced into Parliament on 17 March 2016 and referred to the Joint Select Committee on Northern Australia (Joint committee) for inquiry and report.

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

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

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

12 The Northern Australia Advisory Group was established in June 2014, to provide expert advice on developing Northern Australia. More information is available on the following website: [http://minister.infrastructure.gov.au/wt/releases/2014/June/wt084\\_2014.aspx](http://minister.infrastructure.gov.au/wt/releases/2014/June/wt084_2014.aspx) (accessed 21 June 2018).

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

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

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

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

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

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

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

### **Purpose of inquiry**

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

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

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

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

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

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

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

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

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

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

...

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

1.29 Transparency Australia International also commented that:

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

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

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

## Recent developments

### *Expert Review Report*

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

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

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

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

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

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

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

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

1.35 The review made 15 recommendations. A number of these recommendations proposed changes to NAIF's 2016 Investment Mandate, in particular recommendations 4, 5, 6, and 7. This saw NAIF's original 2016 Investment Mandate repealed and replaced with a new 2018 Investment Mandate which came into force on 3 May 2018.<sup>25</sup>

### ***Australian National Audit Office review***

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

1.37 The ANAO proposes to examine if NAIF has:

- in place a sound governance framework that is fit-for-purpose; and
- implemented arrangements that support effective integrity and transparency in relation to its operations<sup>26</sup>

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

### **Scope and structure of report**

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

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

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

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

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

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

# Chapter 2

## Governance Framework

2.1 The objective of the Northern Australia Infrastructure Facility (NAIF) is to partner with the private sector and the Northern Territory, Western Australian and Queensland governments to provide grants of financial assistance for the construction of Northern Australian infrastructure.<sup>1</sup> The grants are expected to be in the form of concessional loans, guarantees and other financial mechanisms, to assist the construction of economic infrastructure which is expected to be repaid.<sup>2</sup>

2.2 This chapter outlines NAIF's legislative and corporate governance frameworks before examining the evidence received in relation to the effectiveness of how these frameworks function. It then considers NAIF's resourcing, and the relationships between NAIF, the federal government and the three northern state and territory jurisdictions.

### Legislative framework

2.3 The Department of Industry, Innovation and Science (department) was responsible for the development of NAIF's legislative framework and is responsible for its ongoing administration. The responsible minister for NAIF is the Minister for Resources and Northern Australia (the Minister), currently, Senator the Hon. Matthew Canavan.

2.4 NAIF was established by the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act) in July 2016. NAIF is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

2.5 The Department of Finance defines a corporate Commonwealth entity as 'a body corporate that has a separate legal personality from the Commonwealth, and can act in its own right exercising certain legal rights such as entering into contracts and owning property'.<sup>3</sup> As a corporate Commonwealth entity, NAIF is independent, however, is still subject to the whole of government accountability standards as outlined in the PGPA Act.

2.6 The NAIF Act establishes a Board of Directors, specifies its functions and the process for the appointment of new Board members. It also establishes a

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1 Replacement Explanatory Memorandum to the Northern Australia Infrastructure Facility Bill 2016, p. 2.

2 Replacement Explanatory Memorandum to the Northern Australia Infrastructure Facility Bill 2016, p. 7.

3 Australian Government, Department of Finance, Resource Management glossary—corporate Commonwealth entity (CCE). <https://www.finance.gov.au/resource-management/pgpa-glossary/corporate-commonwealth-entity/> (accessed 22 May 2018).

Chief Executive Officer (CEO) who is responsible for the day-to-day administration of the NAIF, and outlines the appointment process for the CEO.<sup>4</sup>

2.7 The NAIF Act also provides for NAIF's Investment Mandate Direction (Investment Mandate), which is a legally binding Ministerial Direction that sets out how NAIF is expected to perform its functions.<sup>5</sup> In addition to the NAIF Act and the Investment Mandate, NAIF has established its own governance policies to inform and guide its decision making. The adequacy and effectiveness of NAIF's Investment Mandate and its governance policies are discussed in more detail below.

### *NAIF's role as a commercial financier*

2.8 NAIF is designed primarily to stimulate private sector involvement in the provision of infrastructure, while ensuring not to distort existing financing markets. As such, NAIF is intended to work in partnership with commercial financiers and consider the impact of its financial assistance on the infrastructure financing markets.

2.9 When established, NAIF was to act as a 'gap financier'. This meant that finance could only be provided where the project proponent had explored and exhausted all other options. NAIF financing was also contingent on total debt to government not exceeding 50 per cent of the total debt for the project, preventing it from becoming the primary source of debt for projects and competing with the private sector. Following the Expert Review conducted by Mr Tony Shepherd AO (Shepherd review) in 2018, the government implemented the review's recommendation 6 which relaxed this requirement, giving NAIF the option of lending up to 100 per cent debt for a project.<sup>6</sup>

2.10 The main mechanism by which the NAIF facilitates its support is through the provision of concessional financial assistance to the states and territories for the construction of economic infrastructure.<sup>7</sup>

2.11 Concessional finance can be in the shape of concessional loans which are loans that are extended on terms substantially more generous than market loans. The 'concessional' is generally achieved either through interest rates below those available on the market or by extended grace periods, or a combination of these two factors. NAIF provides the following examples of the types of concessions it may offer:

- longer loan tenor than offered by Commercial Financiers, not exceeding the longest term of Commonwealth borrowings;

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4 *Northern Australia Infrastructure Facility Act 2016*, Parts 5 and 6.

5 *Northern Australia Infrastructure Facility Act 2016*, ss. 9(1).

6 Senator the Hon. Matthew Canavan, Minister for Resources and Northern Australia, *NAIF changes to fast-track infrastructure investment*, 18 April 2018, <http://minister.industry.gov.au/ministers/canavan/media-releases/naif-changes-fast-track-infrastructure-investment> (accessed 4 July 2018).

7 Department of Industry, Innovation and Science, *Submission 42*, p. 4.

- lower interest rates than offered by Commercial Financiers, which must not be lower than the rate at which the Commonwealth borrows at;
- extended periods of capitalisation of interest beyond construction completion;
- deferral of loan repayments or other types of tailored loan repayment schedules;
- lower or different fee structures than those offered by Commercial Financiers; or
- ranking lower than Commercial Financiers for cash flow purposes.<sup>8</sup>

2.12 NAIF's progress in fulfilling its role as a commercial financier is discussed in more detail below.

### **Investment Mandate**

2.13 The Investment Mandate is a key element of NAIF's legislative framework as it directs NAIF on the Minister's expectations. The Investment Mandate is a non-disallowable instrument which means that it is exempt from scrutiny or disallowance by the Parliament. This is designed to balance the need for flexibility and market certainty, while maintaining transparency.<sup>9</sup>

2.14 The NAIF Act states that the Investment Mandate may include directions to NAIF on the following matters:

- (a) objectives the Facility is to pursue in providing financial assistance;
- (b) strategies and policies to be followed for the effective performance of the Facility's functions;
- (c) loan characteristics for circumstances in which financial assistance is used to provide or support loans;
- (d) providing financial assistance for purposes other than to provide or support loans;
- (e) eligibility criteria for financial assistance;
- (f) risk and return in relation to providing financial assistance;
- (g) any other matters the Minister thinks appropriate.<sup>10</sup>

2.15 The Investment Mandate provides for alternative financing mechanisms, gives broad investment risk parameters, and outlines consultation processes and the relationship with other government entities.

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8 Northern Australia Infrastructure Facility website—'Concessionality', <http://naif.gov.au/about-naif-finance/concessionality/> (accessed 23 May 2018).

9 Department of Industry, Innovation and Science, *Submission 42*, p. 4.

10 *Northern Australia Infrastructure Facility Act 2016*, s. 10.

2.16 It also sets mandatory criteria that the NAIF Board must have regard to when making an Investment Decision.

### ***2016 Investment Mandate***

2.17 The Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (2016 Investment Mandate) came into effect on 4 May 2016. However, as noted in Chapter 1, it was repealed and replaced on 2 May 2018 by the Northern Australia Infrastructure Facility Investment Mandate Direction 2018 (2018 Investment Mandate).

2.18 The 2016 Investment Mandate<sup>11</sup> sets out seven mandatory eligibility criteria and two non-mandatory eligibility criteria for the Board to consider when making an investment decision. The 2016 mandatory criteria stipulated that:

- The proposed Project involves construction or enhancement of economic infrastructure;
- The proposed Project will be of public benefit;
- The proposed Project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope, without financial assistance;
- The Project is located in, or will have a significant benefit for, Northern Australia;
- Facility's loan monies are not the majority source of debt funding;
- The loan will be able to be repaid, or refinanced; and
- The proposed project must have an Indigenous engagement strategy (IES).

2.19 The non-mandatory criteria suggested:

- The proposed Project is seeking financing from the Facility for an amount of \$50 million or more; and
- There is an identified need for the Project.<sup>12</sup>

2.20 Submitters raised concerns about certain aspects of both the mandatory and non-mandatory criteria contained in the 2016 Investment Mandate. In particular, submitters commented on the guidelines for the IES, the multi-user nature of proposed NAIF projects, and the non-mandatory \$50 million minimum. Despite the introduction of the 2018 Investment Mandate, evidence received from submitters on these criteria retains its relevance as:

- the IES and the multi-user nature of proposed NAIF projects remain part of the mandatory criteria in the new 2018 Investment Mandate; and

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11 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

12 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], Schedule 1, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

- although changes have been made to the non-mandatory \$50 million minimum criteria in the 2018 Investment Mandate, the evidence received in relation to this criteria demonstrated the negative consequences of NAIF's poor communication of the most significant eligibility criteria.

2.21 These issues are discussed further below.

*Indigenous engagement strategy*

2.22 In relation to a project's IES, the Investment Mandates specifies that:

The Project Proponent must provide a strategy which sets out objectives for Indigenous participation procurement and employment that reflect the Indigenous population in the region of the proposed Project.<sup>13</sup>

2.23 More detailed information on what NAIF expects to be contained in an IES is set out in NAIF's governance policy, *Indigenous Engagement Strategy Guideline* (IES Guideline). The IES Guideline specifies that a project proponent's IES must contain a number of components relating to Indigenous participation, employment, procurement and other overarching principles. The significant list of components includes:

- Identifies and engages with the correct stakeholders;
- Is based on sound data;
- Identifies existing community issues and commits to not further exacerbate (or to improve) these issues;
- Reflects local cultural protocols;
- Commits to viable, sustainable procurement targets; and
- Identification and recognition of the importance of cultural heritage protection<sup>14</sup>

2.24 For a number of the components, a note is included which indicates that 'targets may be negligible if local Indigenous businesses/population is nil or not significant'.<sup>15</sup>

2.25 The IES Guideline also notes clause 15 of the Investment Mandate which stipulates that project proponents must obtain all relevant regulatory approvals including Native Title and environmental approvals before any provision of finance.<sup>16</sup>

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13 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], Schedule 1, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

14 Northern Australia Infrastructure Facility, *NAIF—Indigenous Engagement Strategy Guideline*, June 2017, pp. 2–6.

15 Northern Australia Infrastructure Facility, *NAIF—Indigenous Engagement Strategy Guideline*, June 2017, p. 5.

16 Northern Australia Infrastructure Facility, *NAIF—Indigenous Engagement Strategy Guideline*, June 2017, p. 6.

2.26 A condition of receiving a loan from NAIF is that the proponent agrees to maintain compliance with the IES Guideline. The IES Guideline notes that compliance may look different for each project and the monitoring of compliance may also vary noting that the Board can impose different reporting requirements on an individual basis.<sup>17</sup>

2.27 In regard to the IES, the committee notes that submitters were generally supportive of the inclusion of an IES. However, a number suggested that the IES Guideline may be insufficient because it does not require a project to set specific targets or levels of Indigenous participation for a proposed project.<sup>18</sup>

2.28 Mr Shannon Burns, Policy Officer from the Cape York Land Council (CYLC) commented that while the CYLC supported the intent of the mandatory criterion relating to Indigenous engagement, the criterion should be strengthened to include Indigenous involvement. Mr Burns specified that:

We would like to see that made a mandatory criterion with set levels to be achieved for Indigenous employment and Indigenous service delivery. That should be a minimum level regardless of the Indigenous population in that region. But if there is significantly high Indigenous population—such as in Cape York, where there is a majority Indigenous population—then the level of Indigenous employment and procurement should be higher. We would point to the fact that the Australian government and the Queensland government already have Indigenous procurement policies. They mandate requirements for Indigenous investment, and we think the NAIF should mandate those requirements as well.<sup>19</sup>

2.29 The Northern Land Council made similar comments about NAIF's IES criterion and recommended that 'NAIF applications, as a requirement, [should] demonstrate consultation with affected Indigenous people in developing a project Indigenous engagement strategy'.<sup>20</sup>

2.30 The Wangan & Jagalingou Traditional Owners suggested in their submission that the Investment Mandate should be amended to contain 'proper consideration of, and investment in, culturally-aligned and self-determined Indigenous development'. The organisation commented that:

The governance and operation of the NAIF does not serve us specifically as Traditional Owners...nor as Indigenous people in Northern Australia, historically disenfranchised while others have and still prosper from the

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17 Northern Australia Infrastructure Facility, *NAIF—Indigenous Engagement Strategy Guideline*, June 2017, p. 6.

18 See for example: Northern Land Council, *Submission 68*, p. 8; Wangan & Jagalingou Traditional Owners, *Submission 101*, p. 2; Cape York Land Council, *Submission 27*, p. 2; Union Aid Abroad, *Submission 35*, p. 2.

19 Mr Shannon Burns, Policy Officer, Cape York Land Council, *Committee Hansard*, 1 February 2018, p. 37.

20 Northern Land Council, *Submission 68*, p. 3.

economically productive land base which was taken from us without consent or restitution.<sup>21</sup>

2.31 Mr Joe Morrison, CEO of the Northern Land Council also proposed a change to the Investment Mandate to introduce Indigenous impact assessments for project proposals. Mr Morrison argued that this would help in identifying the nature of each project's potential impacts, both detrimental and beneficial, on Aboriginal people.<sup>22</sup> Mr Morrison explained:

We want to make sure that this is articulated in a way that it is separate from the Indigenous engagement strategy, which I think is important. But I think the requirement to ensure that there is individual impact assessments for all the projects that the NAIF is seeking to assist is undertaken as well.<sup>23</sup>

2.32 The Northern Land Council also proposed that each project proponent's IES ought to be made public.<sup>24</sup> The committee notes that as a document produced by a proponent in relation to due diligence processes, IES' are subject to NAIF's commercial-in-confidence policy and are therefore not published.<sup>25</sup>

#### *Multi-user infrastructure*

2.33 The 2016 and 2018 Investment Mandates both include a criterion relating to public benefit. In updating the Investment Mandate, the specific language used to describe the criterion has been altered, however, the intent of the criterion remains. The 2016 Investment Mandate specifies that in considering public benefit, the Board will give preference to those projects that will:

- serve or have the capacity to serve multiple users; and
- produce benefits to the broader economy and community beyond those able to be captured by Project Proponents.<sup>26</sup>

2.34 This concept was strongly supported by submitters, who acknowledged that NAIF investments had the ability to produce a significant positive knock-on effect in a number of areas through the delivery of a single project. Mr Chris Mitchell, CEO of the Regional Development Australia (RDA) Kimberley commented that:

We believe there should be a bit more flexibility in relation to eligible infrastructure, particularly things like multi-user processing infrastructure. As part of the Commonwealth white paper looking at northern Australia as

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21 Wangan & Jagalingou Traditional Owners, *Submission 101*, p. 4.

22 Mr Joe Morrison, Chief Executive Officer, Northern Land Council, *Committee Hansard*, 2 February 2018, p. 11.

23 Mr Joe Morrison, Chief Executive Officer, Northern Land Council, *Committee Hansard*, 2 February 2018, p. 11.

24 Northern Land Council, *Submission 68*, p. 3.

25 Northern Australia Infrastructure Facility, *Confidentiality Policy*, June 2017, p. 5.

26 Northern Australia Infrastructure Facility Investment Mandate Direction 2016, [F2016L00654], Schedule 1, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

a whole, we're looking at ways we can collaborate and do cross-border industry or infrastructure projects<sup>27</sup>

2.35 Mr Mitchell gave the example of a cold storage facility feasibility study that the RDA was conducting and pointed out that this was the type of project that would certainly fulfil the multi-user public benefit criterion as it would target pastoral, agricultural and horticultural industries simultaneously.<sup>28</sup>

2.36 Mr Peter Taylor, President of the Broome Chamber of Commerce and Industry agreed that multi-user infrastructure would be highly beneficial to an area such as the Kimberley region and that finding infrastructure projects that can be integrated into the existing infrastructure was an important consideration.<sup>29</sup>

2.37 The Institute for Energy Economics and Financial Analysis recommended that 'the preference for multi-user infrastructure should be reflected in NAIF's prioritization of projects for financing'.<sup>30</sup>

#### *\$50 million non-mandatory minimum*

2.38 Under the 2016 Investment Mandate, there was a misapprehension by many stakeholders that projects, in order to be eligible, had to exceed a \$50 million project threshold. The \$50 million threshold is a minimum non-mandatory criterion which has been a source of confusion and frustration for many organisations—with the only clarification about this criterion in the 2016 Investment Mandate being that 'a Project proponent may aggregate multiple pieces of infrastructure into a single Project'.<sup>31</sup>

2.39 Ms Louise Talbot, General Manager of the department clarified that the \$50 million minimum was set as a non-mandatory criteria, to provide NAIF with greater flexibility in its consideration of potential projects:

Projects do not have to meet that criteria in order to be considered for funding for the NAIF. The NAIF is taking a flexible approach to that because in some jurisdictions that might be too big. The reason the threshold was set at \$50 million is that the purpose of the \$5 billion fund was to develop transformational infrastructure for the north. So it's got \$5 billion and it has five years to run. The idea was that it would be involved in large transactions, not lots and lots of very small ones. But it is a non-mandatory criteria so that if a particular economic infrastructure

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27 Mr Chris Mitchell, Executive Officer, RDA Kimberley, *Committee Hansard*, 9 April 2018, p. 1.

28 Mr Chris Mitchell, Executive Officer, RDA Kimberley, *Committee Hansard*, 9 April 2018, p. 1.

29 Mr Peter Taylor, President, Broome Chamber of Commerce and Industry, *Committee Hansard*, 9 April 2018, p. 10.

30 Institute for Energy Economics and Financial Analysis, *Submission 85*, p. 5.

31 Northern Australia Infrastructure Facility Investment Mandate Direction 2016, [F2016L00654], Schedule 1, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

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project comes forward that meets all the other criteria then the NAIF can consider it.<sup>32</sup>

2.40 As the minimum was non-mandatory, NAIF was able to consider smaller projects. NAIF explained to the committee that it chose the Onslow Marine Support Base Project as its first Investment Decision, in part, because it was under the \$50 million threshold. NAIF had intended that this would encourage other smaller projects to come forward.<sup>33</sup>

2.41 Despite this clarification, the non-mandatory \$50 million minimum remained a source of confusion for stakeholders and was generally viewed as the most significant obstacle by many prospective proponents who self-excluded their projects on this basis.

2.42 Ms Pip Close, CEO of Tourism Tropical North Queensland commented that there is a perception in the community that many small business operators had not applied for funding because they were put off by the \$50 million minimum.<sup>34</sup>

2.43 Councillor Elizabeth Schmidt, President of the Northern Alliance of Councils Incorporated echoed this view and suggested that 'a single project or aggregate projects could be reduced to a figure more obtainable to regional councils'.<sup>35</sup>

2.44 Mr Morrison of the Northern Land Council proposed that the \$50 million minimum could be lowered to invite smaller projects to consider applying for NAIF funding. Mr Morrison argued that this would give smaller Indigenous led projects a greater chance of development and consideration.<sup>36</sup> Further, Mr Morrison proposed creating an alternative lower threshold specifically for Indigenous led projects.<sup>37</sup>

2.45 Mr Greg Owens, CEO of the NT Farmers' Association also commented that a number of the members of the association had not considered applying for NAIF funding because the \$50 million threshold was too high. Mr Owens was of the opinion that members of the association would be more likely to be considering projects that are in the \$2 million to \$5 million range.<sup>38</sup>

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32 Ms Louise Talbot, General Manager, Department of Industry, Innovation and Science, *Committee Hansard*, 11 August 2017, p. 43.

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

34 Ms Pip Close, Chief Executive Officer, Tourism Tropical North Queensland for Queensland Tourism Industry Council, *Committee Hansard*, 1 February 2018, p. 22.

35 Councillor Elizabeth Schmidt, President, Northern Alliance of Councils Incorporated, *Committee Hansard*, 1 February 2018, p. 48.

36 Northern Land Council, *Submission 68*, p. 3.

37 Mr Joe Morrison, Chief Executive Officer, Northern Land Council, *Committee Hansard*, 2 February 2018, p. 10.

38 Mr Greg Owens, Chief Executive Officer, NT Farmers' Association, *Committee Hansard*, 2 February 2018, p. 15.

2.46 The committee notes that the 2018 Investment Mandate no longer includes the \$50 million minimum non-mandatory criterion.

### ***2018 Investment Mandate***

2.47 The majority of the changes implemented by the 2018 Investment Mandate reflect recommendations made in the Shepherd review.<sup>39</sup> These recommendations and subsequent changes are discussed briefly below.

#### *Economic infrastructure*

2.48 The Shepherd review noted that it is difficult to define the exact nature of infrastructure projects that might be proposed for NAIF funding; and suggested this was because of the 'lack of mature industries and infrastructure' in Northern Australia.<sup>40</sup> Mr Shepherd concluded that projects most likely to request NAIF funding would be those seeking to create economic infrastructure. This formed the basis for:

#### Recommendation 4—Infrastructure:

The definition of 'economic Infrastructure' should be broadened in the Mandatory Criteria to recognise that in remote regions economic infrastructure stretches far further than the traditional roads, rail, power, water, ports, communications and airports. The definition needs to be broadened to include all those facilities, services and supplies, which are essential to the establishment of business in the location. The multi user test should be relaxed so that all that is required is for the proponent to contract on the basis that it will provide services to other users on reasonable commercial terms.<sup>41</sup>

2.49 In implementing Recommendation 4, the 2018 Investment Mandate gives the following description in relation to Mandatory Criterion 1—The proposed Project involves construction or enhancement of Northern Australia economic infrastructure:

The Board must be satisfied that the Project incorporates (in whole or in part) construction or enhancement of physical structures, assets (including moveable assets) or facilities which underpin, facilitate or are associated with:

- (a) the transport or flow of people, goods, services or information; or
- (b) the establishment or enhancement of business activity in a region; or
- (c) an increase in economic activity in a region, including efficiency in developing or connecting markets; or
- (d) an increase in population.

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39 See Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018. In particular, recommendations 4, 5, 6, and 7 are implemented in the new 2018 Investment Mandate.

40 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 9.

41 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 9.

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The Project must bring new capacity online either through the construction of new infrastructure or by materially enhancing existing infrastructure.

The refinancing of existing debt that does not involve the creation of new capacity is ineligible.<sup>42</sup>

### *Crowding out test*

2.50 The Shepherd review also examined Mandatory Criterion 3 of the 2016 Investment Mandate—The proposed Project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope, without financial assistance:

The Project Proponent must demonstrate to the Board's satisfaction that financial assistance is necessary to enable the Project to proceed, or to proceed much earlier than it would otherwise.<sup>43</sup>

2.51 Mr Shepherd's assessment was that the criterion was causing NAIF to conduct a comprehensive analysis of finance market appetite for potential project to ensure that a gap in the market exists. He concluded that this was slowing down NAIF's processes by between two to three months and recommended:

#### Recommendation 5—Crowding Out Test

NAIF should rely on its own judgement on the impact on the market and market information and submissions by the proponents on whether NAIF participation is essential to facilitate the projector bring forward its delivery. NAIF should also make it clear that they are prepared to step back if the private sector can demonstrate that the project can be delivered in a timely manner without NAIF support.<sup>44</sup>

2.52 This recommendation resulted in the removal of the above mandatory criterion from the 2018 Investment Mandate.

### *Debt cap*

2.53 Prior to the new Investment Mandate coming into force, NAIF was intended to act as a 'gap financier'. This meant that finance could only be provided where a project proponent had explored and exhausted all other options. Further, NAIF financing was not to exceed 50 per cent of total debt for the project, limiting its liabilities and preventing it from becoming the primary source of debt for projects and competing with the private sector. Any concessions provided by NAIF were to be limited to the minimum necessary for the project to proceed.

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42 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], Schedule 1, <https://www.legislation.gov.au/Details/F2018L00567> (accessed 6 June 2018).

43 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], Schedule 1, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

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

2.54 This was reflected in Mandatory Criteria 5 of the 2016 Investment Mandate—Facility's loan monies are not the majority source of debt funding.<sup>45</sup> In this context, NAIF's financing model was notably different to a similar Commonwealth entity, the Clean Energy and Finance Corporation (CEFC), which can provide 100 per cent debt finance.

2.55 The Shepherd review commented that 'this protection may be resulting in a number of worthwhile transformational projects capable of delivering significant public benefits being delayed or not proceeding'. Mr Shepherd proposed that:

Relaxation or removal of the 50 percent debt cap may support the NAIF to utilise its higher risk tolerances to drive projects with significantly higher public benefit and to take more secure, lower risk positions in debt structures.<sup>46</sup>

2.56 In light of this, the Shepherd review made the following recommendation:

Recommendation 6—Debt Cap:

NAIF Mandatory Criterion 5 should be relaxed to allow NAIF to provide more than 50 percent of the debt of a project provided there is a reasonable level of private sector funding and risk in the project. NAIF should not be the major risk taker in an investment.<sup>47</sup>

2.57 This recommendation resulted in the removal of Mandatory Criterion 5 from the new 2018 Investment Mandate, such that NAIF is no longer solely a 'gap financier', and is able to provide up to 100 per cent of the debt for a project.

### *Concessional finance*

2.58 The Shepherd review noted that the type of concession given to a project proponent can be important in assisting a project to succeed:

Most developmental projects are at their most vulnerable in their early years. NAIF loan concessions in the form of a holiday for a specified period on the payment of interest and the repayment of principal create space for increased utilisation in the later years of an infrastructure asset's life. This could make all the difference to the viability of a project in the immediate term.<sup>48</sup>

2.59 The review put forward the following recommendation to address this issue:

Recommendation 7—Concessional Finance:

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45 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], Schedule 1, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

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

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

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

The role of NAIF is not to make a 'profit' at least in the short term but to provide concessional finance to projects which would otherwise not proceed or not proceed for some time. In doing so, NAIF's prime consideration should be that there is a reasonable expectation that NAIF will be repaid. This gives NAIF great flexibility as to the level of concessions it can provide and it should fully exploit this flexibility within the constraint of only providing concessions to the level necessary to facilitate timely delivery of the project.<sup>49</sup>

2.60 The 2018 Investment Mandate has seen the removal of the following requirement from the body of the 2016 Investment Mandate:

(b) there is an expectation that the Commonwealth will be repaid, or that the investment can be refinanced...<sup>50</sup>

2.61 However, Mr Shepherd maintains that the 2018 Investment Mandate's Mandatory Criterion 4<sup>51</sup> is sufficient in expressing the requirement of NAIF to ensure that there is a reasonable expectation of repayment:

The loan will be able to be repaid, or refinanced.

The Project Proponent must present comprehensive financial modelling to demonstrate the ability of the Project to repay the debt in full and on time, or refinance, based on assumptions acceptable to the Board.

A relevant substitute for this criterion should be used for assessing Projects which request alternative Financing Mechanisms, as determined by the Board.<sup>52</sup>

#### *New mandatory criteria*

2.62 As a result of the review of the NAIF, the 2018 Investment Mandate now contains only five Mandatory Criteria (down from the original seven), and no non-mandatory criteria (down from the original two criteria):

- The proposed Project involves construction or enhancement of Northern Australia economic infrastructure;
- The proposed Project will be of public benefit;
- The Project is located in, or will have a significant benefit for, Northern Australia;
- The loan will be able to be repaid, or refinanced; and

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

50 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], p. 3, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

51 Mandatory Criterion 4 of the 2018 Investment Mandate is identical to Mandatory Criterion 6 of the 2016 Investment Mandate.

52 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], Schedule 1, <https://www.legislation.gov.au/Details/F2018L00567> (accessed 6 June 2018).

- The proposed project must have an Indigenous engagement strategy.

### ***Appropriateness of matters left to delegated legislation***

2.63 The NAIF Act stipulates a 'Limit on Investment Mandate'. This section specifies that:

(4) The Investment Mandate must not direct, or have the effect of directing, the Facility to provide financial assistance:

- (a) for the construction of particular infrastructure; or
- (b) in relation to a particular person.

2.64 As such, the Minister cannot approve projects for funding. The Minister does, however, have a power of veto, which can only be applied on three specified grounds. After a consideration period, the Minister may notify NAIF that financial assistance should not be provided to a proponent only if the Minister is satisfied that a NAIF loan would:

- (a) be inconsistent with the objectives and policies of the Commonwealth Government; or
- (b) have adverse implications for Australia's national or domestic security; or
- (c) have an adverse impact on Australia's international reputation or foreign relations.<sup>53</sup>

2.65 Despite this limit on the Investment Mandate a number of submitters considered that the Investment Mandate placed too much power with the Minister.<sup>54</sup> In particular, the Australia Institute noted that a significant proportion of the basic financial definitions and mechanisms to guide NAIF are left to the Investment Mandate. The Australia Institute suggested that this type of information would be better placed in the NAIF Act—a primary piece of legislation, which is subject to scrutiny by the Parliament.<sup>55</sup>

2.66 Submitters also commented that, as the responsible Minister for NAIF, Minister Canavan's vocal promotion of coal had been detrimental to the way NAIF is perceived by the public. Due to the fact that the Minister is responsible for content of the Investment Mandate, some considered that the Minister's public announcements about coal related projects were tantamount to a direction to the NAIF.<sup>56</sup>

2.67 Ms Imogen Zethoven from the Australian Marine Conservation Society commented that:

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53 *Northern Australia Infrastructure Facility Act 2016*, ss. 11 (5).

54 See for example: The Australia Institute, *Submission 47*, p. 6; Greenpeace, *Submission 102*, p. 2; Ms Jody Williams, *Submission 81*, p. 3.

55 The Australia Institute, *Submission 47*, p. 6.

56 See for example: Professor Thomas Clarke, Professor of Corporate Governance, University of Technology Sydney, *Committee Hansard*, 11 August 2017, p. 2; Mr Thomas Swann, Researcher, The Australia Institute, *Committee Hansard*, 11 August 2017, p. 26.

...when ministers—Minister Canavan, Minister Joyce—have made public comments stridently in support of a particular proposal, it obviously places political pressure on a government body to influence their decision. It's undeniable that it would build pressure on that body to make a decision that was favourable to what very senior leaders of the government would want.<sup>57</sup>

2.68 Ms Sandra Williams, a North Queensland resident, considered that the Minister's continued public commentary on NAIF projects was worrisome. Indeed, Ms Williams thought that only having one responsible minister for NAIF was a 'major concern'.<sup>58</sup>

2.69 Professor Thomas Clarke, Professor of Corporate Governance at the University of Technology Sydney, shared this view and commented that:

Given the lack of any viable form of accountability and transparency in the decision making of the NAIF Board, it does appear a fatal flaw of the Northern Australia Infrastructure Facility Act 2016 that recommendations of the NAIF are subsequently referred to a single Minister.<sup>59</sup>

2.70 The Australia Institute noted that other agencies comparable to NAIF have two responsible Ministers, which in their view, provides for better oversight and more accountability in decision making. In particular, the Australia Institute pointed to the CEFC as an example of a corporate Commonwealth entity with two responsible Ministers.

2.71 The Australia Institute suggested that NAIF processes would benefit from having two responsible Ministers,<sup>60</sup> and proposed that the Minister for Finance would be an appropriate appointment in this instance—to act alongside the Minister for Resources and Northern Australia:

It is a similar arrangement to the CEFC, but, unlike the CEFC and other similar agencies, almost everything in the NAIF Act and the NAIF mandate where the minister has power or discretion is the discretion of one minister, rather than two. Normally it's the finance minister as well as the responsible minister. This seems to be a reform to bring it into line with other agencies.<sup>61</sup>

## **Governance policies**

2.72 In conjunction with the NAIF Act and Investment Mandate, NAIF and its board are governed by a number of policies, including the following:

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57 Ms Imogen Zethoven, Campaign Director, Great Barrier Reef, Australian Marine Conservation Society, *Committee Hansard*, 1 February 2018, pp. 31–32.

58 Ms Sandra Williams, *Submission 7*, p. 2.

59 Professor Thomas Clarke, *Submission 30*, p. 3.

60 The Australia Institute, *Submission 47*, p. 6, p. 26.

61 Mr Thomas Swann, Researcher, The Australia Institute, *Committee Hansard*, 11 August 2017, p. 26.

- NAIF Board Charter
- NAIF Board Audit and Risk Committee Charter
- Anti-Corruption Policy
- Confidentiality Policy
- Conflict of Interest Policy
- Freedom of Information Policy
- Incident Reporting Policy
- Indigenous Engagement Strategy Guideline
- Environment and Social Review of Transactions Policy
- Staff Securities Trading Policy
- Privacy Policy
- Public Interest Disclosure Policy
- Public Benefit Guideline.

2.73 These policies are available on NAIF's website, and are subject to review annually.<sup>62</sup>

2.74 NAIF has advised that these policies reflect current Australian best practice government governance principles and current Australian best practice corporate governance for commercial financiers.<sup>63</sup> NAIF's submission to the inquiry noted that these policies have been reviewed by Allens Linklaters and found to be compliant with these two sets of principles.<sup>64</sup>

2.75 Mr John Hopkins, General Counsel of the Export Finance and Insurance Corporation (Efic) advised the committee that Efic had assisted NAIF in its in set up. Mr Hopkins explained that:

NAIF has taken advantage of the fact that we are an established organisation with established policies, governance frameworks, board, and financial mechanisms and administration—the idea being that rather than recreate some of the more back office or administrative aspects of an organisation they would be able to initially rely on Efic's expertise, and that's what's happened.<sup>65</sup>

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62 All policy documents listed are available on NAIF's website: NAIF Act and Governance, <http://naif.gov.au/about-us/naif-governance/> (accessed 24 May 2018).

63 Northern Australia Infrastructure Facility, *Submission 43*, p. 4.

64 Schedule 6—Attachment 1, Northern Australia Infrastructure Facility, *Submission 43*, pp. 14–15.

65 Mr John Hopkins, General Counsel and Board Secretary, Export Finance and Insurance Corporation, *Committee Hansard*, 11 August 2017, p. 32.

2.76 Some submitters expressed concern that NAIF had commenced receiving inquiries and assessing projects prior to the finalisation of the above policies and questioned whether this was appropriate given the large sum of money involved.<sup>66</sup>

2.77 In particular, the Australia Institute noted that although NAIF was established in July 2016, and had commenced some due diligence processes in December 2016, the majority of its governance policies are dated June 2017.<sup>67</sup>

2.78 The Australian Conservation Foundation commented that the delayed publication of these documents was 'concerning' and suggested that it was unclear 'what processes NAIF was using to assess these projects, given that important policy documents had not been finalised at the date of their consideration'.<sup>68</sup>

2.79 Several of these policies are discussed in greater detail in Chapters 3 and 4 of the report.

## Resourcing

2.80 At the same time that the NAIF Act was passed, the Parliament passed the *Northern Australia Infrastructure Facility (Consequential Amendments) Act 2016* which amended the *Export Finance and Insurance Corporation Act 1991* (Efic Act) to provide Efic with the ability to provide assistance to NAIF in the performance of its functions as well as to assist, on agreement, the relevant states and territories in relation to financial arrangements and agreements related to the terms and conditions of grants of financial assistance for the construction of Northern Australia economic infrastructure.<sup>69</sup>

2.81 Efic has a service level agreement (SLA) with NAIF. As an experienced financier with expertise in managing large and complex lending transactions, such as those that NAIF makes, Efic's role is to support NAIF's day-to-day operations.

2.82 The SLA allows Efic to perform:

- Transaction due diligence, environment and technical review, credit assessment, and loan management; and
- Corporate and administrative services (including secretariat and board secretary, legal, compliance, financial management and reporting, human resources, information technology and communications, property management).<sup>70</sup>

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66 See for example: Market Forces, *Submission 69*, p. 2; Greenpeace Australia Pacific, *Submission 102*, p. 2.

67 The Australia Institute, *Submission 47*, p. 18.

68 Australian Conservation Foundation, *Submission 26*, p. 9.

69 Export Finance and Investment Corporation, *Submission 8*, p. 2.

70 Export Finance and Investment Corporation, *Submission 8*, p. 2.

2.83 Mr John Hopkins, General Counsel and Board Secretary for Efic specified that in undertaking due diligence work for NAIF, Efic can only do so at NAIF's request.<sup>71</sup> Mr Hopkins explained that:

...in terms of the transaction process: as you articulated earlier, discussions take place. These are extremely large transactions, and I know from an Efic point of view in dealing in project finance transactions that they can take not just many months but many years to reach a point where information is capable of being put together for decision. For large transactions, similar to the ones that NAIF would be considering, it takes a long time. During that process you are gathering information along with a number of other different transactions, and they are in a pipeline of transactions. Eventually, some transactions reach a crescendo where there is enough information and a credit paper is put together. It discusses whether or not the transaction is creditworthy, and also some legal due diligence and other things are done. Then it is taken through the decision process within management and then to the board.<sup>72</sup>

2.84 In its 2016–17 annual report, NAIF confirmed that it has access to over 110 of Efic's staff, and had, at the time of publication, utilised over half of this number including the Chief Financial Officer, General Counsel, Board Secretary, Head of Policy Compliance, Head of Human Resources, Project Finance Environment and Technical Review, Credit and Portfolio Management.<sup>73</sup>

### **State and territory governments**

2.85 As noted at the beginning of this chapter, the object of the NAIF Act is 'to provide grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure'.<sup>74</sup>

2.86 The relevant jurisdictions under NAIF are Queensland, Western Australia and the Northern Territory. The role of the states and territory in NAIF is essential to ensure effective delivery, and achievement of NAIF's objectives and government infrastructure policy. The building of infrastructure that provides a basis for economic growth and stimulates population growth, will impact the economies of the relevant states and territory.

### ***Master Facility Agreements***

2.87 The relationship between NAIF, the Federal Government and each state and territory is governed by three unique Master Facility Agreements (MFAs), one with each jurisdiction.

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71 Mr John Hopkins, General Counsel and Board Secretary, Export Finance and Insurance Corporation, *Committee Hansard*, 11 August 2017, p. 33.

72 Mr John Hopkins, General Counsel and Board Secretary, Export Finance and Insurance Corporation, *Committee Hansard*, 11 August 2017, p. 35.

73 Northern Australia Infrastructure Facility, *Annual Report 2016–17*, p. 32.

74 *Northern Australia Infrastructure Facility Act 2016*, p. 2.

2.88 The MFAs outline the key principles and arrangements agreed between the parties, which will be adhered to in drafting and executing the project finance documents. The MFAs set out arrangements for issues such as the process for the jurisdiction's role in administering finance agreements, the sharing of costs between the Commonwealth and the jurisdiction, the flow of funds repaid by finance recipients, and the exposure of each party in the event of a default by finance recipients.

2.89 The MFAs with Queensland and Northern Territory came into effect on 3 April 2017. The Western Australian agreement was finalised on 2 November 2017.

2.90 The MFAs state that NAIF will provide a Financing Mechanism to the relevant state or territory in order to provide funding to the Project Proponent.<sup>75</sup>

2.91 The MFAs describe two main types of Financing Mechanism: loans and State Guarantee Payment Undertakings. In the case of a loan, the funds are given to the state or territory by NAIF; the state or territory then pays those funds forward to the project proponent. A State Guarantee Payment Undertaking is more complex and relies on the state or territory providing funds to the project proponent and then advising NAIF of the amount to be repaid to the state or territory. The MFAs also provide that other Financing Mechanisms may be agreed upon; however, these are not detailed in the agreements.<sup>76</sup>

2.92 The Financing Mechanisms are designed to ensure that the financial risk is ultimately carried by the Commonwealth, not by the state or territory, however, the relevant jurisdiction is the lender of record.<sup>77</sup>

2.93 The MFAs also set out how re-payments from project proponents are transferred from the state or territory to NAIF.

### ***Consultation on potential projects***

2.94 The northern jurisdictions do not have a role in selecting or assessing the projects that make an application for funding from NAIF. However, NAIF must consult the relevant jurisdictions prior to making an Investment Decision. Section 13 of the Investment Mandate<sup>78</sup> outlines the form of this consultation and provides the relevant jurisdiction with a clear veto power over individual project decisions.<sup>79</sup>

2.95 The Shepherd review commented that 'full and effective engagement' with the northern jurisdictions is vital to NAIF's success. The review also found, however, that

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75 Australian Government, Section 2, *Master Facility Agreement—Northern Australia Infrastructure Facility*, p. 2.

76 Australian Government, Sections 4 and 5, *Master Facility Agreement—Northern Australia Infrastructure Facility*, pp. 5–6.

77 Northern Australia Infrastructure Facility, *Submission 43*, p. 33.

78 Section 13 of the 2016 and 2018 Investment Mandates are identical.

79 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 [F2016L00654], pp. 5–6, <https://www.legislation.gov.au/Details/F2016L00654> (accessed 6 June 2018).

there is a 'lack of strong engagement' between NAIF and each of the northern jurisdictions which had 'adversely impacted on the progress of the NAIF'.<sup>80</sup>

2.96 While the Investment Mandate requires NAIF to consult with the relevant jurisdictions as soon as practicable after receiving an Investment Proposal, the Shepherd review made the following recommendation concerning the relationship between NAIF and the states and territories:

Recommendation 10—Relationship with States and Territories

The working relationship with the States and Territories on NAIF should be strengthened at both the Government level and NAIF level. The responsible jurisdiction should be consulted as early as practicable in the assessment process by NAIF and kept apprised of all relevant developments. It is important that NAIF remains the point of contact with the jurisdiction and the Government acts in a facilitating role.<sup>81</sup>

2.97 The Shepherd review also considered the role of the Commonwealth in facilitating NAIF's activities, commenting that the Commonwealth has a responsibility to 'smooth the way' for projects identified as a priority. Mr Shepherd proposed that this involvement from the Commonwealth could be exercised either through the Minister or the department. He noted that this approach is already used by the department's Major Project Facilitation Agency.

Recommendation 11—Commonwealth Role

The Commonwealth should adopt a 'whole of Government' approach on active NAIF projects and facilitate cooperation from other Commonwealth Departments or agencies, which may have a role in the project or its approval. The Department is best placed to act as a coordinator.<sup>82</sup>

2.98 The Shepherd review noted that some projects that NAIF might consider could also be eligible for funding from the CEFC, and pointed out that there is not currently any formal relationship between the two government entities. Mr Shepherd proposed that in order to avoid an 'inefficient competitive model between two Commonwealth financiers',<sup>83</sup> that formalising the relationship between NAIF and the CEFC would assist the two entities in achieving the Commonwealth's overall policy objectives:

Recommendation 14—CEFC

The two responsible Ministers should agree on a Memorandum of Understanding between NAIF and CEFC on their *modus vivendi* on

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80 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, pp. 22–23.

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

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

83 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 27.

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projects falling under both their mandates. The goal is to establish a partnership approach using the skills and experience and mandates of both organisations.<sup>84</sup>

### **Committee view**

2.99 The majority of evidence received by the committee was not complimentary of NAIF's governance framework, claiming it was severely inadequate to ensure effective oversight of the NAIF's performance of its role as a commercial financier.

2.100 The committee is pleased the government acknowledged the necessary changes required of NAIF's legislative framework, particularly its Investment Mandate, and sought to address these issues by commissioning Mr Tony Shepherd AO to undertake a review of the NAIF. The committee welcomes the implementation of a number of the recommendations made by Mr Shepherd, in the form of the 2018 Investment Mandate. In particular, the committee notes that the removal of the 50 per cent debt cap (Recommendation 6) on NAIF financing has brought NAIF in line with other Commonwealth investment entities, notably the Clean Energy Finance Corporation (CEFC). While the committee recognises the Shepherd review's observations that 'transformational projects capable of delivering significant public benefits [are] being delayed or not proceeding' as the rationale for removing the debt cap on NAIF, the committee is cognisant that the removal of the debt cap will shoulder more financial liability onto the Commonwealth and ultimately onto the Australian taxpayer. The committee therefore supports the intent of the second part of Recommendation 6 that, 'NAIF should not be the major risk taker in an[y] investment'. Implementation of this recommendation should naturally increase the expectation for greater transparency and accountability even more than before.

2.101 The committee is mindful of the importance of Indigenous participation in NAIF projects, and observes that NAIF has an important role to play in ensuring Indigenous participation, employment, and procurement in the projects it funds. The committee urges NAIF to consider the suggestions made by Indigenous representative bodies during the course of this inquiry and to work together with them to improve NAIF's Indigenous engagement.

2.102 The committee agrees with Mr Shepherd's assessment of NAIF's relationship with the states and territory, and recognises that 'full and effective engagement' with the northern jurisdictions is vital to NAIF's success. It is apparent to the committee that the lack of strong engagement between NAIF and each of the northern jurisdictions has adversely impacted on the early progress of NAIF. The committee encourages the government to consider Recommendations 10 and 11 of the Shepherd review and is hopeful that NAIF will actively take steps to improve its relationship with the states and territory.

2.103 Based on the evidence received, the committee considers that NAIF would benefit from shared ministerial oversight to ensure that the high governance and

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84 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 27.

management standards the community expect are enforced. The committee believes that the introduction of a second responsible Minister for NAIF would provide for greater accountability in NAIF's processes and decision making. This change will align NAIF more closely with the governance and objectives of other similar Commonwealth investment funds like the CEFC. In this context, the committee is of the view, that like the CEFC, the Minister for Finance would be an appropriate appointment in this instance—to act alongside the Minister for Resources and Northern Australia.

2.104 Furthermore, in terms of directing limited resources appropriately, the committee notes and agrees with the Shepherd review's observation that some projects considered by NAIF may also be eligible for funding from the CEFC. The committee considers this observation to be very pertinent and in order to avoid any competition or inefficient distribution of Commonwealth-backed finance between the two government agencies a Memorandum of Understanding between agencies ought to be established expeditiously.

### **Recommendation 1**

**2.105 The committee recommends that the *Northern Australia Infrastructure Facility Act 2016* be amended to require two responsible Ministers (the Minister for Resources and Northern Australia and the Minister for Finance) to provide oversight of the Northern Australia Infrastructure Facility.**

### **Recommendation 2**

**2.106 The committee recommends that the Northern Australia Infrastructure Facility should establish a Memorandum of Understanding with the Clean Energy Finance Corporation to allow information and processes to be shared on projects that have applied to both agencies, ensuring work is not duplicated.**

### ***Indigenous Engagement Strategy***

2.107 The committee believes that Indigenous participation in NAIF projects is crucial to NAIF's success in developing Northern Australia. The committee agrees with submitters that the creation and implementation of an IES is an important step in ensuring such participation. The committee particularly supports a project committing to viable, sustainable procurement targets, identifying and recognising the importance of cultural heritage protection, and reflecting local cultural protocols.

2.108 The committee notes feedback received about the lack of targets that might be within Indigenous engagement strategies and concerns about the potential lack of genuine Indigenous engagement resulting from NAIF financed projects. The committee believes that Indigenous engagement strategies should include detailed and meaningful Indigenous employment and Indigenous procurement targets. Proponents should also demonstrate that they have sincerely engaged Indigenous communities and should conduct a genuine impact assessment.

2.109 Given feedback received by the committee raising concerns about the effectiveness of Indigenous engagement strategies, NAIF should consider what compliance mechanisms are available to it to drive adherence to these strategies. In this regard, public accountability, including public disclosure of Indigenous

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engagement strategies, is itself a form of compliance and will help ensure that both project proponents and NAIF demonstrate their commitment to Indigenous Communities.

2.110 The committee notes that, as a document produced by the project proponent in relation to due diligence processes, a project's IES is subject to NAIF's commercial-in-confidence policy and is not published. The committee agrees with the Northern Land Council's proposal that each project proponent's IES ought to be made public.

### **Recommendation 3**

**2.111 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 detailed Indigenous Engagement Strategies from applicants when an investment decision is taken, including detailed Indigenous procurement and employment plans demonstrating a commitment to Indigenous Communities on its website.**



# 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.

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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.

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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.**



# Chapter 4

## Project assessment process

4.1 This chapter examines the Northern Australia Infrastructure Facility's (NAIF) project assessment and approval processes, as well as concerns raised by submitters regarding NAIF's Risk Appetite Statement (RAS), its public benefit guidelines and the level of information provided about NAIF's recent investment decisions. In so doing, the chapter also outlines the relevant recommendations made in the Expert Review conducted by Mr Tony Shepherd AO (Shepherd review).

4.2 The evidence received during the course of this inquiry relates to decision making processes which were guided by the Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (2016 Investment Mandate) and NAIF governance policies that were in place in mid-late 2017. While, references in this chapter are to the 2018 Investment Mandate and NAIF's current policies, the revisions made to these documents since the inception of this inquiry do not negate submitters concerns in relation to project assessment processes.

### Selecting projects for funding

4.3 NAIF must have regard to a number of different parameters when assessing and selecting projects for funding. These are drawn from the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act), the Mandatory Criteria of the Investment Mandate, NAIF's Risk Management Framework, and a number of governance policies.

4.4 NAIF has developed an application and approval procedure for all projects it considers. Once a project proponent has approached NAIF with a proposal for a project, it enters what NAIF refers to as its pipeline.

4.5 At the time of writing, the NAIF website indicates that NAIF had received a total of 239 enquiries. Of these, 115 are referred to as 'active'; and 16 projects are said to be in the due diligence phase.<sup>1</sup>

4.6 In considering potential projects, NAIF must have regard to a preference for a diversified portfolio including industry and geographic spread across the Northern Australian states and territory.<sup>2</sup> The 16 most advanced projects are spread across five sectors, with projects in the renewables and energy, transport, manufacturing, resources, tourism and social sectors. Of the 16 projects, three are located in the Northern Territory, six are in Western Australia and seven are in Queensland.<sup>3</sup>

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1 Northern Australia Infrastructure Facility, *Pipeline information*, <http://naif.gov.au/application-process/pipeline-information/> (accessed 4 July 2018).

2 Northern Australia Infrastructure Facility, *Risk Management Framework*, <https://naif-gov-au.industry.slicedtech.com.au/risk-management-framework/> (accessed 20 April 2018).

3 Northern Australia Infrastructure Facility, *Pipeline information*, <http://naif.gov.au/application-process/pipeline-information/> (accessed 4 July 2018).

4.7 Once a project enters the pipeline it goes through four broad stages of assessment:

- Enquiry and Preliminary Assessment Stage;
- Strategic Assessment Stage;
- Due Diligence Stage; and
- Investment Decision and Execution Stage.<sup>4</sup>

4.8 More detail about each stage is available on NAIF's website, however, the online page specifies that this information is 'a guideline only and may vary depending on the type and suitability for the project'.<sup>5</sup>

4.9 The Shepherd review noted that in order for the NAIF to be considered successful, 'it must provide the transformative infrastructure required to stimulate economic and population growth in northern Australia'. Mr Shepherd observed that there is a role for NAIF in 'supporting the financing of infrastructure projects identified in the strategic regional hubs':

Recommendation 13—Development Hubs

Without in anyway reducing the opportunities for investment in remote locations, the Government in consultation with NAIF should explore with the States and Territories the establishment of longer term plans for the development of economic infrastructure in identified Regional Development Hubs and seek to establish priorities.<sup>6</sup>

4.10 The Shepherd review also considered NAIF's processes for selecting projects, and suggested that there was potential for NAIF to play an important advisory role in this process, noting that 'where project proponents with underdeveloped ideas come forward, NAIF originators can use their experience in infrastructure financing and development to advise projects about what is required to proceed'.<sup>7</sup> In light of this, the Shepherd review made the following recommendation:

Recommendation 15—NAIF Focus

New potential projects should be reviewed quickly by NAIF in consultation with the relevant jurisdiction and NAIF should decide if the project is likely to proceed to the investment phase with NAIF support. If its assessment is

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4 Northern Australia Infrastructure Facility, *Application and Approval Procedure*, <http://naif.gov.au/application-process/application-and-approval-procedure/> (accessed 19 April 2018).

5 Northern Australia Infrastructure Facility, *Application and Approval Procedure*, <http://naif.gov.au/application-process/application-and-approval-procedure/> (accessed 19 April 2018).

6 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 26.

7 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 28.

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that this is unlikely then the proponent should be advised what is required to bring the project to investment.<sup>8</sup>

### ***Projects in the tourism industry***

4.11 Noting that the tourism industry is a major employer in Northern Australia, submitters proposed that investment in projects in the tourism industry would have particular benefits for Northern Australia, and suggested that such projects should be prioritised for investment by NAIF.<sup>9</sup>

4.12 Dr John Davison-Mowle noted the particular benefit of investing in the tourism industry because 'tourism is a major employer in many northern Australian regions, particularly Queensland, and these jobs have minimum environmental impact and provide long term employment'.<sup>10</sup>

4.13 The joint submission made by the Arid Lands Environment Centre, Cairns and Far North Environment Centre, Environment Centre NT and Environs Kimberley also expressed this view explaining that significant benefits could be achieved by investing in smaller projects across a range of industries including tourism, as it is an industry that supports growth and fits with the natural assets and values of the north.<sup>11</sup>

4.14 The Australia Institute echoed this view, recommending that NAIF and the government give much greater priority to overcoming barriers to tourism industry engagement with NAIF.<sup>12</sup>

### **Risk Appetite Statement**

4.15 The due diligence stage is an important element of the project assessment process. This stage examines the different types of risks that could be involved in a proposed project, including its public benefit, financial risk, technical risks and others.<sup>13</sup> Section 12 of the Investment Mandate<sup>14</sup> requires the NAIF to develop a Risk Appetite Statement (RAS) to guide its Investment Decisions. The RAS is developed in consultation with the responsible Minister and the relevant Northern Australia

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8 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 28.

9 See for example: Mrs Nancy Pallin, Submission 12, p. 1; Dr Galina Williams, *Submission 23*, p. 2; Australian Conservation Foundation, *Submission 26*, p. 4; Lock the Gate Alliance, *Submission 34*, p. 1.

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

11 Arid Lands Environment Centre (ALEC), Cairns and Far North Environment Centre (CAFNEC), Environment Centre NT (ECNT) and Environs Kimberley (EK), *Submission 29*, p. 2.

12 The Australia Institute, *Submission 47*, p. 25.

13 Northern Australia Infrastructure Facility, *Application and Approval Procedure*, <http://naif.gov.au/application-process/application-and-approval-procedure/> (accessed 27 June 2018).

14 References in this chapter are to the 2018 Investment Mandate, unless otherwise specified.

jurisdictions and is a core component of NAIF's Risk Management Framework. Section 12 also sets out a number of other requirements for the RAS:

- Subsection 12(3) prescribes that 'in order to drive economic development in Northern Australia, the Risk Appetite Statement must have regard to a preference for a diversified portfolio, including industry and geographic spread across the States and Territory that comprise Northern Australia'.<sup>15</sup>
- Subsection 12(4) states that:

The Risk Appetite Statement may have a high risk tolerance in relation to factors that are unique to investing in Northern Australia Economic Infrastructure as defined in the Act, including but not limited to, Northern Australia's:

  - (a) distance;
  - (b) remoteness; and
  - (c) climate.<sup>16</sup>
- Subsection 12(5) of the Investment Mandate requires the RAS to be reviewed annually to address emerging risks, changes to existing risks and changes to Government policy<sup>17</sup>—the NAIF Risk Management Framework provides for this and in line with the ANAO Guide, NAIF has advised that the board will update the RAS more regularly to take account of emerging risks and innovation strategies.<sup>18</sup>

4.16 NAIF does not publish its RAS; however, NAIF's website does include a page which provides information on NAIF's Risk Management Framework. This page outlines the main objectives of NAIF's RAS:

The RAS provides personnel at all levels of the business with a clear understanding of the acceptable level of risk within which they must execute their business plans in pursuit of the Board's strategic objectives. It articulates the amount and type of risk that NAIF is willing to seek or retain in pursuit of its objectives (i.e. risk appetite) as well as the amount of risk that it has a readiness to bear at the individual risk level (i.e. risk tolerance).<sup>19</sup>

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

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

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

18 Northern Australia Infrastructure Facility, *Submission 43*, p. 24

19 Northern Australia Infrastructure Facility, *Risk Management Framework*, <https://naif-gov-au.industry.slicedtech.com.au/risk-management-framework/> (accessed 20 April 2018).

4.17 NAIF's website also explains that the RAS may accept higher levels of risk in the initial years of NAIF's operation.<sup>20</sup> Over time, the board may approve a strategy for the management of risk concentrations, including the imposition of limits.<sup>21</sup>

4.18 NAIF describes the RAS as an internal, strategic, tactical and operational document that the board uses to guide its Investment Decisions, operations and governance.<sup>22</sup> In its submission to the inquiry, NAIF explained that the reason for maintaining confidentiality of the RAS is because it describes in detail the manner in which NAIF's risk appetite and tolerances (qualitative and quantitative) are established and controlled.<sup>23</sup>

4.19 NAIF also explained that this non-disclosure of the RAS is consistent with a number of other corporate entities in the private sector including the Clean Energy Finance Corporation (CEFC), the Export Finance and Insurance Corporation (Efic), and the major banks in Australia.<sup>24</sup>

### ***Clean Energy Finance Corporation***

4.20 The CEFC uses similar processes to the NAIF for selecting projects to approve for funding. On this matter, Mr Simon Every, Head of Government and Stakeholder Relations at the CEFC explained to the committee:

Our act specifies that there is a kind of criteria when we go down into making an investment decision. It starts with some specifics in the act. Then our ministers give us an investment mandate direction which makes certain provisions as to how we're to treat investment applications. Then the act says that we must develop policies and procedures and cause them to be published, which is done. And of course we publish them in other aspects such as our annual report when we're discussing how we make our investment.<sup>25</sup>

4.21 Like NAIF, the CEFC does not publish a RAS; however, it does publish its Risk Investment Strategy (RIS). In answers to questions on notice, the CEFC noted that there are two reasons why the CEFC publishes its investment strategy. Firstly, it is a legal requirement of its enabling legislation. Section 68(1)(a) of the *Clean Energy Finance Corporation Act 2012* requires that the Board make and publish an investment strategy as part of its investment policies. Secondly, CEFC noted that they publish their RIS because:

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20 Northern Australia Infrastructure Facility, *Risk Management Framework*, <https://naif-gov-au.industry.slicedtech.com.au/risk-management-framework/> (accessed 20 April 2018).

21 Northern Australia Infrastructure Facility, *Risk Management Framework*, <https://naif-gov-au.industry.slicedtech.com.au/risk-management-framework/> (accessed 20 April 2018).

22 Northern Australia Infrastructure Facility, *Submission 43*, p. 23.

23 Northern Australia Infrastructure Facility, *Submission 43*, p. 23.

24 Northern Australia Infrastructure Facility, *Submission 43—Attachment 1*, p. 6.

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

...even if it was not legally required, it helpfully serves as a practical piece of communication to potential counterparties as to what the CEFC is about and the types of investments it is seeking (and consequently, what it is not).<sup>26</sup>

### ***Publication of the Risk Appetite Statement***

4.22 Submitters were not satisfied with the limited information on NAIF's website relating to the organisation's risk tolerance, and commented that it was impossible to reflect on the adequacy of a document which they could not access. Submitters suggested the RAS should be made public as this would increase transparency and give the public confidence in the decisions NAIF was making.<sup>27</sup>

4.23 A number of submitters including Doctors for the Environment Australia, the Australian Conservation Foundation, and the Australian Marine Conservation Society pointed out that the RAS had not been made public despite the fact that an Order of the Senate had requested it.<sup>28</sup>

4.24 Dr Noel Preece, an experienced risk assessor, commented that the RAS should be publicly released to allow the public to consider the processes that NAIF implements to evaluate risk. Dr Preece further argued that having worked as a risk assessor for major projects in Northern Australia, he understood the process, and did not agree with NAIF's decision to keep the RAS as a confidential document.<sup>29</sup>

4.25 Dr Preece explained to the committee that he did not believe that publishing NAIF's RAS would 'jeopardise projects':

We're talking about a risk appetite statement. It's about what risks and what level of risks NAIF is prepared to take. That doesn't need to get down to the level of detail that might be in a project which is commercially confidential. It doesn't need to jeopardise any of those things, but it does need to present to the public, the consumer, the funder, what sort of risks this organisation is prepared to take. Are they just prepared to throw that money away, or are they recognising some of those risks, so that people, particularly people in northern Australia can say, 'They have considered that' or 'They haven't considered that—they need to address that sort of issue.' That is just absent from the information I was able to obtain.<sup>30</sup>

4.26 Dr Preece suggested that instead of publishing the entire document, an alternative for NAIF could be to publish some detail of its RAS:

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26 Clean Energy Finance Corporation, answer to question on notice, 1 February 2018 (received 26 February 2018).

27 See for example: Concerned Economists Group, *Submission 48*, p. 7; Institute for Energy Economics and Financial Analysis, *Submission 85*, p. 4; The Australia Institute, *Submission 47*, p. 28.

28 Doctors for the Environment Australia, *Submission 25*, p. 7; Australian Conservation Foundation, *Submission 26*, p. 7; Australian Marine Conservation Society, *Submission 55*, p. 4.

29 Dr Noel Preece, *Submission 24*, p. 2.

30 Dr Noel Preece, *Committee Hansard*, 1 February 2018, p. 8.

Even in a general statement for NAIF and its principles of how you're going about business—and it is business—I would have assumed that they would have presented that risk scenario, if you like, at least in some detail. Maybe not down to the fine detail; each project will have a different risk profile; but as a body that is allocating a very large amount of money, they should at least have a tabulation, a summary or schema of what risks they think are most important.<sup>31</sup>

4.27 The Australia Institute proposed that in the event that the RAS could not be publicly released, that the document should be instead subject to external professional audit as a priority.<sup>32</sup>

#### *Climate related risk*

4.28 Ms Bess Murphy, Community Engagement Coordinator from the Cairns and Far North Environment Centre, pointed out that NAIF should consider publishing its RAS because the public should have access to this information in order to determine whether NAIF is 'taking climate risk properly into account in its assessment of projects':

Climate change is obviously a huge environmental issue but it also has a huge bearing on a project's success. What we are asking for is confidence in the decision making processes. Climate change should be extensively featured in the risk appetite statement. We believe that it should be made public or at least a clear summary of what the risk appetite statement involves.<sup>33</sup>

4.29 Dr Preece also considered climate change a major risk to projects, and suggested that this factor was not being appropriately assessed:

NAIF relies heavily on the Developing Northern Australia white paper, which does not address climate change except in one passing mention of possible threats to biodiversity (certainly a threat) but ignores the overwhelming evidence that climate change impacts will be severe in the north.<sup>34</sup>

4.30 On the issue of considering climate related risk in assessing whether to provide financial assistance to a particular project, Ms Shar Molloy from the Environment Centre NT noted that Westpac had published their climate change position statement and 2020 action plan:

They also clearly acknowledge that climate related risk is also a financial risk. So risk associated with climate change may impact on companies' financial performance and the stability of the financial system. Westpac has long stated that climate related risk is financial risk. This is why we have

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31 Dr Noel Preece, *Committee Hansard*, 1 February 2018, p. 8.

32 The Australia Institute, *Submission 47*, p. 28.

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

34 Dr Noel Preece, *Submission 24*, p. 2.

been working with their customers and investors to disclose the information on their approach to this issue. I would suggest that large funding banks like Westpac are certainly leading the way in the importance of being able to identify climate risk and then how that impacts the financial risk.<sup>35</sup>

4.31 The Climate Action Network Pacific encouraged the committee to 'consider the views of Pacific countries on climate change and work to ensure that the NAIF funds are directed towards projects that reduce rather than exacerbate the risks [they] face'.<sup>36</sup>

### Public Benefit

4.32 As noted in Chapter 2, the NAIF board can only approve projects for funding if they fulfil all of the mandatory criteria set out in Schedule 1 of the Investment Mandate. Mandatory Criterion 2 requires that a proposed project must be of public benefit. The Investment Mandate specifies that:

The Board must be satisfied that the Project will produce benefits to the broader economy and community beyond those able to be captured by Project Proponent.

In assessing public benefit, the Board may, without limitation, consider whether the Project will have the capacity to serve multiple users (either immediately or during the expected life of the Project).<sup>37</sup>

4.33 Further, subsection 9(1) of the Investment Mandate also requires that:

In determining any concession to be granted in an Investment Decision, the Board must have regard to:

- (a) the extent and mix of all concessions necessary for the Investment Proposal to proceed; and
- (b) the extent of the project's public benefit.<sup>38</sup>

4.34 In determining what constitutes the public benefit of a proposed project, NAIF has developed a *Public Benefit Guideline* (PB Guideline). The PB Guideline states:

Public benefits are benefits of the Project not captured by the Project Proponent. They are benefits of the Project valued by other business users, governments, individuals and the community.<sup>39</sup>

4.35 The PB Guideline notes that examples of these types of benefits include 'improvements in regional productivity, regional connectivity or better social or economic outcomes for individuals'.<sup>40</sup>

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35 Ms Shar Molloy, Director, Environment Centre NT, *Committee Hansard*, 2 February 2018, p. 30.

36 Climate Action Network Pacific, *Submission 104*, p. 1.

37 Northern Australia Infrastructure Facility Investment Mandate Direction 2018 [F2018L00567], Schedule 1, <https://www.legislation.gov.au/Details/F2018L00567> (accessed 6 June 2018).

38 *Northern Australia Infrastructure Facility Investment Mandate Direction 2018*, ss. 9(1).

39 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 2.

4.36 NAIF's policy also establishes that 'significant public benefits are more likely to eventuate when a Project serves, or has potential to serve multiple end users'. The requirement that any project must have a public benefit is consistent with NAIF's objective of supporting infrastructure that promotes economic growth and stimulates population growth in northern Australia.<sup>41</sup>

4.37 Submitters agreed that any project that receives NAIF funding should be subject to a public benefit test. However, submitters were frustrated that, along with the RAS, the public benefit test was not available to the public and raised concerns about how the public benefit w a project would be assessed.

4.38 The Environmental Defenders' Office (EDO) considered that the PB Guideline 'do[es] not appear to assist Board members to accurately recognise the inherent difficulties...when assessing the public benefit of a project'. Specifically, EDO commented that the criteria set out in the PB Guideline were not sufficient as a public benefit test. Further, EDO pointed out:

There is no clarification in the Investment Mandate on what is meant by public benefit, and no mention of public benefit in the Northern Australia Infrastructure Facility Act 2016. Thus, the NAIF Board had broad discretion in determining the public benefit test before publishing its Public Benefit Guideline (the Guideline) in June 2017. The Guideline only stipulates that the Board must be provided with a Public Benefit Analysis (PBA) from the Proponent. No indication is given as to how the PBA is then assessed and relied upon in the decision-making process.<sup>42</sup>

4.39 Professor Samantha Hepburn, Director of the Centre for Energy and Natural Resources Law, Deakin Law School, agreed that the mandatory eligibility criteria did not define public benefit or 'explain how public benefit must be assessed in the context of the management and distribution of significant amounts of public resources by a Commonwealth entity'. Professor Hepburn explained that:

Public benefit should not be presumptively equated with enhanced economic infrastructure, particularly within a public resource framework such as that which exists in Australia. The mandatory criteria set out in the existing investment mandate needs clearly defined to ensure that considerations relevant to public benefit are taken into account by the NAIF board.<sup>43</sup>

4.40 Ms Claire Gronow, an environmental scientist specialising in environmental assessment and management, considered that the criteria for determining the suitability and acceptability of proposals for NAIF funding were 'woefully inadequate

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40 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 2.

41 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 2.

42 Environmental Defenders' Office, *Submission 111*, p. 7.

43 Professor Samantha Hepburn, *Submission 108*, p. 11.

and simplistic', and commented that 'if these are the only criteria applied, it is likely that proposals funded by NAIF will cause more harm than good'.<sup>44</sup>

4.41 Doctors for the Environment Australia proposed that the definition of public benefit should be 'broadened to include short and long-term effects on health, social and community functioning and the environment'.<sup>45</sup>

4.42 The Australia Institute suggested that NAIF should clarify its public benefits test. Specifically, that it should:

- include a 'national interest' test with scope of assessment covering all of Australia;
- clarify whether and how it is prioritising job creation;
- include impacts on other actors in relevant markets, not just other infrastructure; and
- include guidance on acceptable models and clarify parameters.<sup>46</sup>

4.43 RDA took an opposing view and stated it believed that the guidance provided in the Investment Mandate, and by NAIF in the PB Guideline, is sufficient.<sup>47</sup>

### ***Cost benefit analysis***

4.44 NAIF's PB Guideline sets out that 'for Projects where the proposed NAIF Investment is \$50 million or greater, the Board requires a Cost Benefit Analysis (CBA) of the Project's Public Benefit. Such analysis involves valuing the benefits and costs of a Project to estimate the Public Benefit'.

4.45 The PB Guideline also stipulates that 'for projects where NAIF's proposed investment is below \$50 million, a CBA may not be required'. However, the public benefit must still be clearly demonstrated to the satisfaction of the board. For projects requiring significant financing concessions, the project proponents will be encouraged to provide a CBA.<sup>48</sup>

4.46 The PB Guideline specifies that it is preferable for benefits and costs to be quantified in present value terms, while acknowledging that this is not always possible. In these circumstances, the PB Guideline states that the CBA can be supported by 'qualitative assessments on how benefits and costs of a Project will be realised'. The PB Guideline stipulates that 'failure to quantify the Public Benefit of a Project may influence the financing concessions available to the Project'.<sup>49</sup>

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44 Ms Claire Gronow, *Submission 3*, p. 1.

45 Doctors for the Environment Australia, *Submission 25*, p. 3.

46 The Australia Institute, *Submission 47*, p. 6.

47 Regional Development Australia, Far North Queensland and Torres Strait, *Submission 109*, p. 3.

48 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 3.

49 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 3.

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4.47 The PB Guideline also sets out that:

- The CBA must examine if a project has a public benefit to the economy and community. It must involve aggregating the impacts on members of the community, excluding the benefits and costs of the project captured by the project proponent.
- Where possible, the CBA must consider a range of possible scenarios in addition to the base case. Sensitivity analysis on the assumptions that underpin the CBA outcome, for example discount rates applied to estimate benefits and costs in present value terms, must also be provided.<sup>50</sup>

4.48 Finally, the PB Guideline requires that the following three types of impacts than generate benefits and costs should be included in the CBA:

- Impacts on the economy and productivity—Examples include the value of capacity and operating cost savings that flow from the project to business and the value of improvements in reliability of infrastructure services.
- Impacts on individuals—Examples include accessibility and connectivity impacts, or improved employment, health, safety and security outcomes.
- Impacts on the community—Examples include positive and negative environmental and social impacts during the construction and operation of the project.<sup>51</sup>

4.49 Despite the availability of this information about public benefit and cost benefit analyses, submitters were not satisfied and expressed that the information provided was too vague. Specifically, Ethinvest suggested that NAIF define the terms of the cost-benefit analyses it applies, and include specific commitments in terms of environmental sustainability and climate change.<sup>52</sup>

4.50 The Australia Institute agreed and proposed that all cost-benefit analyses should be made public to permit scrutiny. Further, The Australia Institute suggested that if CBAs could not be published, summaries of the CBAs should be released, and the full analysis should be subject to thorough critical external expert review.<sup>53</sup>

4.51 The Concerned Economists Group also suggested that 'when NAIF is considering large and complex loan proposals, including in the case of Adani, it should be required to contract out the relevant cost/benefit analysis to independent experts with the expertise to conduct them, such as the Productivity Commission'.<sup>54</sup>

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50 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 3.

51 Northern Australia Infrastructure Facility, *Public Benefit Guideline*, June 2017, p. 3.

52 Ethinvest, *Submission 38*, p. 2.

53 The Australia Institute, *Submission 47*, p. 6.

54 Concerned Economists Group, *Submission 48*, p. 6.

### ***Environmental and social considerations***

4.52 Submitters were particularly concerned about whether a project's impact on the environment would be taken into account as part of the public benefit assessment and the CBA.

4.53 Subsection 17(1) of NAIF's Investment Mandate stipulates that:

The Facility must have regard to Australian best practice government governance principles, and Australian best practice corporate governance for Commercial Financiers, when performing its functions, including developing and annually reviewing policies with regard to:

- (a) environmental issues; and
- (b) social issues;
- (c) governance issues.

4.54 To assist in its assessment of projects from an environmental and social perspective, NAIF developed an *Environmental and Social Review of Transaction Policy* (ESRT Policy). This document reminds the reader that NAIF is a financier not a regulatory authority.<sup>55</sup> The ESRT Policy explains:

...the NAIF understands that the regulation and management of environmental and social matters is the responsibility of the Commonwealth, State and Territory (Australian Government) departments and agencies. Some economic infrastructure projects (Project) have the potential to result in significant adverse environmental and social impacts. Where relevant, such impacts will be evaluated when the NAIF Board makes an Investment Decision. Understanding a Project's environmental and social impacts is also commercially prudent for NAIF as significant environmental and social issues can impact the repayment of a financing facility.<sup>56</sup>

4.55 The ESRT Policy notes that project proponents are obliged to 'obtain and maintain all relevant State or Territory and Federal Government regulatory, environmental and Native Title approvals' and provide proof that it has done so.<sup>57</sup>

4.56 In considering whether a project has received all of the necessary approvals, the ESRT Policy states:

...the NAIF board considers its regulatory, environmental, social and Native Title requirements are met when expert regulatory, environmental,

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55 Northern Australia Infrastructure Facility, *Environmental and Social Review of Transaction Policy*, June 2017, p. 2.

56 Northern Australia Infrastructure Facility, *Environmental and Social Review of Transaction Policy*, June 2017, p. 2.

57 Northern Australia Infrastructure Facility, *Environmental and Social Review of Transaction Policy*, June 2017, p. 2.

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social and Native Title due diligence reviews on which NAIF has reliance confirms (or otherwise) that all relevant approvals have been obtained.<sup>58</sup>

4.57 The ESRT Policy also notes that if required, the NAIF board may make an Investment Decision prior to a project receiving all such approvals, however, stipulates that funds will not be released to the project until the review of approvals has been achieved to the satisfaction of the board.<sup>59</sup>

4.58 Ms Laurie Walker, NAIF CEO, attempted to reassure the public that the NAIF board did take environmental considerations into account and conceded that NAIF had a role to play in communicating this:

I think we could make some of this clearer to help with some of the feedback that the market has been giving. Broadly, we do need environmental approvals and native title approvals for all of our projects before we lend, but we also do an assessment as a lender and we don't replicate the role of the regulator. So those approvals need to be in place, but we then look at, on a project-by-project basis, factors such as the physical impacts of climate change.<sup>60</sup>

4.59 Despite the assurances set out in NAIF's ESRT Policy and those given by NAIF's CEO, some submitters were not satisfied that the environmental impact of a proposed project was being sufficiently considered.<sup>61</sup>

4.60 Ms Gronow suggested that NAIF's reliance on other legislation for a project's environmental approvals was insufficient:

Having practiced in environmental impact assessment in Australia since 1991, I am not convinced that merely holding an environmental approval under Federal and/or State legislation is a reliable indicator that a proposal has low impacts.<sup>62</sup>

4.61 Dr John Davison-Mowle echoed this view, commenting that reliance on Commonwealth, state and territory regulations is inadequate due to several factors:

- (a) there are provisions in some of them for short term economic considerations to override environmental concerns;
- (b) there is a very low incidence of refusal of permissions, especially in Queensland; and

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58 Northern Australia Infrastructure Facility, *Environmental and Social Review of Transaction Policy*, June 2017, p. 2.

59 Northern Australia Infrastructure Facility, *Environmental and Social Review of Transaction Policy*, June 2017, p. 2.

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

61 See for example: Ms Grusha Leeman, *Submission 13*, p. 1; Dr Galina Williams, *Submission 23*, p. 1; Doctors for the Environment Australia, *Submission 25*, p. 3; Lock the Gate Alliance, *Submission 34*, p. 1; Australian Ethical Investment, *Submission 36*, p. 2.

62 Ms Claire Gronow, *Submission 3*, p. 1.

(c) there is a perception, which may indeed be true, that there are inadequate provisions for enforcing compliance in environmental matters, particularly in regard in rehabilitation of mining sites.<sup>63</sup>

4.62 Ms Murphy of the Cairns and Far North Environment Centre proposed that:

...the NAIF Act and the investment mandate need to include an explicit guideline to protect the environment of northern Australia, including the climate impact of projects. The investment mandate as it stands doesn't follow the triple bottom line principle and we think that explicit consideration of climate change is really essential, but even more pertinent in northern Australia as our region is on the frontline of climate change.<sup>64</sup>

4.63 Doctors for the Environment Australia proposed that the definition of a project's public benefit be expanded to include 'short and long-term effects on health, social and community functioning and the environment'.<sup>65</sup> The Australian Conservation Foundation expressed a similar view, and recommended that the public benefit test should 'express the desire of improving the long-term wellbeing of Northern Australians, while protecting and enhancing existing environmental and cultural sites'.<sup>66</sup>

#### ***Suitable person test***

4.64 Submitters also suggested that NAIF consider, as part of its assessments, whether a project proponent is suitable to receive NAIF funding.<sup>67</sup> The catalyst for this consideration was the possibility of NAIF providing funding to the Adani Group for the North Galilee Basin Rail Project.

4.65 Transparency International Australia suggested that NAIF could introduce applicant eligibility criteria. This would involve 'conduct[ing] due diligence checks into the character and integrity of applicants' as well as 'investigat[ing] the beneficial ownership of companies applying for financial assistance'.<sup>68</sup>

4.66 In the same vein, Farmers for Climate Action, recommended including a 'Suitable Person' test to NAIF's project assessments, including a mandatory consultation with the Australian Securities and Investments Commission and the Australian Crime Commission.<sup>69</sup>

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63 Dr John Davison-Mowle, *Submission 22*, pp. 2–3.

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

65 Doctors for the Environment Australia, *Submission 25*, p. 3.

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

67 See for example: Union Aid Abroad APHEDA, *Submission 35*, p. 2; Australian Conservation Foundation, *Submission 26*, p. 3.

68 Transparency International Australia, *Submission 44*, p. 2.

69 Farmers for Climate Action, *Submission 45*, p. 4.

4.67 The Australia Institute also believed that NAIF should be required to consider the history of the applicant with regards to social, environmental and governance risks prior to any Investment Decision.<sup>70</sup>

### *Shepherd review*

4.68 The Shepherd review considered NAIF's project assessment processes and in particular, looked at how it considered public benefit:

Given that NAIF is public finance, it is appropriate that NAIF seek to maximize the public benefits associated with the concessional aspects of their financing arrangements. In particular, there is an opportunity for the Investment Mandate to clarify that, where competing projects are in place or where there is oversubscription of NAIF's allocation, a preference exists for local investment from which benefits are likely to be dispersed to the Australian community.<sup>71</sup>

4.69 Mr Shepherd explained that this is 'consistent with the approach of US TIFIA<sup>72</sup> scheme', and proposed that subject to Australia's International Trade Obligations:

#### Recommendation 9—Local Investment

The NAIF Mandate should be clarified to make it clear that all else being equal preference will be given to the project, which has the highest relative level of domestic equity.<sup>73</sup>

4.70 The Shepherd review also considered NAIF's pipeline and its processes for selecting which projects to progress. Mr Shepherd noted that:

While high value projects deliver the best payoff in terms of input costs, the impact of driving smaller projects which will deliver localised public benefit also need to be considered.<sup>74</sup>

## **Investment Decisions**

4.71 Following its assessment of a project, the proponent will submit a formal Investment Proposal which contains all of the necessary information, including due diligence information, for the NAIF board to make an Investment Decision.<sup>75</sup>

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70 The Australia Institute, *Submission 47*, p. 6, p. 34.

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

72 *Transportation Infrastructure Finance and Innovation Act*.

73 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 21.

74 Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report*, 2018, p. 28.

75 The 2018 Investment Mandate defines an Investment Decision as a decision by the Board to offer, or not to offer, a Financing Mechanism.

4.72 When an Investment Decision is made, subsection 17 (2) of NAIF's Investment Mandate stipulates that:

(2) Within 30 business days of an Investment Decision, the Facility must publish information regarding the Investment Decision on its website, subject to commercial confidentiality, including:

- (a) the name of the Project Proponent; and
- (b) the goods/services involved; and
- (c) the location; and
- (d) the type of Financing Mechanism; and
- (e) the amount of the Financing Mechanism.

4.73 In addition to the above requirement, section 42 of the NAIF Act specifies that:

The annual report prepared by the Board and given to the Minister under section 46 of the Public Governance, Performance and Accountability Act 2013 for a period must include the following:

- (a) the particulars of any changes to the Investment Mandate during the period and their impact on the operations of the Facility;
- (b) a summary of the proposal notices given by the Facility to the Minister during the period;
- (c) a summary of any rejection notices given by the Minister during the period and the Minister's reasons for giving the notices;
- (d) for financial assistance provided by the Facility during the period, a summary of:
  - (i) the amounts of financial assistance and kinds of Northern Australia economic infrastructure concerned; and
  - (ii) the kinds of loan contracts used, and their important features;
  - (iii) the risks and returns to the Commonwealth;
- (e) a summary of any adjustments or concessions made by the Facility during the period in relation to Northern Australia economic infrastructure projects that have not progressed as planned.<sup>76</sup>

4.74 Since its establishment, NAIF has produced one annual report, for the 2016–17 financial year. No Investment Decisions were made during that period.

4.75 Since its establishment, NAIF has made three Investment Decisions and given conditional approval to another project. The details of these decisions are set out below.

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<sup>76</sup> *Northern Australia Infrastructure Facility Act 2016*, s. 42.

## Projects

### *Onslow Marine Support Base*

4.76 On 29 September 2017, the NAIF Board made its first Investment Decision—the offer of a loan of \$16.8 million to the Onslow Marine Support Base in Western Australia for the development of a marine supply facility including the expansion of the existing wharf and harbour.

4.77 In accordance with subsection 17(2) of the Investment Mandate, following the board's Investment Decision the following information about the project was published on NAIF's website:

### Formal NAIF publication of Investment Decision relating to Onslow Marine Support Base, Western Australia

On 29 September 2017 the NAIF Board made an Investment Decision to offer a Financing Mechanism. This project to which the Investment Decision relates is the **Onslow Marine Support Base, Western Australia**. It will provide supply and support services for onshore and offshore businesses such as logistics, fuel suppliers, waste management, and construction and maintenance companies in the Carnarvon Basin.

For the purpose of Section 17(2) of the Investment Mandate details of that decision are:

**Name of project proponent:** Onslow Marine Support Base Pty Ltd

**Goods/services involved:** Development of a marine supply facility including wharf and harbour expansion

**Location:** Beadon Creek Onslow, Western Australia

**Type of Financing Mechanism:** loan

**Amount of Financing Mechanism:** up to \$16.8m

Financial assistance to the project is subject to a number of conditions.

The NAIF Board has provided a proposal notice to the responsible Minister for the purpose of Section 11(2) of the NAIF Act in relation to the Onslow Marine Support Base Investment Decision. NAIF has not provided financial assistance to the project at this stage.

The formal agreement of the Western Australian Government to enter into the project financial assistance loan and the relevant finance documents has not yet been obtained.

Figure 1: Northern Australia Infrastructure Facility website, 'Formal NAIF publication of Investment Decision' (accessed November 2017).

4.78 While the details provided fulfil the NAIF's disclosure obligations regarding Investment Decisions, the information did not include details such as, when the project might receive funding, what the terms of the funding would be or why the project was selected to receive funding.

4.79 In early June 2018 the Onslow Marine Support Base was financed. NAIF's website updated the above text to include:

All conditions precedents were met on 7 June 2018 with initial drawdown of funds being made 7 days later on 14 June 2018.<sup>77</sup>

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77 Northern Australia Infrastructure Facility, *NAIF Investments*, <http://naif.gov.au/application-process/naif-investments/> (accessed 25 June 2018).

### *Humpty Doo Barramundi Farm*

4.80 On 3 May 2018, NAIF made its second Investment Decision—the offer of a loan to the Northern Territory's Humpty Doo Barramundi Pty Ltd. The relevant information required by section 17(2) of the Investment Mandate is on NAIF's website.<sup>78</sup>

4.81 The loan will finance the first of a three stage infrastructure investment, including the development of a solar farm, and a medium fish nursery as well as providing processing equipment and adult fish feeding systems.<sup>79</sup>

4.82 The loan amount is \$7.18 million, and NAIF has stated that this may lead to further investment in stages two and three of the development, leading to a commitment to a potential overall \$30 million program. The loan is for 100 per cent of the debt for the project infrastructure components, which was not possible under the original 2016 Investment Mandate. As noted in Chapter 2 of this report, the debt cap was previously set at 50 per cent.

4.83 Ms Laurie Walker, NAIF CEO, stated:

It demonstrates the additional flexibility that the Mandate changes have given us, and how they've helped accelerate NAIF's ability to make Investment Decisions.<sup>80</sup>

4.84 The financing of the loan will be subject to the necessary environmental and other approvals.

### *James Cook University*

4.85 On 3 July 2018, NAIF announced its third Investment Decision—the offer of a loan to James Cook University (JCU) in Queensland. The \$96 million will fund the development of the Technology Innovation Centre (TIC) on JCU's Townsville Campus. This social infrastructure project is part of a larger Enterprise Bundle which has a total project value of \$174 million.<sup>81</sup>

4.86 At the time of writing NAIF has released a media statement but no formal notification of the Investment Decision as required by subsection 17(2) of the Investment Mandate.

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78 Northern Australia Infrastructure Facility, *NAIF Investments*, <http://naif.gov.au/application-process/naif-investments/> (accessed 26 June 2018).

79 Northern Australia Infrastructure Facility, *NAIF Investments*, <http://naif.gov.au/application-process/naif-investments/> (accessed 15 June 2018).

80 Northern Australia Infrastructure Facility, Media Release, 'First NT project will take more Barramundi to the world', <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2018/05/20180516-First-NT-project-will-take-more-Barramundi-to-the-world.pdf> (accessed 16 May 2018).

81 Northern Australia Infrastructure Facility, Media Release, 'World class education more attainable with NAIF loan', <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2018/07/20180703-World-class-education-more-attainable-with-NAIF-loan.pdf> (accessed 4 July 2018).

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*Genex Power–Kidston Stage 2 project*

4.87 On 20 June 2018, NAIF and Genex Power made a joint media release to announce that the NAIF board had 'expressed its support for the development of the financing structure for Genex's Kidston Stage 2 project through the provision of an indicative term sheet for a long-term concessional NAIF debt facility for up to \$516 million'.<sup>82</sup>

4.88 A year earlier, NAIF released some limited information in relation to the Genex Kidston project via a joint media release.<sup>83</sup> In this instance Genex Power had agreed that NAIF could make a statement about its application for its 'Stage 2 large-scale solar and hydro pumped storage projects at Kidston in North Queensland'.<sup>84</sup>

*Adani railway line to the Carmichael coal mine*

4.89 In the lead up to the Queensland election in November 2017, the Queensland Premier Anastacia Palaszczuk stated that if the Labor Government was re-elected, it would not support any NAIF Investment Decision to provide funding to the Adani Group for the North Galilee Basin Rail Project.

4.90 Following the re-election of the Labor Government, the Queensland Treasurer, the Hon. Jackie Trad wrote to Minister Canavan to confirm this position. The letter specifically stated:

In accordance with Section 13(4) of the Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (the Mandate), the State of Queensland provides formal notification to the Commonwealth that financial assistance should not be provided to Adani for the North Galilee Basin Rail Project. Under the Mandate, an application will not progress following such notification.<sup>85</sup>

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82 Northern Australia Infrastructure Facility, Media Release, 'Genex receives indicative term sheet from the Northern Australia Infrastructure Facility for up to \$516 million of concessional debt funding for the Kidston Stage 2 project', <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2018/06/Genex-NAIF-Announcement-20-June-2018.pdf> (accessed 25 June 2018).

83 Northern Australia Infrastructure Facility, Media Release, 'Genex welcomes approval from the Northern Australia Infrastructure Facility to proceed to full due diligence phase', <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/07/NAIF-Genex-release-12-July-2017.pdf> (accessed 25 June 2018).

84 Northern Australia Infrastructure Facility, Media Release, 'Genex welcomes approval from the Northern Australia Infrastructure Facility to proceed to full due diligence phase', <https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/07/NAIF-Genex-release-12-July-2017.pdf> (accessed 25 June 2018).

85 Letter from the Deputy Premier of Queensland, the Hon. Jackie Trad MP to Senator the Hon. Matthew Canavan, Minister for Resources and Northern Australia, [https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/12/12-12-2017\\_Letter.pdf](https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/12/12-12-2017_Letter.pdf) (accessed 4 July 2018).

4.91 Although no formal Investment Decision was made in relation to the Adani North Galilee Railway Line project, NAIF updated its website to include a copy of the letter received and a short statement below the letter which reads:

As a consequence, in accordance with section 13(4) of the NAIF Investment Mandate, NAIF will not be making an Investment Decision to provide financial assistance to that Project.<sup>86</sup>

***Statement of reasons***

4.92 Submitters raised concerns about the level of information provided by NAIF about Investment Decisions; and proposed that, further to the requirements of subsection 17(2) of the Investment Mandate, NAIF should be required to publish a statement of reasons once it has made an Investment Decision, detailing how a project meets the mandatory criteria in the Investment Mandate.<sup>87</sup>

4.93 The Environment Council of Central Queensland suggested:

The NAIF should also commit to publishing as much information as possible about an investment decision as soon as it is made (e.g. a statement of reasons explaining the decision).<sup>88</sup>

4.94 The Australian Conservation Foundation also recommended that NAIF 'publish a statement of reasons as to how specific investment decisions comply with the mandatory [criteria]...'<sup>89</sup>

4.95 In answers to questions on notice, the Department of Industry, Innovation and Science stated that the NAIF board's Investment Decision was statement enough that the project satisfied the criteria:

The NAIF Board is an independent Board, which makes investment decisions in accordance with its Investment Mandate. The Investment Mandate outlines a number of mandatory criteria which must be met for financial assistance to be approved. Therefore in making a decision to finance a project, the NAIF confirms that the project meets the criteria, and the NAIF has fulfilled its obligations under the Investment Mandate.<sup>90</sup>

4.96 NAIF has expressed some inclination to providing more information in relation to one Investment Decision, the Onslow project. In answers to questions on notice, NAIF commented:

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86 Northern Australia Infrastructure Facility, *Written Notification from Northern jurisdictions*, <http://naif.gov.au/written-notification-from-northern-jurisdictions/> (accessed 4 July 2018).

87 See for example: Sunshine Coast Environment Council, *Submission 40*, p. 3; Environment Council of Central Queensland, *Submission 60*, p. 3; Australian Conservation Foundation, *Submission 26*, p. 3.

88 Environment Council of Central Queensland, *Submission 60*, p. 3.

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

90 Department of Industry, Innovation and Science, answer to question on notice, 11 August 2017 (received 5 September 2018).

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In consultation with the proponent, NAIF expects to publish a case study on the Onslow Project after the project has achieved financial close which is expected to be in line with the level of detail for such studies published by CEFC another Government lender. Commercial in confidence material will not be disclosed. For example, the detailed project risk analysis is part of the Investment Decision process and Board deliberations, and is commercial in confidence.

4.97 At the time of writing, the above-mentioned case study has not been published.

## **Committee view**

### ***Public benefit***

4.98 In assessing NAIF's PB Guideline, the committee considers that it appears adequate. The difficulty posed is that because NAIF's due diligence processes are confidential, it is impossible for the committee (or the public) to determine whether the PB Guideline is being adhered to by the board in selecting projects to fund.

4.99 The committee notes that NAIF has made three Investment Decisions and given conditional approval to another project since its establishment. The committee is pleased to see NAIF fulfilling its role as a commercial financier, investing in the construction of Northern Australia economic infrastructure. However, the committee considers that the information provided on NAIF's website about its Investment Decisions lacks sufficient details. In particular, the committee considers NAIF could provide more detail about its Investment Decisions including: when a project might receive funding; the terms of the funding; why the project was selected to receive funding; the true public benefits, including adequate cost-benefit analysis summaries; and most importantly to the Australian taxpayer, how the project proponents intend to pay back the loan. The committee believes that increased communication about its Investment Decisions would greatly benefit NAIF's transparency and assist in improving the way NAIF is perceived by the public.

4.100 The committee agrees with stakeholders that once NAIF has made an Investment Decision, it should be required to publish a statement, detailing how the subject project meets the mandatory criteria in the Investment Mandate.

4.101 The committee notes that NAIF's ESRT Policy requires the board to ensure a project has received all necessary approvals before it provides funding. Where all approvals have not yet been granted, the committee understands that an Investment Decision must stipulate that funding will not be provided until all approvals have been obtained. The committee considers that in such circumstances, it is appropriate for NAIF to publish information about what approvals need to be completed before a project can commence.

4.102 The committee also notes that NAIF's 2017–18 Corporate Plan sets a target for NAIF to deliver between three and five projects in the 2017–18 financial year with a total value of between \$300 million and \$1 billion. The committee notes that NAIF has made three Investment Decisions, however considers that NAIF has not met its performance target, noting that the three Investment Decisions NAIF has announced

have a total value of \$120 million, which falls short of the \$300 million minimum target.

### **Recommendation 6**

**4.103 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 the following information on its website:**

- **A statement addressing how the project proponent has met the mandatory criteria set out in Schedule 1 of the Investment Mandate;**
- **Information about the loan conditions between the Northern Australia Infrastructure Facility and the project proponent. i.e. expected repayment rates, rate of return and length of investment; and**
- **What approvals need to be completed before a project can commence (e.g. environmental and Native Title approvals).**

#### *Focus on Australia's regional areas*

4.104 The committee agrees with the Shepherd review that NAIF must provide the transformative infrastructure required to stimulate economic and population growth in Northern Australia; and believes that success in this objective will see benefit provided to the regions as well as to the main population centres of Northern Australia.

4.105 When considering the types of projects to which NAIF could provide funding, the committee understands that high value projects deliver the best payoff in terms of input costs. However, the committee believes that smaller projects which will deliver localised public benefit should be prioritised. The committee believes NAIF should step up and drive the consideration of projects that will deliver a greater benefit to the regions.

### **Recommendation 7**

**4.106 The committee recommends that the Northern Australia Infrastructure Facility prioritise projects that have high local content, procurement and employment plans, to deliver a higher benefit to the regions.**

#### *Supporting growth in the tourism industry*

4.107 The committee recognises the tourism industry is a major employer in Northern Australia and agrees that investment in projects in the tourism industry would have particular benefits for Northern Australia.

4.108 The committee believes significant benefits could be achieved by investing NAIF funds specifically in tourism, as it is an industry that supports growth and fits with the natural assets and values of the north. The committee also considers that such projects should be prioritised for NAIF investment.

**Recommendation 8**

**4.109 The committee recommends that a portion of the Northern Australia Infrastructure Facility's total funds should be allocated to directly supporting Northern Australia's vital tourism industry.**



## 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**



# 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 3<sup>rd</sup> 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

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

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 publically 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.<sup>2</sup>

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.

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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.<sup>3</sup> 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 3<sup>rd</sup> 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.<sup>4</sup>

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

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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).

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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.<sup>5</sup>

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,<sup>6</sup> 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.

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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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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;

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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).

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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.<sup>10</sup>

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.

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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**

## **Australian Greens' Additional Comments**

1.1 The Australian Greens support the majority report and all of the recommendations of the Senate Standing Committee on Economics inquiry into the governance and operation of the Northern Australia Infrastructure Facility (NAIF).

1.2 The Australian Greens encourage the NAIF to engage far more comprehensively with communities in Northern Australia and to consider supporting approaches to the development of Northern Australia beyond the traditional and often outdated and unsustainable suggestions of mines and dams. The suggestions provided by the Environment Centre NT in their response to a question taken on notice at the Committee's Darwin hearing give good examples of alternative approaches which can provide more sustainable long-term benefits to communities in Northern Australia.<sup>1</sup>

1.3 While the Australian Greens recognise that the NAIF is not directly responsible for environmental assessment and approvals, the current reality is that our federal and state environment laws are inadequate and need significant and urgent reform. As such the NAIF should be required to give some degree of consideration of the potential environmental and climate impact of any project as part of assessing its suitability for investment.

1.4 The Australian Greens note the large number of submissions that raised concerns regarding the possibility of the NAIF providing funding to the Adani Group for the North Galilee Basin Rail Project. This example provides good grounds for requiring the NAIF to include a suitable person test as part of its assessment processes.

1.5 This could be done via means such as those outlined in the Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017 introduced by former Senator Larissa Waters. This Bill is currently before the Senate, and requires the NAIF to assess whether an entity is a suitable person for the purposes of providing financial assistance for Northern Australia economic infrastructure; and provides that in undertaking an assessment, the facility consults with the Australian Securities and Investments Commission and the Australian Crime Commission.

1.6 The Australian Greens share the concern raised in several submissions that public comments of support for the Adani Carmichael mine project by current and former government ministers, including the minister responsible for the NAIF, Senator Canavan, has the potential to prejudice the decisions of the NAIF and place unreasonable political pressure on their assessment process.

1.7 The NAIF must consider the Australian government's policy commitment to the Paris Agreement, both its current domestic pledges and international goals under

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1 Environment Centre NT, Additional Documents; Answers to Questions on Notice 7.

that agreement. As such, the NAIF should be prohibited from financing infrastructure primarily to be used to extract, refine, transport or burn thermal coal or gas, as recommended by The Australia Institute in its submission.

1.8 The Australian Greens, while supportive of Recommendation 4, consider that it would be appropriate to specify that the expanded eligibility criteria for the NAIF board include expertise from the *environmental or climate* sciences.

### **Recommendation 1**

**1.9 That the Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017 be passed by the Parliament so that a suitable person test is added to the NAIFs consideration of a project.**

### **Recommendation 2**

**1.10 That the Northern Australia Infrastructure Facility Act 2016 be amended to require NAIF to consider the Australian government's policy commitment to the Paris Agreement, the climate impacts of a project and to prohibit the NAIF from financing infrastructure which would facilitate the extraction, refinement, transportation or burning of thermal coal or gas.**

**Senator Andrew Bartlett**

**Senator for Queensland**

# Appendix 1

## Submissions and additional documents

### Submissions

- 1 Mr Mark Zanker
- 2 Mr Jonathan Peter
- 3 Ms Claire Gronow
- 4 WA Government
- 5 Mr Peter Atherton
- 6 Dr Clare Smith
- 7 Ms Sandra Williams
- 8 Export Finance and Insurance Corporation (Efic)
- 9 White Label Personal Clouds
- 10 Dr John Price
- 11 Name Withheld
- 12 Mrs Nancy Pallin
- 13 Ms Grusha Leeman
- 14 NT Government
- 15 John & Rachel Griffiths
- 16 Dr Kim Loo
- 17 Dr Margaret Beavis
- 18 Mrs Rebecca Blowfield
- 19 Dr Sean Maher
- 20 Dr Robin Collin
- 21 Greater Whitsunday Alliance Ltd.
- 22 Dr John Davison-Mowle
- 23 Dr Galina Williams
- 24 Dr Noel Preece
- 25 Doctors for the Environment Australia
- 26 Australian Conservation Foundation
- 27 Cape York Land Council Aboriginal Corporation (CYLC)
- 28 Mackay Conservation Group

- 29 Arid Lands Environment Centre (ALEC), Cairns and Far North Environment Centre (CAFNEC), Environment Centre NT (ECNT) and Environs Kimberley (EK)
- 30 Professor Thomas Clarke
- 31 Regional Development Australia Mackay Isaac Whitsunday
- 32 Climate Tasmania
- 33 Ms Karen Vegar
- 34 Lock the Gate Alliance
- 35 Union Aid Abroad - APHEDA
- 36 Australian Ethical Investment
- 37 Mr Richard Stayner
- 38 Ethinvest Pty Ltd
- 39 Mr Marcus Hassall
- 40 Sunshine Coast Environment Council
- 41 Mrs Catherine Rossiter
- 42 Department of Industry Innovation and Science
- 43 Northern Australia Infrastructure Facility (NAIF)
- 44 TI Australia
- 45 Australian Farmers for Climate Action
- 46 QLD Government
- 47 The Australia Institute
- 48 Concerned Economists Group
- 49 Ms Alison Hallahan
- 50 Climate Council of Australia
- 51 Mrs Kathleen Langtree
- 52 Professor Kingsley Faulkner
- 53 Ms Jane Stevenson
- 54 Mrs Lesley Keegan
- 55 Australian Marine Conservation Society
- 56 Dr Sarah Crowe
- 57 Mr Angus King
- 58 Barbara Guthrie & Maureen Kingshott
- 59 Mr Bruce Currie
- 60 Ms Christine Carlisle, Environment Council of Central Queensland

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- 61 Dr Matthew Currell & Prof. Adrian Werner  
62 Ms Vivien Griffin  
63 Mr Hugh Scobie  
64 Dr Ea Mulligan  
65 Environmental Justice Australia  
66 Professor John Quiggin, Kristen Lyons & Morgan Brigg  
67 Gecko Environment Council  
68 Northern Land Council  
69 Market Forces  
70 Ms Kirsten Duncan  
71 Mr Ian Kilgour  
72 Mr David Arthur  
73 Ms Clare Johnston  
74 Mrs Jaclyn Bourke  
75 Name Withheld  
76 Professor Jonathan Potts  
77 Ms Sue Holmes  
78 Dr Elizabeth Moore  
79 Name Withheld  
80 Name Withheld  
81 Ms Jody Williams  
82 Dr Barbara Davis  
83 Ms Charmaine Roth  
84 Name Withheld  
85 Institute for Energy Economics and Financial Analysis  
86 Ms Sharon France  
87 Professor Richard Ruffin  
88 Dr Karin Kochmann  
89 Whitsunday Charter Boat Industry Association  
90 King & Wood Mallesons  
91 Dr Brendan Gogarty  
92 Dr Kim Hare  
93 Dr Donald Gutteridge

- 94 Mr Garry Reed
- 95 Ms Jenny Allen
- 96 Mr Gaven Gilmour
- 97 Mr Christopher Taylor
- 98 Ms Julie Shepstone
- 99 Advance Cairns
- 100 Ms Janet Hutchison
- 101 Wangan and Jagalingou Traditional Owners Council
- 102 Greenpeace Australia Pacific
- 103 Mr Pat Clive
- 104 Pacific Islands Climate Action Network (PICAN)
- 105 Professor Michael Adams
- 106 Business Council of Co-operatives and Mutuals (BCCM)
- 107 National Australia Bank (NAB)
- 108 Professor Samantha Hepburn
- 109 Northern Regional Development Australia RDA Alliance
- 110 Mr Ian Dunlop
- 111 Environmental Defenders Offices of Australia
- 112 Mr Robert Forsythe
- 113 Lighter Footprints
- 114 Mr Peter Burke
- 115 Mr Daniel White
- 116 GetUp

### **Tabled Documents**

- 1 Document tabled by Northern Australia Infrastructure Facility at a public hearing in Canberra on 11 August 2017.
- 2 Document tabled by Australian Marine Conservation Society at a public hearing in Cairns on 1 February 2018.
- 3 Document tabled by the Chair, Senator Chris Ketter at a public hearing in Cairns on 1 February 2018.
- 4 Document tabled by Northern Australia Infrastructure Facility at a public hearing in Cairns on 1 February 2018.
- 5 Document tabled by Senator Murray Watt at a public hearing in Cairns on 1 February 2018.

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- 6 Document tabled by Senator Murray Watt at a public hearing in Cairns on 1 February 2018.
  - 7 Document tabled by Environs Kimberley at a public hearing in Broome on 9 April 2018.
  - 8 Document tabled by Environs Kimberley at a public hearing in Broome on 9 April 2018.

### **Answers to Questions on Notice**

- 1 Answers to questions on notice received from Efic on 30 August 2017, following a public hearing in Canberra on 11 August 2017.
- 2 Answers to questions on notice received from the Department of Industry, Innovation and Science on 5 September 2017, following a public hearing in Canberra on 11 August 2017.
- 3 Answers to questions on notice received from Environmental Justice Australia on 5 September 2017, following a public hearing in Canberra on 11 August 2017.
- 4 Answers to questions on notice received from the Australia Institute on 5 September 2017, following a public hearing in Canberra on 11 August 2017.
- 5 Answers to questions on notice received from the Northern Australia Infrastructure Facility on 7 September 2017, following a public hearing in Canberra on 11 August 2017.
- 6 Answers to questions on notice received from Professor John Quiggin on 12 February 2018, following a public hearing in Cairns on 1 February 2018.
- 7 Answers to questions on notice received from Environment Centre NT on 13 February 2018, following a public hearing in Darwin on 2 February 2018.
- 8 Answers to questions on notice received from the Northern Australia Infrastructure Facility on 23 February 2018, following a public hearing in Cairns on 1 February 2018.
- 9 Answers to questions on notice received from the Northern Australia Infrastructure Facility on 23 February 2018, following a public hearing in Cairns on 1 February 2018.
- 10 Answers to questions on notice received from the Clean Energy Finance Corporation on 26 February 2018, following a public hearing in Cairns on 1 February 2018.
- 11 Answers to questions on notice received from the Northern RDA Alliance on 2 March 2018, following a public hearing in Cairns on 1 February 2018.
- 12 Answers to questions on notice received from the Clean Energy Finance Corporation on 5 March 2018, following a public hearing in Cairns on 1 February 2018.

- 13 Answers to questions on notice received from the Department of Industry Innovation and Science on 17 April 2018.

### **Additional Information**

- 1 Letter from the Australian Government Solicitor provided by the Northern Australia Infrastructure Facility on 16 August 2017.
- 2 Additional Information provided by the Australian Conservation Foundation on 12 September 2017.

### **Correspondence**

- 1 Correspondence received from Mr Geoff Miell on 11 August 2017.
- 2 Correspondence received from Northern Australia Infrastructure Facility on 15 February 2018.

## Appendix 2

### Public hearings

*Canberra, 11 August 2017*

**Members in attendance:** Senators Dastyari, Di Natale, Hume, Ketter, Macdonald, Rice, Watt.

BARNDEN, Mr David, Lawyer, Australian Conservation Foundation

BELLETTINI, Ms Carol, Chief of Staff, Northern Australia Infrastructure Facility

CAMPBELL, Mr Roderick, Research Director, the Australia Institute

CLARKE, Professor Thomas, Professor of Corporate Governance, University of Technology Sydney

FARMER, Mr Stephen, Senior Counsel & Head of Legal, Northern Australia Infrastructure Facility

HOLMES, Ms Sue, Member, Concerned Economists Group

HOPKINS, Mr John, General Counsel and Board Secretary, Export Finance and Insurance Corporation

LAWSON, Mr Mike, Acting Deputy Secretary, Department of Industry, Innovation and Science

LOCKE, Mr Chris, Head of Division, Portfolio Policy and Innovation Strategy,  
Department of Industry, Innovation and Science

PACEY, Mr John, Chief Credit Officer, Northern Australia Infrastructure Facility

PARSONS, Mr Jan, Director, Environmental & Technical Review, Northern Australia Infrastructure Facility

ROSE, Mr Matthew, Economist, Australian Conservation Foundation

SINCLAIR, Dr Paul, Campaigns Director, Australian Conservation Foundation

SWANN, Mr Thomas, Researcher, the Australia Institute

TALBOT, Ms Louise, General Manager, Department of Industry, Innovation and Science

THATCHER, Mr Adam, General Counsel, Northern Australia Infrastructure Facility

WALKER, Ms Laurie, Chief Executive Officer, Northern Australia Infrastructure Facility

WEIR, Mr Geoff, Member, Concerned Economists Group

***Cairns, 1 February 2018***

**Members in attendance:** Senators Bartlett, Ketter, O'Sullivan, Watt.

BELLETTINI, Ms Carol, Chief of Staff, Northern Australia Infrastructure Facility

BURNS, Mr Shannon, Policy Officer, Cape York Land Council

CLOSE, Ms Pip, Chief Executive Officer, Tourism Tropical North Queensland for Queensland Tourism Industry Council

CRASE, Ms Jan, Chief Executive Officer, Regional Development Australia Far North Queensland and Torres Strait,

EVERY, Mr Simon, Head of Government and Stakeholder Relations, Clean Energy Finance Corporation

PREECE, Dr Noel, Private capacity

QUIGGIN, Professor John, Private capacity

SCHMIDT, Councillor Elizabeth Ruth, President, Northern Alliance of Councils Inc.

WAKELEY, Mr Aaron, Director, Corporate Affairs and Communications, Northern Australia Infrastructure Facility

WALKER, Ms Laurie, Chief Executive Officer, Northern Australia Infrastructure Facility

ZETHOVEN, Ms Imogen, Campaign Director, Great Barrier Reef, Australian Marine Conservation Society

***Darwin, 2 February 2018***

**Members in attendance:** Senators Bartlett, Macdonald, McCarthy, Rice.

BIGG, Mr Chris, Secretariat, Darwin Major Business Group

COCKING, Mr Jimmy, Chief Executive Officer, Arid Lands Environment Centre

GRAHAM, Mr Craig, Under Treasurer, Department of Treasury and Finance, Northern Territory Government

KEW, Mr Ian, Chair, Darwin Major Business Group

MOLLOY, Ms Shar, Director, Environment Centre NT

MORRISON, Mr Joe, Chief Executive Officer, Northern Land Council

MURPHY, Ms Bess, Community Engagement Coordinator, Cairns and Far North Environment Centre

OWENS, Mr Greg, Chief Executive Officer, Northern Territory Farmers Association

READ, Mr Alexander, Policy Officer, Arid Lands Environment Centre

TENNANT, Mr Michael, Chief Executive Officer, Department of Trade, Business and Innovation

***Broome, 9 April 2018*****Members in attendance:** Senators Dodson, Smith, Stoker.

ARCHER, Ms Elsia, Chair, Regional Development Australia Kimberley

FOWLER, Mr Jason, Marine Projects Officer, Environs Kimberley

JOLLIFFE, Ms Elaine, Chief Executive Officer, Broome Chamber of Commerce and Industry

MITCHELL, Mr Chris, Executive Officer, Regional Development Australia Kimberley

PRITCHARD, Mr Martin, Executive Director, Environs Kimberley

TAYLOR, Mr Peter John, President, Broome Chamber of Commerce and Industry

***Canberra, 20 June 2018*****Members in attendance:** Senators Hume, Ketter, Macdonald, Rice.

SHEPHERD AO, Mr Anthony, Private capacity

