

Question on notice no. 44

Portfolio question number: SI-44

2017-18 Supplementary budget estimates

Economics Committee, Industry, Innovation and Science Portfolio

Senator Peter Whish-Wilson: asked the Northern Australia Infrastructure Facility on 26 October 2017—

Northern Australia Infrastructure Facility NAIF Investment Mandate requires NAIF to ensure the following, amongst other things, before making an investment decision on a project: that the project is unlikely to proceed, or only at a much later date or with limited scope, without NAIF financial assistance; that the loan will be repaid or refinanced; that the project will provide public benefits; and that NAIF does not act in a way that is likely to cause damage to the state, territory or federal governments reputation.

1. What is the process for determining breaches of NAIFs Investment Mandate?
2. How does NAIF determine whether a project is unlikely to proceed, or only at a much later date or with limited scope, without NAIF financial assistance?
3. Does NAIF consider public statements by a project proponent in its assessment against this criterion?
4. Does NAIF consider that any projects commencement prior to NAIF funding indicates that a project is proceeding, and therefore does not meet this criterion?
5. Has NAIF sought legal advice or ministerial advice in relation to this matter?
6. How does NAIF determine whether a loan can be repaid or refinanced?
7. Does NAIF internally assess risk of non-repayment, and does any part of this assessment process involve third parties (e.g. consultants) ?
8. What level of risk of non-repayment is acceptable for any given project, and does this vary from project to project; or does NAIF have set thresholds or benchmarks across any project (e.g. required rates of return on assets or projects) , and if so how are they determined?
9. How does NAIF determine whether a project will provide public benefits?
10. What is the detailed methodology that NAIF uses to determine whether a project will provide public benefits?
11. How does NAIF determine what constitutes a reputation risk to state, territory or federal governments?
12. What other government agencies (state, territory or federal) , organisations or individuals does NAIF expect to consult with on the issue of potential reputational risk, and is any consultation mandatory?
13. Is NAIF able to seek third party advice when determining any potential risk?
14. If NAIF has any concern in this regard on a specific project, is NAIF likely or required to provide advice or brief the Minister or others in the department?
15. Can the Minister direct you to disregard identified risks to NAIFs Investment Mandate, such as reputational risk to state, territory or federal governments?
16. Does NAIF consider a project proponents broader historical financial record, environmental and human rights record across all jurisdictions, both federal and international, in determining whether a potential reputational risk exists?
17. Does NAIF consider a project proponents history of tax avoidance, including the use of tax havens, to be a potential reputational risk to state, territory or federal governments?

At 2017-18 Supplementary Budget Estimates, NAIF CEO Laurie Walker said the decisions that the board makes don't necessarily take into account opinions of other people.

18. When determining whether a decision would damage the Commonwealth governments reputation, does

NAIF consider: a. Simply the views of the minister or other government agencies? b. The views of foreign leaders? c. The views of prominent business people? d. The views of the Australian public? e. Has NAIF sought legal advice in relation to this matter? If so, please provide this advice. 19. What is the process for NAIF to receive and consider new information about a project proponent after the initial assessment against the Investment Mandate is made? 20. Has NAIF indicated to the Adani Group that it will receive funding from NAIF? 21. Is NAIF aware of reports that Adani Group Chairman Gautam Adanis informed Indian business publication Livemint that The [Carmichael rail line] project will be funded by internal accruals, NAIF and foreign banks? 22. Is this statement true? If not, does NAIF consider that the Adani Group Chairman is making misleading public statements? Will NAIF correct the record? NAIF recently made its first Investment Decision, the Onslow Marine Support Base. This information was first reported by The Australian newspaper in the early hours of 10 October. A media release was published on NAIF website later that day. 23. What is NAIFs policy in relation to public disclosure of Investment Decisions? 24. Please explain how The Australian received advice that NAIF had made its first Investment Decision before NAIFs media release was published. 25. Given that there is as yet no Master Facility Agreement yet with the WA Government, can the WA Government sign off on the contract without the Master Facility Agreement yet in place? 26. If not, why has NAIF chosen to make this Investment Decision prior to the Master Facility Agreement being in place? 27. When is NAIF targeting a Board decision for its second and third Investment Proposals? 28. NAIFs annual report stated that five projects are in due diligence phase. How did NAIF arrive at the figure of \$800 million as the median cost for those projects in due diligence phase? At 2017-18 Supplementary Budget Estimates, NAIF stated that there are now 10 projects in execution or due diligence phases. 29. How many projects are in due diligence? 30. How many projects are in execution? 31. What is the average and median costs for these 10 projects? NAIF is required to consult with Infrastructure Australia for projects greater than \$100 million. 32. At what stage of NAIFs assessment process is Infrastructure Australia consulted? 33. Is this before or after the beginning of due diligence? 34. Is this before or after the beginning of execution? 35. How long does Infrastructure Australia have to consider projects? During 2017-18 Supplementary Budget Estimates, Infrastructure Australia indicated they would expect NAIF to request critical evaluation and transparency in its consultations with Infrastructure Australia. 36. Will NAIF permit Infrastructure Australia to release its assessments of projects? During 2017-18 Supplementary Budget Estimates, the Productivity Commission recommended that business cases for public financing be made public prior to decisions. 37. Will NAIF permit Infrastructure Australia to release assessment of projects prior to NAIF decisions where those projects are already publicly known? In response to a question at 2017-18 Budget Estimates, Senator Canavan, in his capacity as Minister, indicated that he intended to release the Master Facility Agreements once they had been signed and he had received consent from each of the parties. He indicated he had written to parties seeking their consent. 38. What is the status of the Master Facility Agreement with Western Australia? 39. Has consent to release the Master Facility Agreement been received from the Northern Territory Government? 40. Has consent to release the Master Facility Agreement been received from the Queensland Government? Please provide copies of the Master Facility Agreements where consent has been received. If consent has not

been received, please provide advice as to when NAIF expects to receive consent. On 11 September 2017, The Sydney Morning Herald reported a confidentiality breach by NAIF showing that it is now considering loaning public money to the proponents of the \$6 billion Balla Balla project, which comprises a port and railway to the Pilbara Iron Ore project in Western Australia. 41. Please explain the circumstances leading to this breach of confidentiality. 42. What steps have NAIF taken to ensure this will not happen again? 43. Have any of NAIF Board declared conflicts of interest over this project? At 2017-18 Budget Estimates Senator Canavan stated that I suggested a number of board appointments, one of which was Ms McPhail. 44. Did Senator Canavan or Deputy Prime Minister Joyce suggest the names of any other NAIF Board members (including Sally Pitkin)? At 2017-18 Budget Estimates, NAIF CEO, Ms Laurie Walker, stated that there had been six conflicts declared. 45. How many conflicts had been declared as of 31 October 2017? During the Senate Economic References Committee inquiry into the Governance and Operation of the Northern Australia Infrastructure Facility, it was revealed that Dr Sally Pitkin resigned from NAIF Board on 31 July 2017. 46. What steps has the Minister or NAIF taken to appoint a new Board member? 47. Will the Minister prioritise non-resources experience in his appointment? 48. Has the Minister or any member of the Government recommended the appointment of any person? On 31 January 2017, the Australian Taxation Office (ATO) issued its first Taxpayer Alert, stating: We are reviewing arrangements which attempt to fragment integrated trading businesses in order to re-characterise trading income into more favourably taxed passive income. Our concern arises where a single business is divided in a contrived way into separate businesses. The income that might be expected to be subject to company tax is artificially diverted into a trust where, on distribution from the trust, that income is ultimately subject to no tax or a lesser rate than the corporate rate of tax. These arrangements have the potential to erode the corporate tax base, particularly where they are promoted to overseas investors as a way to acquire tax advantages in Australia. 49. Has NAIF considered the ATO's Taxpayer Alert? 50. If so, how has NAIF responded? 51. What steps has NAIF taken to ensure that a company's corporate structure is assessed during due diligence? 52. In general terms, what influence would a corporate structure that is designed to avoid Australian taxation have on NAIF's decision to propose financial assistance? The Anti-Money Laundering and Counter-Terrorism Financing Act (AML-CTF) 2006 imposes obligations on regulated businesses including: Establishing and maintaining an AML-CTF program to help identify, mitigate and manage the money laundering and terrorism financing risks a business faces Customer due diligence identifying and verifying the customer's identity, and ongoing monitoring of transactions Neither NAIF's website or the response to Question on Notice BI-76 from 2017-18 Supplementary Budget Estimates refer to any NAIF policies that deal with money-laundering processes. 53. Is NAIF enrolled or registered as a reporting entity under the AML-CTF Act? 54. Does NAIF have a specific policy to ensure it meets its obligations under the AML-CTF Act? If so, please provide this policy. 55. What processes has NAIF implemented to ensure that it is meeting its obligations under the AML-CTF Act? 56. How does NAIF deal with organisations that are facing allegations of money-laundering in foreign jurisdictions? NAIF is required to diversify funding across jurisdictions. 57. Does NAIF intend to diversify according to population, current economic activity, or any other measure? 58. Does the requirement for diversification mean that a substantial

amount of funding to one project in one state reduces the likely amount of further funding that state can expect for other projects? NAIF has previously stated that Adani consented to publicise its application, and that NAIF told the Minister this by email. But NAIF later refused to say when Adanis proposal went into due diligence, when Adani consented to disclosure, and when NAIF told the Minister about this consent, which NAIF says is commercial in confidence. 59.What commercial value would be put at risk by this information? 60.Did Adani give consent to publicise, and did NAIF officials tell the Minister, before or after 3 December 2016? 61.If Adani had consented, why did NAIF refuse for many weeks after 3 December 2016 to say if Adani had applied, including in response to FOI requests? NAIF has said it does not know how the Courier Mail got the story about Adani on 3 December 2016, but did not investigate. 62.Does this mean there was a breach of NAIFs confidentiality policies? 63.Will this breach be investigated? If no, why not?

Answer —

See attachment.

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry, Innovation and Science Portfolio
2017 – 2018 Supplementary Budget Estimates
26 October 2017

AGENCY/DEPARTMENT: NAIF

TOPIC: Northern Australia Infrastructure Facility Investment Decisions

REFERENCE: Written Question – Senator Whish-Wilson

QUESTION No.: SI-44

Northern Australia Infrastructure Facility

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At 2017-18 Supplementary Budget Estimates, NAIF stated that there are now 10 projects in execution or due diligence phases.

29. How many projects are in due diligence?
30. How many projects are in execution?
31. What is the average and median costs for these 10 projects?
32. NAIF is required to consult with Infrastructure Australia for projects greater than \$100 million. At what stage of NAIF's assessment process is Infrastructure Australia consulted?
33. Is this before or after the beginning of due diligence?
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35. How long does Infrastructure Australia have to consider projects?

During 2017-18 Supplementary Budget Estimates, Infrastructure Australia indicated they would expect NAIF to request critical evaluation and transparency in its consultations with Infrastructure Australia.

36. Will NAIF permit Infrastructure Australia to release its assessments of projects?

During 2017-18 Supplementary Budget Estimates, the Productivity Commission recommended that business cases for public financing be made public prior to decisions.

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In response to a question at 2017-18 Budget Estimates, Senator Canavan, in his capacity as Minister, indicated that he intended to release the Master Facility Agreements once they had been signed and he had received consent from each of the parties. He indicated he had written to parties

seeking their consent.

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41. Please explain the circumstances leading to this breach of confidentiality.

42. What steps have NAIF taken to ensure this will not happen again?

43. Have any of NAIF Board declared conflicts of interest over this project?

At 2017-18 Budget Estimates Senator Canavan stated that “I suggested a number of board appointments, one of which was Ms McPhail”.

44. Did Senator Canavan or Deputy Prime Minister Joyce suggest the names of any other NAIF Board members (including Sally Pitkin)?

At 2017-18 Budget Estimates, NAIF CEO, Ms Laurie Walker, stated that “there had been six conflicts declared”.

45. How many conflicts had been declared as of 31 October 2017?

During the Senate Economic References Committee inquiry into the Governance and Operation of the Northern Australia Infrastructure Facility, it was revealed that Dr Sally Pitkin resigned from NAIF Board on 31 July 2017.

46. What steps has the Minister or NAIF taken to appoint a new Board member?

47. Will the Minister prioritise non-resources experience in his appointment?

48. Has the Minister or any member of the Government recommended the appointment of any person?

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These arrangements have the potential to erode the corporate tax base, particularly where they are promoted to overseas investors as a way to acquire tax advantages in Australia.

49. Has NAIF considered the ATO’s Taxpayer Alert?

50. If so, how has NAIF responded?

51. What steps has NAIF taken to ensure that a company’s corporate structure is assessed during due diligence?

52. In general terms, what influence would a corporate structure that is designed to avoid Australian taxation have on NAIF’s decision to propose financial assistance?

The Anti-Money Laundering and Counter-Terrorism Financing Act (AML-CTF) 2006 imposes obligations on regulated businesses including:

Establishing and maintaining an AML-CTF program—to help identify, mitigate and manage the money laundering and terrorism financing risks a business faces

Customer due diligence—identifying and verifying the customer’s identity, and ongoing monitoring of transactions

Neither NAIF’s website or the response to Question on Notice BI-76 from 2017-18 Supplementary Budget Estimates refer to any NAIF policies that deal with money-laundering processes.

53. Is NAIF enrolled or registered as a reporting entity under the AML-CTF Act?

54. Does NAIF have a specific policy to ensure it meets its obligations under the AML-CTF Act? If so, please provide this policy.
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59. What commercial value would be put at risk by this information?
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NAIF has said it does not know how the Courier Mail got the story about Adani on 3 December 2016, but did not investigate.

62. Does this mean there was a breach of NAIF's confidentiality policies?
63. Will this breach be investigated? If no, why not?

ANSWER

1. The NAIF undertakes detailed due diligence analysis for each project. This analysis includes an assessment of a project/transaction's compliance (or otherwise) with NAIF's Investment Mandate and management presents this analysis to the NAIF Board for consideration. The Board considers each project on a case-by-case basis to determine that all of the Investment Mandate's requirements have been met.
2. Pursuant to NAIF Investment Mandate, 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. NAIF will seek guidance from the Project Proponent and, if necessary, conduct its own enquiries and analysis (drawing on the experience of the NAIF executive and Board and which may include input from independent due diligence experts, consultants or other entities) to ensure sufficient and appropriate measures have been undertaken in this regard and for the Board to exercise its judgement to determine if this condition has been satisfied.
3. Yes.
4. This would depend on the circumstance of each project.
5. No.
6. Pursuant to the NAIF Investment Mandate (Mandatory Criterion 6), 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. The NAIF Executive will undertake financial analysis and due diligence of that

modelling including the reasonableness of assumptions. Input from independent due diligence experts, consultants or other entities may be sought and testing of scenarios undertaken. The Board will consider the Proponent modelling and further due diligence in exercising its judgement to determine if this condition has been satisfied.

7. Yes. It may involve third parties (e.g. consultants) as and when required. This is considered on a case-by-case basis.
8. The acceptable level of risk of non-repayment is determined in accordance with NAIF's Risk Management Framework (RMF). It is consistent across all projects subject to revision of the RMF from time to time. It is a function of amongst other things the likelihood and impact of the relevant risk which will depend on the circumstances of each case. Risk tolerance is determined as the acceptable level of risk remaining after controls for the relevant risk.

Refer to the NAIF [website](http://www.naif.gov.au/risk-management-framework/) <http://www.naif.gov.au/risk-management-framework/> for the overview of the RMF.

9. Please refer to NAIF's Public Benefit Guideline available on the NAIF website: <https://naif.gov.au/industry.slicedtech.com.au/wp-content/uploads/2016/08/Public-Benefit-Guideline-27.6.2017-for-web.pdf>.

10. Please see response to Question 9.

11. NAIF undertakes its own analysis on reputation risks associated with any potential transaction and Project. The analysis is undertaken on a case-by-case basis and depends on the relevant issues arising out of each particular project. NAIF at all times is able to seek third party advice if the Executive or Board requires it.

Pursuant to s14(2) of the NAIF Investment Mandate, as appropriate NAIF also consults with relevant government stakeholders including Commonwealth departments. The NAIF also consults the relevant state or territory government pursuant to s13 of the NAIF Investment Mandate.

Section 16 of the NAIF Investment Mandate states that the NAIF must not act in a way that is likely to cause damage to the Commonwealth Government's reputation or that of a State or Territory government.

12. This would be considered on a case-by-case basis. Consultation with relevant government stakeholders is as appropriate. Also refer to the response to Question 11 regarding s14(2) of the NAIF Investment Mandate.

13. Yes.

14. Pursuant to s14(2) of the NAIF Investment Mandate, as appropriate NAIF consults with relevant government stakeholders including Commonwealth departments. Further, all relevant information the NAIF has that is relevant to the responsible Minister's consideration period grounds for rejection will be provided.

15. No.

16. The type of risks relevant to a project and the materiality of those risks will depend on the particular project under consideration and will be assessed on a case-by-case basis.

17. The type of risks relevant to a project and the materiality of those risks will depend on the particular project under consideration and will be assessed on a case-by-case basis.
18. As outlined in response to Question 11, the NAIF may consider relevant information from a range of sources on this matter. The NAIF has not sought legal advice on this matter.
19. NAIF will consider any new information which is relevant to its assessment of a project.

An outline of the NAIF appraisal process is available on the NAIF website:
<http://naif.gov.au/application-process/application-and-approval-procedure/>.

20. No.

21. A copy of this article was tabled at the Senate Estimates Hearing on 26 October 2017.

22. Specific project information is regarded as commercial in confidence. NAIF does not comment on specific projects without the consent of the proponent. NAIF assesses the facts as they are established at the time due diligence is being undertaken and an Investment Decision is being made.

NAIF does not correct the record for every media report. Reported conversations are not necessarily accurate and to correct the record in all cases would be a significant diversion of NAIF resources from its core objectives.

23. Pursuant to s17(2) of the Investment Mandate, within 30 business days of an Investment Decision, NAIF must publish information regarding all transactions on its website, subject to commercial confidentiality, including:

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

24. The NAIF did not provide the information to the Australian. The report was consistent with information agreed by NAIF and other relevant stakeholders for publication.

25. The Master Facility Agreement with Western Australia has now been executed.

26. The NAIF Board made an Investment Decision once it was satisfied the project met the requirements of the Investment Mandate. There are some conditions which included that the Master Facility Agreement be executed.

27. Timing and progression from stage to stage of the NAIF appraisal process is largely dependent on the quality of information provided by proponents for assessment at various points in time. Timeframes will depend on factors such as project complexity, and the stage at which private sector financiers are with their due diligence. This will vary on a case-by-case basis.

28. This is the median estimated total project size of the five transactions in the due diligence phase as at 30 June 2017.

29. As at 25 November 2017 there are eleven projects in the due diligence phase.

30. As at 25 November 2017 there is one project in the execution phase.
31. In relation to the 10 projects that were in due diligence as at the 2017-18 Supplementary Budget Estimates: average estimated project size: \$564m; and median estimated project size: \$288m.
32. Refer to Question on Notice AI-82. NAIF consults Infrastructure Australia on an as needs basis, or as required by the NAIF Investment Mandate and the NAIF Application and Approval Procedure.
33. Refer to response to Question 32. It may be before or after the beginning of due diligence.
34. Refer to response to Question 32. Typically, it would be before the beginning of execution.
35. Refer to response to Question 32. This will be dependent on the nature, complexity and timelines, of the relevant project.
36. This will be considered by the NAIF Board on a case-by-case basis and subject to commercial in confidence requirements.
37. Refer to response to Question 36.
38. It has been executed.
39. Yes.
40. Yes. The Minister for Resources and Northern Australia, Senator the Hon Matthew Canavan provided copies of the MFAs to the Senate Tabling Office on 15 December 2017.
41. NAIF does not accept it was responsible for a confidentiality breach and is not aware how the Sydney Morning Herald obtained any information for its report.
42. Relevant stakeholders being all NAIF staff and Directors and all agencies and jurisdictions with which NAIF shares commercial proponent information to progress consideration of proposals have been reminded by NAIF of their obligations regarding the management of commercial in confidence information.
43. Refer to the NAIF's submission to the Senate Enquiry into the Governance and Operation of the NAIF (pages 26 to 30) for further information.

Consistent with best practice, as outlined in that submission, details of specific recusals made by Board members are not publically released.
44. Under the NAIF Act (s15(1)) the responsible Minister appoints the NAIF Board members.
45. As at 31 October 2017, there have been 25 conflicts in relation to 17 projects (out of a total of 142 projects as at 31 October 2017).
46. The Department of Industry, Innovation and Science is undertaking its standard processes to support the Minister select and appoint a new NAIF Board member. NAIF Board appointments are considered significant and will be subject to the process outlined in the Cabinet Handbook.

47. NAIF Board member appointments are matters for the Minister, having regard to the skills and experience requirements outlined in clause 15(4) of the NAIF Act 2016.
48. All NAIF Board members are appointed by the Minister.
49. NAIF is aware of this Taxpayer Alert.
50. NAIF considers taxation and corporate structure issues for each project and may, if necessary, consult with the ATO and taxation experts in relation to relevant taxation issues.
51. NAIF's due diligence in all cases will involve detailed understanding and analysis of the corporate structure of the potential proponent and other relevant transaction parties.

It would involve obtaining the corporate structure identified by the proponent and then verified by searches and investigations including of corporate registers such as ASIC and relevant international bodies.

52. NAIF will not support a project that breaches Australian laws, including Australia's tax laws.
53. Yes.
54. NAIF are in the advanced stages of developing a comprehensive policy and procedures to ensure compliance with AML/CTF.
55. See response to Question 54.
56. NAIF would take steps to substantiate the allegations and assess that as part of its due diligence process.
57. Section 12(2) of the NAIF Investment Mandate, requires the NAIF's Risk Appetite Statement to have regard to a preference for a diversified portfolio, including industry and geographic spread across the States and Territory that comprise Northern Australia.
58. This would be a matter for the NAIF Board to consider, at the time an Investment Decision is made and as the NAIF portfolio develops.
59. NAIF indicated to the Minister that Adani had consented to publically disclose the fact that it had expressed interest in accessing the NAIF facility for the purpose of supporting the North Galilee Basin Rail Project.

At the public hearing for the Senate Enquiry in August 2017, NAIF confirmed at that time it had not received any Investment Proposal, which is the formal application for NAIF financial assistance.

As to the commercial value in disclosing the status of project phases, without commenting specifically on any project, indicating whether a project has been delayed for example may reveal commercial in confidence information. Refer to response to Question on Notice AI-54 for further detail.

60. Refer to response to Question 59 as to what Adani consented to disclose publically.

The Minister had been advised by NAIF of Adani's consent to this public disclosure before 3 December 2016.

61. Refer to response to Question 59 as to what Adani consented to disclose publically.

There is a significant difference between a statement that party is interested in accessing NAIF funds and confirming commercial in confidence information, for example whether the NAIF is conducting detailed due diligence with that party.

Each FOI request is provided with a detailed Statement of Reasons explaining the decision maker's decision, including why information requested was commercial in confidence.

62. No.

63. Refer to response to Question 62.