Australian Government
Department of Industry, Science, Energy and Resources

Statutory Review of the Northern Australia Infrastructure Facility

December 2020

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Glossary

Acronym or Shortened Term	Full Name
ABGF	Australian Business Growth Fund
AC	Advisory Committee to the Statutory Review of the Northern Australia Infrastructure Facility
ANAO	Australian National Audit Office
ARENA	Australian Renewable Energy Agency
CBA	Cost Benefit Analysis
CCE	Commonwealth Corporate Entity
CEFC	Clean Energy Finance Corporation
CEO	Chief Executive Officer
CRCNA	Cooperative Research Centre for Northern Australia
DISER/the department	Department of Industry, Science, Energy and Resources
DITRDC	Department of Infrastructure, Transport, Regional Development and Communications
EFA	Export Finance Australia
FIRB	Foreign Investment Review Board
IA	Infrastructure Australia
IES	Indigenous Engagement Strategy
Investment Mandate	Northern Australia Infrastructure Facility Investment Mandate Direction 2018
MFA	Master Facility Agreement
MoU	Memorandum of Understanding
MPFA	Major Projects Facilitation Agency
NAIF	Northern Australia Infrastructure Facility
NAIF Act	*Northern Australia Infrastructure Facility Act 2016*
NHFIC	National Housing Finance and Investment Corporation
NIAA	National Indigenous Australians Agency
NT	Northern Territory
ONA	Office of Northern Australia
PGPA Act	*Public Governance, Performance and Accountability Act 2013*
QLD	Queensland
RDA	Regional Development Australia
RIC	Regional Investment Corporation
Shepherd Review	Independent Expert Review of the NAIF
SLA	Service Level Agreement
SME	Small to Medium Enterprise
Responsible Minister	The Minister for Northern Australia
WA	Western Australia
White Paper	White Paper on Developing Northern Australia

Executive summary

The Northern Australia Infrastructure Facility (NAIF) is a Corporate Commonwealth Entity (CCE), established under the *Northern Australia Infrastructure Facility Act 2016* (the NAIF Act). The NAIF has a special appropriation of $5 billion to finance the construction of infrastructure that provides a basis for economic growth in northern Australia and stimulates population growth in northern Australia. As of September 2020, around $2.4 billion of these funds have been allocated by the NAIF; approximately nine months of the initial investment period remains with $2.6 billion still available.

In accordance with Section 43(1) of the NAIF Act, the Minister for Northern Australia (the responsible Minister) instructed the Department of Industry, Science, Energy and Resources (previously the Department of Industry, Innovation and Science) to undertake a statutory review of the NAIF Act. Under the terms of reference, the Review was asked to consider:

- whether the limit of 30 June 2021 set out in section 8 of the NAIF Act for making decisions to provide financial assistance should be extended
- the appropriate governance arrangements for the NAIF after that date
- if the NAIF's framework best supports economic development in northern Australia, and other issues considered relevant to the operation of the NAIF Act.

The Review contains findings and recommendations on the operation of the NAIF Act, and its effectiveness and implementation, and has been provided to the Minister in accordance with section 43(3) of the NAIF Act. The findings and recommendations of the Review also consider the NAIF's potential to support the Government's economic stimulus and recovery response to the challenges of the COVID-19 pandemic.

Mandatory questions

The most pressing question for the Review, and one which the Review team raised in all its consultations, is whether the NAIF's investment window should be extended beyond the original five years (ending 30 June 2021). There was broad consensus that a gap exists for accessible finance in northern Australia, and that the NAIF is playing a valuable role in financing infrastructure projects in the north that would otherwise be delayed or not proceed. The Review recommends that the NAIF's investment period be extended for a further five years. An extension would allow the NAIF to continue filling the identified gap in infrastructure financing in the north, and build on the momentum developed since the revised 2018 Investment Mandate. An extension will require amendment of the NAIF Act, and may have budgetary implications. In response to feedback collected by the Review and in acknowledgement of the need to provide clarity to business, the Government announced on 17 July 2020 that the NAIF's investment window would be extended by five years to 30 June 2026.

The Review was also asked to consider governance arrangements for the NAIF beyond 30 June 2021 should the investment window not be extended. Given the early action by the Australian Government extending the NAIF's operations, the Review considers it can and should continue to manage its loan portfolio until the close of the extended window. While subject to further review as part of a five year extension, the Review finds that at this time, Export Finance Australia (EFA) would be the appropriate agency to manage NAIF loans following the end of the investment window. Through a service agreement with the NAIF, EFA currently administers the back-end of loans for the

NAIF, making it well-placed to undertake the ongoing administration of these loans. The Review acknowledges there will be legislative and budgetary implications to be addressed to support EFA in administering NAIF loans.

Recommendations:

1. Extend the NAIF's investment window until 30 June 2026, with a further review of the NAIF to be scheduled as soon as possible after 1 July 2024.

2. Export Finance Australia is the most appropriate agency to manage NAIF loans if and when the NAIF's investment window expires, subject to further assessment of legal and financial implications at that time.

Strategic investment, public benefit and risk

The NAIF is intended to fill a finance gap in northern Australia by being more risk tolerant in relation to factors that are unique to northern Australia, including distance, remoteness and climate. The NAIF Board must be satisfied that a project meets a range of mandatory criteria, including that the proponent is able to repay or refinance the debt, and the project delivers public benefit beyond that accruing to the proponent. These requirements attempt to balance Commonwealth risk with the intent for the NAIF to be more risk tolerant than commercial lenders. Characteristics specific to the north can affect a proponent's ability to repay, and the risk profile of projects. The NAIF's expertise is financing the building of northern Australia economic infrastructure with the intention to stimulate greater commercial investment through partnerships.

Many of those who spoke to the Review team believe that the NAIF's risk appetite appropriately balances a desire to assist projects with the need to protect public money and deliver public benefit. Consultations revealed concerns about the NAIF's approach to risk, suggesting either that the NAIF was too risk averse when it came to certain sectors or types of projects, or that the processes used by NAIF to assess risk created a cost barrier for smaller value projects seeking NAIF finance including, but not limited to, Indigenous-led projects and start-ups.

There is an inherent tension between the requirement that a project be able to repay a loan, and embracing more risk. While the NAIF's short period of operation presents a limited history from which to assess its success in balancing this tension, the Review concludes the NAIF has taken a conservative approach to date. However, adjustments should be made to more clearly articulate the Commonwealth's expectations for the NAIF's risk assessment practices, particularly in the post-COVID operating environment. The NAIF's risk appetite could be increased by removing the existing prohibition against the Commonwealth carrying majority financial risk in any give project, or by adopting a 'portfolio approach', where low risk investments are used to offset higher risk investments. Given the NAIF administers public funds, it would be expected that any high risk project would have to demonstrate commensurately high public benefit. A portfolio approach to risk could increase the pool of projects eligible for NAIF finance, and thereby maximise the NAIF's ability to generate public benefit through the projects it finances.

As the Government's priorities evolve over time, the NAIF's Investment Mandate (and Statement of Expectations) should be reviewed and updated to clarify the type of public benefit, or sectors, it is expected to target through its investment decisions.

The Review identified that there is a capability and resourcing gap in the north in leading project development. The NAIF fundamentally operates under a 'proponent-led' model, but recently has had success in actively supporting project development. To extend this model more broadly within the NAIF would have resource implications. There is also a risk that the NAIF would, under this model, be perceived to be picking winners, rather than letting the private sector take the lead. Nonetheless, the shift represents a logical extension of the NAIF's contribution to developing the north through growing capability and promoting the development of multi-user infrastructure.

Recommendations:

3. Explore opportunities to empower the NAIF to adopt a greater risk tolerance for projects of specific public benefit, for example use of a portfolio approach to risk.

4. The Investment Mandate be reviewed and expanded to provide greater clarity to the NAIF on the Government's priorities and public benefit aims for NAIF investments.

5. The Statement of Expectations for the NAIF include guidance to expand its role in leading project development to maximise public benefit, subject to resourcing constraints.

Engagement with government

In addition to the NAIF, there are many Commonwealth agencies that contribute to the northern Australia development agenda. The review found that the relationships between the NAIF and these agencies could be more collaborative in order to maximise outcomes for the region. In particular, the Review reinforced the widely-held position that the NAIF and the Clean Energy Finance Corporation (CEFC) should agree a formal memorandum of understanding.

Similarly, the NAIF is working well with the jurisdictions, however there is opportunity to deepen engagement and streamline administrative process, and improve engagement with local governments on projects that have the potential to affect their regions. As a result of feedback from Western Australia regarding their engagement with NAIF, the Review further recommends that the definition of northern Australia in the NAIF Act be amended to include the Shire of Ngaanyatjarraku in Western Australia.

Recommendations:

6. The NAIF work towards establishing formal MoUs or protocols of engagement with other Australian Government financing vehicles, prioritising the CEFC.

7. The NAIF continue to collaborate with the National Indigenous Australians Agency to develop measures that support the aspirations of and improve outcomes for Indigenous businesses in the north.

8. The NAIF and the Major Projects Facilitation Agency agree protocols of engagement to support the development of infrastructure projects in the north.

9. The definition of northern Australia in the NAIF Act be amended to include the Shire of Ngaanyatjarraku.

10. The NAIF engage more effectively with Regional Development Australia committees on their assessment of infrastructure priorities for their regions.

11. Australian Government entities ensure information on opportunities and projects in the north is shared with relevant entities, including the NAIF.

Indigenous engagement

Aboriginal and Torres Strait Islander Australians are key stakeholders in the development of northern Australia, and this is reflected in NAIF's legislative framework. The mandatory requirement that project proponents develop an Indigenous Engagement Strategy (IES) as a precondition to NAIF finance is the primary mechanism the NAIF employs to drive positive Indigenous outcomes. The Review finds the NAIF's approach to enforcing IESs is appropriate. The NAIF should continue to encourage project proponents to set more ambitious targets within their IESs and should work with proponents to publish IESs.

In addition to requiring that NAIF projects have an IES, the NAIF can also drive positive outcomes for First Nations Australians by financing Indigenous-led projects. The Review heard feedback that NAIF finance may be inaccessible for some Indigenous businesses due to the unique challenges they face. In light of this, the NAIF could strengthen its collaboration and engagement with entities that have Indigenous outcomes as their core business.

Recommendations:

12. Retain Indigenous Engagement Strategies (IESs) as the primary mechanism through which the NAIF pursues Indigenous participation and engagement in northern Australia, and work with proponents to publish IESs.

13. The NAIF to consider how they might further encourage proponents to be ambitious in their IESs.

14. The NAIF should continue to strengthen its collaboration and engagement with entities that have Indigenous outcomes as their core business, and work with these to provide finance to Indigenous-led projects.

Financing mechanisms

The Review heard that the NAIF's ability to offer concessional debt finance fills a significant gap in the market. This feature appropriately responds to the challenges associated with developing projects in northern Australia. NAIF loans typically have a longer tenor than what is offered by commercial financiers, and support projects to generate net positive cash flows at a faster rate than may otherwise be possible. However, there remains opportunity to consider other concessions to bolster the benefits already provided by the NAIF, including subordinated debt and similar options. Under current arrangements, the NAIF is able to provide alternative financing mechanisms subject to ministerial agreement and consultation with the relevant jurisdiction on a case-by-case basis, with the exception of equity, and could consider implementing this option where appropriate. However this extra approval threshold is reported to deter proponents and the NAIF from seeking to deploy such mechanisms, and is overly burdensome given the minimal change in risk profile expected to arise from the use of debt other than loans.

The Review considered the NAIF's inability to offer financial assistance that would result in an equity stake in a project. The Review found that the benefits of equity investments for projects can be largely replicated by debt concessions, which the NAIF is already able to provide, and noted that the NAIF's ability to provide conditional terms sheets and concessional finance to proponents can also play a part in bringing other equity investors into a project. However, equity investments present some advantages to Government, including potentially greater investment return in line with the risk taken on by Government, and the right to have a say on the governance and management of the project. The greater financial risk of equity and the ownership role it confers also requires more active management than debt. Nonetheless the potential of equity to assist in driving projects forward is attractive, particularly in the current challenging economic context.

The Review concludes there may be benefit in providing the NAIF with increased flexibility in its investment offering as the economic impacts of the COVID-19 pandemic continue to evolve. On balance, it is worth Government considering lifting the prohibition on equity investment by the NAIF, on the basis that a diverse offering will ensure the NAIF is most effective, and able to respond to the impacts of the COVID-19 pandemic as they emerge. To a similar end, the Review also finds that the NAIF should be encouraged to fully utilise its ability to provide alternative finance mechanisms, and unintended obstructions should be removed.

A number of stakeholders suggested that the NAIF should provide grant funding for project proponents to undertake feasibility studies or as start-up capital. This is in response to identified gaps in business skills and expertise in the north, and a lack of early stage capital. The Review accepts that grant funding has a role to play in certain types of projects in northern Australia. However, the NAIF is not designed as a grants body, and it would be more efficient for the NAIF to instead leverage existing Commonwealth and jurisdictional grants programs to develop and support infrastructure projects.

The NAIF is restricted to providing finance for the construction or enhancement of economic infrastructure. This includes physical structures, assets or facilities that generate 'new capacity'. Some stakeholders suggested greater public benefit could be derived if the restriction to physical infrastructure was removed. Conversely, most stakeholders agreed that physical infrastructure remains the most pressing need in northern Australia. Nonetheless, in order to maximise the NAIF's impact, the Review finds that the NAIF's remit should be extended beyond financing the construction of physical infrastructure.

Recommendations:

15. Consider removing the limitation on NAIF provision of equity finance to maximise its flexibility in working with businesses to develop infrastructure projects despite the economic challenges of COVID-19.

16. The NAIF refer projects, where appropriate, to the new Australian Business Growth Fund, which is intended to serve as a source of equity finance for small businesses.

17. Consider simplifying the alternative financing mechanisms process to make it easier for NAIF to offer other forms of debt apart from loans.

18. The NAIF continue to focus on delivering finance, but consider opportunities for proponents to access Australian Government and jurisdiction grant programs to develop and support infrastructure projects.

19. The NAIF Act and Investment Mandate be amended as necessary to remove the requirement that NAIF finance be limited to the construction of physical infrastructure.

Governance

The Review heard feedback that the NAIF Board should increase its expertise in project financing and Indigenous development. Further, future appointment of board members should consider any potential changes to the NAIF's functions, and the skills required to manage those functions. The Review also found that the appointment of a Commonwealth representative to the NAIF Board would maximise the synergies between the NAIF and government, and bring additional Commonwealth Government experience to the Board.

The NAIF Board must make all investment decisions and approve any amendments to those decisions. As NAIF's investment portfolio increases, the Review found that there may be benefit in delegating power to the CEO in some circumstances. Many comparable Commonwealth financing entities possess broad delegation powers within their respective legislation.

The current legislative framework establishes that all NAIF loans are provided to proponents through grants of financial assistance to the states and territories. The Review found that at least some of the administrative burden borne by the states and territories as a result of this arrangement is unavoidable. However, consideration should be given to how to reduce existing, or prevent additional, administrative burden where possible, including by potentially empowering the NAIF to lend to proponents directly in recognition of the smaller size of projects being funded, the NAIF's increasing organisational maturity and the current challenging economic context.

The Minister can veto an investment decision made by the NAIF Board on limited grounds and within a specified timeframe. Although this is not seen in other Commonwealth financing agencies, the Review found that the Minister's veto power is an appropriate mechanism to ensure consistency with government policy in northern Australia. The Review notes that there is an opportunity to improve timeliness by providing the Minister with the option to decide in a shorter period than currently legislatively provided, to approve (or in effect not to reject) a proposal.

The NAIF has been subject to criticism regarding the transparency of its processes and decisions. In particular, the NAIF has been criticised for not disclosing some information related to investment decisions, including IESs and public benefit assessments. The Review found that the NAIF should continue to work with project proponents to publish this information where possible. The Review also noted steps being undertaken by the NAIF to assess the suitability of its remuneration framework.

Recommendation:

20. 'Experience in Indigenous development' be added to the list of expertise requirements for NAIF Board.

21. An *ex-officio* Commonwealth representative be appointed as a member of the NAIF Board.

22. The NAIF Act be amended to empower the Board to delegate some powers within the organisation.

23. The NAIF, in consultation with the relevant states and territories, revise assessment and approval processes and engagement to accelerate the origination, assessment and execution of finance contracts.

24. That the expansion of the NAIF's powers to include lending directly to proponents where appropriate be considered.

25. The NAIF consider options to reduce timeframes on investment decisions, including through streamlining assessment processes.

26. The NAIF consider approaches to increase the accessibility of finance for smaller projects, including partnerships with other commercial bodies.

27. The Ministerial consideration period be retained, with amendment to allow the Minister to take a decision not to reject a proposal at any point during the consideration period.

28. That the NAIF should maximise the information it makes publicly available, particularly around public benefit assessments and Indigenous Engagement Strategies, within commercial confidentiality requirements.

COVID-19 response and recovery

The COVID-19 pandemic presents extraordinary challenges for Australia and the global community. It has caused a significant decline in global growth, with the Treasury reporting it has significantly restrained Australia's growth prospects in the short and medium term, with the national economy now in a technical recession.[1] In northern Australia, the impact of COVID-19 has been harshly felt. Trade-exposed sectors which are critical to northern Australia's economy, including tourism, agriculture, and education, have experienced a significant decline in private demand, uncertainty over future demand and investment and concerns over supply chain links.

The Australian Government is delivering a number of economy-wide measures supporting individuals and businesses in the north. It is also working to ensure critical projects continue to develop and operate both now and into the future. The NAIF is well-placed to support these efforts in northern Australia, and has been working with those projects to which it was already committed to manage the impacts of the pandemic. The NAIF provides financial assistance that secures jobs and promotes investment, positioning northern Australia to recover strongly from the COVID-19

[1] Treasury, Economic and Fiscal Update, June 2020

pandemic. Providing finance to current and future projects will also boost investor confidence at a time when the private sector may be reluctant to invest.

As a result, the Review considers how the NAIF can best support recovery efforts in northern Australia. It found that the NAIF should be encouraged to provide financial relief to projects within its current investment portfolio where necessary and possible. The NAIF should also accelerate the assessment of investment proposals and streamline its processes. Further opportunities could be realised with changes to the Investment Mandate and legislation, specifically that will:

- provide more flexibility to the NAIF in its operation and finance tools;
- further improve assessment processes
- better support smaller projects.

The recommendations put forward in the Review aim, among other things, to assist the NAIF in achieving these outcomes. Moreover, the recommendations seek to position the NAIF as a key contributor to the recovery of the northern Australian economy over the medium and long term.

Introduction

Conduct of the Review

In accordance with Section 43(1) of the NAIF Act, the former Minister for Resources and Northern Australia instructed the Department of Industry, Science, Energy and Resources (the department, formerly the Department of Industry, Innovation and Science) to undertake a statutory review of the NAIF Act after 1 July 2019. This Review considers the operation of the NAIF Act and whether the legislative framework might be amended to maximise the NAIF's effectiveness. It also considers the two mandatory questions required under the NAIF Act: whether the NAIF should be extended; and ongoing management of NAIF loans following conclusion of the NAIF's investment period.

The Review was conducted by the department with an Advisory Committee (AC) to provide oversight. The AC met on three occasions throughout the Review and consisted of representatives from the department and the following Commonwealth departments and agencies:

- Department of Finance
- Department of Infrastructure, Transport, Regional Development and Communications
- Department of the Prime Minister and Cabinet
- Infrastructure and Project Financing Agency
- National Indigenous Australians Agency
- Treasury.

The Review team undertook an extensive consultation process to inform the Review's findings and recommendations. An outline of the consultation process is provided at **Appendix A.**

This report was prepared for the Minister as required by section 43(3) of the NAIF Act. The Report reflects feedback the department received through the consultation process and outlines the Review's key findings and recommendations.

Background

The NAIF is an initiative of the Australian Government in response to the White Paper.[2] The White Paper noted the importance of infrastructure as a foundation for economic growth and prosperity. However, it also acknowledged that infrastructure in northern Australia faces 'cost and service challenges, resulting in critical infrastructure gaps.'[3] These challenges pertain to northern Australia's low population density, dispersed industry, and unique climate.

Commencing on 1 July 2016, the NAIF Act established the NAIF as a Corporate Commonwealth Entity (CCE) under the *Public Governance, Performance and Accountability Act 2014* (PGPA Act). As such, the NAIF is independent of government but must observe the whole of government accountability standards prescribed in the PGPA Act.

[2] Department of the Prime Minister and Cabinet, *Our North, Our Future: White Paper on Developing Northern Australia*, June 2015, available from https://www.industry.gov.au/data-and-publications/our-north-our-future-white-paper-on-developing-northern-australia.
[3] Ibid, 84.

The NAIF has a special appropriation of $5 billion to facilitate the construction of physical infrastructure that 'provides a basis for economic growth in northern Australia, and stimulates population growth in northern Australia'.[4] This is primarily provided through loans on concessional terms, however it can include guarantees or other financing mechanisms. Unlike other government financing entities, such as the CEFC, the NAIF only requires a rate of return on its investments that covers its administrative costs and the Commonwealth's cost of borrowing.[5]

The responsible Minister for the NAIF Act is the Minister for Resources, Water and Northern Australia (the Minister). The accountable authority for the NAIF is the NAIF Board (the Board), which is established under subsection 13(1) of the NAIF Act. Board members are appointed by the Minister, and consist of a Chair and at least 4 (but no more than 6) other members.[6]

Direction is provided to the NAIF via the Investment Mandate – a legislative instrument issued by the Minister under section 9 of the NAIF Act. The current Investment Mandate was issued on 24 April 2018,[7] replacing the original Investment Mandate issued on 6 May 2016.[8] The Investment Mandate provides directions about the performance of the NAIF's functions, and includes the mandatory criteria that projects must satisfy. These criteria are:

1. The proposed Project involves the construction or enhancement of northern Australia economic infrastructure.
2. The proposed Project will be of public benefit.
3. The Project is located in, or will have a significant benefit for, northern Australia.
4. The loan will be able to be repaid, or refinanced.
5. The Project Proponent has provided an Indigenous Engagement Strategy (IES).

The NAIF works closely with the three northern Australia jurisdictions, who serve as partners in delivering funds to project proponents. The processes underpinning this cooperation are formalised in Master Facility Agreements (MFAs). The MFAs are tripartite agreements between the Commonwealth, the NAIF and each northern jurisdiction. Each MFA is unique, and prescribes the rights and obligations for each party to assume the role they play in the provision of NAIF finance to projects. All three MFAs were tabled in the Senate on 18 December 2017.

Since its commencement, as of September 2020, the NAIF Board has made 24 investment decisions and one conditional loan approval. The finance mechanisms attached to these decisions are worth approximately $2.4 billion and are expected to deliver an additional $6.7 billion in public benefit. A full list of the NAIF's investment decisions and conditional loan approvals to date is at **Appendix C**. Nearly all these decisions and approvals were made after the current Investment Mandate was issued by the Minister on 24 April 2018. Prior to this, the Board had made just one investment decision worth $16.8 million.

[4] *Northern Australia Infrastructure Facility Act 2016* (Cth), s 3(2).
[5] *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth), s 7(1)(b).
[6] *Northern Australia Infrastructure Facility Act 2016* (Cth), s 13(2).
[7] *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth).
[8] *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (Cth).

Previous reviews and inquiries

In response to the NAIF's 'slow start',[9] the Minister commissioned Mr Anthony Shepherd AO to undertake an independent expert review (the Shepherd Review) in December 2017. The NAIF has also been scrutinised by the Senate and the Australian National Audit Office (ANAO).

The Shepherd Review was tasked with recommending ways to accelerate project development. It found that when the NAIF was launched, there was an 'unreasonable market expectation' as to the length of time it takes between conceptualising a project and reaching financial close, and time needed to establish the NAIF and its relationships with the jurisdictions.[10] The Shepherd Review also found the original Investment Mandate to be overly restrictive and unnecessarily reducing the type of projects that could be eligible for NAIF finance.[11]

The Shepherd Review's findings and 15 recommendations were presented to the Australian Government on 20 January 2018. In response, three key changes were made to the NAIF's Investment Mandate:

1. **Allowing the NAIF to provide up to 100 per cent of a project's debt**
   The original Investment Mandate limited the finance the NAIF could provide to 50 per cent of the total debt of a project's infrastructure component. This was intended to reduce the Commonwealth's exposure to financial risk and to attract other sources of investment. The effect, however, was to prevent worthwhile projects that would otherwise provide economic and public benefit from proceeding. This change removed the debt cap while ensuring the Commonwealth does not bear the majority financial risk in a project.[12]

2. **Removing the gap test**
   The NAIF is intended to act as a gap financier, only providing financial assistance to projects that are unlikely to proceed, be delayed or have limited scope without financial assistance. This requirement was originally included in the Investment Mandate criteria, and the Shepherd Review found that it imposed an obligation upon the NAIF to conduct onerous due diligence, which could significantly delay projects. Consequently, the requirement was removed in the current Investment Mandate. The NAIF Board is now expected to use their expertise to determine a genuine finance gap, and is required 'to have regard to' the potential effect of a proposed NAIF financing mechanism on the Australian infrastructure financing market.

3. **Broadening the definition of infrastructure**
   The Shepherd Review found that the definition of 'infrastructure' contained in the original Investment Mandate did not reflect the infrastructure needs of the regional and remote areas that are typical of northern Australia. As a result, the definition of infrastructure was broadened to recognise that in remote regions, economic infrastructure stretches further

[9] Senator the Hon Matthew Canavan, Minister for Resources and Northern Australia, *2019 Annual Statement on Developing Northern Australia*, 27 November 2019, available from https://www.minister.industry.gov.au/ministers/canavan/speeches/2019-annual-statement-developing-northern-australia.
[10] Mr Anthony F Shepherd AO, *Northern Australia Infrastructure Facility (NAIF) Expert Review Report* (2018), 5.
[11] Ibid, 6.
[12] *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth), s 12(1)(d).

than the normal roads, rail, power, water, ports, communications and airports. The NAIF can now consider facilities, services and supplies, which are essential to the establishment of business in the location. The multi user test was also relaxed in recognition of the potential remoteness of projects.

The Senate Economics References Committee undertook an inquiry into the governance and operation of the NAIF between 14 June 2017 and 6 July 2018.[13] In its response to the inquiry, the Government supported four recommendations (three in principle), noted another three and rejected the remaining five.[14] The NAIF's operations are also relevant to a second Senate inquiry being conducted by the Select Committee on the Effectiveness of the Australian Government's Northern Australian Agenda (the Select Committee). This Committee was established on 4 July 2019 and is due to report in late 2020.

In 2018, the NAIF was audited by the ANAO. The intent of the audit was to examine the effectiveness of governance and integrity arrangements for the NAIF. The ANAO found that although the NAIF 'has an appropriate governance framework', the procedures it had in place to 'support the integrity of decision making were not fully effective'.[15] The ANAO made six recommendations to remedy this conclusion, including that the NAIF publish more information about investment decisions to promote accountability and transparency. The NAIF is in the process of implementing both the ANAO's recommendations, as well as other actions suggested by the ANAO in their final report. The NAIF has also engaged PricewaterhouseCoopers to assist in developing, monitoring and reporting against an implementation plan to appropriately fulfil its response to the ANAO's recommendations.

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[13] Senate Economics References Committee, Parliament of Australia, *Governance and operation of the Northern Australia Infrastructure Facility (NAIF)* (2018), available from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/NAIF/Final_Report.

[14] Australian Government, *Australian Government Response to the Senate Economics Reference Committee report: Governance and operation of the Northern Australia Infrastructure Facility* (2019), available from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/NAIF/Government_Response.

[15] Auditor-General, *Governance and Integrity of the Northern Australia Infrastructure Facility* (2019), Auditor General Report No. 33 2018-19, Australian National Audit Office, 8, available from https://www.anao.gov.au/work/performance-audit/governance-and-integrity-the-northern-australia-infrastructure-facility.

Mandatory questions

As set out in s43 of the NAIF Act, this review must consider:

a) *whether the time limit of 30 June 2021 set out in section 8 for making decisions to provide financial assistance should be extended; and*

b) *the appropriate governance arrangements for the Facility after that date.*

Extension of the NAIF

Under s8 of the NAIF Act, the NAIF cannot make decisions after 30 June 2021 to 'provide financial assistance for the construction of Northern Australia economic infrastructure'. Unless amendments are made to the NAIF Act to extend this investment window, the NAIF will be unable to make investment decisions after this period.

There remain specific challenges in funding infrastructure in the north. While large-scale projects have little difficulty accessing competitive finance in the current market, smaller projects face difficulty, with some stakeholders reporting that the major banks will not do business in the north. This may be due to the thinner markets and limited information impeding the ability of major banks to conduct a robust risk assessment and estimate business growth[16], which may result in a higher cost of borrowing. Other stakeholders commented on the inconsistent nature of capital availability, with a particular gap during the middle stages of project development, at which point the risk is reducing, but costs are high due to things such as environmental approvals and engineering.

Stakeholders were overwhelmingly supportive of extending the NAIF's operating period, expressing near universal agreement that there is a gap in the finance market for northern Australian infrastructure that requires Commonwealth intervention, and that the NAIF is the right tool to fill that gap. Stakeholders cited the NAIF's valuable role in supporting projects of public benefit that had been unable to get commercial support, due to the broader lack of commercial lending in northern Australia.

Extending the NAIF does not require any additional investment capital funds in the first instance. The NAIF was initially slower than expected to make investment decisions, and despite an acceleration in the NAIF's decision making following its revised Investment Mandate, was highly unlikely to have fully invested its original $5 billion allocation by 30 June 2021.

As at September 2020, 24 investment decisions and one conditional credit approval have been made, committing around $2.4 billion of the $5 billion.

The extension of the NAIF's investment window will allow it to take full advantage of the 2018 changes resulting from the Shepherd review, building on this momentum and ensuring the intended impact on infrastructure investment and economic growth in northern Australia is achieved.

[16] Regional Australia Institute, *Access to Finance: Growing SMEs in regional Western Australia*, June 2015, 6 available from http://www.regionalaustralia.org.au/home/access-to-finance-growing-smes-in-regional-western-australia-2/.

Recommendation 1: Extend the NAIF's investment window until 30 June 2026, with a further review of the NAIF to be scheduled as soon as possible after 1 July 2024[17].

Loan portfolio

Section 43 of the NAIF Act also requires that this review consider the appropriate governance arrangements for the NAIF, and loans that it has issued, following the conclusion of the NAIF's investment window. If the NAIF is to be extended beyond June 2021, the loans can continue to be managed by the NAIF for as long as they operate.

If the NAIF is to cease making investment decisions from 30 June 2021, then Export Finance Australia (EFA) is the best placed agency for the ongoing loan management. Because EFA currently administers the back-end of loans for the NAIF, it is well-placed to undertake the continued maintenance of these loans. Unless changes are made to the NAIF structure in the intervening years, or a more appropriate loan manager is identified, EFA would remain the best body to manage the NAIF's loan portfolio at the conclusion of an extended NAIF operating period.

However, ongoing decision-making responsibility for the NAIF portfolio would need to be assigned and will likely require legislative change. One option could be to retain a NAIF Board for the purposes of making decisions on the NAIF loan book, with all administrative duties to be assumed by EFA, which would likely only require amendment to the NAIF Act. Alternatively, it might be more appropriate to amend the *Export Finance and Insurance Corporation Act 1991* to pass decision making responsibility to EFA.

Should EFA's role extend beyond the business-as-usual administration of existing loan agreements, EFA may require additional resourcing and capability for the long term management of the portfolio, particularly if decision making is required where a NAIF project proponent requires refinancing or material variation to the terms of their loan.

Recommendation 2: Export Finance Australia is the most appropriate agency to manage NAIF loans if and when the NAIF's investment window expires, subject to further assessment of legal and financial implications at that time.

[17] On 17 July 2020, the Australian Government announced it would extend the NAIF's investment period for five years to 30 June 2026.

Strategic investment, public benefit and risk

What projects is the NAIF supporting?

The NAIF was initially premised on the understanding it would finance a small number of high value, large-scale major infrastructure projects. In reality, the NAIF has supported more projects in the small to medium range (NAIF investment of less than $100 million). This has occurred for two reasons. First, large projects in northern Australia (for example, large-scale resource projects) frequently have access to finance which is comparably priced to the concessional debt offered by the NAIF (notwithstanding the potential future impacts of the COVID-19 pandemic). In other words, the unprecedented availability of cheap finance (based on historically low interest rates) has diminished the attractiveness of the NAIF as a financier for those large-scale projects. Second, given the geographical size and low population density of the north, projects in the $10-100 million range are disproportionally impactful when compared to projects of a similar size undertaken in the south.

Stakeholders consistently welcomed the NAIF's engagement in the small to medium sized company/project space. A common comment was that this segment of the market needed the most help, and for these projects, the NAIF's concessional finance offering was making a difference and resulting in the construction of infrastructure across northern Australia that would not otherwise have occurred.

The Review finds that the NAIF has appropriately responded to the realities of the contemporary finance market as it affects projects in northern Australia. It has supported a large number of small and medium sized projects which will have significant impact in their regions, while also looking for opportunities to support larger-scale, transformative projects, where these require the sort of concessional finance that the NAIF can provide.

There is no minimum value threshold for a project to receive NAIF finance, though in practice the costs associated with making a NAIF application (particularly in the due diligence phase) mean that few projects valued below $10 million are likely to seek NAIF support. Given the NAIF's mandate, this is broadly appropriate. However, there may be opportunities for the NAIF to work with other institutions to develop ways in which smaller projects can be supported, where there is a particular need. The Review looks at this further in the Indigenous outcomes chapter.

Strategic direction

Initially the NAIF operated on a 'proponent-led' model, and to some extent it still relies on proponents bringing projects to it for assessment. However, the NAIF has started to become involved at earlier stages in project development. The Review finds that this is a positive development, and should be developed further by the NAIF (noting such activity is resource-intensive).

Many of those consulted by the Review team suggested there was potential for the NAIF to take a more strategic approach to its investments. Ideas included: developing a portfolio of projects across different industries; encouraging growth of sectors or precincts through NAIF investments; and facilitating projects from development through to the approval of NAIF financing.

Clearly, it is important that the NAIF considers its role in a broader strategic context. However, the Review finds that the task of setting strategic direction for northern Australia, and the regions and industries within it, is most appropriately left to the relevant Australian, state and territory governments. The question is thus one of the NAIF working more closely and effectively with other parts of government, which we address in a later chapter.

One common sentiment was that the NAIF could take a more proactive approach in considering public benefit. While the NAIF is required to consider the public benefit offered by proposed projects when making investment decisions, there is limited direction around the form or type of public benefit it should be delivering.

How do we define public benefit?

The NAIF is directed to consider the public benefit of projects under mandatory criterion two of the NAIF Investment Mandate, which requires that a project deliver benefits beyond those captured by the project proponent in order to receive NAIF finance. This requirement helps guarantee maximum public benefit from NAIF investments, and ensures the benefits of NAIF investments do not accrue solely to the private sector.

While the Investment Mandate does not specifically define public benefit, the Explanatory Statement for the Investment Mandate explains:

> 'Criterion 2 requires that projects will be of public benefit. In assessing a project to be of public benefit, the Board must be satisfied that the project will deliver benefits for the broader economy and community. In satisfying this criterion, the Board may consider whether the Project has the capacity to serve multiple users either immediately or during the expected life of the Project.'[18]

The NAIF has published Public Benefit Guidelines to assist project proponents to demonstrate the public benefit of their specific projects.[19] For most projects, the public benefit will be evidenced by a Cost Benefit Analysis (CBA) prepared by a third-party expert, which includes:

- **Impact on the Project Proponent**, such as project costs and revenues.
- **Impact to those outside the Proponent** including:
    - **Impacts on the economy and productivity**, such as the value of capacity and operating cost savings that flow from the project to business, the value of improvements in reliability of infrastructure services, and the costs to other business (for example, likely competitors) of the project going ahead.
    - **Impacts on individuals**, such as accessibility and connectivity impacts, or improved employment, health, safety and security outcomes.
    - **Impacts on the community**, such as positive and negative environmental and social impacts during the construction and operation of the Project.

A CBA is mandatory for any project requesting greater than $50 million of NAIF assistance. Smaller projects are required to quantify the above impacts associated with their projects, but are not required to complete a formal CBA unless they are seeking significant concessions. Proponents are also provided an opportunity to outline any additional public benefit associated with their project that may not be captured by a standard CBA.

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[18] Explanatory Statement, *Northern Australia Infrastructure Facility Investment Mandate Direction* (Cth), available from https://www.legislation.gov.au/Details/F2018L00567/Explanatory%20Statement/Text.
[19] Northern Australia Infrastructure Facility, *Public Benefit Guideline* (May 2019), available from https://naif.gov.au/about-naif-finance/eligibility-criteria/.

For large scale projects (greater than $100 million of NAIF assistance), the NAIF also consults with Infrastructure Australia (IA) regarding the assumptions and methodology used in the CBA. While the NAIF is required to consult with IA, it is not required to obtain direct approval of the project from IA. The NAIF also has the option to choose to consult with IA for any project requesting greater than $50 million of NAIF assistance, however, these consultations are not covered by the Engagement Protocol between IA and the NAIF.

Following a successful investment decision, the NAIF publishes limited information on the public benefit of projects – including a dollar figure of public benefit and estimated jobs supported – through case studies on the NAIF website. The pipeline of successful NAIF investments reveals that the public benefit generated by these projects generally takes the form of long-term job creation, and the spill-over benefits associated with these jobs and the general increase in economic activity.

The original Investment Mandate required the NAIF Board to preference projects that will 'serve or have the capacity to serve multiple users.' The Shepherd Review found this to be unduly restrictive. Indeed, the geographic size and low population density of northern Australia mean that many infrastructure projects, at least in the short and medium terms of their life cycle, are unlikely to serve users other than the project proponent.

Consequently, the current Investment Mandate states that a project's capacity to serve multiple users is only one factor the NAIF Board 'may' consider in assessing public benefit. While this requirement for projects to benefit users beyond the project proponent should be retained, the NAIF should continue its flexible approach that considers broader public benefits (such as job creation) in addition to whether the infrastructure provides 'multi-user access'.

Under current settings, the public benefit of a project is considered alongside the other four mandatory criteria, including the ability of a proponent to repay or refinance a loan. It is left to the NAIF Board to assess the balance between the potential public benefit of a proposed project and the risk of default.

Risk appetite

The NAIF was intended to provide finance to projects that would not otherwise be built.[20] Under the 2018 Investment Mandate, the NAIF is permitted have a greater tolerance of risk, relative to the private sector, in consideration of factors unique to investing in northern Australia.[21] Nonetheless, the eligibility requirements under the 2018 Investment Mandate still require that proponents demonstrate an ability to repay the loan.

The NAIF Act requires the Investment Mandate include directions on the NAIF's risk appetite, outlined in section 12 of the Investment Mandate which states:

1) The Board must satisfy itself that:
    a) the Facility is not the sole holder of financial risk in each Project; and
    b) there is a reasonable allocation of risk for each Project between the Facility and other sources of finance for the Project; and
    c) it can appropriately manage the Facility's risk exposure to each Project; and

[20] Department of the Prime Minister and Cabinet, above n 1, 86.
[21] Explanatory Statement, *Northern Australia Infrastructure Facility Investment Mandate Direction* (Cth), available from https://www.legislation.gov.au/Details/F2018L00567/Explanatory%20Statement/Text.

d) its due diligence also identifies the total exposure of the Commonwealth to a project so as to prevent the Commonwealth overall having the majority financial risk in a project.

Section 12 also requires the NAIF to develop a Risk Appetite Statement to guide its investment decisions, with a high risk tolerance in relation to factors that are unique to northern Australia, including distance, remoteness and climate. The Risk Appetite Statement must also have regard to a diverse portfolio across the geography and different industries in northern Australia.

In implementing this higher risk tolerance, the NAIF Board retains considerable flexibility to balance potential public benefit against repayment. However, the Board is still bound by Mandatory Criteria 4 which requires project proponents to '…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.' This requirement acknowledges the NAIF's intended role as a financier (as opposed to a grants body), protects public funds and provides accountability. In practice, it could be concluded that this criteria constrains the appetite of the NAIF to be more risk tolerant in relation to factors that are unique to investing in northern Australia, as these factors can affect a proponent's ability to repay.

This raises issues regarding how much the NAIF can use a greater risk tolerance to achieve its objective of supporting infrastructure development in northern Australia. The current concessionality of NAIF financing can assist projects in meeting Mandatory Criteria 4, however, particularly high risk projects or sectors (such as tourism and agriculture) have difficulty meeting this requirement.

In addition, the cost of producing the required business case and/or financial modelling to prove the ability to repay can be difficult for smaller proponents, creating a cost barrier for businesses seeking NAIF finance. This can be problematic where smaller value projects are over-represented in a particular sector or opportunity, such as Indigenous led projects or start-ups. Without a robust business case and/or financial modelling, it is impossible to assess the viability of a project. The NAIF is already looking at ways to minimise documentary requirements for certain proponents, while maintaining the rigor of its processes. This review encourages these activities.

Stakeholder sentiment on the NAIF's risk appetite varied. Some stakeholders described the NAIF's risk appetite as appropriate, where others viewed the NAIF as too risk averse. Stakeholders who considered the NAIF's current approach to risk as appropriate, noted that the use of taxpayer funding should limit how risk tolerant it could be; and that the NAIF had a responsibility to ensure a return for the Commonwealth, or at least to avoid a loss. This view was commonly expressed by financial firms and a number of successful NAIF proponents. Conversely, critics of the NAIF's risk appetite argued that given the objectives of the NAIF and the conditions in northern Australia, the NAIF needed to strongly embrace risk to deliver public benefit returns, even at the risk of not recovering the funds provided.

In the end, wherever the line is drawn on risk appetite, there will be some projects that are not able to show that they are sufficiently viable. It is a balance between the preparedness of the Commonwealth to accept that more projects may fail, and a desire to expand the risk appetite. It is therefore the Commonwealth's duty to provide clear direction to the NAIF through the instruments available to it, including the Investment Mandate and Statement of Expectations.

Maximising public benefit

Managing risk

An objective of the NAIF is to accept as much risk as possible, whilst ensuring that there is a positive return –that is projects receiving NAIF finance are able to repay their loans in full. As noted above, the biggest restriction on the NAIF's ability to work within a greater risk tolerance is Mandatory Criterion 4, which requires a rigorous assessment of a proponent's ability to repay a loan.

The NAIF's short period of operation makes it difficult to assess if the current risk settings are appropriate – the majority of approved proponents have not yet progressed to the point of beginning to make loan repayments, making it very difficult to assess the robustness of the NAIF's 'ability to repay' assessment process. The preliminary assessment of the Review is that the NAIF, while responding the Commonwealth's requirement that is be tolerant of risk specific to northern Australia, has taken a generally cautious approach. In the economically challenging times the country now faces as a result of COVID-19, that approach may no longer be sufficient.

There are adjustments that could be made to more clearly articulate the Australian Government's expectations for the NAIF's risk assessment practices. For example, the Minister could include in their Statement of Expectations to the NAIF Board a directive that the NAIF seek to accept as much risk as possible without putting proponents at serious risk of defaulting on their loan commitments. Alternatively, this could be clearly outlined in the Investment Mandate, for example by removing the current prohibition in the Investment Mandate, which requires the NAIF Board to be satisfied the Commonwealth is not carrying the majority risk on any one project.

A key issue in adopting an approach allowing for higher risk investments is that any defaults on NAIF loans will impact the Commonwealth Budget over the longer term. The impact to the budget might be mitigated by supporting the NAIF to take a portfolio approach to risk such that non-repayment on higher risk loans might be offset by the broader portfolio.

A portfolio approach to risk

This is how commercial lenders generally manage risk – creating a portfolio of investments where low risk investments are used to offset higher risk investments. In contrast, the NAIF operates on an assessment of the likelihood of repayment for each individual project – with a focus on ensuring that all projects must be repaid in full. Given more than half of the NAIF's special appropriation remains unallocated, there is still opportunity to take a portfolio approach whereby a portion of the NAIF investment allocation is specifically set aside to finance high risk projects. Given the NAIF utilises public funds, it would be expected that any high risk project would have to demonstrate commensurately high public benefit.

To support the NAIF in assessing these high risk projects, the Australian Government would need to provide direction as to the kind and size of public benefit it would expect those projects to deliver. For example, requiring the project:

- be from an emerging or strategic sector
- enable further investment or growth (high multiplier effect)
- support a significant number of jobs
- support start-ups or greenfield projects
- and/or have significant Indigenous or other social benefits.

Another consideration is if the funded infrastructure would remain for public use, even if the proponent is unable to fully repay their loan. For example, a public road that goes between a highway and a project provides minimal public benefit if the project site is no longer there, but a hospital facility in a major city has potential for public benefit even if the proponent that built the site no longer exists.

A portfolio or generally higher risk approach increases the NAIF's flexibility when making investment decisions. Given the NAIF's expertise assessing the balance between risk and public benefit, providing them with the flexibility to allocate risk to projects within a portfolio limit would be the most efficient way to consider risk. However, alongside this, limiting the higher risk segment of the portfolio to a specific proportion or amount provides a degree of control over the increased risk level to the Commonwealth budget in the longer term.

The pay-off for the additional risk is potentially increasing the pool of projects eligible for NAIF finance, better supporting the objectives of the NAIF and developing the north. The NAIF is more likely to have a transformational impact and generate significant public benefit.

The unique circumstances of developing infrastructure in northern Australia can make it difficult for a traditional cost-benefit analysis to demonstrate a positive outcome. Increasing the flexibility of the NAIF to assess public benefit within the specific and unique context of northern Australia and balance this against the risk of loan default may support the NAIF to have an even greater impact. While some projects may not be successful, others may stimulate growth in ways that would otherwise never have been realised.

Recommendation 3: Explore opportunities to empower the NAIF to adopt a greater risk tolerance for projects of specific public benefit, including through the use of a portfolio approach to risk.

Guidance on public benefit

The NAIF's sense of strategic direction could also be strengthened through clearer and more fulsome guidance on what kind of public benefit should be sought or prioritised. As noted above, the Investment Mandate has no definition of public benefit, and the Explanatory Statement to the Investment Mandate provides little guidance on what constitutes public benefit. The NAIF Act specifies that, among other issues, the Investment Mandate can include directions on the objectives the NAIF is to pursue in providing financial assistance.

As a non-disallowable legislative instrument, the Investment Mandate can be amended without agreement of Parliament. As such, making amendments is relatively straightforward, but frequent updates may contribute to a level of uncertainty among proponents about the stability of the NAIF. Following any changes that result from the review, additional guidance should focus on broad aims of the Australian Government in the north and clarify the public benefit sought from NAIF investments. A clear distinction between the mandatory criteria and general guidance in the Investment Mandate should also be maintained.

The NAIF is also issued a Statement of Expectations by the responsible Minister. This statement provides a further avenue by which the Australian Government can outline its key policy priorities and areas of focus for the north to support alignment between the NAIF and the broader Australian Government agenda for northern Australia. Updates to the statement could also link with whole of government policy documents reviewed on an annual basis, such as the Northern Australia Indigenous Development Accord, to assist in developing a coordinated whole of government policy.

> **Recommendation 4:** The Investment Mandate be reviewed and expanded to provide greater clarity to the NAIF on the Government's priorities and public benefit aims for NAIF investments.

Leading project development

Beyond increasing the strategic direction provided by the Government to the NAIF, it was suggested by some that there is scope for the NAIF to take a greater role in driving project development across the north. A number of stakeholders reported that a lack of capability and resources is slowing the development of infrastructure across the north. They identified an opportunity for the NAIF to actively drive project development in priority areas, using its internal capabilities to support prospective proponents to develop viable projects.

For example, multi-user agricultural infrastructure in northern Australia is commonly slow to develop as projects often lack a single proponent with the money and resources required to develop such a proposal. The establishment of a food processing centre might be a great benefit to multiple agricultural producers in a local area and deliver a significant multiplier effect, but no single producer has the capability or resources to progress such a project. Stakeholders suggested that the NAIF could take the lead in seeking out such opportunities and assisting local producers to organise themselves, for example using a cooperative approach, to develop this kind of multi-user infrastructure.

Doing so may require an increase in resourcing for the NAIF, but could be explored within existing resources. There is also a risk that the NAIF would, under this model, be picking winners rather than letting the private sector take the lead. It is also possible that as the NAIF establishes itself as a mature player in the northern Australia financing market, it will start being factored into the investment plans of the private sector, therefore broadening the range of projects being explored by default. This may negate the need for the NAIF to step forward into a more active scouting and development role. In the interim, it seems clear that there exists a gap in some areas in the north for the expertise to bring proponents together and assist to develop projects, which the NAIF can help fill.

> **Recommendation 5:** The Statement of Expectations for the NAIF include guidance to expand its role in leading project development to maximise public benefit, subject to resourcing constraints.

NAIF engagement with government

The Australian Government is committed to growing a strong northern Australian economy, unlocking its potential as a gateway to global markets, a source of rich resources and a home to pristine environments. The NAIF represents a critical investment by the Commonwealth in the development of northern Australia. Alongside Commonwealth investment in roads and water infrastructure, the NAIF is encouraging private sector investment and the construction of infrastructure to support the long term prosperity of northern Australia. The NAIF is a key part of the Government's commitment to make the north an even more attractive place to live and do business, recognising that it faces cost and services challenges due to its low population density, extreme climate and other unique factors.

Stakeholders noted that the NAIF is one of the most visible initiatives from the Australian Government's agenda to develop northern Australia, and the $5 billion funding allocation represented significant potential. However, they noted that the NAIF has been slow to build momentum since its commencement, and that prior to the 2018 changes to the Investment Mandate, the NAIF's policy settings did not accurately reflect the conditions unique to northern Australia. Despite these historical complaints, many stakeholders noted that since the changes to the Investment Mandate, the NAIF has developed momentum and has a much clearer understanding of the types of projects that show potential for NAIF financing.

Consultation also identified opportunities for the NAIF to have better engagement with other government initiatives. This included both Australian Government programs (including the Office of Northern Australia) and jurisdictions' programs (such as state development grants for project planning or construction).

Engagement with other Commonwealth entities

The NAIF is not the only Australian Government entity with an interest in northern Australian development, and operates within broader government efforts. ONA, CEFC, ARENA, the RIC, EFA, National Water Grid Authority, National Drought and North Queensland Flood Response and Recovery Agency, and the CRCNA are just some of the other Commonwealth and Commonwealth-funded bodies investing in the economic development of northern Australia.

The NAIF has a formal relationship with EFA governed by a Service Level Agreement under which EFA provides transaction support to the NAIF. The NAIF also has a strong relationship with the department (that supports the responsible Minister), and the Investment Mandate requires the NAIF consult with IA on any investment decision greater than $100 million.[22] The NAIF has not established formal relationships with any other Commonwealth entity.

Mixed feedback was received regarding the NAIF's success in engaging effectively with other Commonwealth entities. Despite the effective 'back-office' partnership between the NAIF and EFA established via the *Export Finance and Insurance Corporation Act*, EFA was prohibited from providing finance to projects receiving NAIF finance. Proponents reported that this prohibition meant the EFA would not engage with them, even where concurrent discussions with the NAIF were only in preliminary stages.

[22] *Northern Australian Infrastructure Facility Investment Mandate Direction 2018* (Cth), s 14(1).

This situation has now been partially resolved, following November 2019 decision to allow critical minerals projects to access dual funding through EFA and the NAIF.[23] The review finds that there would be benefit in lifting this prohibition for all projects, regardless of sector. Given the specific challenges of infrastructure development in the north, and differing investment mandates of these bodies, proponents should be allowed to engage in discussions with any and all relevant entities to identify the most appropriate sources of investment for their project. Infrastructure projects can take years to finalise, and as such it is in both the proponent's and the Commonwealth's interests that this time be used effectively.

The issue of the appropriate relationship between the CEFC and the NAIF has been considered in two earlier reviews – the 2018 Shepherd Review, and the 2018 Senate Inquiry into the governance and operation of the NAIF. The Senate Inquiry report referenced the recommendation in the Shepherd Review that in order to avoid an 'inefficient competitive model between Commonwealth financiers' the relationship between the NAIF and the CEFC should be formalised, and itself recommended that an MoU between the two be established to avoid duplication of work.[24]

The Australian Government response to the Senate Inquiry supported this recommendation and noted that the NAIF and CEFC are currently discussing the development of protocols to govern their engagement with each other. The NAIF notes that while a formal MoU has not been agreed, understanding between the two agencies has improved, and reports that the staff from each agency meet regularly to discuss market experiences and potential opportunities.

Some crossover between applicants to the NAIF and the CEFC might be expected, given their shared interest in energy infrastructure projects. However, to date there has been little crossover in successful applicants (though the Chichester Solar Gas Hybrid Project backed by Alinta Energy did secure $24.2 million in funding from ARENA). Business stakeholders indicated a perception that the NAIF is reluctant to engage with the CEFC to discuss projects with the potential to seek funding from both entities. Others suggested that in practice, the NAIF and CEFC are operating in slightly different parts of the finance market, with the NAIF designed to take a higher risk tolerance for projects affected by the unique characteristics of the north.

The NAIF reports that, where appropriate, they refer proponents to engage with the CEFC. The new NAIF CEO, appointed in January 2020, was previously an Executive Director at the CEFC. He brings to the organisation an understanding not just of the CEFC but experience in working within the Commonwealth more broadly that will support continuing improvement in the NAIF's engagement with federal entities. However, the reported stakeholder perception of low cooperation between CEFC and the NAIF indicates that a need remains for the establishment of a MoU or formal protocols governing engagement between these entities. This reflects the feedback received about NAIF engagement with Australian Government entities more broadly.

Recommendation 6: The NAIF work towards establishing formal MoUs or protocols of engagement with other Australian Government financing vehicles, prioritising the CEFC.

[23] Export Finance Australia, 'New financing measures to help build critical minerals sector', (Media release, 14 November 2019)', available at https://www.exportfinance.gov.au/resources-news/news-events/government-news/2019/november/new-financing-measures-to-help-build-critical-minerals-sector/.

[24] Senate Economics References Committee, above n 13, 28.

The CRCNA is an industry-led R&D venture intended to lead an integrated, coordinated and evidence-based approach to improve the competitiveness, productivity and sustainability of the northern Australian economy and the wellbeing of its communities. Like the NAIF, it was an outcome of the 2015 White Paper and will invest $75 million in Commonwealth funds over a 10-year period. The CRCNA was established in 2017 and focuses on de-risking investment in the north, aiming to improve the pipeline of investment opportunities progressing to the NAIF and other investment options. This aligns with the NAIF's objectives, although many of the outcomes of its research will likely be realised after the current NAIF investment deadline of 30 June 2021. Nonetheless, it represents an additional stakeholder for the NAIF with active interest and expertise in economic development of the north. While the Review did not identify significant interaction between the CRC-NA and the NAIF, the CRC-NA did report engaging in discussions with the NAIF on policy and research priorities that might help improve future investment pathways.

There are also opportunities for the NAIF to collaborate with the NIAA to identify and develop projects led by or benefitting Aboriginal and Torres Strait Islander people in northern Australia. This includes financial support for business case development and feasibility studies, as well as joint assessments with NIAA Regional of projects that have the potential to activate the economic value (potential) of Indigenous land, water and sea assets. The NAIF and the NIAA are currently working together where possible. This work should continue and be formalised through an engagement protocol if necessary.

Recommendation 7: The NAIF continue to collaborate with the NIAA to develop measures that support the aspirations of and improve outcomes for Indigenous businesses in the north.

Many of the proponents consulted in this Review commented positively on the NAIF's collaborative and innovative approach to their projects. However, better engagement with other relevant Australian Government funding bodies on projects will likely increase overall efforts to invest in the north.

Engagement with Australian Government regulation

During consultation, some stakeholders raised concerns regarding the NAIF's requirement that proponents meet all relevant Australian Government standards, including where those standards go beyond that mandated by the relevant state or territory. This is a requirement common to all recipients of Australian Government funding and is aligned with the reasonable expectation that Australian Government -funded projects meet Australian Government standards. However, it was noted that the implementation of this requirement in northern Australia can result in perverse outcomes arising from the north's unique characteristics including remoteness and low population density. For example, under the *Building and Construction Industry (Improving Productivity) Act 2016*, all building work funded by the Australian Government or a Corporate Commonwealth Entity must be accredited with the Federal Safety Commissioner.[25] This restricts the available pool of contractors for any given project, which may already be limited as a result of the remote or regional location of a project. It can further delay construction by requiring companies to apply for certification before they can commence work, and add to the cost of construction. While these

[25] *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), s 36.

challenges are acknowledged, the Review considers that it is not unreasonable to expect recipients of Australian Government funds to meet Australian Government standards.

The Major Project Facilitation Agency (MPFA) assists companies with projects valued at over $20 million to navigate Australian Government approvals processes. Projects with a capital investment of more than $50 million are eligible to apply for Major Project Status (MPS) which entitles a project to greater support from the MPFA, including working with state and territory governments to coordinate approvals. These eligibility thresholds overlap neatly with the scale of NAIF projects, suggesting that there may be value in the two agencies instituting protocols of engagement whereby projects proposed to the NAIF can be made aware of the MPFA (where eligible) and vice versa. Any referrals would need to be clear with the proponents that being awarded MPS does not automatically make a project eligible for NAIF finance, nor does NAIF finance make a project automatically eligible for MPS. Increasing the number of NAIF projects accessing the services of the MPFA will support efficient interactions across the Commonwealth, and may assist in decreasing the time between investment decisions and breaking ground.

Recommendation 8: The NAIF and the Major Projects Facilitation Agency agree protocols of engagement to support the development of infrastructure projects in the north.

Engagement with the jurisdictions

Like the Australian Government, state and territory governments are important stakeholders in infrastructure projects within their respective jurisdictions. For smaller infrastructure projects, the jurisdictions play a significant role in infrastructure approval and regulatory processes, and so remain invested parties. Large, transformative projects like ports, railways and highways are often owned, in whole or in part, by the relevant state government.

The current NAIF framework takes a collaborative approach, facilitating a three-way relationship between each jurisdiction, the NAIF and the Australian Government. MFAs establish the terms of this relationship and are signed by each of the three parties. The final MFA was signed in November 2017.

The NAIF has invested time and resources into forging productive relationships across the state and territory governments, putting in place both formal and informal mechanisms to ensure that its assessment of projects considers the priorities and concerns of the relevant jurisdiction.

In the case of QLD, there is a formal monthly roundtable held by the NAIF with relevant QLD departments, where current and prospective projects are discussed. This meeting also provides an opportunity for the state to refer projects to the NAIF.

While similar formal structures are not in place in WA or the NT, the NAIF reports frequent (usually monthly) visits during which meetings are held with relevant entities in each jurisdiction, including Premier and Cabinet, Treasury, and the departments responsible for industry and business. These regular catch-ups provide an opportunity for the NAIF to engage with the jurisdictions on current and prospective projects, and for the states to provide guidance on priorities in their region.

In general, the jurisdictions report that after working through earlier challenges, they now have functional relationships with the NAIF. What is missing from the current engagement strategy is an integrated approach to manage projects that may cross jurisdictional borders. While the majority of infrastructure projects presented to the NAIF would sit within one jurisdiction, the NAIF has identified cross jurisdictional projects as an area with additional complexity and is reviewing its processes in this area. To this end, it may be prudent to consider establishing a mechanism by which the NAIF, Commonwealth and relevant jurisdictions jointly discuss cross-jurisdiction projects.

Some feedback indicated there remains room for improvement in engagement with jurisdictions. NAIF finance, and infrastructure projects more generally, require government support at both the state and federal level. Based on the feedback received in undertaking this Review, it is clear the NAIF needs to continue to develop its relationships to be better incorporated into government planning and decision-making. It should continue to engage early and regularly at the official and political level in each jurisdiction to deploy its financial capital most effectively to the benefit of the jurisdiction, the Commonwealth and the northern agenda.

The WA Government raised the current definition of northern Australia used by the NAIF Act in their submission to the Review. As there is no single agreed geographical definition of northern Australia, the definition used by the Act is based on that used by Infrastructure Australia in the 2015 Northern Australia Infrastructure Audit. This definition excluded the WA Shire of Ngaanyatjarraku (the Shire), highlighted in yellow in the map below. The WA Government noted that the borders of this region sit further north than the Meekatharra and Wiluna areas, which are included in the current definition. The submission further noted that this region, home to the West Musgrave mineral province and several remote Indigenous communities, has the potential to benefit significantly from accessing NAIF finance. The Review concludes that amending the definition of the northern Australia in the NAIF Act to include the Shire would contribute to the achievement of the NAIF's objective to foster economic development and population growth in the north.

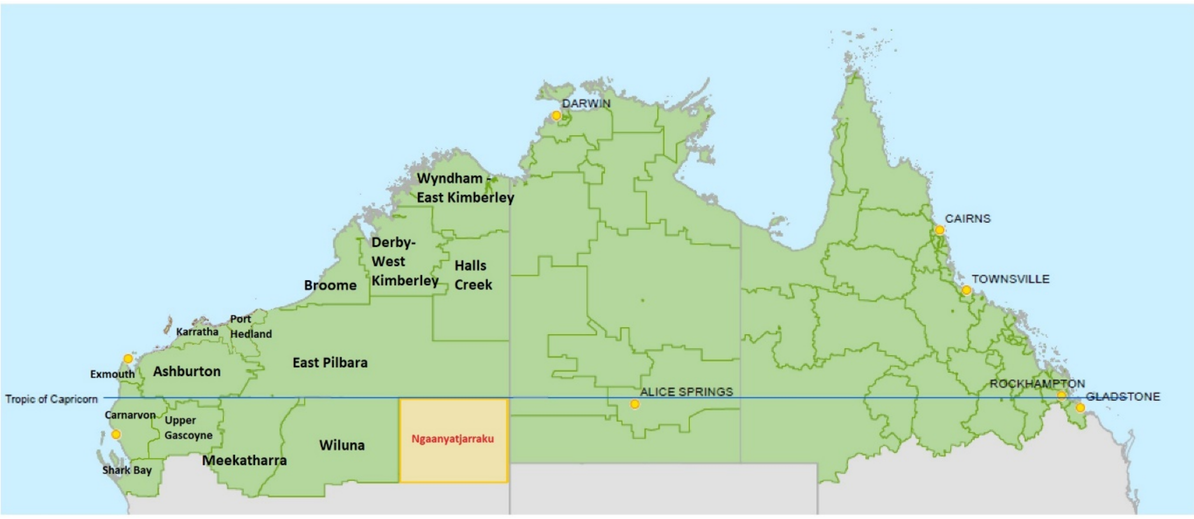

Figure: Map of local government areas included in the definition of northern Australia in the NAIF Act (in green). The Shire of Ngaanyatjarraku is highlighted in yellow.
Map provided courtesy of the WA Government.

Recommendation 9: The definition of northern Australia in the NAIF Act be amended to include the Shire of Ngaanyatjarraku.

Local engagement

The vast geographical area and low population density of the north gives rise to particular challenges. The impacts of proposed projects need to be considered at a national, state and regional level to ensure that what might benefit one region does not unfairly diminish the prospects of another. Under the 2018 Investment Mandate, the NAIF is required to consider the potential effect of a proposed project on other infrastructure. While the NAIF has effective arrangements in place to support assessment at the national and state level, it could be doing more to assess the regional impact of proposed projects.

Two key players which could assist in assessing the impact of projects at a regional level are the DITRDC RDA network, and local government authorities.

DITRDC supports the national RDA network of 52 committees who work with all levels of government, business and community groups to support the development of their regions. These RDAs (of which eight are based across northern Australia) have valuable insights into the needs and priorities of their local area. They represent a valuable resource for the NAIF, allowing it to tap into a local assessment of economic priorities that may provide useful intelligence when assessing the public benefit of proposed projects.

Local governments have a strong understanding of the needs of their local communities, and are well-networked across their region. They too could offer the NAIF useful feedback on local priorities and the possible impact of projects under consideration. Feedback received during this Review indicated that the NAIF's engagement with both the RDAs and local governments could be more effective. While some RDAs and councils were aware of and had engaged with the NAIF, others were only peripherally aware of its existence and role. All commented that in financing projects, the NAIF needed to carefully consider possible unintended consequences arising from investment decisions, and should factor in local priorities.

The NAIF reports engaging regularly with the key RDA personnel and local governments across the north, but it is not clear that their feedback is always specifically sought on regional impact. The NAIF has indicated that it fulfils this particular direction mostly through the completion of an economic impact statement, a process that does not necessarily require the contribution of the RDAs or local governments. Given the close connections of these stakeholders to local business and their understanding of the infrastructure needs of their communities, the NAIF's impact assessment process could benefit from engaging these stakeholders. Given the commercial-in-confidence nature of NAIF proposals, permission would have to be sought from proponents to share the details of their projects.

Recommendation 10: The NAIF engage more effectively with Regional Development Australia committees regarding their infrastructure priorities for their regions.

Recommendation 11: Australian Government entities ensure information on opportunities and projects in the north is shared with other relevant entities, including the NAIF.

Indigenous outcomes

Indigenous involvement and opportunity is a fundamental component of developing northern Australia.[26] Aboriginal and Torres Strait Islander people make up around 15 per cent of the population in northern Australia, and over 25 per cent in the Northern Territory.[27] Across the north, 66 per cent of QLD, 80 per cent of the NT and 94 per cent of Western Australia is either communal freehold Indigenous land, or is claimed or determined native title land.[28]

Aboriginal and Torres Strait Islander Australians share ambitions for a thriving and diverse northern Australian economy, and bring to this shared agenda their significant land holdings, contemporary and traditional knowledge and skills, unique tourism products and offerings, and drive and determination to secure better futures.

The NAIF's legislative framework recognises that Indigenous Australians are key stakeholders, and requires that the NAIF considers outcomes for Aboriginal and Torres Strait Islander people through the Investment Mandate's mandatory criterion that NAIF project proponents have an Indigenous Engagement Strategy (IES). This embeds the pursuit of Indigenous participation and improved outcomes for each NAIF project, and is the only aspect of the NAIF's legislative framework to specifically reference Indigenous policy.

Despite this, in addition to the IES requirement, the NAIF can play a role in Indigenous engagement in developing northern Australia both directly through financing Indigenous-led projects, and indirectly through broader activity that engages Indigenous stakeholders and identifies opportunities for Indigenous involvement.

The NAIF has been active in this, however there is more that can be done, in particular in finding ways for smaller value projects (which Indigenous-led projects often are) to access the NAIF, as these projects face an unofficial barrier to NAIF support due to application costs and requirements. There may also be a stronger role for the NAIF in the broader Indigenous policy agenda across northern Australia, through further collaboration with entities for which Indigenous economic development is a key goal.

Indigenous Engagement Strategies

The requirement for an Indigenous Engagement Strategy seeks to ensure Aboriginal and Torres Strait Islander people have the opportunity to participate in and benefit from activity associated with NAIF investments. The criterion requires that the IES 'sets out objectives for Indigenous participation, procurement and employment that reflect the Indigenous population in the region of the proposed project'.[29]

The NAIF provides guidance to proponents regarding what an IES could include through the IES guideline, which is a comprehensive, but not exhaustive, list of things that could be considered in an

[26] Department of the Prime Minister and Cabinet, above n 1, 4.
[27] Australian Bureau of Statistics. *Census 2016.*
[28] Australian Government. *Developing northern Australia: Implementation Report 2018.* Office of Northern Australia. Available from https://www.industry.gov.au/sites/default/files/2018-10/our-north-our-future-developing-northern-australia-2018-implementation-report.pdf?acsf_files_redirect. October 2018.
[29] *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth), sch 1 cl 5.

IES.[30] It includes: procurement, career and skills development, community engagement, cultural protocols, and cultural and heritage protection. The NAIF seeks outcomes in both the construction and operation phase of a project, and generally requires proponents to report at 6-monthly intervals throughout the construction phase, and 12-monthly in the operation phase.

Due to the variability in NAIF projects, there is no set formula for an IES. The NAIF expects that IESs will vary according to each project, and as such they consider each on its merits. That said, it is common for an IES to include specific employment or procurement targets. The NAIF will also consider IESs in conjunction with related requirements such as Indigenous Land Use Agreements and Reconciliation Action Plans, and encourages proponents to leverage off these where possible. This overall approach aligns with the view of some stakeholders who noted the importance of flexibility in developing IESs, to allow for the varied characteristics and needs of projects.

It is too early in the lifecycle of NAIF's investments to evaluate the broad effectiveness of the various IESs, therefore this report mainly considers the approach taken by the NAIF and proponents to date.

Proponents' approach

Stakeholder consultation did not reveal any major or widespread concerns regarding IESs. In general, proponents were positive, or had no concerns, regarding the IES requirement. Some reported that developing an IES is not overly onerous, and can be helpful in framing Indigenous engagement. This is particularly true for those larger entities already familiar with operating in northern Australia, where Indigenous engagement is a fairly established practice. Many such proponents have dedicated resources and/or experience in engaging with Indigenous communities. The requirement is also consistent with some proponents' existing Indigenous engagement policies, for example Indigenous employment targets.

Despite this, in some cases the requirement for an IES has been criticised as not appropriate given the scale or nature of the project. These concerns appear to arise where proponents are not readily resourced or experienced in Indigenous engagement. In other instances, a proponent may have felt their project was too small, or too specialised, to warrant an IES.

The NAIF has an Indigenous engagement team who meets with proponents throughout the process to ensure a comprehensive understanding of the IES requirement, make the reporting requirements clear, and seek to embed the associated activity within the organisation to drive lasting change. An example of this is through encouraging proponents to use in-house capacity to develop the IES rather than consultants, to help with ownership of, and engagement with, the resulting strategy. Should this approach be successful, engagement resulting from IESs has the potential for genuine positive impact.

It is too early to comprehensively evaluate how this strategy is working, but feedback has not revealed any concerns with this approach. It will be important to continue to monitor the impact of the IES requirement as projects mature.

Ultimately, the IES requirement ensures engagement of this key group of stakeholders in the development of northern Australia, and contributes to the pursuit of an important goal to promote better outcomes for Aboriginal and Torres Strait Islander people. Regardless of its size or nature, every project the NAIF supports can contribute to this goal in some way.

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[30] Northern Australia Infrastructure Facility, *NAIF - Indigenous Engagement Strategy Guideline* (November 2018), available from https://naif.gov.au/our-governance/governance-overview/indigenous-resources/.

Outcomes and compliance

The NAIF has reported that so far, IESs have been generally adhered to. Despite this, managing IES compliance can be a challenge, due to the involvement of other financiers, the varying degrees of ambition in IESs, and the difficulties proponents face in knowing what resources and skills will be available prior to embarking on recruitment and construction.

In instances where an IES is not adhered to, the implications are determined on a case-by-case basis, and set out at the commencement of the contract in a schedule of obligations. In general initial non-compliance will trigger a review event, and persistent non-compliance can result in a financial penalty. These penalties are not a mandated part of the NAIF's legislative framework, but are deemed by the NAIF as the best mechanism to ensure the IESs are implemented with appropriate diligence.

The NAIF should continue with this approach to ensure IESs are adhered to. While there may be a small number of cases in which an IES is not the best vehicle for a meaningful contribution to Indigenous economic development, on balance, the requirement to have an IES appears to be effective (noting the IESs to date are in their early stages of implementation).

Some consulted have raised the possibility of adopting a reward for achieving IES targets or additional penalty for not meeting IEs targets, to strengthen the impact of the IES requirement. The challenge in this approach is that penalising or rewarding proponents creates an incentive to be conservative in developing the IES, which could be counter to what the IES requirement is aiming to achieve. Rather, it is important for IESs to in the first instance be realistic, evidence based and achievable, without being conservative. This can be verified in the NAIF's assessment around whether a proponent meets the mandatory criterion to have an IES.

Another option could be to invite proponents to include stretch targets in their IESs, for which a reward is available upon reaching them. The NAIF has advised that they do have these kinds of discussions with proponents, and while they have not implemented a reward system, if a target or other aspect of an IES is understood as ambitious, compliance relating to this aspect could receive different treatment. This would be established on a case-by-case basis.

Recommendation 12: Retain IESs as the primary mechanism through which the NAIF pursues Indigenous participation and engagement in northern Australia, and work with proponents to publish IESs.

Recommendation 13: The NAIF to consider how they might further encourage proponents to be ambitious in their IESs.

IESs are not currently made public, and there is no requirement (legislative or otherwise) for the NAIF to do so. The NAIF does not routinely publish IESs due to confidentiality concerns, and to preserve ambition in IESs.

Despite this, there have been calls to provide more transparency regarding successful projects' IESs.[31] Both the Government and the NAIF have shown broad support for this, while noting that detail in IESs is often commercial-in-confidence, and must be protected accordingly.[32] In addition,

[31] Auditor-General, above n 15, 10; Senate Economic Reference Committee, above n 13, 31.
[32] Australian Government, above n 14, 3; Auditor-General, above n 15, 10.

they may contain other sensitive information, for example that pertaining to Indigenous communities, which should also be treated with the appropriate degree of confidence.

Noting these challenges, there is value in pursuing greater transparency regarding the contents of the IESs, as this should improve accountability, provide examples of best practice IESs, and show future proponents what their projects could gain from Indigenous participation and engagement. Appropriate redaction or summary material can address the challenge of balancing transparency, and protecting material that is required to be treated as in-confidence. Care must also be taken to not disincentivise proponents from being ambitious in their IESs.

NAIF's role in the broader Indigenous policy environment

The NAIF's role in Indigenous involvement and opportunity must be considered in the context of other activities which seek to accelerate economic development for Indigenous Australians in northern Australia.

Stakeholders have highlighted that first and foremost the NAIF is a concessional lender, and it should not seek to replicate the functions of entities which have a specific remit to pursue Indigenous economic development. There are many of these, covering an array of activities, including:

- the National Indigenous Australians Agency (NIAA)
- Indigenous procurement policies
- the Indigenous Land and Sea Corporation
- Indigenous Business Australia.

The NAIF's value in this policy space – in addition to driving outcomes through the requirement for proponents to have an IES – is through its collaboration with these entities, taking opportunities to bring together relevant stakeholders, and pursuing opportunities to work with Indigenous proponents.

As discussed in the Governance chapter, Kate George, a Putijurra woman, was appointed to the NAIF Board as a Director in 2019. Ms George has extensive experience in northern Australia, and in the community and resources sectors, government, law, Indigenous business, and infrastructure and asset management.

Opportunities for Indigenous proponents

To date, the NAIF has financed two projects with substantial Indigenous involvement: the Australian Aboriginal Mining Corporation's iron ore mine in the Pilbara, and Voyages Indigenous Tourism's upgrades to its airport at Yulara, NT.

Discussions with stakeholders including the NIAA, highlighted the need for more Indigenous proponents to access NAIF finance. The barriers to this include the unofficial costs of a NAIF finance application, making it hard for small value projects to access (of which many Indigenous-led projects are), and the combination of generic and unique challenges faced by Indigenous businesses, the latter of which are the result of intergenerational socio-economic disadvantage.[33]

[33] IRG submission.

Addressing the barrier to smaller value projects is addressed in the Public Benefit and Risk section of this report, noting that Indigenous-led projects can be particularly affected. In summary, the requirement for the NAIF to be satisfied that a loan can be repaid has resulted in a due diligence process that requires significant resourcing and cost that discourages smaller proponents (including Indigenous) from applying for NAIF finance.

Adjusting how risk is considered according to project size, and for projects that represent a particular strategic or public benefit, for example Indigenous-led projects, could reduce this impost and facilitate more Indigenous-led projects receiving NAIF finance. Sufficient measures would still need to be taken to maintain an appropriate risk level for the NAIF's investment portfolio.

The IRG defines the unique challenges faced by Indigenous businesses as manifested in *'generally lower levels of education and income, limited intergenerational wealth transfer, relatively limited capacity to engage in the workforce or to own, successfully operate and grow commercial enterprise and to access the necessary networks, resources and support services required to achieve these outcomes'.*[34]

In order to overcome this, stakeholders have suggested models where specific Indigenous-led projects would receive unique treatment from the NAIF, in light of the additional challenges they face.

Examples include allowing for grants or equity, in recognition of the additional capital requirements faced by Indigenous-led projects. Providing equity is a complex issue, and is dealt with in the Financing Mechanisms chapter of this report. See below for further discussion on the provision of grant funding.

In terms of accessing the equity and expertise necessary to progress an application with the NAIF, there is opportunity for the NAIF to collaborate, or even partner, with the various entities that are involved in Indigenous investments. For example, Indigenous Business Australia and the Indigenous Land and Sea Corporation, both of which engage in investments and related activity for the benefit of Aboriginal and Torres Strait Islander people.

> **Recommendation 14:** The NAIF should continue to strengthen its collaboration and engagement with entities that have Indigenous outcomes as their core business, and work with these to provide finance to Indigenous-led projects.

Grant support

Consultation has revealed broad support for a program of grant or similar funding to assist projects in the early stages of development, for example through supporting business cases or feasibility studies. This was also raised in the context of supporting Indigenous-led projects, as these often need additional support in these early stages, due to challenges associated with socio-economic disadvantage.

Although it was raised in the context of the Review consultations, the support for grants was accompanied by a general belief that the NAIF is not the appropriate vehicle to deliver this support.

[34] IRG submission to this review, p.6

The NAIF is not resourced to administer grants, and there are many existing programs and vehicles already delivering, or well placed to deliver, this kind of support.

In addition, this is already being explored under the Northern Australia Indigenous Accord of December 2019 which establishes an intergovernmental agreement to scope funding options for 'feasibility studies to leverage infrastructure investment for Indigenous benefit'.[35] The specific role for NAIF in this is limited.

See the Financing Mechanisms chapter for further discussion regarding the role of grants.

[35] National Indigenous Australians Agency, *Northern Australia Indigenous Development Accord* (13 December 2019), available from https://www.niaa.gov.au/resource-centre/indigenous-affairs/northern-australia-indigenous-development-accord.

Financing mechanisms

The NAIF has been established to provide concessional finance to projects in, or benefiting, northern Australia. The NAIF's target, unlike grant funding bodies, is to fill an identified gap – namely, the lack of private finance available for northern projects and limited tolerance for the unique characteristics of northern Australia that affect them. The NAIF is intended to finance projects which are commercially viable but require support (primarily in the form of concessional finance) to succeed.

Under the 2018 NAIF Investment Mandate, 'loans will be the default Financing Mechanism considered for all Investment Proposals'.[36] The Investment Mandate specifically authorises the NAIF to offer concessional debt finance, and provides some guidance as to the form the concessions might take.[37] The NAIF can offer loan concessions such as longer loan tenors and lower interest rates than those offered by commercial financiers,[38] as well as extended periods of interest capitalisation and the deferral of loan repayments.[39]

Consistent feedback provided to the Review from current and potential proponents, as well as from the financial sector, was that the NAIF's ability to offer concessional debt finance was one of its greatest assets. These concessions empower project proponents to generate positive cash flows sooner than would otherwise be possible. This appropriately responds to one of the key challenges associated with developing projects in northern Australia – the longer time frame before projects can be completed or reach profitability.

In addition to loans, the Investment Mandate also authorises the NAIF Board to offer alternative financing mechanisms to support a proposed project. However, this is subject to the approval of the Minister for Resources and Northern Australia, the Treasurer and the Minister for Finance and requires consultation with the relevant jurisdiction.[40] What alternative mechanisms might be offered is unspecified, except that equity investments are prohibited.[41]

To date, no project has been offered an alternative financing mechanism. This may indicate that the provision of patient, long-term debt finance is sufficient for the market's needs, but it may also indicate the presence of unintended hurdles to the NAIF offering these alternative financing mechanisms. For example, proponents may be reluctant to consider alternative finance mechanisms due to a lack of understanding of these offerings. Further discussions with the NAIF could be beneficial in ensuring alternative financing mechanisms are being offered and explored in situations where they may be suitable, particularly in the challenging context of economic recovery.

In this chapter, the Review considers other possible financing mechanisms, specifically equity investments, other forms of debt finance, and the provision of grant funding. The chapter also considers whether the NAIF's remit should be expanded beyond physical infrastructure, and the possibility of establishing the NAIF as a rolling investment fund.

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[36] *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth), s 10(1).
[37] Ibid, s 10(2).
[38] Ibid, ss 10(2)(a)-(b).
[39] Ibid, ss 10(2)(c)-(d).
[40] Ibid, s 11(4).
[41] Ibid, s 11(5).

Equity

The NAIF's Investment Mandate prevents it from providing financial assistance that would result in equity being provided to any project.[42] This is in contrast to other Australian Government financing agencies such as the CEFC and NHFIC, which are both able to be minority (non-controlling) equity investors.[43]

What 'equity' means for the purpose of this Review

In the context of finance, equity represents ownership of assets. Equity securities, such as shares of stock, are commonly sold by companies to raise capital. In exchange for purchasing shares, an investor becomes a part-owner or, in other words, a shareholder of the company.

Whether the NAIF should be authorised to make equity investments was considered in the Shepherd Review, which recommended the Government consider removing the prohibition, subject to three significant caveats: 'resolution of the complex Constitutional issues', 'NAIF cannot be the major risk taker' and 'there must be an exit mechanism for NAIF at least in the medium to long term'. This Review therefore considered the possibility of the NAIF making equity investments.

Feedback from stakeholders on this issue was mixed. The main argument in favour of the NAIF making equity investments was that for some projects in northern Australia there was an 'equity gap' in the capital structure, meaning the project would not go ahead without a source of equity funding. A second argument was that, by giving NAIF a significant equity stake in a project (more than 10-15 per cent), the NAIF could then provide additional strategic direction to the project, including through holding a position on the company board. It should be noted that given the NAIF is known only as a concessional debt financier, the stakeholders participating in this review possibly self-select towards a bias in favour of debt over equity investment. Opening the NAIF up to deliver equity investment may uncover latent demand not identified by this Review.

On the other hand, many of those consulted noted the significant additional challenges posed by taking on equity investments. The NAIF would need to recruit a team of equity finance specialists to conduct due diligence on project opportunities, and to manage the NAIF's equity holdings. The NAIF's operational expenses would increase to account for associated staffing and capacity requirements. 'Chinese walls' or virtual barriers would also be required to prevent the exchange of information where a project was considered for and/or given both equity and debt finance by the NAIF. Apart from the additional resourcing this implies, NAIF project selection and ongoing project management models would also require significant amendment.

The NAIF Board would need to have members who were experienced in equity. If there was an expectation that the NAIF would play an active role in the management of the company concerned, the additional onus on the NAIF would be even greater. These challenges are not insurmountable,

[42] Ibid.

[43] *Clean Energy Finance Corporation Investment Mandate Direction 2019* (Cth), s 14(1); *National Housing Finance and Investment Corporation Investment Mandate Direction 2018* (Cth), s 24(4).

but would need to be considered as part of the broader operational implications of the NAIF undertaking equity investments.

Equity investments come with a greater risk of non-recovery than debt securities due to the order of priority they are assigned for repayment in the event of a company's liquidation. In other words, equity investments represent the 'first-loss piece' if the proceeds of the sale of a company's assets are insufficient to repay its debts. If NAIF were permitted to be an equity investor, it could compensate for this risk by adopting a benchmark rate of return across its equity investment portfolio.

The Review acknowledges that for some projects in northern Australia, there are very real challenges in finding sufficient equity investment. The NAIF can (and does) help resolve this issue through its debt offerings. As outlined above, the NAIF's loans are typically long tenor and concessional; in effect these loan agreements can largely replicate the benefits of raising capital through equity markets. The provision of debt to a project decreases the level of equity needed, thereby maximising the potential return shareholders can earn on their investment. The appeal of this investment strategy is enhanced when the debt involved is provided on concessional terms. Depending on the nature of the concessions attached to a loan, these can amplify the advantages that debt possesses over equity from the perspective of a project proponent. For example, the interest that is liable to be repaid on a loan is tax deductible, but dividends paid to shareholders are not. The NAIF's willingness to issue a conditional terms sheet can encourage other financiers to purchase equity in a project, which has been the case of projects such as Verdant Mineral's Ammaroo Phosphate Project.

Case Study: Verdant Minerals Limited (Verdant)

Verdant proposed to develop and operate the Ammaroo Phosphate Project, located to the north-east of Alice Springs. Noting the potential public benefit for the Northern Territory from the project, including 300 jobs during the construction phase, the NAIF provided Verdant with a non-binding indicative terms sheet for a debt facility in order to 'catalyse interest' from other financiers.

Following the NAIF's indication of support, Verdant accepted a buyout from a private equity firm. The NAIF is continuing to engage on the Ammaroo project, and is currently undertaking due diligence prior to consideration by the NAIF's Board of Directors.

The NAIF could extend this role for relevant projects by making use of subordinated debt. As the name suggests, subordinated debt is debt that will be repaid after senior debt holders are repaid in the event of liquidation. Although subordinated debt is more risk sensitive than senior debt, it is less risky than equity which is the first-loss piece in the event of liquidation.

In short, there are significant considerations to be weighed in considering removing the prohibition on the NAIF making equity investments. However, such a move has the potential to allow the NAIF to support a greater range of projects, and play a more comprehensive role in filling the infrastructure market gap in northern Australia. There is also uncertainty regarding how the

COVID-19 pandemic will impact equity markets over the longer term. Providing the NAIF with increased flexibility in its investment offering will allow it to be agile and responsive, filling market gaps as and when they emerge. Moreover, equity offers some key advantages to Government, in particular a potentially greater return on investments commensurate with the level of risk, and the opportunity to help drive projects forward through active exercise of the management obligations associated with an equity investment. As an equity investor, Government would have a say in the direction of a project and can seek to influence project outcomes to maximise the public benefit delivered.

Government equity investment is also undoubtedly valuable in the infrastructure sector, where projects can have long lead times. The patient nature of Government investment, willing to wait longer than private investors for revenue streams to develop, may prove particularly critical to the successful development of projects at a time when economic volatility makes it challenging to establish stable, long-term revenue.

On balance, the Review finds that it is worth Government considering lifting the prohibition on equity investment by the NAIF, with due consideration within the broader Budget context of the additional risk and resourcing requirements such a decision would entail. A diverse offering will ensure the NAIF is agile and responsive as the economic impacts of the COVID-19 pandemic continue to develop.

Recommendation 15: Consider removing the limitation on NAIF provision of equity finance to maximise its flexibility in working with businesses to develop infrastructure projects despite the economic challenges of COVID-19.

Existing mechanisms for Commonwealth equity investments

There are existing Australian Government investment funds that can provide equity funding with respect to certain infrastructure projects, including the CEFC and NHFIC. In situations where market gaps exist with respect to equity funding, the Government could consider other existing or ad hoc mechanisms to fill those gaps. The Government's commitment to invest $100 million in an Australian Business Growth Fund (ABGF) is relevant in this regard. The ABGF is intended to provide longer term equity funding to small and medium-sized enterprises (SMEs), defined as those with annual turnover of between $2-100 million. Investment decisions will be made by the ABGF, independent of government and in line with its investment mandate. This will likely allow for investment in a wide range of industries.

The rationale for the ABGF is to address the difficulty that SMEs face in attracting a level of equity funding which enables them to grow without taking on additional debt or giving up overall control of their business. The ABGF is modelled on similar international examples, such as those in the United

Kingdom[44] and Canada.[45] In addition to the Australian Government, six Australian banks have committed capital to the ABGF to invest in Australian small businesses.

Once the ABGF is established, the NAIF should look at opportunities to refer projects that could be improved by an equity investment to the ABGF for consideration, noting that the ABGF cannot be directed to invest in any particular project (at the time of writing the AGBF Bill is before the Senate). This could be done through informal engagement, but could be formalised through a Memorandum of Understanding or Engagement Protocol with the ABGF.

> **Recommendation 16:** The NAIF refer projects, where appropriate, to the new Australian Business Growth Fund, which is intended to serve as a source of equity finance for small businesses.

Debt tools other than loans

The current NAIF Investment Mandate specifies that loans are the default financing mechanism to be considered for all projects.[46] The use of other financing mechanisms is allowed for through the 'Alternative Financing Mechanisms' section, but their use requires the agreement of the responsible Minister, the Minister for Finance and the Treasurer. The NAIF must also consult with the relevant jurisdiction.

To date, this option has never been used by the NAIF. The NAIF's originators, who are at the coalface of business engagement, report that while some proponents are interested in utilising alternative instruments, the approvals process has deterred them from pursuing the option further. The reasons cited include uncertainty as to the likelihood of receiving approval from the Commonwealth to deploy an alternative mechanism; uncertainty as to the receptiveness of the jurisdictions to deliver an alternative mechanism via the 'pass-through' arrangements to which NAIF financing has to date been limited; and uncertainty as to how long the approvals process might take, at both the Commonwealth and jurisdictional level.

Stakeholders reported through the Review that loans are not always the only form of debt required by projects, and that is was fairly common in the private sector for debt financiers to offer other debt instruments such as guarantees, letters of credit or even the purchase of bonds. It was suggested that simplifying the NAIF's use of other debt instruments could be useful to projects that need to secure supply chains and credit lines – a need that the current economic volatility is making more pressing. Empowering the NAIF to be able to efficiently deliver a package of debt utilising different tools without having to satisfy additional bureaucratic processes would be a relatively straightforward way to enhance its impact in the face of economic uncertainty.

While it is understood that different debt tools present slightly different levels of risk to the lender, they are all fundamentally subject to an assessment of the proponent's ability to repay. The Review considers that any possible change in the NAIF's risk profile that might arise as a result of more widely deploying different debt instruments is unlikely to be of such a scale as to warrant the additional approval process currently in place.

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[44] Business Growth Fund (UK), available from https://www.bgf.co.uk/.
[45] Canadian Business Growth Fund, available from https://cbgf.com/.
[46] Northern Australia Infrastructure Facility Investment Mandate 2018

Recommendation 17: Consider simplifying the alternative financing mechanisms process to make it easier for NAIF to offer other forms of debt apart from loans.

Grants

The NAIF's role

The NAIF is a financing organisation, and has no expertise in administering grant programs. While a grant program targeting early stage infrastructure development could have merit, without substantial additional resourcing the NAIF will not be adequately equipped to deliver such a program. In addition, the Australian, state and territory governments have well-established grants programs available to businesses, with lengthy and significant expertise in delivery. This is particularly the case where existing programs or agencies have developed sector-specific expertise, such as in the Indigenous sector. Although existing programs may not directly target the sort of early-stage infrastructure projects called for by some stakeholders, should government agree grant funding is required to address that specific challenge, such a program should be administered by existing grant administrators. Many of the stakeholders who raised grants in the context of this Review acknowledged that the NAIF may not be the right vehicle to administer grants.

Further, the NAIF operates as a loan facility, and as such its effectiveness in financing infrastructure construction across the north is dependent on the availability of commercially viable projects backed by a proponent capable of repaying any finance provided. Proponents generally require a depth of business expertise – or access to such expertise – to navigate the NAIF's requirements and satisfy the Board that the investment is sound. Stakeholders identified gaps in this regard, noting a generally shallow depth of business skills/expertise across the north; and a lack of capital to 'get projects off the ground'. These challenges were particularly raised in the context of Indigenous and agricultural projects, and those of small (less than $10 million) value. The often proposed solution to this, including by the Indigenous Reference Group to the Ministerial Forum on Northern Development (IRG), was one or more grant programs, targeting early stage infrastructure project development.

Feasibility studies and greenfield investments

Stakeholders noted that many potentially beneficial projects in the north lack the resources and/or capacity to produce the feasibility studies required to establish the viability of a project and secure funding and/or finance. A grant program which supported proponents to undertake early-stage feasibility studies could assist in building both the expertise and skills pool in the north, and build a pipeline of feasible projects.

Consultation identified sectors that have experienced difficulty in developing high quality feasibility studies. In particular, the agricultural sector was repeatedly named as one where projects are reportedly less likely to be able to partner with a larger organisation or obtain grant funding to develop business cases. Indigenous enterprises were also identified as requiring support in the early stages of the business growth cycle, proposed by the IRG as necessary to overcome the market failure associated with socio-economic disadvantage.

By providing targeted grants, the NAIF could develop a pipeline of future projects with robust feasibility studies that might be eligible to seek financing from the NAIF. In some cases, the feasibility study may reveal the project is suitable for commercial financing, and the project may not require further concession or support to proceed. Expectations would need to be carefully managed, as a positive feasibility assessment could not be a guarantee of NAIF support.

Grants were also suggested as a possible solution to the challenge of establishing greenfield projects in the north. These kinds of projects present substantial risk to investors, as they lack a proven track record of delivery and therefore may not offer a high probability of return on investment. For such projects, low cost finance provided by the NAIF will not be sufficient to support progress. In these cases, a combination of grant funding for capital costs and NAIF finance might sufficiently de-risk a project to the point of attracting a private sector proponent to bring both expertise and private funding, potentially opening a new industry for the region and boosting economic growth.

Despite these potential benefits, a grants program carries risk. For example, given the purpose of a feasibility study is to make an assessment of a project's commercial viability, it is quite likely that many grants for these studies will fail to result in a positive feasibility assessment and therefore not progress. Unlike NAIF finance, grants are not typically required to be repaid, so any program will impact the Commonwealth Budget.

Some mitigation might be offered through an eligibility criterion requiring successful project proponents to make a co-contribution. While this may eliminate some quality projects, it could also serve as a filter, removing projects with a low probability of success from the application process. The expertise of local governments could also be tapped to ensure grants are awarded to projects considered a local priority, although this risks favouring larger councils with more resources.

Some stakeholders cautioned that unlike debt finance, a grants program may not impose sufficient financial rigour on proponents and therefore carried a stronger risk of funding projects that failed to reach commercial viability. This is not a problem in and of itself, as the type of support discussed here would be aimed at assessing the viability of promising project proposals, but protections would need to be in place to maximise the likelihood of grants leading to commercially viable projects.

> **Recommendation 18:** The NAIF continue to focus on delivering finance, but consider opportunities for proponents to access Australian Government and jurisdiction grant programs to develop and support infrastructure projects.

Beyond physical infrastructure

Under the current framework, the NAIF Act limits the NAIF to 'providing finance for the construction of economic infrastructure'.[47] The IM goes one step further, with mandatory criterion 1 specifying an eligible project involve the construction or enhancement of *physical structures, assets or facilities*, creating *new capacity*.

> Mandatory Criteria 1:
>
> 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

[47] *Northern Australia Infrastructure Facility Act 2016* (Cth), s 7(1)(a).

(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.

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.

The definition of infrastructure provided for in the IM is broad, encompassing everything from logistical infrastructure such as ports and roads to social infrastructure such as health or education facilities.[48] The breadth of the definition received widespread support from stakeholders. That said, by limiting eligibility to physical infrastructure that creates new capacity, projects designed to foster economic development which do not in and of themselves create new capacity are excluded. For example, the high cost of insurance premiums in northern Australia constrains economic development by increasing operating costs and risk. Removing the specific reference to 'creation of new capacity' might open NAIF finance to projects designed to mitigate climate risks in the north, contributing to a reduction in insurance premiums and general operating risk, facilitating economic development – a legislated objective of the NAIF.

Some stakeholders also suggested greater public benefit could be derived if the restriction to physical infrastructure was removed. One stakeholder commented that the 'NAIF can give me a loan to fund construction of these sheds, but not the equipment that goes inside them'. Examining the arrangements of comparable entities, the Review notes that the CEFC is not bound by this restriction. This flexible approach appears to have assisted unlocking impactful investment.

Lifting the restriction to physical infrastructure would likely require amendment to both the NAIF Act and the IM. Those amendments would consequently empower the NAIF to provide finance to projects regardless of whether they involve the construction of physical infrastructure, provided that they are consistent with the other objectives of the NAIF. For example, the NAIF could consider providing finance for the establishment and initial operational costs associated with the creation of a health services centre, or providing operational finance to ensure that capital investment is not deferred during periods of economic downturn. The NAIF may also explore options to provide financing for other investment entities which may support a wider array of projects than just physical infrastructure.

Broadening the remit might increase the diversity of sectors accessing NAIF finance, and facilitate projects targeting the intangible social and community infrastructure that contributes to population growth. Whilst stakeholders broadly agreed that the biggest gap across the north remains physical infrastructure, it is crucial that the NAIF be provided a level of flexibility to support its objectives, especially given the uncertain outlook resulting from the COVID-19 pandemic. Some stakeholders noted there is a variety of alternative funding sources that can be accessed to support social infrastructure and business development. The NAIF should maintain awareness of these services,

[48] Explanatory Statement, *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth), Attachment A, available from https://www.legislation.gov.au/Details/F2018L00567/Explanatory%20Statement/Text.

taking care not to duplicate these functions and referring prospective applicants to these avenues where appropriate.

> **Recommendation 19:** the NAIF Act and Investment Mandate be amended as necessary to remove the requirement that NAIF finance be limited to the construction of physical infrastructure.

Consideration of a rolling fund

Some stakeholders questioned whether the NAIF could be continued on a permanent basis, with the ability to reinvest its returns in a similar manner to other Australian Government financiers such as the CEFC.

While this idea has merit, there are also risks. In particular, most current NAIF loans have a long tenor, leading to a significant delay between the NAIF's initial loan and the point at which repayments would be sufficient to provide the recycled capital to issue new loans.

Without an increase in the capital available to the NAIF to issue loans, an immediate transition of the NAIF into a rolling fund would likely lead to a period of inactivity before the initial loan funds began to be repaid. If the NAIF were to become a permanent investment vehicle, it may be better to consider this at a later date when a sufficient portion of its initial funding allocation is starting to flow back as repayments, providing a pool for reinvestment.

Governance

The NAIF is established as a Corporate Commonwealth Entity through the NAIF Act, which also establishes the NAIF Board, and sets out the functions of the organisation. The NAIF Act also provides for the NAIF's Investment Mandate, a legislative instrument that gives direction to the NAIF on the performance of its functions, including outlining eligibility and criteria for NAIF financing.

As prescribed by the NAIF Act, the Board consists of a Chair, and four to six other members. Currently, the Board has six members in addition to the Chair. Board Members are appointed by the Minister for Resources and Northern Australia in accordance with the NAIF Act.

The Board is responsible for making investment decisions, and is advised by the NAIF organisation. The organisation includes project origination and assessment capability, and is led by a CEO appointed by the NAIF Board in line with the NAIF Act.

The NAIF also has a Service Level Agreement (SLA) with EFA to provide day-to-day support to the organisation. This broadly falls into two categories:

- transaction due diligence, environment and technical review, credit assessment, and loan management
- corporate and administrative services (including legal, compliance, financial management and reporting, human resources, information technology and communications, and property management).[49]

Through the SLA, the NAIF has also been able to leverage EFA's resources, policies and procedures to support the organisation's establishment, and to allow the NAIF to develop and approve its own policies and procedures.

Role of the NAIF Board and CEO

Expertise of Directors

Section 15 of the NAIF Act sets out requirements for members of the NAIF Board, including that:

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:

- banking and finance
- private equity or investment by way of lending or provision of credit
- economics
- infrastructure planning and financing
- engineering
- government funding programs or bodies
- financial accounts or auditing
- law.

[49] Northern Australia Infrastructure Facility, *Service Level Agreement*, available from https://naif.gov.au/service-level-agreement/.

The NAIF Act does not require that membership of the Board covers all of these fields, nor does it prioritise any of these fields.

With the limited number of Board members, covering the required expertise across all of these fields poses challenges. The current Board's expertise is weighted towards experience in local and state government funding programs, and law. While the NAIF Board has been able to utilise these skills and increase the volume of investment decisions in 2019, there has been feedback to the review that the board should increase its expertise in project financing and infrastructure development.

In future board appointments, consideration should be given to any changes to the NAIF's remit following this review. If the NAIF expands into other areas, including equity shares or grants, there may be a need for Directors with significant experience in financing, banking and private equity. There may also be potential for future Board appointments to improve existing linkages with jurisdictional governments by seeking board members with successful project development experience with these jurisdictions, and who are able to understand the perspective of state and territory governments.

While there are no legislative requirements for NAIF Board members to come exclusively from northern Australia, the selection of members for the NAIF Board has tried to encompass people who live, or have extensive work experience, in northern Australia. However, the experience of recruitment for the NAIF organisation has demonstrated difficulty in securing people with sufficient banking and finance expertise required for board members, who also reside in northern Australia. Consideration may need to be given to including Board members living outside of northern Australia to secure the required skills and experience.

Indigenous representation of the NAIF Board

As noted in the chapter considering the NAIF's Indigenous engagement, Aboriginal and Torres Strait Islander inclusion is a key element in the development of northern Australia. This is supported by the requirement that all NAIF projects have an Indigenous Engagement Strategy. However, discussions with Indigenous stakeholders noted longstanding concerns that the requirements for the Board currently do not mandate an Indigenous member, nor does the list of skills in section 15 of the NAIF Act include any reference to experience in Indigenous development.

In 2019, Kate George, of the Putijurra people, was appointed to the Board as a Director. Ms George has extensive experience in developing northern Australia.

Given the importance of Indigenous perspectives in the NAIF's operation, expertise in Indigenous development could be added to the list of desired expertise under section 15 of the NAIF Act. This would support the representation of Aboriginal and Torres Strait Islander people on the NAIF Board, while still providing flexibility for the responsible Minister to appoint appropriate candidates.

> **Recommendation 20**: 'Experience in Indigenous development' be added to the list of expertise requirements for the NAIF Board.

Commonwealth representation on the NAIF Board

At present, there is no Commonwealth representation on the NAIF's Board, either as a Director or Observer. While this underscores the independence of the NAIF, it limits the NAIF's visibility of the Government's strategic direction and opportunities for cooperation between the NAIF and the broader agenda for developing northern Australia.

The appointment of a Commonwealth representative on the NAIF board would take advantage of these opportunities and strengthen the links between the NAIF and the Department (including ONA and the MPFA). Additionally, by having a Board representative who holds a high level security clearance, the Commonwealth representative could receive sensitive information on behalf of the Board where a project may have implications for national security. More broadly, given the NAIF's operating environment requires close collaboration with government and business, best practice governance principles suggest that a Commonwealth representative would add significant value to the Board's thinking.

The appointment of a Commonwealth representative on the NAIF Board creates a number of risks. In particular, there is a risk that a Commonwealth representative will create a perception that the NAIF is not achieving independence in its investment decisions. The representative would also have to manage their dual role as a member of the NAIF Board and a representative of the department.

A model for government board membership has been shown in a number of other Australian Government financing organisations. EFA, ARENA and FIRB have a Commonwealth representative (ex-officio) appointed to their board. These members are nominally present to represent the Australian Government's interests, and to provide greater visibility on the operation of the organisation, its strategic goals and its use of taxpayer funds. It is the view of the Review that the precedents set by these other organisations indicate any risks arising from appointing a Commonwealth representative as a member of the NAIF Board can be effectively managed.

In speaking to those who had experience on similar boards, the Review heard two consistent suggestions. First, that the Commonwealth representative should operate like other members of the Board bringing their experience and judgement to bear on all Board matters. Second, that having a consistent representative was more important than seniority within the Commonwealth. In the other entities mentioned, the appointment is of the Secretary or a Deputy Secretary of the relevant Department to ensure alignment with government agendas. Given that NAIF Board meetings are held all over Australia on a regular basis, it may thus be more practical to nominate a First Assistant Secretary, rather than a more senior officer.

> **Recommendation 21:** An *ex-officio* Commonwealth representative be appointed as a member of the NAIF Board**.**

Delegations

As the NAIF has matured as an organisation, the volume of projects reaching the Board for consideration has increased significantly. Looking at positive investment decisions alone, the NAIF made one investment decision in 2017, five in 2018 and 10 in 2019.[50] As more projects approach the NAIF, particularly if those projects are requesting smaller amounts of financing, there is potential for this to increase the workload of the Board in making investment and all related decisions at the expense of the strategic management of the NAIF.

Under the NAIF Act, all investment decisions and decisions relating to amendments to existing loans, even if those amendments are minor or beneficial to the NAIF, must be approved by the NAIF Board. The NAIF Board does not have the power to delegate these decisions to the CEO or the organisation.

[50] Northern Australia Infrastructure Facility, *NAIF Investment Decision Notifications*, available from https://naif.gov.au/corporate-reporting/naif-investment-decision-notifications/.

As more projects have access to NAIF finance, there is likely to be an increase in the number of post-investment decision alterations to loans, some of which may need to be completed in a short timeframe due to the involvement of other financiers. Several project proponents noted that the process for investment decision amendments took significantly longer through the NAIF than their other financiers, primarily because of the requirement for the Board to approve these changes.

The Review finds that there is merit in altering the NAIF Act to give the Board discretion to delegate decision making within the NAIF organisation. This would not be inconsistent with comparable Commonwealth financing organisations, which provide Boards the option to delegate decision making power. For example, the *Clean Energy Finance Corporation Act 2012,* the *Export Finance and Insurance Corporation Act 1991* and the *Foreign Acquisitions and Takeovers Act 1975* provide broad powers for the relevant Board or Minister to delegate in writing their decision making authority for the purposes under the Act.

The use and parameters of delegation powers could be clarified within the Investment Mandate (for example, specifying that they could only be used for projects under a specific value).

Recommendation 22: The NAIF Act be amended to empower the Board to delegate some powers within the organisation.

State and territory roles in the NAIF

As outlined in the MFAs signed with the Northern Territory, Western Australia and Queensland, the NAIF provides concessional finance to the jurisdiction, which on-lends to the project proponent. Under this framework, the jurisdictions play a critical role in facilitating and progressing projects applying for NAIF finance, and have the ability to veto projects up to the signing of the loan documents.

To prevent NAIF loans having an impact on the jurisdictions' finances, they are given a 'pass-through' accounting treatment, allowing the states and the Northern Territory to recognise NAIF loan assets and liabilities but prevent any impact on their accounts or credit ratings.

Agreements with the states and the Northern Territory include a requirement that the jurisdiction is both substantially involved in the negotiation of the provision, terms and conditions of financial assistance, and the ongoing management (including pursuing enforcement action) of financial assistance. This is mirrored by s13 of the NAIF's Investment Mandate requiring the NAIF to consult with relevant jurisdiction governments as early as possible.

As all NAIF loans are made via state and/or territory governments, there is a requirement for these governments to play a role in the ongoing management of loans, including receiving repayments and passing them on to the Commonwealth. While the Commonwealth offsets the financial costs of this process, at least one jurisdiction noted that 'there is a considerable, unfunded, overhead in administering the NAIF on behalf of the Commonwealth'.

While there are opportunities for the state and territory governments to transfer some of this responsibility, this is not possible for all projects, and is not possible under current legislation in one state. In making any further adjustments to the NAIF, consideration should be given on how to reduce this administrative burden where possible, or preventing an increase in this administrative burden.

Accelerating state and territory approvals

As described above, the NAIF cannot make an investment decision to provide financial assistance to a project unless it is supported by the relevant state or territory jurisdiction.[51] The process therefore has considerable involvement of the relevant jurisdiction, and despite the NAIF being required to consult with them as early as practicable after receiving an Investment Proposal, there can still be delays in securing the jurisdiction's support.

The MFA provides for the development of protocols to streamline the origination, assessment, execution and administration of finance contracts, including the indemnification of the jurisdiction against financial loss arising from a NAIF transaction[52]. However, given the relevant jurisdiction is a party to the finance contract for each project, it must participate in the negotiation of contracts with relevant project proponents. Because these contracts can vary with each project, there is a necessary degree of bespoke work required each time a project is considered. The Review also heard of instances in which duplicative financial due diligence was undertaken by a jurisdiction despite the indemnification clause in the MFA.

Some projects have faced particular delays going through the jurisdiction's processes. As at May 2020, there was an average delay of 261 days between the NAIF making an Investment Decision, and a project reaching contractual close. As an extreme example, one project is recorded to have taken 404 days (more than a year) to reach contractual close. This can have serious consequences for time sensitive projects, for example where construction is scheduled around the wet and dry seasons, and could be dealt with by imposing mandatory turnaround times for state/territory consideration. While appealing in that it would give proponents more certainty regarding timelines, the variability in complexity of NAIF investments would make it difficult to identify a reasonable standard timeframe, and challenges in enforcing the deadline make it a less desirable option than addressing the causes of delays directly. It would be more beneficial for the NAIF to work collaboratively with the states and territories to identify ways to streamline processes.

The Review identified that while the jurisdictions reported that the current process imposes a considerable administrative burden on them, this is, to some extent, a result of the duplication of the due diligence processes which have already been conducted by the NAIF prior to the jurisdiction receiving the application for review. Some of this duplication may be necessary, for example if the jurisdiction requires independent legal advice, however it may be that better communication, particularly regarding the underlying mechanics such as who carries the risk, can reduce some duplication.

Given the severity of the economic fallout from the COVID-19 pandemic, there is now an urgent need to hasten these processes for all investment proposals. It would be beneficial for the NAIF and the states and territories to revisit both their assessment processes and engagement frameworks to identify where efficiencies might be found, with the intention to reduce timeframes for project assessment and approval. The increasing organisational maturity of the NAIF, and the now clear need for its services in a smaller project-size market than initially envisaged, also justify fresh consideration of the value of empowering the NAIF to lend directly to proponents where appropriate.

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[51] *Northern Australia Infrastructure Facility Investment Mandate Direction 2018* (Cth), s 13(4).

[52] The clause provides general indemnification against financial loss except in situations where the loss if caused by the jurisdiction's negligence or wilful misconduct.

Recommendation 23: The NAIF, in consultation with the relevant states and territories, revise assessment and approval processes and engagement to accelerate the origination, assessment and execution of finance contracts.

Recommendation 24: That the expansion of the NAIF's powers to include lending directly to proponents where appropriate be considered.

Location of NAIF staff

In managing the relationships with jurisdiction governments, consideration should also be given to the location of NAIF staff. Currently, the NAIF's project originators are based in Sydney, with frequent travel to their respective regions to discuss potential projects, and an expert is based out of Perth providing additional coverage of north-western WA. The NAIF CEO is based at the NAIF's headquarters in Cairns.

Some stakeholders questioned whether the originators being based in Sydney could restrict their ability to effectively engage with northern Australia. In contrast, almost all project proponents consulted praised the work of their respective originators and did not believe that being based in Sydney was an impediment to working with the NAIF.

While the NAIF has presences in Northern Australia, given the importance of developing relationships with jurisdiction governments, NAIF should continue to prioritise employment of staff in northern Australia wherever possible, noting that skills and expertise in project finance will pose some challenges to this. .

Internal NAIF assessment process

Since establishment, the NAIF has been criticised for a slow rate of investment decisions. Since the revised Investment Mandate was published in 2018, the pace of NAIF investment decisions has increased. Proponents consulted in the course of this Review reported that moving through the NAIF assessment process does take a significant amount of time and resourcing, but is not out of line with standard timeframes for infrastructure projects. Moreover, many proponents are negotiating other sources of finance and capital in parallel with their negotiations with the NAIF, which influences when they are able to demonstrate their ability to repay NAIF finance. Depending on the maturity of a project when it first engages with the NAIF, reaching investment-ready status can take considerable time.

Currently, draw-down on a NAIF finance facility is linked to construction milestones, ensuring that only the funds required are spent, and only when they are actually needed. However, given a NAIF investment decision can be taken in advance of a project securing final regulatory approvals, there can be a lag between the investment decision and draw-down dates. Additionally, as NAIF loans involve agreement with the relevant jurisdiction, there can be a lag arising from a delay between the NAIF decision point and jurisdiction agreement. As noted previously, the Review found an average delay of 261 days between the NAIF taking an Investment Decision, and contractual close being reached.

Moreover, the Review found that securing NAIF finance was not always the last step before project commencement. In some cases, regulatory approvals were still outstanding at contractual close, while other projects were still completing their financing arrangements, including equity, of which NAIF finance is only part. Some stakeholders noted that NAIF finance approval was actually sought at an early stage in establishing financing arrangements because of the role it can play in securing other partners to the project. The case study discussed earlier on Verdant Minerals also demonstrates why there can be a lag on the draw-down of NAIF finance post Investment Decision, as businesses and projects can be restructured or sold. A NAIF finance commitment is often the catalyst for other debt as well as equity investors to commit to a project; NAIF Investment Decisions allow proponents the confidence and financial support to start costly regulatory approvals, a time-consuming step that precedes draw-down.

These factors notwithstanding, there is an imperative for the NAIF to explore how efficiencies can be achieved at all stages of the assessment pipeline, with a view to reducing timeframes on investment decisions across the board. This is particularly pertinent given the economic uncertainty resulting from the COVID-19 pandemic. The NAIF will play a crucial role in the recovery of the economy of northern Australia, and should endeavour to expedite investment decisions to reduce the disruption to the economy resulting from the outbreak.

As discussed above regarding the jurisdictions, one way to expedite NAIF investments could be to impose timeframes for NAIF's assessment. Given the varied complexity of NAIF projects, and the NAIF's need to be flexible in managing what is currently an extensive pipeline of projects, it would be more efficient for the NAIF to continuously revise its processes and seek proponent feedback to identify areas for process improvement. For example, ways to more quickly identify projects that will not succeed in securing NAIF finance, and remove these from the pipeline.

The Review considered the benefit of setting timeframes for investment decisions for the NAIF. It found that setting such timeframes may be counterproductive. Indeed, the NAIF ultimately relies on the provision of information, or other actions, from the relevant project proponent in order to progress an investment proposal through the application process. As described earlier, the speed in which a project can receive financial assistance from the NAIF is also dependant on the relevant state or territory jurisdiction, whom the NAIF cannot require to make decisions within a certain timeframe.

Nonetheless, the NAIF could establish a key performance indicator (KPI) that requires for investment proposals to move from the initial inquiry stage to the strategic assessment and due diligence stages, or guidance on how long these assessments typically take. The question as to what an appropriate timeframe might be in this respect is a judgment best left to the NAIF, given its first-hand knowledge of how quickly an Investment Proposal can progress through the different stages involved in the process of applying for financial assistance. There is opportunity for the NAIF to report on its performance through its Corporate Plan or website.

> **Recommendation 25:** The NAIF to consider options to reduce timeframes on investment decisions, including through streamlining assessment processes and KPIs.

Smaller project accessibility to the NAIF

As noted in the discussion of public benefit, the NAIF's requirements impose additional burden on proponents as compared to those imposed by private financiers, and these requirements can have a disproportionate impact on smaller proponents with fewer resources to shoulder this burden. Additionally, smaller proponents can be affected more severely by the length of time required to move through NAIF due diligence, and any delays between a NAIF decision and jurisdiction agreement.

While the requirements enforced by the NAIF are appropriate given the NAIF is investing public funds, a number of stakeholders suggested there would be benefit to establishing a streamlined process for projects requiring a small amount of finance, with $5 million a commonly suggested threshold, and that due diligence requirements are scaled to the size of the project. This approach would complement the NAIF's existing exemptions around CBAs for smaller projects, and reduce the burden for smaller proponents seeking to engage with the NAIF.

One option to further assist improving the accessibility of the NAIF to smaller projects might see the NAIF partner with other lenders to leverage their expertise in working with smaller organisations. This would utilise existing credit application processes of these organisations to ensure proponents meet the NAIF's mandatory criteria, while minimising the resourcing burden. The Review assesses that Indigenous business and projects in the tourism sector in particular may benefit from an option to engage with the NAIF through a more streamlined or simplified process. This would assist in increasing the diversity of sectors benefiting from NAIF finance.

> **Recommendation 26:** The NAIF consider approaches to increase the accessibility of finance for smaller projects, including partnerships with other commercial bodies.

Role of the Australian Government

COVID-19

The onset of the COVID-19 pandemic has led not only to a public health emergency, but has caused significant disruption in most sectors of the Australian economy.

Bolstering the NAIF's economic impact is therefore more important than ever. The pandemic has caused a significant decline in global growth, forecast by the IMF to contract by 4.9 per cent in 2020.[53] This has significantly restrained Australia's growth prospects in the short and medium term, with Treasury forecasting GDP to fall by 2.5 per cent over the 2020-21 fiscal year.[54]

In northern Australia, the impact of COVID-19 has been harshly felt. Trade-exposed sectors which are critical to northern Australia's economy, including tourism, agriculture, and education, have experienced a collapse in private demand. For example, payroll jobs have declined dramatically in the accommodation and food services (down 29 per cent in Queensland), arts and recreation services (down 22 per cent in Queensland) and mining (down 11.6 per cent in NT). The resources sector, while proving resilient to date, has seen a significant drop in long term investment and exploration which may lead to lower productivity in the long term.

The current situation poses a particularly significant risk to the long term development of northern Australia given the region's reliance on tourism, primary agriculture, education and health. Restrictions on both domestic and international travel will reduce not only the inflow of tourists and students to the region, but also the supply of short-term labour which is crucial for the tropical horticulture sector. Given that many of these sectors are seasonally-affected, earning up to 90 per cent of their income during the mid-year high season, their recovery is unlikely to commence until after April 2021.

The Australian Government is delivering a number of economy-wide measures supporting individuals and businesses in the north, including:

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[53] International Monetary Fund, World Economic Outlook Update, June 2020
[54] Treasury, Economic and Fiscal Update, June 2020

- the now extended JobKeeper program, which has supported nearly 32,000 businesses and not-for-profits in the north significantly impacted by COVID-19
- the extended coronavirus supplement to JobSeeker supporting more than 100,000 northern Australians while they look for work
- providing top-up income support payments in a period when many more people are reliant on these payments
- establishing a new $1 billion JobTrainer fund, which will provide for around 340,700 additional training places to help school leavers and job seekers
- the $1 billion Relief and Recovery Fund, which has delivered sectoral specific support across the economy, including logistics and airlines, tourism, agriculture and arts and recreation
- the Coronavirus SME Guarantee Scheme, supporting up to $40 billion of lending to small and medium businesses
- the boosting cash flow for employers program that provides temporary cash flow support to small and medium businesses and not-for-profit organisations.

The expertise possessed by the NAIF in the economic development of northern Australia means that it is well-placed to contribute to recovery efforts in the region. Providing finance to projects will boost investor confidence at a time when the private sector may be reluctant to invest. The development of impactful infrastructure which creates jobs and secures population growth has a heightened importance in this context.

As an immediate response to the COVID-19 pandemic, the NAIF must make full use of the concessions and finance mechanisms permitted under the current Investment Mandate to provide financial relief to current and future projects, and to accelerate assessment processes where possible. The NAIF has advised it has been actively working with its project proponents to manage the financial implications of COVID-19.

The key impact the NAIF can make in supporting northern Australia through the economic disruption caused by the COVID-19 pandemic is likely to be realised over the medium to long term. The recommendations of this report will increase the flexibility and dynamism of NAIF financing, for example by opening the door to smaller projects and those which go beyond support for construction of physical infrastructure. In this current context, there is a stronger justification for ensuring that NAIF support is easily accessible and broadly distributed.

Veto power

While the NAIF Board independently makes investment decisions, the current legislative framework provides the Minister with a power of veto over NAIF investment decisions on three grounds – where providing financial assistance 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.

A 21 day consideration period is provided for in the legislation, with an option for extension up to 60 days, if required.[55] Jurisdictions can also veto investment decisions made by the NAIF Board, up to the execution of loan documents.

While some business stakeholders noted the veto power extends the time required to finalise NAIF finance, they acknowledged that Australian Government financial assistance requires checks and balances. None of the business sector stakeholders consulted indicated that the inclusion of a ministerial veto provision in the legislative framework significantly decreased the attractiveness of NAIF finance. The NAIF's regular engagement with all three jurisdictions and the Australian Government on proposed projects puts them in a good position to assess the overall viability of proposals.

An alternative approach employed in relation to the CEFC and the NHFIC is for the boards of these entities to take sole responsibility for their investment decisions. Neither of these entities are required to refer investment decisions to the Australian Government for any purposes other than reporting. The benefits of this include providing certainty to proponents that Board decisions are final, and avoiding adding time to secure Ministerial approval.

In other instances such as the RIC, the Australian Government takes more direct responsibility and accountability for specific investments than it does in the case of the NAIF. In those cases, funding decisions are a government decision as outlined below.

> The Regional Investment Corporation (RIC) administers delivery of $2 billion for farm business loans and $2 billion for regional water infrastructure loans. Established under the *Regional Investment Corporation Act 2018* (RIC Act), the RIC – like the NAIF – is a Corporate Commonwealth Entity with an independent Board. Under the RIC Act, the responsible Ministers (the Minister for Agriculture, Water and Environment and the Minister for Finance) may give a written direction to the RIC Board to enter into an agreement for a grant of financial assistance (in the form of a concessional loan) to a specific state or territory in relation to a specific water infrastructure project.
>
> The RIC Act requires the responsible Ministers to seek the Board's advice on the specific water project under consideration ahead of giving the direction.

This Review has not identified any significant concerns with the ministerial veto model employed in the NAIF's current legislative framework. Moving towards a stronger directive approach would see the responsible Minister (or jointly with the Minister for Finance, or as part of a government committee) empowered to direct the NAIF to finance specific projects. Taking such an approach increases the accountability of the Minister and the Australian Government for NAIF investments. While it may better align NAIF investments with Australian Government priorities, an objective supported by a number of stakeholders, it also risks the perception of NAIF finance being tied to political imperatives more than commercial reasoning. It also opens the NAIF's financing decisions to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*, and potentially slows the approval process, particularly if Australian Government endorsement is required.

[55] *Northern Australia Infrastructure Facility Act 2016* (Cth), s 11(3).

A shift in the other direction, to empower the NAIF Board as sole decision-maker on NAIF investment decisions, could simplify approval processes, support the independence of the Board and align the NAIF with other Corporate Commonwealth Entities like the CEFC. One stakeholder suggested removing the Ministerial veto would increase the flexibility of the NAIF to make deals 'in the room', though this would still be caveated by the jurisdictions' ability to veto a loan under the pass-through arrangements. However, this model eliminates a final check and balance from defence and national security stakeholders on funding for projects that might be considered critical infrastructure and/or have national security implications.

Retaining the ministerial veto provides a continuing check to ensure NAIF investment decisions do not contradict Australian Government policy or present a national security risk. The advantages of moving to more, or less, independence for the NAIF Board do not present a compelling enough case for changing the status quo. Moreover, it is clear any delay arising from the 21 day consideration period is vastly outweighed by the average delay arising from the finalisation of negotiations with the jurisdictions. Nonetheless, there is room to improve the efficiency of the Ministerial veto process such that the Minister for Northern Australia could take a decision to 'not reject' a proposal within the consideration period.

Recommendation 27: The Ministerial consideration period be retained, with amendment to allow the Minister to take a decision not to reject a proposal at any point during the consideration period.

Transparency

The NAIF's transparency has been subject to scrutiny since the inception of the organisation, culminating in an audit by the ANAO of the NAIF's governance processes. While this audit noted that in broad terms, the NAIF's internal governance structures are fit for purpose and functioning effectively, it also highlighted concerns with the consistency and transparency of the NAIF's processes.

The NAIF is required to balance their obligations under the NAIF legislative framework, the PGPA Act, and the commercial sensitivity of NAIF projects. The NAIF must keep project information confidential to protect the project and market integrity. The release of commercial-in-confidence information can jeopardise or damage that project's ability to proceed, and would be a significant deterrent for future proponents in seeking NAIF finance. The NAIF must negotiate the release of information with project proponents in a way that allows them to meet their transparency requirements without jeopardising the commercial viability of the project.

Transparency of NAIF processes

The NAIF has received criticism from potential proponents around the lack of detail regarding what information needs to be provided to apply for financial assistance, and what criteria must be met in order to be eligible for finance.

The ANAO identified similar concerns in their 2019 audit, and formally recommended that the NAIF publish not only a full set of eligibility criteria for proponents, but also provide more detail on the types of information that proponents need to provide as they go through the NAIF application process.

Information on the five Mandatory Criteria in the NAIF Investment Mandate is easily accessible on the NAIF's website, as well as an outline of the NAIF's Project Assessment Process with the information the NAIF requires from proponents at each step. The NAIF has also made a Fact Sheet available on their website that has a short description of the mandatory criteria, the type of concessions available from the NAIF, and the information required from proponents to commence an assessment. The information available to potential proponents includes links to the relevant NAIF legislation for further information on considerations of the Board in making investment decisions, as well as a contact point at the NAIF for discussion of potential projects. The NAIF is currently conducting a review of the information presented on their website, as well as information provided to proponents following their initial enquiry.

Discussion with stakeholders revealed some common misconceptions regarding the eligibility of projects for NAIF finance and the NAIF's assessment process. Most commonly raised was a perception that projects needed to be above a specific size to be eligible for NAIF finance. The original 2016 Investment Mandate included a non-mandatory requirement for projects to be seeking $50 million or more in NAIF finance. While this suggested threshold was removed in the 2018 Investment Mandate, many stakeholders still thought this threshold was in place. It is clear that there remains some work to do on communicating the NAIF's project criteria. However, it is worth considering if the NAIF should institute a clear minimum value threshold. Given the same level of financial rigour is applied to projects applying for NAIF finance, regardless of size, and the amount of time and resources required to complete the process for both the proponent and the NAIF, it is likely projects requiring less than $5 million in finance may find applying to the NAIF more of a burden than it is worth.

Less commonly, there was confusion over the breadth of the definition of infrastructure used by the NAIF, with some stakeholders unaware that social infrastructure projects are eligible for NAIF finance. It is clear that there remains some work to do to improve the understanding across the north of the NAIF's eligibility criteria.

Publication of information about the NAIF's decisions

The NAIF Investment Mandate specifies that:

> 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.

The NAIF's decisions to date, including conditional approvals, have been published on the NAIF website. Despite this, the NAIF has been subject to ongoing criticism that while this information is of use, it lacks detail, including public benefit assessments and Indigenous Engagement Strategies. Additionally, the current case studies for projects prepared by the NAIF demonstrate a 'moment in time' analysis of projects, which ceases to be relevant where the value of the project or the NAIF's contribution may change over time.

Since the ANAO's audit, the NAIF has committed to improving the information available on approved projects with consideration given to the commercial confidence provisions. A new case study template includes information on the public benefit of projects, as well as a brief overview of the Indigenous Engagement Strategy.

As noted in the discussion on Indigenous engagement, the NAIF should seek to publish IESs on projects, noting that some aspects may be commercial in confidence and unable to be made public. In line with Commonwealth transparency guidelines, once a project has reached the Strategic Assessment phase, the NAIF should consider making publicly available more information on projects, where this information is not commercial in confidence. This principle should also extend to publication of information once an investment decision has been made on a project.

Recommendation 28: The NAIF should maximise the information it makes publicly available, particularly around public benefit assessments and Indigenous Engagement Strategies, within commercial confidentiality requirements.

The NAIF has also sought to provide updates on projects via media releases and the NAIF newsletter, and through updates to case studies as projects evolve.

Performance targets and remuneration

The NAIF has a range of performance targets, which are set each year in the NAIF Corporate Plan, with outcomes reported on via the NAIF Annual Report. These documents are publicly available on the NAIF website.

Through both stakeholder feedback and the ANAO audit, the NAIF has attracted criticism where during the periods the NAIF did not meet its performance targets (primarily 2016-17), yet still awarded staff with performance based bonuses. The ANAO audit also criticised the NAIF's performance targets and recommended that 'the NAIF revise its performance measures and targets to provide clearer accountability and transparency in the measurement of its performance, and measure and report on the realisation of public benefit.'

As the NAIF has become more established, it has developed both clearer performance targets and met those targets more reliably (for example, based on the 2018-19 Annual Report the NAIF met all but one of its performance measures). In response to the ANAO recommendation, the NAIF conducted a review of its performance measures in preparation of the 2019-20 Corporate Plan.

In regards to the payment of bonuses in 2016-17, the ANAO Audit noted that 'these bonus payments were also partly intended to have the effect of topping up base salaries.' This reflects a tension in the broader operation of the NAIF, where the organisation has struggled to provide salaries competitive with the private sector to retain appropriately skilled staff.

Following the ANAO Audit, the NAIF has established a Remuneration Committee, which considers remuneration recommendations presented by the NAIF CEO, and provide advice to the Board for their decision. This aims to provide a more robust process for considering staff remuneration, and avoid repeating concerns regarding bonuses paid in 2016-17.

The NAIF has also appointed AON to undertake a conclusive review of the NAIF's remuneration framework. This includes a review of the mapping of NAIF position descriptions to:

(a) the Financial Institutions Remuneration Group (FIRG); and

(b) the Australian Public Service Commission (APSC) Job Family Model, work level standards and other relevant remuneration related policies.

AON has reviewed the NAIF Staff Remuneration Policy to confirm it takes into account the operating environment of the NAIF and the requirements of section 17(1) of the Investment Mandate.

Appendix A – Stakeholder engagement

Stakeholder consultation

From August to December 2019, departmental officers conducted 122 targeted face-to-face meetings to inform the Review. These consultations took place in nine locations across northern Australia (Darwin, Cairns, Rockhampton, Broome, Kununurra, Alice Springs, Mackay, Townsville and Mount Isa), with further meetings in Perth, Brisbane, Sydney and Canberra.

These meetings were held with 104 different entities, as detailed in **Table 1** below.

Stakeholder Entity Type	Number Consulted
Not-for-profit/lobby group	8
Private - citizen	4
Private - company	34
Public - Commonwealth	33
Public - Local Government	5
Public - NT	8
Public - QLD	6
Public - WA	6
Total	**104**

Table 1: Stakeholder entities consulted as a part of the NAIF Review

Public submissions

The department invited public submissions to the NAIF review via the department's Consultation Hub. These submissions opened on 8 November 2019, and closed on 13 December 2019.

A total of 17 submissions were received, including from not-for-profit organisations, industry associations and jurisdictional governments.

List of public submissions

- Association of Mining and Exploration Companies
- Consult Australia
- Townsville Enterprise
- Lock the Gate Alliance
- The Australia Institute
- Darryl Nelson
- Indigenous Reference Group to the Ministerial Forum on Northern Development
- Alinta Energy
- CopperString 2.0
- Chamber of Minerals and Energy Western Australia
- Environmental Justice Australia
- Australian Fresh Produce Alliance
- Australian Logistics Council
- Cairns Regional Council
- Michael Dillon
- Northern Territory Government
- Western Australian Government

Appendix B - Terms of reference

Without limiting the matters to be covered by the Review, Section 43(2) stipulates that the Review must consider:

- whether the limit of 30 June 2021 for which the NAIF can decide to provide financial assistance should be extended; and
- the appropriate governance arrangements for the NAIF after that date.

The Review also considered other issues to identify options aimed at improving the NAIF's capacity and capability to support the construction of economic infrastructure in northern Australia. These issues include:

- The appropriateness of the NAIF's Investment Mandate and eligibility criteria.
- Impediments to enhanced NAIF support for projects that are of larger scale or are better aligned to the northern Australia development agenda.
- NAIF as a mechanism to support the long-term development of northern Australia, including coordination with state, territory and local governments and organisations.
- Opportunities through the legislative framework to strengthen Indigenous outcomes, diversify the sectors receiving NAIF finance and build the skills necessary to develop finance-ready business plans in the north.
- The suite of available investment mechanisms and associated required changes to the legislative framework, including the potential to provide equity.
- The relationship between legislative requirements and public benefit outcomes from NAIF investment decisions.
- The Ministerial consideration provisions and the adequacy of associated procedures, including how policy consistency, national security and international relations matters are considered through the investment pipeline.
- Opportunities for the legislative framework to support better governance arrangements, including the role of the NAIF Board and CEO.

Appendix C – NAIF Investment Decisions

(Projects are in order from most recent to oldest, based on NAIF Board approval dates)

Project name (Jurisdiction)	Maximum loan	Date of decision	Public Benefit estimate	Jobs forecast	Project Description
Hudson Creek Power Plant and Batchelor Solar Farm (NT)	$37 million	30 July 2020	$132 million	Construction: 162 Operation: 42	Develop a 12 MW gas power plant and 10 MW solar farm.
Strandline Resources - Coburn Mineral Sands (WA)	$150 million	19 June 2020	$922 million	Construction: 315 Operation: 190	Develop open pit dry mining operation and processing facilities for premium zircon, zircon concentrate, chloride ilmenite and rutile
Charles Darwin University (NT)	$151.5 million	17 July 2020	$599.5 million	Construction: 730 Operation: 80	Develop a Darwin City Campus. Forms part of the Darwin City Deal announced by the Prime Minister in November 2018.
Mater Private Hospital Redevelopment (QLD)	$19.75 million	30/3/2020	$7.6 million	Construction: 12 Operation: 2	Development of a six-level car park and specialist medical facility, a key component of a multi-stage development
James Cook University – Student accommodation (QLD)	$46 million	15/1/2020	$140 million	Construction: 348 Operation: 221	The project consists of the construction of a modern seven storey facility to house 425 students.
Darwin Ship Lift and Marine Project (NT)	$300 million	26/11/2019	$924 million over 22 years	Construction: 100 Operation: 187	The loan will support building a ship lift facility and associated marine industry infrastructure in the Darwin harbour.
North Queensland Cowboys (QLD)	$20 million	11/11/2019	$202 million over 30 years	Construction: 213 Operation: 58	The loan will support the development of a Community, Training and High Performance Centre in Townsville
Metro Mining (QLD)	$47.5 million	11/11/2019	$510 million over 16 years	Operation: 60	The loan will fund a new floating terminal for the bauxite miner on the Skardon River in north-western Cape York
Signature Onfarm Pty Ltd (QLD)	$25 million	30/08/2019	$63.5 million over 20 years	Construction: 200 Operation: 70	Construction of an on farm, greenfield specialist service, beef processing facility with onsite accommodation for up to 70 employees and other ancillary amenities
Australian Aboriginal Mining Corporation (WA)	$12.5 million	22/08/2019	$304 million over 7 years	Construction: 120 Operation: 120	First Iron Project - Construction of a borefield, crushing plant and site accommodation and a 55km haul road to connect the Great Northern Highway to the Cloudbreak site.
Genex Power Ltd (QLD)	$610 million	8/07/2019	$343 million over 30 years	Construction: 510 Operation: 20	The loan will support Genex's Kidston Project (Stage 2), which involves construction of a Pumped Storage Hydro Project at 250MW, capable of storing and dispatching electricity at 2000MWh on demand

Project name (Jurisdiction)	Maximum loan	Date of decision	Public Benefit estimate	Jobs forecast	Project Description
Kalium Lakes Ltd (WA)	$74 million	15/02/2019	$169 million over 30 years	Construction: 150 Operation: 60	Development of the Beyondie Sulphate of Potash Project plus supporting infrastructure.
Chichester Solar Gas Hybrid (WA)	$90 million	15/02/2019	$221 million	Construction: 200	The loan will fund construction of a 60 megawatt (MW) solar photovoltaic farm; new electricity substation(s); and approximately 64km of 220kV transmission lines.
Northern Territory Airports (NT)	$150 million	7/01/2019	$127 million over 20 years	Construction: 980 Operation: 142 Indirect: 500	Freight and cold storage and export hub at Darwin International Airport, solar arrays at Darwin, Tennant Creek and Alice Springs, an off-site multi-user battery and runway upgrades.
Queensland Airport Ltd (QLD)	$50 million	7/01/2019	$82 million over 30 years	Construction: 207 Operation: 50	Redevelopment of Townsville Airport terminal including new core infrastructure (water, fire, waste facilities).
Sheffield Resources Ltd (WA)	$95 million	28/08/2018	$484 million over 42 years	Construction: 400 Operation: 200	LNG power generation facility, upgrade roads and port infrastructure to support the Thunderbird Mineral Sands Project.
Pilbara Minerals Ltd (WA) (not proceeding)	$19.5 million	2/08/2018	N/A	N/A	Since the NAIF's investment decision, changes to the project have resulted in the company not proceeding in the form that was subject to the investment decision.
James Cook University – technology innovation complex (QLD)	$98 million	15/06/2018	$700 million over 30 years	Construction: 270	Building of a Technology Innovation Complex, a 10,000m2 centre for students, industry partners and researchers in Townsville.
Voyages Indigenous Tourism Australia (NT)	$27.5 million	14/05/2018	$370 million over 20 years	Construction: 80	Airport runway, taxiway and apron upgrade, runway lighting and provision of contractor accommodation
Humpty Doo Barramundi Farm (NT)	$7.18 million	3/05/2018	N/A[56]	Construction: 13 Operation: 7	The loan will support construction of a solar farm and fish nursery, as well as the purchase of processing equipment
Onslow Marine Support Base (WA)	$16.8 million	29/09/2017	$100 million over 10 years	Construction: 12 Operations: 49 Indirect: 166	Development of a marine supply facility including wharf and harbour expansion

This list includes all publicly announced investment decisions made by the NAIF up to 16 September 2020. An investment decision by the NAIF does not guarantee that a project will move forward; for reasons unrelated to the NAIF, the circumstances of project proponents may change such that NAIF finance is no longer required for the approved project.

[56] In accordance with the NAIF Public Benefit Guideline, the size of the loan for Humpty Doo was below the threshold requiring a detailed Cost Benefit Analysis.