

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry, Innovation and Science Portfolio
2016 - 2017 Additional Estimates
2 March 2017

AGENCY: NORTHERN AUSTRALIA INFRASTRUCTURE FACILITY

TOPIC: Disclosure of information relating to commercial interests

REFERENCE: Question on Notice (Hansard, 2 March 2017, page 128)

QUESTION No.: AI-54

Senator LUDLAM: And Ms Walker, you are prevented from disclosing anything, apparently. In terms of public interest immunity, the ground that you are claiming is commercial-in-confidence. Could you provide for us, in writing on notice, the specified potential harm to commercial interests. I need you to be quite specific about how the public or the commercial interests would be harmed if this information is disclosed.

Ms Walker: I am very happy to do that.

Senator Canavan: Yes, happy to take it on notice.

Senator LUDLAM: It is handy to have the minister at the table.

CHAIR: So it is harm to public interest, is that correct?

Senator LUDLAM: There is a public interest immunity ground being claimed by the officer. That is fine. It is commercial-in-confidence. That is a blanket that we need narrowing down to the specific commercial harm that would be created.

ANSWER

NAIF is committed to its responsibilities as a public entity and to be publicly accountable for the \$5 billion it is charged with investing. It is required under Section 17(2) of the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (Investment Mandate) to publish information within 30 days of an Investment Decision being made and will comply with that obligation. That is the point in the NAIF lending process when there is certainty as to the terms on which it will lend.

NAIF and its Board treats business information received from, or developed about a proponent or its dealings at each stage of its assessment process as confidential except to the extent explicitly agreed by NAIF with a proponent. This may include very high level information such as a brief description of the project and limited information such as that they are interested in approaching NAIF for finance. It does not extend to any detail on a project's status prior to NAIF's requirements to publish under its Investment Mandate.

The NAIF's objectives are in summary to:

- provide loans (or other financial assistance) for the construction of infrastructure that provides a basis for economic or population growth to benefit Northern Australia (refer to the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act) Section 3(1) and Section 7(1) (a)); and
- have regard to the necessity of the investment to encourage private sector participation in financing a project and the potential effect of its loan on the Australian infrastructure financing market (this is referred to as 'crowding in' private sector finance) (refer to Investment Mandate Section 7 (3)).

NAIF must act within the requirements of its Investment Mandate, which include:

- partnering with other financiers. NAIF cannot be the sole lender or even a majority source of finance. This is to ensure there is risk sharing between NAIF and other financiers. (Refer to Investment Mandate Schedule 1 Mandatory Criteria 5);
- servicing a market 'gap'. NAIF can only provide finance if the project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope without financial assistance. NAIF must not provide financing unless the Board is satisfied the project would not otherwise have received sufficient financing from other financiers. (Refer to Investment Mandate Schedule 1 Mandatory Criteria 3 and Section 7(1)); and
- limiting concessions offered to the minimum required for a project to proceed. (Refer to Investment Mandate Section 9(2)).

NAIF is a lender, not the provider of grant funds. NAIF needs to negotiate terms for the provision of its loan with the project proponent, equity investors, commercial and other debt financiers and contractors, operators and key suppliers amongst others ('Project Participants').

NAIF's approach to maintaining the confidentiality of information is in the best interests of the public, NAIF and its key stakeholders, including taxpayers and to achieve its objectives. Project Participants have consistently indicated that they expect NAIF to maintain the commercial in confidence position NAIF operates under. Further project proponents that are listed companies have a requirement to manage disclosures regarding their commercial affairs which aligns with NAIF's approach to confidentiality. In addition, Section 17(1) of the Investment Mandate obliges NAIF to have regard to Australian best practice government governance principles and corporate governance for Commercial Financiers when performing its functions. Maintaining commercial in confidence of information is consistent with this practice and is also common practice across Government during infrastructure procurement and tender bidding processes.

NAIF's approach to maintaining the confidentiality of information is applicable to all transactions that it considers. Applying this principle consistently maintains the confidence of stakeholders and Project Participants in the integrity of NAIF's processes.

Achievement of NAIF objectives

NAIF loans will be highly tailored to the circumstances of the particular transaction. This takes significant analysis and negotiation with the other Project Participants. NAIF must work iteratively with other Project Participants to understand what are the deal drivers for each Project Participant and what risks they are each prepared to accept. Financial and other contractual arrangements often change significantly as more is understood about a proponent and its proposal. If information were disclosed to the market prior to terms being formally and finally agreed, it could result in public or commercial harm, through:

- the undermining of NAIF's negotiating position and ability to have the market tested to ensure that as a gap funder NAIF only puts in the minimum amount of NAIF (public sector) debt or concessions; and/or
- misleading information being released to the market. For example information that suggests a project has insurmountable challenges that with time could be better understood and mitigated.

If the status of the transaction were signaled before agreement on financing and other arrangements it could harm the prospects of the proponent raising equity and the debt finance required from other financiers. That might ultimately result in:

- other financial partners contributing less finance, creating a larger market 'gap' and using more NAIF finance than would otherwise have been necessary and therefore having less of the NAIF \$5 billion of funds available for other projects in need; and/or

- the project not being able to raise sufficient finance from any source (including NAIF) and therefore not proceeding resulting in the loss of the expected public benefit; and/or
- discouraging financial partners to engage with NAIF and proponents to work with NAIF if they feel that their commercial strategic information regarding their interest in particular investments may be released causing commercial harm to their operations.

NAIF's approach to maintaining the confidentiality of information is also consistent with the practices of other Commonwealth Government lending bodies including the Export Finance and Insurance Corporation and the Clean Energy Finance Corporation.