Australian Government | NAIF Northern Australia Infrastructure Facility

Mr Mark Fitt
Committee Secretary
Senate Standing Committee
Department of the Senate
By email to: economics.sen@aph.gov.au

4 August 2017

Dear Mr Fitt

RE: Senate Inquiry into the governance and operation of the Northern Australia Infrastructure Facility

The Northern Australia Infrastructure Facility (NAIF) welcomes the opportunity to provide a submission to the *Senate Inquiry into the Governance and Operation of the Northern Australia Infrastructure Facility*.

NAIF's purpose is to enable growth in the economy and population of northern Australia by assisting with the financing of infrastructure in the region. This financing may be on concessional terms and is delivered through the Queensland, Western Australian and Northern Territory Governments.

Since NAIF's establishment on 1 July 2016 we have received over 131 enquires for possible infrastructure projects. Of those enquires, over 57 are active, with five having progressed to formal due diligence stage. We are targeting financial close of our first transaction by the end of September 2017. This indicates the strong demand for NAIF services to assist in developing the infrastructure that will help transform northern Australia. The pipeline of potential projects is spread across all infrastructure types, including: roads, rail, energy, telecommunications, ports, pipelines and water. The projects are also spread across all three of the northern jurisdictions.

In addition, to building a pipeline of potential projects, NAIF, led by its Board, has established a governance and operations framework for making investment decisions. Independent experts in governance have reviewed a suite of NAIF's core governance documents and in their view they are best practice corporate governance. NAIF's Risk Management Framework, which incorporates its Risk Appetite Statement is aligned with the NAIF's purpose and strategy. This framework also benefited from extensive consultation with NAIF's key stakeholders in the Commonwealth, State and Territories. Consistent with similar functioning public and private sector lending institutions, NAIF's governance framework ensures the NAIF Board's independence from government when making investment decisions.

This submission demonstrates NAIF's governance is robust and transparent to ensure the successful implementation of NAIF's mandate entrusted to it by the Commonwealth.

Yours sincerely,

[redacted]

Laurie Walker
Chief Executive Officer

THE SENATE ECONOMIC REFERENCE COMMITTEE

INQUIRY INTO THE GOVERNANCE AND OPERATION

OF THE NORTHERN AUSTRALIA INFRASTRUCTURE FACILITY

EXECUTIVE SUMMARY

The *Northern Australia Infrastructure Facility* (NAIF) welcomes the opportunity to provide a submission to the Senate Inquiry into the Governance and Operation of the Northern Australia Infrastructure Facility (the Inquiry).

The governance standard which NAIF must satisfy is set out in Section 17(1) of the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (Investment Mandate) which provides NAIF:

'…must have regard to Australian best practice government governance principles, and Australian best practice corporate governance for Commercial Financiers[1]*, when performing its functions, including developing and annually reviewing policies with regard to:(a) environmental issues; (b) social issues; and (c) governance issues.'*

This submission demonstrates that the standard is met.

Section 1: identifies the foundational legislative protections to ensure NAIF's independence. NAIF has been established as a corporate Commonwealth entity, which has obligations under the *Public Governance and Performance Accountability Act 2013* (PGPA Act). It is overseen by an independent commercial Board. The NAIF Board is the only entity with power to make an Investment Decision (to offer or not to offer finance). The NAIF Act specifically prohibits the responsible Commonwealth Minister in the Investment Mandate from directing or having the effect of directing NAIF to lend for a particular project or in relation to a particular person.

Section 2: identifies the overarching objectives of the NAIF, which distinguish it from other lenders. They are to generate public benefit and longer term growth in population and the economy of northern Australia. It is also mandated to encourage greater private sector participation in financing northern Australia infrastructure development and to be satisfied that each proponent provides a strategy for sustainable Indigenous participation, procurement and employment.

NAIF's mandate is to catalyse transformational change while being disciplined with taxpayers money and only applying NAIF finance to fill gaps in the infrastructure financing market. NAIF needs to recover its cost of funds plus administration costs and have an expectation that the NAIF loan will be repaid.

NAIF role is a 'gap' financier in which it must partner with other lenders for at least 50% of the infrastructure debt and can only contribute the minimum amount of debt finance or concessional terms for a project to proceed. Those are key aspects of its mandate and are very important in understanding NAIF's approach to maintaining as commercial in confidence sensitive information as in the public interest.

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1 Section 4 Investment Mandate provides 'Commercial Financier means a private sector body that provides finance or investment into infrastructure projects.'

Section 3: addresses each of the Inquiry Terms of Reference.

Adequacy: Independent governance experts have concluded in their view a suite of core NAIF governance policies reviewed by them (including NAIF's Confidentiality Policy and Conflicts of Interest Policy) **reflect current Australian best practice government governance principles and current Australian best practice corporate governance for Commercial Financiers** (refer to Schedule 6). It has also been confirmed that suite of governance policies are appropriate given NAIF's size and function. Other key NAIF governance documents have been prepared with substantial consultation with government stakeholders as required under the Investment Mandate or advice of specialist consultants as appropriate including NAIF's Risk Appetite Statement and Public Benefit Guideline.

Transparency: NAIF is highly transparent. It has complied with all obligations on it to disclose information including under the Investment Mandate to publish guidance on the format of an Investment Proposal and Investment Decisions. The Investment Mandate specifies when NAIF must publish information about Investment Decisions, which NAIF will comply with when such decisions are made.

NAIF has published 17 Governance documents (refer to Schedule 2) and website which compares favourably to other public sector lenders the Export Finance and Insurance Corporation (Efic) and the Clean Energy Finance Corporation (CEFC). NAIF matches the level of disclosure of the private sector (refer Schedule 3).

NAIF has a confidentiality protocol, which it applies in the public interest. It means that Board deliberations, key credit decisioning governance documents and information regarding proponents for NAIF loans or assistance are not publicly disclosed. It applies that protocol consistently across all 131 projects it has been approached to consider. That is important to maintain the confidence of stakeholders and project participants in the integrity of NAIF's processes. Any breach of this confidentiality protocol may compromise projects. They may not proceed or it may result in other financing partners contributing less finance creating a larger market 'gap' and using more NAIF finance than would otherwise have been necessary and therefore having less of NAIF's funds available for other projects. The public benefit and population and economic growth for northern Australia and more broadly the achievement of NAIF's other objectives could be prejudiced.

An **analysis of eight Australian lending institutions** operating in similar projects to NAIF, **including the two public and the top five private banks and a regional bank, demonstrates that none of them disclose publically their Risk Appetite Statement or credit decisioning governance documents**. Those organisations are the public sector entities CEFC and Efic, the four Australian major banks (ANZ, CBA, NAB and Westpac), Macquarie Bank and Suncorp.

NAIF stakeholders and project proponents have consistently indicated that they expect NAIF to maintain the commercial in confidence position NAIF operates under. Independent highly credentialed legal and consulting advisors experienced in financing of the type NAIF will be involved with or in financial risk management have provided feedback to NAIF. NAIF's protocols in relation to publication of credit policies, risk appetite statement, decision making processes and information provided by applicants seeking finance has been confirmed as consistent with general market practice amongst project finance lenders and is an appropriate position to adopt. Also that it is compliant with the NAIF Act, Investment Mandate and other applicable laws (refer Schedule 7).

Board Conflicts of Interests: The best practice public sector Governance Better Practice Guide issued by the Australian National Audit Office (ANAO Guide) acknowledges that in relation to Boards *'Avoiding conflicts of interest is not always possible, particularly as those stakeholders with the most to offer the entity are often those with the greatest interest in the outcome.'*

The ANAO outlines that the important consideration is the management of conflicts including the probity that is in place to minimise the likelihood of conflicts affecting decision making. NAIF has a published Conflicts of Interest Policy and its established protocols for assessment and management of conflicts are broadly consistent with the approach taken by Efic and to publically listed companies (including the four major Australian banks) who have obligations under the Corporations Act.

The protocols have been applied and compliance with them has been a focus for the Board since its inception. Board members are experienced in understanding their duties to disclose material personal interests. They also have high regard for their reputations and PGPA Act responsibilities to perform their duties to comply with all laws.

Consistent with the ANAO Guide and given Privacy Act obligations and the NAIF confidentiality protocols (on disclosure of information on dealings with proponents and Board deliberations) public disclosure of recusals by Directors is not made. NAIF has stated and confirms that it has full confidence that the NAIF Board members have complied with their obligations and where appropriate recused themselves.

Independence of Board decisions: The Board is extremely cognisant of its responsibility to remain independent when making investment decisions. The NAIF Act which was passed with bipartisan support incorporates structural protections for Board independence. Refer above for comments.

NAIF has developed an information sharing protocol with NAIF's responsible Minister to keep the Minister and the Minister for Finance informed about its operations, consistent with the requirements under the PGPA Act.

States and Territory: The Queensland, Western Australian and Northern Territory governments have a key role particularly for NAIF to leverage the regional understanding of projects, which will be located in their jurisdiction. NAIF has developed strong relationships with these stakeholders, meeting regularly. Without the support of a relevant jurisdiction, NAIF is not able to proceed to fund a project.

Section 4: demonstrates that NAIF's governance policies, procedures and guidelines compared favourably to:

- **Part A:** to the public sector fundamentals of governance for public sector entities to achieve good governance set out in the *Australian National Audit Office (ANAO) Better Practice Guide (ANAO Guide)* [2]; and
- **Part B:** to the *Australian Securities Exchange (ASX) Governance Council* has established eight core *Corporate Governance Principles and Recommendations for ASX-listed companies* [3].

The tables below summarise those factors.

ANAO: Public Sector Governance Better Practice Guide Fundamentals		
Strong leadership	Focus on ethical behaviour and continuous improvement	✓
Fit for purpose	Appropriate governance systems and processes	✓
Performance Orientation	Planning, engaging with risk, innovation, and performance monitoring, evaluation and review	✓
Openness, transparency and integrity	Engaging constructively with stakeholders Promoting accountability through clear reporting on performance and operations	✓
Effective collaboration	Collaborative partnerships to more effectively deliver programs and services, including partnerships outside government	✓

ASX Governance Council: Core Corporate Governance Principles		
Lay solid foundations for management and oversight	Management responsibilities, assessment and policy to provide oversight	✓
Structure the Board to add value	Skills and experience to achieve mandate objectives	✓
Act ethically and responsibly	Safeguard reputation, adhere to Code of Conduct, respect diversity	✓

2 Australian National Audit Office Public Sector Governance – Better Practice Guide (ANAO Guide) can be accessed at: https://www.anao.gov.au/work/better-practice-guide/public-sector-governance-strengthening-performance-through-good

3 The Australian Securities Exchange Governance Council Principles can be accessed at: http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf

Safeguard integrity in financial reporting	Appropriate risk management and financial controls and audit process	✓
Make timely and balanced disclosures	Transparent best practice disclosures	✓
Respect the rights of security holders	Promote proper use of public resources and achieve mandate objectives	✓
Recognise and Manage risk	Fit for purpose Risk Management Framework	✓
Remunerate fairly and responsibly	Remuneration policy including independent setting or benchmarking for all Board and executive roles	✓

As a Corporate Commonwealth entity, NAIF has used the ASX recommendations as a guide to the extent to which they are applicable given NAIF's size and unlisted nature.

Conclusion

NAIF has an extremely important mandate which in the Australian market is unique being focussed on public sector benefit, growth and 'crowding' in private sector investment and seeking to achieve sustainable change for indigenous populations of northern Australia.

It is important in pursuing those objectives that NAIF's stakeholders understand the rigour of NAIF's governance arrangements.

In this submission we have sort to address comprehensively the Inquiry's scope and to demonstrate that it meets or exceeds relevant reference benchmarks.

NAIF has been actively pursuing its mandate and has made significant progress in its first year of operation. We look forward to continuing to contribute to the major initiative to transform northern Australia. The governance standard which the *Northern Australia Infrastructure Facility* (NAIF) must satisfy is set out in the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (Investment Mandate).

INTRODUCTION

Background

The *Northern Australia Infrastructure Facility* (NAIF) came into effect on 1 July 2016 as a corporate Commonwealth entity under the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act). It was passed with bipartisan support.

NAIF is a $5 billion lending facility to provide financial assistance (by way of loans or alternative financing mechanisms) to Queensland, Western Australia and Northern Territory (Jurisdiction) to encourage and complement private sector investment[4] in the development of infrastructure. This infrastructure is to enable transformational growth in the economy and population of northern Australia.

NAIF's operations are also governed by other Commonwealth legislation including the *Public Governance and Performance Accountability Act 2013* (PGPA Act). It is overseen by an independent commercial Board.

Pursuant to the Australian Government Administrative Arrangement Orders the responsible Minister for NAIF is currently the Hon Barnaby Joyce MP, Deputy Prime Minister, Minister for Agriculture and Water Resources and Minister for Resources and Northern Australia.

Section 9(1) of the NAIF Act requires the responsible Minister to give directions to NAIF about the performance of NAIF's functions. Those directions are set out in the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (Investment Mandate). NAIF must take all reasonable steps to comply with the Investment Mandate.[5] The NAIF Act Explanatory Statement notes the purpose of the Investment Mandate is to provide a mechanism for the Commonwealth to articulate its broad expectations on the functions of NAIF and how it invests.[6]

An Investment Decision (to offer or not to offer finance) under the NAIF Act can only be made by the NAIF Board. Subject to the limited powers (of veto) of the responsible Minister under Section 11 and 12 of the NAIF Act with respect to Investment Decisions made by the Board, the NAIF Board makes those decisions independently of the Commonwealth. Section 9(4) of the NAIF Act specifies that the Investment Mandate must not direct, or have the effect of directing, NAIF to lend for a particular project or in relation to a particular person.

There are unlimited powers for the Jurisdiction in which a project is located to direct NAIF not to progress an Investment Decision. Section 13(4) of the Investment Mandate states that NAIF must not make an Investment Decision if at any time the relevant Jurisdiction provides written notification that financial assistance should not be provided to a project.

[4] Section 7(3)(e) Investment Mandate

[5] Section 9(3) NAIF Act

[6] Explanatory Statement, p1

NAIF has certain obligations under the Investment Mandate[7] to consult with the responsible Minister and Jurisdictions in relation to its Risk Appetite Statement (RAS) as it guides Investment Decisions; with Infrastructure Australia[8] where the Investment Decision is greater than $100 million; and with the Jurisdictions generally in relation to Investment Proposals of project proponents.

Achievements on First Anniversary

Since NAIF's establishment on 1 July 2016 we have received over 131 enquires, of which 57 are active. We are targeting financial close of our first transaction by the end of September 2017. Refer to Schedule 1 for more details.

Senate Inquiry and Terms of Reference

On 14 June 2017, the Senate referred to the Senate Economics References Committee (the Committee) an inquiry into the governance and operation of NAIF.

NAIF is pleased to provide a submission to the Committee in relation to the inquiry terms of reference being. Each of these is addressed in Section 3 of this document:

a. the adequacy and transparency of NAIF's governance framework, including its project assessment and approval processes;

b. the adequacy of NAIF's Investment Mandate, risk appetite statement and public interest test in guiding decisions of the NAIF Board;

c. processes used to appoint NAIF Board members, including assessment of potential conflicts of interest;

d. the transparency of NAIF's policies in managing perceived, actual or potential conflicts of interest of its Board members;

e. the adequacy of the Northern Australia Infrastructure Facility Act 2016 and Investment Mandate to provide for and maintain the independence of decisions of the Board;

f. the status and role of state and territory governments under the NAIF, including any agreements between states and territories and the Federal Government; and

g. any other related matters.

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[7] Section 12(1) Investment Mandate

[8] Section 14(1) Investment Mandate

NAIF MANDATED ROLE OF FINANCIAL PARTNER AND GAP FINANCIER

NAIF purpose and vision

NAIF's strategic vision is to transform northern Australia by financing infrastructure development that generates:

- public benefit[9];
- longer term growth in population and the economy[10];
- greater private sector participation in financing northern Australia infrastructure development[11]; and
- sustainable Indigenous participation, procurement and employment.[12]

That focus on benefit and growth and encouraging private sector and indigenous involvement in northern Australia are key differentiators from other lenders. In addition, the NAIF Board must be satisfied that any return on NAIF's finance will cover at least NAIF's administrative costs and the Commonwealth's cost of borrowing[13] and there is an expectation that the NAIF loan will be repaid. [14]

Northern Australia infrastructure challenge

NAIF is designed to fill gaps in the infrastructure financing market for northern Australia and in doing so unlock economic opportunities globally, nationally and in northern Australia.[15] By 2030, the Asia Pacific is forecast to be home to two thirds of the world's middle class and 50% of the world's GDP.[16] NAIF aims to:

- Open new markets and assist development of new, more resilient and reliable supply chains.
- Reduce cost for business through improving productivity, creating jobs and encouraging a larger population base by helping to attract and retain workers.
- Make better use of existing infrastructure (for example, by improving capacity, safety and usability to overcome seasonal and other supply chain constraints).
- Help overcome diseconomies of scale by facilitating co-sharing and multi-user access to infrastructure.

9 Schedule 1 Mandatory Criteria 2 Investment Mandate
10 Section 3(2)(a) and (b) NAIF Act definition of '*Northern Australia economic infrastructure*'
11 Section 7(3)(e) Investment Mandate
12 Schedule 1 Mandatory Criteria 7 Investment Mandate
13 Section 7(2)(c) Investment Mandate
14 Section 7(2)(b) Investment Mandate
15 Second Reading Speech Northern Australia Infrastructure Facility Bill 2016
16 Our North, Our Future: White Paper on Developing Northern Australia, p8

The *Second Reading Speech Northern Australia Infrastructure Facility Bill 2016* states:

'*Infrastructure investment in northern Australia is affected by low population density and issues of remoteness, extreme heat and high levels of rainfall at certain times of the year. The uncertainty for infrastructure investment created by these factors can result in commercially viable projects in northern Australia being unable to attract the limited investment funds available. Infrastructure Australia's Northern Australia Audit released in January 2015 confirmed that infrastructure market failures were affecting northern Australia in particular. The identified failures included: limited economic scale, resulting in high costs, poor quality and an absence of competition; a first mover disadvantage (where the first project bears all the capital costs of infrastructure that will reduce for later projects); co-ordination challenges, which prevents cooperation in building more extensive infrastructure; and low socio- economic circumstances, which result in a lower capacity to pay for infrastructure services.'* [17]

NAIF is a 'gap financier'

NAIF's mandate is to catalyse infrastructure investment in northern Australia while at the same time being disciplined with taxpayers money and only applying NAIF finance to fill gaps in the infrastructure financing market.

NAIF's mandate is designed to address northern Australian infrastructure financing market gaps, but to minimise the NAIF contribution. The key design features of NAIF's mandate to achieve those outcomes are:

- NAIF must not provide financing unless the Board is satisfied the project would not otherwise have received sufficient financing from other financiers.[18]
- NAIF can only provide finance if the project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope without financial assistance.[19]
- The NAIF Board must be satisfied that for all financings there is an expectation that the Commonwealth will be repaid or that the investment can be refinanced.20 The project Proponent must present comprehensive financial modelling to demonstrate the ability of the project to repay the debt in full and on time, or refinance, based on assumptions acceptable to the Board.[21]
- NAIF must partner with other financiers. Its loan monies are not to be the majority source of debt (i.e. cannot exceed 50 %) funding for the proposed Project infrastructure. The Investment Mandate states '*This is in keeping with the principle that [NAIF] will work in partnership with Commercial Financiers and any other financiers who should provide an equal or majority source of finance.*'[22] It is also

[17] Second Reading Speech Northern Australia Infrastructure Facility Bill 2016

[18] Section 7(1) Investment Mandate

[19] Schedule 1 Mandatory Criteria 3, Investment Mandate

[20] Section 7(2)(b) Investment Mandate

[21] Schedule 1 Mandatory Criteria 6, Investment Mandate

[22] Schedule 1 Mandatory Criteria 5, Investment Mandate

consistent with the obligation on the NAIF Board to have regard to the necessity of the NAIF financing to encourage private sector participation in financing a project.[23]

- NAIF can provide finance on concessional terms, but in granting concessions the Board must have regard to the extent and mix of all concessions necessary for an investment proposal to proceed and the extent of public benefit generated. Therefore, concessions offered should be the minimal required for a project to proceed.[24] Relative to other lenders NAIF's financing terms may:
    - have longer tenors (up to 30 years under current Commonwealth borrowing conditions);
    - have lower interest rates (not below the Commonwealth bond rates);
    - be more patient (e.g. extended periods for interest capitalisation beyond the construction period or deferral of loan repayments with extended interest only periods);
    - have different fee structures; and
    - be subordinated in security or cash-flow.[25]
- NAIF's RAS must have regard for a preference for a diversified portfolio including industry and geographic spread across the Jurisdictions.

Strategic use of risk appetite

The way that the Investment Mandate prescribes how NAIF uses its risk appetite is also an important feature. NAIF is able to use its concessional options to tailor its financing terms and its risk to calibrate them to the particular circumstances of a project.

The NAIF Investment Mandate provides that NAIF's '*The Risk Appetite Statement may have a high risk tolerance in relation to factors that are unique to investing in Northern Australian Economic Infrastructure as defined in the [NAIF] Act including but not limited to, Northern Australia's: (a) distance, (b) remoteness and (c) climate.'* [26] For example, it may assist with the provision of 'patient' capital for a new infrastructure asset that is facing a long ramp up phase that precludes available bank financing.[27]

23 Section 7(3)(e) Investment Mandate
24 Section 9(2) Investment Mandate
25 Section 10(2) Investment Mandate
26 Section 12(3) Investment Mandate
27 Second Reading Speech Northern Australia Infrastructure Facility Bill 2016 p 3442

NAIF may use its risk appetite to encourage private sector participation for example by looking to:

- better match revenue ramp up and life cycle of new projects with debt servicing;
- absorb an element of merchant risk where there is uncertain utilisation/pay back period;
- mitigate project cost premium;
- scale up technology;
- take a longer term or more global view of credit risk of the end producer/off-taker;
- provide liquidity to meet capital need; or
- assist in mixed infrastructure/non infrastructure projects with NAIF infrastructure debt.

NAIF aims to attract private sector finance by partnering with Commercial Financiers through strategic use of risk so as to optimise the extent to which private and other financiers can contribute to a project rather than compete with them.

Through that partnering with the private sector, the NAIF’s investments and the decisions by the NAIF Board will leverage much more than the $5 billion of NAIF appropriated funds. There is also an opportunity for NAIF to create over time greater private sector risk awareness and appetite and through that, develop the Australian infrastructure financing market to better support infrastructure construction in northern Australia.

Negotiated risk outcome

NAIF can only provide up to 50 % of a projects infrastructure debt, and then contribute only the minimum required. To achieve its objectives, NAIF needs to negotiate terms for the provision of its loan with the project proponent, equity investors, commercial and other debt financiers and contractors, operators and key suppliers amongst others ('Project Participants').

TERMS OF REFERENCE RESPONSES

a) The (i) adequacy and (ii) transparency of NAIF's governance framework, including its project assessment and approval processes

i) The *adequacy* of NAIF governance framework

- The governance standard applicable to NAIF is set out in Section 17(1) of the Investment Mandate, which is to have regard to best practice governance principles applicable to both a publically accountable government entity and a Commercial Financier.
- Section 4 of this submission demonstrates that standard has been met at all times by reference to guidelines for both public sector and ASX listed company governance.[28]
- The core suite of NAIF's governance policies has been benchmarked against similar agencies in the public and private sectors. Allens Linklaters and the Australian Government Solicitor (AGS) independent governance experts have concluded that in their view the policies, they reviewed, reflect current Australian best practice government governance principles and current Australian best practice corporate governance for Commercial Financiers.
- Allens Linklaters has also confirmed that NAIF's comprehensive suite of governance policies are appropriate given its size and function.
- Where NAIF has formally adopted a specific policy, procedure or other governance document, that document applies. Otherwise, applicable Efic governance documents apply to NAIF's activities. In addition, as NAIF's Service Provider under the Service Level Agreement (SLA), Efic is responsible for providing a range of services to NAIF and its own best practice policies apply to delivery of those services.
- In developing its governance documents, NAIF has utilised Efic's expertise and expertise of NAIF's Board. It has also consulted with representatives of the relevant Jurisdictions, the responsible Minister, the Department of Industry Innovation and Science (DIIS), Infrastructure Australia, and various external consultants and stakeholders with the relevant expertise in the relevant areas.
- The Board regularly reviews and updates its governance as required. This is consistent with best practice requirements in the ANAO Guide which states '*chief executives, directors and senior executives should establish fit for purpose governance arrangements and be willing to adjust them to meet changing needs*.'[29]

[28] To the extent, they are applicable given NAIF's size, unlisted nature and maturity.

[29] ANAO Public Sector Governance Better Practice Guide p 7.

- The adequacy of NAIF's governance and its processes and associated internal controls will be subject to regular review through assurance testing and internal and external audit procedures in accordance with best practice.
- A key aspect of the SLA with NAIF is that NAIF is using many of the same key systems and processes used by Efic. They are independently audited by Efic's appointed internal audit provider, currently Deloitte. Efic's internal audit function has established a rigorous audit plan that is reviewed and approved by the Efic Audit Committee and Board. Additionally, in preparing financial information for NAIF as its service provider, Efic is subject to review by the Australian National Audit Office and its appointed agent, currently KPMG, to perform an independent review of the financial statements. Together, Deloitte and the ANAO provide a high level of assurance that key systems and controls used by Efic in it is day to day operations, including services provided to NAIF, are consistent with best practice and satisfy PGPA Act.

ii) The *transparency* of the NAIF's governance framework

Highly transparent

NAIF is aware of the importance of transparency in its role as an accountable public authority and seeks to be as transparent as possible having regard to its other obligations. NAIF has benchmarked itself with other similar public and private organisations and is satisfied it is highly transparent (refer Schedule 3).

Investment Mandate obligations

The Investment Mandate requires NAIF to publish certain information.

- Section 17(2) provides that within 30 days of an Investment Decision, NAIF must publish information regarding all transactions on its website, subject to commercial confidentiality;

  (a) the name of a Project Proponent;

  (b) the goods/services involved;

  (c) the location;

  (d) the type of Financing Mechanism, and

  (e) the amount of the Financing Mechanism.

  NAIF has not made an Investment Decision as at the date of this submission but will comply with that obligation.

- Section 17(2) provides that NAIF must publish guidance on its website on :
  (a) the format of an Investment Proposal. This has been done. Refer website

  (b) Investment Decision processes. This has been done.

  - Summary of Application and Approvals Procedures.
  - Guidance on mandatory criteria of Public Benefit
  - Indigenous Engagement Strategy

(c) any other matters it considers necessary. Refer to website generally, in particular:

- NAIF has published 17 Governance documents (refer to Schedule 2) and website. Comparisons with both public and private sector financiers demonstrates that in doing so NAIF is more transparent than other public sector lenders and matches the level of disclosure of the private sector (refer Schedule 3).
- NAIF executives have given over 20 presentations reaching audiences of over 2,900 people and also met with a more than 1,630 interested stakeholders in private meetings in 12 months of operations. NAIF has published presentations given in public speaking engagements by NAIF executives. They incorporate discussion of mandate parameters and outline NAIF's mandate and in particular, the way that NAIF envisages using its risk appetite to encourage private sector investment.

Budget and other statutory disclosures

There are a number of disclosure obligations, which NAIF as an accountable authority satisfies:

- NAIF's Corporate Plan is published on its website. The 2017-20 Corporate Plan and 2016 Annual Report (including financial statements) will be published on the NAIF website in August and October respectively.

With a view to providing, in line with the public interest as much transparency to stakeholders as feasible within NAIF's framework, which requires it to act in the public interest in achievement of its objectives NAIF has also:

- tabled Opening Statements to Senate Estimates (on 2 March 2017 and 1 June 2017) to provide communication updates on NAIF activities;
- provided briefings to Parliamentarians across the three northern jurisdictions including the Shadow Minister for Resources and Northern Australia;
- briefed the Joint Select Committee on Northern Australia;
- distributed a newsletter to over 700 stakeholders (available on NAIF's website); and
- the NAIF CEO and Chair have given media interviews on selected topics.

NAIF has received and responded to over 1,300 enquiries made under the *Freedom of Information Act 1982*. Where it has been able to disclose information requested it has done so. Many of the enquiries have related to information which is commercial in confidence and which was protected in the public interest. We have published information on the NAIF website as required by the *Freedom of Information Act.*

Public Interest Commercial in Confidence test

NAIF must balance the need to maintain certain information as commercial in confidence in the public interest and in order to achieve its mandated objectives, against the obligation to communicate reliable information and having regard to privacy, legal and policy requirements.

Standard relating to disclosure or protection of information

- NAIF has an obligation under Section 17(1) of the Investment Mandate to '….*have regard to Australian best practice government governance principles, and Australian best practice corporate governance for Commercial Financiers, when performing its functions*….'
- The ANAO Guide provides:

  '*A key function of public sector governance is to identify and engage with stakeholders through appropriate information, consultation and engagement mechanisms. The establishment of suitable links with stakeholders is often vital to inform the development, ongoing suitability and performance of public sector policies, programs and services, and to facilitate potential contributions by stakeholders.*

  In many circumstances, different individuals or groups have disparate interests and expectations. Managing these situations is important; governance practice should ensure that the legitimate interests of all relevant stakeholders are duly considered to inform policy design and enable better outcomes for the community.'[30]

  - The ANAO Guide also provides:

  'Risk management perspectives can also inform the nature and extent of stakeholder engagement and guide ongoing stakeholder relationships. Risk planning applies a systematic approach in considering risks and benefits of stakeholder involvement, as well as the risks associated with inadequate engagement. Important parameters to guide analysis and decision-making are:

    - the reason for stakeholder engagement
    - the stage/s in the policy or delivery process when engagement should occur
    - with whom the engagement should occur
    - the level and method of engagement required.'[31]

Requests for Information

- In March 2017, a motion was moved and passed in the Senate for the Production of Documents[32] (the order) ordering the production of certain NAIF Governance Documents. This included, amongst other things

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30 ANAO Guide page 42

31 ANAO Guide page 46

32 See http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fjournals%2F1822ec5e-4d61-4a7f-ab36-e2b287020500%2F0022%22

'2. NAIF Risk Appetite Statement;

4. Any policies or other documents to be used by the board to satisfy themselves that the project meets each of the mandatory criteria as set out in the Investment Mandate; and

5. Any policies or other documents to be used by the board to satisfy themselves that the project meets each of the non-mandatory criteria as set out in the Investment Mandate.'

- Requests for documents under points four and five would include credit decisioning guidelines, Board papers and other deliberative matter and dealings with or regarding proponents, proponent information or NAIF's pipeline projects.
- Under the NAIF Confidentiality Policy, confidential information includes all deliberations relating to proponents at all stages of NAIF's processes. NAIF will and holds out to proponents that it will treat all proponent information as confidential, subject to complying with its legal obligations.

NAIF position on public interest and commercial in confidence

NAIF's view is that it is in the best interest of the public to maintain the commercial in confidence of relevant information.

Section 2 of this Submission provides the context for NAIF's view. In particular, given NAIF's role as a 'gap' financier.

Please see NAIF's responses to past Questions on Notice, which are reproduced in Schedule 9:

- (QoN) AI – 54 (2 March 2017)
- (QoN) AI – 78 (2 March 2017)
- (QoN) BI – 70 (31 May 2017)

Governance standard met

NAIF has a published Confidentiality Policy. That policy is one of the suite of core governance documents that both Allens Linklaters and the AGS have indicated meets best practice.

NAIF's view is also that maintaining the information as commercial in confidence is necessary to comply with Section 17(1) of the Investment Mandate from a best practice perspective of both the public sector and Commercial Financiers. This position is supported by the following.

For public sector

- the ANAO Guide comments above particularly that *'governance practice should ensure that the legitimate interests of all relevant stakeholders are duly considered' and 'Risk management perspectives can also inform the nature and extent of stakeholder engagement*' and that '*Important parameters to guide analysis and decision-making are …… the stage/s in the policy or delivery process when engagement should occur'*.

- Section 17(2) of the Investment Mandate gives NAIF a clear direction as to the appropriate time for publication of details regarding transactions, which is 30 business days after an Investment Decision has been made.
- NAIF's approach to publication of certain documents also aligns with the Queensland Government's Project Assessment Framework for market led (infrastructure) proposals. Queensland Treasury's approach to maintaining commercial in confidence information is set out in Section 6 of the '*Guidelines for the assessment of market-led proposals*'. This section states that commercially sensitive and confidential information (e.g. intellectual property of the proponent) is protected.[33]

For the private sector

- Allens Linklaters has provided comment to NAIF regarding disclosure of information.[34] They have stated:

  ' …in our experience, it would be unusual for a lender to publish details of its credit policy and risk appetite statement. There are sound reasons for not publishing this information: it may undermine the finance application process and deprive the lender of its competitive advantage…'

  ' In our view, the information NAIF has published, and intends to publish, in relation to its decision-making process is compliant with the NAIF Act, the Investment Mandate, and other applicable laws and directions. It is consistent with general market practice among project finance lenders and is an appropriate position to adopt.

  You have also asked whether it is typical practice for lenders not to publish information provided by applicants seeking finance. In our experience, this is typical. Applicants for project finance will often be disclosing commercially sensitive information and will provide it on the express expectation that it is held in confidence, subject to any obligations owed by the recipient under applicable law. If this confidence were to be undermined, fewer applicants would be willing to seek funding. NAIF procedures as regards the holding of information provided by applicants as confidential is compliant with the NAIF Act, the Investment Mandate and any other applicable law or direction. It is also typical practice in the project finance market and is in our view an appropriate position to adopt.'

  Refer also to Seclude 7 that sets out Allens Linklaters relevant experience. The letter states:

  'Allens has one of the leading project finance practices in Australia, specialising in high-value and complex project finance transactions, and related legislative and industry issues. We are one of the few firms to feature on every major legal panel in the Australian finance market. Our experience

33 See Queensland Government Project Assessment Framework – Guidelines for the assessment of market-led proposals, July 2015 p8.

34 Allens Linklaters letter on Disclosure of information regarding applications, credit and risk policies. Refer Schedule 7

involves representing government, sponsors, contractors and financiers alike on high profile major infrastructure projects in Australia. We have played a leading role in nearly all of the major financings in the market (including road, rail and ports) in recent years, and have acted for the full range of parties to such transactions.

Our position as a current market leader for project finance is evidenced by having recently topped the Inframation Deals League Tables in Australia by deal value, and our ranking in the top ten legal advisers globally, for the first half of 2017. Additionally, Allens' Banking & Finance practice is consistently ranked in the top tier by Chambers Asia Pacific, which directory also awarded Allens 'Australian Law Firm of the Year 2017'.

- NAIF has sought feedback of an expert in financial risk issues, in a leading consulting firm, who deals with lending organisations on a day-to-day basis. NAIF is satisfied that Australian lending institutions whether private or public sector do not publish detailed, quantitative credit risk appetite statements and related policy guidelines. As stated in the answer to QON BI-70:

  ‘ NAIF has had consistent feedback from experts in financial risk management as well as NAIF’s stakeholders that they are not aware of any private or public sector entity publishing detailed, quantitative credit risk appetite statements and related policy guidelines. There are a number of factors that would typically prevent this:

  1. Such policies are considered commercially sensitive;

  2. Policies are not intended to be used as a static or absolute document. Good practice would see these updated and calibrated to reflect market conditions and the unique risk profile of a particular counter-party. As such, publishing these would create the risk of undue reliance and misinterpretation.

  3. Considerable judgement is usually required in applying the policies and guidelines.

  4. Publishing such policies and guidelines would increase the risk to the organisation in other ways.’

  It is also consistent with Australian best practice government governance principles and Australian best practice corporate governance for Commercial Financiers and a specific requirement of the Investment Mandate that NAIF’s RAS is reviewed and updated regularly in response to emerging risks from sources such as changing market activity and government policy. This is also for example consistent with the ANAO Guide which recommends governance documents be evolved in response to changes in an entity’s environment and be adapted accordingly.

- **Schedule 3** provides a desktop comparison of NAIF’S transparency with other public and private sector financiers. No major Australian financier discloses publically their detailed RAS or credit decisioning governance documents.

Reasons why it is in the public interest to maintain confidentiality

NAIF's rationale for its protocols protecting commercial in confidence is that it is in the public interest to do so as discussed below:

- NAIF's approach to maintaining the confidentiality of information is applicable to all transactions that it considers. As at 31 July 2017, NAIF has 131 transactions (57 of which are active) in its list of projects.
- NAIF maintains commercial in confidence on all potential projects, unless there is agreement from all parties involved that certain aspects that can be released publically. Applying this principle consistently maintains the confidence of stakeholders and project participants in the integrity of NAIF's processes. Any breach of this confidentiality protocol may compromise the project and potentially it may not go ahead prejudicing the public benefit and population and economic growth for northern Australia and more broadly that NAIF's objectives.
- NAIF is a 'gap financier'. As NAIF will only ever be able to lend a maximum of 50% of the infrastructure debt financing of a project, NAIF will always have to work closely with the other financiers. Those financiers will expect and require NAIF as a standard practice to maintain as confidential commercial information.
- Each NAIF loan will be highly tailored to the circumstances of the particular transaction. This takes significant analysis and negotiation with the other project participants. NAIF must work iteratively with other project participants to understand what are their deal drivers and what risks they can accept.
- Financial and other contractual arrangements often change significantly, as more is understood about a proponent and other project participants and an investment proposal. If information were disclosed to the market prior to terms being formally and finally agreed, it could result in public or commercial harm, through:
  - the undermining of NAIF's negotiating position and ability to have the market tested to ensure that as a gap funder NAIF only puts in the minimum amount of NAIF (public sector) debt or concessions; and/or
  - misleading information being released to the market, e.g. information that suggests a project has insurmountable challenges that with time could be better understood and mitigated and therefore proceed and achieve NAIF's objectives of public benefit and population and economic growth for northern Australia and more broadly.
- If the status of a transaction were signalled before agreement on financing and other arrangements, it could harm the prospects of the proponent raising equity and the debt finance required from other financiers. That might ultimately result in:
  - other financial partners contributing less finance, creating a larger market 'gap' and using more NAIF finance than would otherwise have been necessary and therefore having less NAIF funds available for other projects in need;
  - the project not being able to raise sufficient finance from any source (including NAIF) and therefore not proceeding resulting in the loss of the expected public benefit and other objectives;

  - discouraging financial partners and proponents to engage or engage early with NAIF if they feel that their commercial strategic information regarding their interest in particular investments may be released causing commercial harm to their operations. This could delay the public benefit and growth being derived.

- Project Participants have consistently indicated that they expect NAIF to maintain the commercial in confidence position NAIF operates under.
- Further, project participants that are listed companies have a requirement to manage disclosures regarding their commercial affairs.
- Apart from the direct impacts on public benefit discussed above, there are indirect but equally important broader impacts that could result from premature disclosure of information. These include loss of value for the proponent or other project parties for example by leakage of information to competitors, distortion of markets by false information being relied upon which may damage or cause loss to any of those parties. For example, if NAIF as a 'gap' financier were known to have been considering a project and then declined to advance funds that could make it difficult for the project to be developed absent those funds.

b) The adequacy of the NAIF's Investment Mandate, risk appetite statement and public interest test in guiding decisions of the NAIF Board

The adequacy of Investment Mandate

- The NAIF Act requires the responsible Minister to give directions to NAIF about the performance of the NAIF's functions and he has done so in the Investment Mandate. NAIF's role is to implement the Investment Mandate as drafted.
- There are extensive provisions in the Act and the Investment Mandate which set out matters which the Board must do, or be satisfied as to, or have regard to, before making an Investment Decision. Please see Schedule 4.
- In addition, there are other obligations of the Board by virtue of being a Commonwealth corporate entity and therefore governed by the PGPA Act and the general law.
- The Investment Mandate is restrictive. For example, it is more constrained than the CEFC mandate. CEFC is able to provide debt or equity and can provide 100% of the debt finance. NAIF cannot invest equity and must partner as to 50% of the debt for the infrastructure activity with other financers. In this way, CEFC is better able to control the financing structure and timing of when information is ready to be assessed.
- NAIF can only invest in infrastructure components of projects.

The adequacy of the NAIF Risk Appetite Statement (RAS)

- The Investment Mandate requires NAIF to develop a RAS to guide its Investment Decisions, in consultation with the responsible Minister and the relevant northern Australia jurisdictions.[35]
- The full RAS is not a public document as it describes in detail the manner in which NAIF's risk appetite and tolerances (qualitative and quantitative) are established and controlled. The RAS is an internal, strategic, tactical and operational document that the Board uses to guide its Investment Decisions, operations and governance.
- The RAS has been developed under the NAIF's Risk Management Framework (RMF), a summary of which is publically available on the NAIF website. The NAIF's approach to risk management is consistent with the International Standard for Risk Management, ISO31000 and the requirements of the NAIF Act and the Commonwealth Risk Policy.
- The RAS was developed with input and advice from a specialist Director Risk Management Assurance from a top tier independent consulting firm. That Director worked closely with the Board and NAIF executives to understand the NAIF context, and then to assist the Board and the NAIF executives to identify, analyse and evaluate risks relating to the NAIF business and for the Board to decide the

35 See Investment Mandate s 12(1).

nature and extent of risks it has tolerance for and how to manage those risks consistent with the Board's strategic objectives.

- As required by the Investment Mandate the NAIF has undertaken detailed consultation with the responsible Minister, the Jurisdictions and the Department about the terms of the RAS, which helps guide its Investment Decisions. This included discussion on the risk appetite and risk tolerances, including in relation to factors unique to investing in the north. Feedback from those stakeholders was considered by the Board and incorporated where appropriate.
- Section 12 (4) of the Investment Mandate requires the RAS to be reviewed annually to address emerging risks, changes to existing risks and changes to Government Policy. The NAIF RMF provides for this and in line with the ANAO Guide the Board will update the RAS more regularly to take account of emerging risks and innovation strategies.

The adequacy of the Public Benefit Test

- NAIF Mandatory Criterion 2 is that a proposed project must be of public benefit. The criterion provides that in considering public benefit, the NAIF must give preference to projects that will serve or have the capacity to serve multiple users and produce benefits to the broader community beyond those able to be captured by the Proponent.[36]
- In addition, under Sections 7(3)(b) and 9 of the Investment Mandate, in determining any concession to be granted by NAIF, the Board must have regard to the extent and mix of any financing concessions necessary for an Investment Proposal to proceed and the extent of the project's public benefit.
- Public benefits are benefits of a project not captured by the Proponent. Rather they are benefits valued by other business users, governments, individuals and the community.
- The Public benefit criterion underpins the key objective of the NAIF to support investment in infrastructure that provides a basis for economic growth and stimulates population growth in Northern Australia.
- The NAIF Board has approved and published on its website, the Public Benefit Guideline to assist and guide Proponents in considering the public benefit of their project. Key aspects of it include:
    - The Board will only approve projects that have net public benefit (and use of that term below means net). The policy provides '*A Project is of Public Benefit if the benefits of the Project are greater than the costs, excluding benefits received (e.g. revenue) and costs borne (e.g. capital and ongoing costs) by the Project Proponent*.'[37]
    - The benefit that can be factored in is intentionally broad.

[36] Investment Mandate Schedule 1, Mandatory Criterion 2

[37] NAIF Public Benefit Guideline June 2017

- For projects where the proposed NAIF investment is $50m or greater the Board requires a Cost Benefit Analysis (CBA). For projects under that $50m hurdle a CBA may not be required but the public benefit must still be clearly demonstrated.
- Annexure A to the published guideline provides examples of benefits and costs that could be included in a CBA for a project.
- At a minimum three types of impacts that generate benefits and costs should be included in the CBA being impacts on the economy and productivity, on individuals and on the community.
- Also the guideline states a preference that benefits and costs are quantified but in circumstances where they are not able to be then the CBA can be supported with qualitative assessments.
- It also states that failure to quantify the public benefit may influence the financing concessions available to a project.
- Where possible the CBA must examine a range of scenarios and sensitivity analysis.
- In some cases, a proponent may already have a public benefit analysis (to meet Government approvals). The guideline indicates it may be appropriate to use in the NAIF assessment of a project but it will be up to NAIF to determine if it requires further information.

- In developing its Public Benefit Guideline NAIF consulted with the responsible Minister, the Jurisdictions, Infrastructure Australia and specialist consultants and their feedback as appropriate was incorporated.

c) Processes used to appoint NAIF Board members, including assessment of potential conflicts of interest

Please see the DIIS submission in regards to the process used to appoint NAIF Board members.

d) The transparency of NAIF's policies in managing perceived, actual or potential conflicts of interest of its Board members.

Conflicts of interest generally

- Public sector officials (which includes the NAIF Board members) are required under Section 29 of the PGPA Act to disclose any material personal interest that relates to the affairs of the entity. The PGPA Rules provide that a Board Member that has a material personal interest in a matter being considered at a Board meeting must not be present while the matter is being considered at the meeting and must not vote on the matter.
- Best practice corporate governance requires protocols and probity to be put in place to minimise conflicts of interest affecting decision making.
- In this regard, the ANAO Guide states:

  "It is common practice for public sector boards and committees to include individuals who also belong to stakeholder groups and private sector entities or advisers from specialist groups. Avoiding conflicts of interest is not always possible, particularly as those stakeholders with the most to offer the entity are often those with the greatest interest in the outcome. Key steps in managing such situations include:

  - Considering the nature and extent of the conflict of interest;
  - Making this known to the parties involved (including other board or committee members);
  - Putting protocols and probity in place to minimise the likelihood of such conflicts affecting decision-making[38]
- NAIF has established a Conflicts of Interest Policy published on the NAIF website and in Schedule 8.
- The NAIF Conflicts of Interest Policy applies to both staff and Directors.
- Clause 1.1 of the NAIF Conflicts of Interest policy defines a "Conflict of Interest" as follows:

  'A Conflict of Interest means a situation where one or more of one person's interests are inconsistent with, or diverge from, one or more of the interests of another person to whom the first person owes a duty. For the purposes of this policy and NAIF's approach to identifying and managing Conflicts of Interest, the term includes actual, apparent or potential Conflicts of Interest.

  An actual Conflict of Interest arises where an analysis of the interests of the parties reveals that there are inconsistent or divergent interests between the parties, in the situation where one owes a duty to the other.

  An apparent Conflict of Interest arises where a situation or relationship exits that could appear to involve a Conflict of Interest. This situation may or may not

[38] ANAO Guide p 52

involve actually divergent or inconsistent interests. Careful analysis of the interests of the parties may be required to determine whether there is an actual Conflict of Interest.

A potential Conflict of Interest is a situation which does not involve an actual or apparent Conflict of Interest at the present time, but where there is a reasonable possibility of such Conflict of Interest arising.'

- Clause 2.4 of the Conflicts of Interest Policy provides some examples of Director's conflicts of interest which include where a director sits on the board of a company which is applying for NAIF finance or where the director holds shares in a company which has applied for NAIF finance. The policy also acknowledges conflicts of interest can potentially arise in other circumstances such as through associations and family relationships, community, sporting, social, cultural or voluntary activities.

Approach to assessment of conflicts of interest

NAIF's approach to assessments of conflicts of interest includes the following:

- All Board members receive induction guidance materials outlining their duties, roles and responsibilities as Board members including in relation to conflicts of interest as required by the PGPA Act and the Conflicts of Interest Policy.
- Directors have significant experience in deciding whether their personal circumstances give rise to an actual, apparent or potential conflict of interest. They also have high regard for their reputations and their responsibilities to perform their duties and obligations in accordance with the PGPA Act, the Conflicts of Interest Policy and other laws.

Approach to management of conflicts of interest

- Upon joining the NAIF Board, Directors disclose their shareholdings and other material personal interests. This disclosure is required to be updated by each Director notifying the Board Secretary of any changes.
- Declaration of conflicts of interest is a standing opening agenda item at each Board Meeting.
- The Board Secretary maintains a register of those declared shareholdings and interests. This register is tabled at each Board meeting, with any changes noted as a standing item on the agenda.

Consequences of conflicts of interest

- The Board Secretary takes all declared conflicts of interest into account when preparing and distributing Board papers. Appropriate redactions are made in papers provided to Board members who have declared a conflict of interest.
- Board members with a declared conflict of interest are excluded from Board discussions on the relevant project or other matter (for example they may be asked to leave the room) and they do not vote in relation to that project or matter.

- Under the NAIF Act, the Board consists of the Chair and no less than four and no more than six other members. If one or two Board members have a conflict of interest in relation to a particular project or matter, decisions can still usually be made by the remaining Directors. The PGPA Rules also provide for mechanisms to allow for decisions to be made in these circumstances where the number of remaining Directors would otherwise fall below a quorum.
- Penalties for non-compliance with the PGPA Act or Conflicts of Interest Policy can potentially lead to the discipline of the Director or his or her removal from office.
- An associated matter lies in the NAIF Staff Security Trading Policy which, in broad terms, provides for an embargo in trading by all NAIF Directors and staff of shares registered on an embargo list maintained by the CEO without appropriate consent. That list is regularly updated and notified to Directors from time to time as and when project proposals are submitted to NAIF staff and prior to each Board meeting. Staff are required to obtain clearance before trading in shares through an online system that cross-checks against the current embargo list.
- NAIF has full confidence that the NAIF Board members have complied with their obligations in relation to conflicts of interest and have, where appropriate recused themselves from relevant Board discussions.

The transparency of NAIF's policies in managing perceived, actual or potential conflicts of interest of its Board members

- As stated above the NAIF Conflicts of Interest Policy is published on its website. NAIF notes that neither CEFC nor Efic publish their policy (refer to Schedule 3).
- The NAIF's Conflicts of Interest Policy was developed in consultation with:
  - NAIF Board Directors;
  - Efic Head of Compliance (who is also the NAIF Head of Compliance); and
  - An external legal counsel governance specialist (in this regard Allens Linklaters has advised that the policy meets best practice governance).
- Outlined above is a full disclosure of how NAIF approaches and manages conflicts of interest.
- NAIF does not publicly disclose which Directors have or have not declared conflicts of interest or the reasons why.
- In this regard, NAIF notes that the ANAO Guide states:

  "Given the personal nature of a declaration of private interest, entities must be conscious of privacy arrangements and ensure that such documents are stored securely."[39]
- In accordance with the ANAO Guide, NAIF regards disclosures of personal interests by Directors as confidential for reasons which include the following:

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[39] ANAO Guide p 50

  - NAIF is bound by obligations under the Privacy Act 1988.
  - Recusals are sometimes made in relation to specific projects and to identify the reason for the recusal would itself reveal commercial in confidence information.
  - NAIF considers disclosure of a Director's personal interest as not being in the public interest and potentially prejudicial to the proper performance of the Director's duties and responsibilities.
  - Recusals are made as part of the Board's internal deliberations, which are also commercial in confidence.
- NAIF's assessment and management of conflicts of interest is broadly consistent with the approach taken by Efic and to publically listed companies (including the four major Australia banks) who have obligations under the Corporations Act.

e) The adequacy of the Northern Australia Infrastructure Facility Act 2016 and Investment Mandate to provide for and maintain the independence of decisions of the Board.

- NAIF's Board is solely responsible for making all Investment Decisions.[40] Subject to provisions in the NAIF Act and Investment Mandate, decisions of the Board are unfettered. The Board is extremely cognisant of its responsibility to remain independent when making investment decisions.
- Parliament established NAIF's Board to make Investment Decisions independently of the government.[41] The NAIF Act and Investment Mandate is the mechanism for the Commonwealth to articulate its broad expectations about the functions of NAIF and how it invests.
- Section 9(4) of the NAIF Act has a safeguard that operates as a limitation to protect the independence of NAIF's Board and its ability to make independent Investment Decisions. The NAIF Act states that the Investment Mandate direction of the responsible Minister to NAIF as to the performance by NAIF of its functions '*must not direct, or have the effect of directing [NAIF's Board] (a) to provide financial assistance for the construction of a particular project or (b) in relation to a particular person*.[42]
- The Minister does not approve Projects. The Minister only has a power of veto, and only on three specified grounds. After a consideration period,[43] the Minister may notify NAIF that financial assistance should not be provided only if the Minister is satisfied that a NAIF loan would:
    - be inconsistent with the objectives and policies of the Commonwealth Government; or
    - have adverse implications for Australia's international or domestic security; or
    - have an adverse impact on Australia's international reputation or foreign relations.[44]
- NAIF has developed an information sharing protocol with NAIF's responsible Minister to keep the Minister and the Minister for Finance informed about its operations, consistent with the requirements under the PGPA Act. This includes:
    - High-level pipeline information regarding the top 15 potential projects that are considered an active inquiry. This is more limited than the information shared with the relevant States and Territory.

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40 Refer to Section 1 of this Submission.

41 See NAIF Explanatory Statement p1 and the NAIF Second Reading speech 17 March 2016, p2.

42 NAIF Act 2016, Section9 (4).

43 NAIF Act 2016, Section 11.

44 NAIF Act 2016, Section 11(5).

- An extract or copy (if the CEO determines) of the strategic assessment paper only after it has been endorsed by the Board.
- Notification of an Investment Decision after the Board has approved an Investment Proposal.

f) The status and role of state and territory governments under the NAIF, including any agreements between states and territories and the Federal Government.

- Section 7 of the NAIF Act states the function of NAIF is to provide grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure and determine the conditions for these grants of financial assistance.
- NAIF views early and sustained engagement with the relevant Jurisdiction about a Project as essential. The States and Territory are key partners to the success of NAIF. How NAIF communicates and engages with the States and Territory is integral to fulfilling NAIF's purpose of stimulating economic and population growth in northern Australia. The involvement of the States and Territory helps to maximise the gains and public benefit from NAIF's infrastructure investment in northern Australia. In particular, NAIF will wish to leverage the knowledge and regional understanding of projects and proponents to contribute to NAIF's assessment of an investment proposal. NAIF executives meet regularly with representatives of the Jurisdictions.
- Without the support of the relevant Jurisdiction, NAIF is unable to progress the making of an Investment Decision.[45] The States/Territory have a right to veto a project under section 13(4) of the Investment Mandate. If NAIF receives a written notice from a relevant jurisdiction that financial assistance should not be provided to a project, NAIF cannot progress an Investment Decision.
- Each State and Territory will be required to enter into a separate Master Facility Agreement (**MFA**) with NAIF and the Commonwealth government. The agreement prescribes the terms and conditions of the borrowings to ensure benefit to the relevant jurisdiction.
- The Commonwealth government assumes the credit risk but the relevant State or Territory is the lender of record and the signatory to the finance documents.
- In broad terms, the principles underlying the MFA, are:
    - The States and Territory have substantial involvement in the application and approval procedure;
    - The MFA and engagement protocols under development pursuant to the MFA outline the key principles and arrangements between all parties about the due diligence, assessment and appraisal of investment proposals, negotiation and execution of finance documents;
    - The loan moneys may flow from the Commonwealth through the States or Territory to a proponent borrower or alternatively, the States or Territory may direct the NAIF to make a payment direct to the Proponent; and
    - Subject to direction, the State or Territory will pursue action against project proponents in respect of any loan or guarantee default.

[45] Investment Mandate Section 13 (4).

g) Any other related matters

- In undertaking due diligence, NAIF will work with other lenders and equity investors. It ideally will expect to leverage due diligence work and expert reports prepared for third parties including in specialist areas (for example engineering, market or industry reports or other specialist expertise). NAIF will thereby have the benefit of the commercial acumen and analysis of other lenders in addition to those of its own highly skilled team. This may mean that information is not made available to NAIF until a significant period after the other lenders have started their due diligence. Given that NAIF is a gap financier this may be an efficient process. It will depend on circumstances. However, a project that has passed the NAIF Strategic Assessment phase is not necessarily in an active due diligence with NAIF.
- If required NAIF will seek further expert advice to address issues which are relevant to NAIF. For example, if NAIF's risk profile is different from other financiers, or due to NAIF specific mandatory criteria such as public benefit or assessment of the proponent's Indigenous Engagement Strategy.

3: NAIF GOVERNANCE

Governance Standard applying to NAIF

Section 17 (1) of the NAIF Investment Mandate sets the governance standard which NAIF must satisfy. It provides NAIF must:

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

(a) environmental issues;

(b) social issues; and

(c) governance issues.'

The NAIF's Investment Mandate provides that '**Commercial Financier** means a private sector body that provides finance or investment into infrastructure projects.'

Section 17 sets a very high standard of performance for NAIF namely to have regard to the governance principles applicable to both a publically accountable government entity **and** a Commercial Financier.

That requirement is aimed at ensuring the NAIF operations are designed and implemented to achieve the NAIF's policy objectives and deliver benefit to the Australian economy and tax payer. The reference to both public and private sector governance principles is an acknowledgement that NAIF a corporate Commonwealth entity is tasked to partner with private sector financiers.

Governance Reference Points

Governance is the rules, relationships, systems and processes by which authority is exercised and controlled within an organisation. The following are reference points:

Public sector reference point	Commercial sector reference point
The **Australian National Audit Office (ANAO) publication: Public Sector Governance - Better Practice Guide (ANAO Guide)**[46] describes public sector governance as the arrangements	**The Australian Securities Exchange Governance Council Principles (ASX Principles)** [47] - these Principles and Recommendations set out

[46] Australian National Audit Office Public Sector Governance – Better Practice Guide (ANAO Guide) can be accessed at: https://www.anao.gov.au/work/better-practice-guide/public-sector-governance-strengthening-performance-through-good.

[47] The Australian Securities Exchange Governance Council Principles can be accessed at: http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf.

and practices, which enable a public sector entity to set its direction and manage its operations to achieve expected outcomes and discharge its accountability obligations.	recommended corporate governance practices for entities listed on the ASX that, in the Council's view, are likely to achieve good governance outcomes and meet the reasonable expectations of most investors in most situations.

NAIF Governance Framework

NAIF has consulted with various experts in developing its governance framework. This included leveraging the extensive knowledge, expertise and experience of Efic and its staff. There are clear synergies between Efic and NAIF and Efic has a service level agreement with NAIF to assist with its corporate and transactional activities. NAIF's governance policies have been tailored to deal with NAIF's own particular functions and circumstances. Efic has been in operation for over 60 years with significant experience and expertise in the finance sector. During that time EFIC has developed, maintained and regularly reviewed and updated a sophisticated corporate governance framework of policies, procedures, plans and guidelines appropriate to its functions.

In broad terms, the NAIF governance framework is developed, maintained and reviewed in accordance with:

- the NAIF Act and Investment Mandate;
- the PGPA Act;
- a suite of integrated and customised corporate and decision making governance documents that NAIF has developed; and
- best practice government and Commercial Financier governance principles.

Under the NAIF Act the Board consists of the Chair and no less than four and no more than six members. Its functions are to decide, within the scope of the Investment Mandate, the NAIF strategies, policies, procedures and guidelines to be followed and considered and to ensure the proper, efficient and effective performance of NAIF's functions and any other functions conferred on the Board by the NAIF Act or otherwise.[48]

The CEO is responsible for the day to day administration of the NAIF and must act in accordance with Board determinations and directions[49].

Benchmarked as Best Practice

NAIF sought independent expert reviews from leading commercial law firm Allens Linklaters and the AGS[50] on its suite of twelve core governance policies.

48 See Section 14 NAIF Act

49 See section 28 NAIF Act

50 Refer to Schedule 2 for suite of policies reviewed by those experts

The experts concluded that in their view those policies[51] reflect current Australian best practice government governance principles and current Australian best practice corporate governance for Commercial Financiers. The NAIF suite of governance policies is appropriate for its size and function. NAIF continues to develop further policies, plans, guidelines and procedures as it matures.

In this submission the NAIF governance policies, procedures and guidelines are compared in:

- Part A: to the Public Sector Governance principles as detailed in the ANAO Better Practice Guide (ANAO Guide); and
- Part B: to the Australian Securities Exchange Governance Council Principles (ASX Principles).

As a Corporate Commonwealth entity, NAIF has used the ASX Principles as a guide to the extent to which they are applicable given NAIF's size and unlisted nature. NAIF's governance meets both the ANAO and ASX Principles.

[51] Allens Linklaters reviewed 12 policies, the Australian Government Solicitor (AGS) reviewed the four public sector specific policies, both review letters are attached in Schedules 6

Part A: NAIF governance compared to ANAO public sector governance requirements

The ANAO Guide identifies the important objectives of good governance as:

- Performance: governance arrangements and practices designed and operated to shape the entity's overall results, including the successful delivery of government programs and services; and
- Accountability to Parliament and the public: governance arrangements and practices designed and operated to provide visibility of results, to the entity's leadership, the government, the Parliament and the community and conform with applicable legislative and policy requirements as well as public expectations of openness, transparency and integrity.

It also identifies certain fundamentals of governance for public sector entities to achieve those overarching objectives as:

ANAO: Public Sector Governance - Better Practice Guide Fundamentals		
1.	**Strong leadership**	Focus on ethical behaviour and continuous improvement
2.	**Fit for purpose**	Appropriate governance systems and processes
3.	**Performance Orientation**	Planning, engaging with risk, innovation, and performance monitoring, evaluation and review
4.	**Openness, transparency and integrity**	Engaging constructively with stakeholders Promoting accountability through clear reporting on performance and operations
5.	**Effective collaboration**	Collaborative partnerships to more effectively deliver programs and services, including partnerships outside government

An overview of how NAIF's governance satisfies each of those public sector governance fundamentals is provided in the following paragraphs, which correspond with each ANAO Fundamental.

ANAO Fundamental - Strong Leadership

NAIF has an independent skills based Board which provides oversight and guidance to the NAIF executive. The Board has a strong mix of regional northern Australian knowledge, background in the private sector, and business skills required for infrastructure financing. See Schedule 5 for a detailed outline of each Board members background and skills.

The NAIF CEO has over 25 years experience in infrastructure lending, including in leadership roles with two of Australia's major banks.

Values and conduct

- Board Charter and Board Audit and Risk Committee (BARC) Charter: Approved August 2016 and reviewed in June 2017 to set 'tone from the top' and establish and promote clear objectives.
- *Instil behavioural standards and values*: Schedule 2 outlines various NAIF governance and related policies, processes, procedures, guidelines and plans which promote a high level of performance and accountability.
- The Board requires the CEO to have clear objectives and focus on achieving high performance in establishing NAIF and originating its pipeline, balancing risk with achievement of NAIF's objectives and attracting, developing and retaining a talented team and promoting a culture of collaboration.

Create positive and ethical culture

Board members and the NAIF Executive promote ethical conduct and behaviours consistent with agreed public sector values. NAIF's workplace culture encourages all members of the organisation to accept a personal responsibility to identify and manage risk, be alert to issues that need to be addressed, contribute to innovative approaches to achieve outcomes and escalate issues as appropriate in the organisation. This includes the following processes:

Who	How
For **Board members**:	• Survey of views of risk appetite and tolerance as part of process of development of Risk Management Framework • Implementation of the NAIF's forward programme of policy review
Standing items on **Board agendas** being:	• Embargo List distribution for purpose of adherence to Staff Trading Policy by Directors • Conflicts of Interest management protocols • Director's Personal Interest Disclosure Register
For **Board and Staff** other policies	• Credit Approval Paper Guidelines

applying to them including:	• CEO and Directors Travel Expenses Policy • Confidentiality Policy • Media Protocols • Public Interest Disclosure Policy
For **NAIF staff** through:	• Code of Conduct • Staff Remuneration Policy • Incident Reporting Policy • Media Protocols • HR Policies

Promotion of a learning and innovation culture

NAIF demonstrates a commitment to ongoing learning for its staff and innovation in its thinking in a number of ways including as follows:

- *Strategic Objectives*: One of the five pillars of NAIF's Strategic Plan identifies the objective of building a high performance organisation through investing in its people, culture, processes and systems to allow the NAIF to achieve its objectives and realise its vision.
- *Engagement protocols*: Another pillar of NAIF's Strategic Plan further identifies the need to be reliable and easy to do business with. NAIF's engagement protocols in development with both the Commonwealth and the State and Territory Jurisdictions incorporate those objectives to ensure that government stakeholders are committed to contributing to an efficient, effective process and outcome for NAIF and its stakeholders, proponents and others.
- *Training*: Under the SLA, Efic provides NAIF employees access to a full learning and development curriculum. Staff receive initial induction through Efic Human Resources and then progressive compliance and other specialist training.
- *Staff development*: as part of NAIF's performance and development program, our people have regular career discussions with their manager and prepare targeted development plans for the year ahead.
- *Policy development*: in developing its policies, NAIF has consulted with numerous internal and external stakeholders.
- *Innovation*: NAIF fosters a culture of innovation in various ways:
    - In developing its Risk Management Framework (RMF) and in particular its RAS and risk tolerances the Board in consultation with the responsible Minister and Jurisdictions considered the parameters of the NAIF Act and Investment Mandate very carefully to develop a sophisticated framework suitable for NAIF.
    - It has developed a RAS which takes into account the specifically mandated areas for:

(a) higher risk tolerance as required under Section 12(3) of the Investment Mandate in relation to factors that are unique to investing in northern Australia infrastructure; and

(b) the direction in Section 12(3)(e) of the Investment Mandate to have regard to the necessity of NAIF finance to encourage private sector participation in financing a project.

- NAIF's Board and executives are constantly thinking creatively in identifying opportunities for how NAIF can partner and structure transactions to optimise benefits for the north.
- NAIF has developed innovative scenarios for how its risk appetite may be used to complement rather than compete with the private sector and has actively been articulating its vision of how NAIF can contribute to projects which other financiers may be able to finance for 50% of the project debt but not 100%. This has been a focus of presentations that NAIF has undertaken and which are available on NAIF's website.
- NAIF's Board has also been innovative in its acceptance that on a case by case basis NAIF can contribute to projects, which involve a mix of infrastructure and non infrastructure and take risk on repayment of its debt from the broader project revenues. This will enable NAIF to contribute to more projects that will have public benefit to northern Australia than if the Board had limited the NAIF to standalone infrastructure assets.

- *Continuous Improvement*: NAIF regularly reviews and assesses the impact of its mandate and effectiveness of its processes and procedures. NAIF's focus is to ensure NAIF can deliver on key objectives of public benefit and economic and population growth in northern Australia. It has identified priority areas of focus both through its Board strategic planning and its executive origination planning to concentrate effort and resources. It has also identified ways of making more meaningful contributions to those deliverables.
- *Review and Evaluation*: NAIF is committed to regular review of its functions and of the NAIF Governance documents. Refer to Section 2.13 below for discussion of its internal and external audit procedures. Refer also to Schedule 2 for more detail on the independent expert review of NAIF's suite of governance policies.

ANAO Fundamental - Fit for Purpose Governance

Overview

As noted in the ANAO guide[52]:

- *Integrity, transparency and accountability remain at the centre of sound public sector governance and it is important for public sector entities to make appropriate investments in systems and processes that support effective management.*

[52] ANAO Public Sector Governance pg 13

- *Governance arrangements should be fit for purpose. Tailoring governance structures and processes to suit the type, maturity, size and business of an entity is a particularly important consideration.*

NAIF's governance satisfies those objectives in a number of ways including as set out below.

Accountable structures

NAIF's Independent Board members are appointed by the responsible Minister, and are required to have relevant professional experience or expertise as outlined in Section 15(4) of the NAIF Act. Board members are also selected based on their experience of northern Australia, be that through long term residence and commitment to local communities or extensive business experience in the north. Refer to Schedule 5 for Board member resumes.

Accountability through Board Charter

The NAIF Board Charter, initially endorsed by the Board at its first meeting in August 2016 and reviewed in June 2017, provides the framework for accountability across the operation of the NAIF. The Charter, published on the NAIF website, details duties and responsibilities of the Board, Chief Executive Officer, broader Executive team and the Board Secretary.

Board Audit and Risk Committee (BARC) and BARC Charter

In accordance with the PGPA Act, the NAIF Board has established an Audit and Risk Committee (BARC).The BARC is governed by the NAIF Board Audit and Risk Committee Charter (BARC Charter) which is publically available on the NAIF website.[53]

The BARC Charter, initially endorsed by the Board at its first meeting in August 2016 and reviewed in June 2017 provides clear accountability to the Board in performing its functions. The BARC is required to meet twice a year, but in NAIF's first year met five times outlining their commitment to ensuring NAIF is performing efficiently and effectively.

The BARC was established to support the Board's governance through oversight and review of the appropriateness of NAIF's financial reporting, performance reporting, systems of risk management and oversight, and system of internal control. The BARC monitors the overall effectiveness of the NAIF Risk Management Framework and has recommended to the Board for adoption an appropriate Risk Appetite Statement in accordance with the Investment Mandate.[54]

BARC members were appointed by the Board at the Board's first meeting. Under the BARC Charter the BARC's membership consists of at least three members all of whom have the appropriate qualifications, knowledge, skills and experience to assist the BARC Committee to perform its functions. At least one of the members of the BARC must be an accountant or financial professional with experience of financial

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[53] https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/06/NAIF-Board-Audit-and-Risk-Committee-Charter.pdf

[54] Section 12 Investment Mandate

and accounting matters. The NAIF BARC Chair is a Chartered Accountant and member of the Governance Institute of Australia. In its first year of operation, one of the other BARC members included a Director with a Doctor of Philosophy in Governance.

Strategic Planning

NAIF's Strategic Plan is the underlying planning document for the NAIF organisation. It sets the foundation for development of the Corporate Plan and key performance indicators (KPI's) and supporting metrics and the Annual Report, which provides an overview of the previous year's operation.

NAIF's Strategic Plan outlines five strategic priorities (and outcomes to drive the activities of NAIF):

- Proponent-led project origination
- NAIF facilitated origination
- Effective, best practice risk management
- High performance culture
- Stakeholder engagement

NAIF's key performance metrics for the next 4 years and individual employee KPI's are all linked to NAIF's Strategic Plan. NAIF's Strategic Plan is reviewed semi-annually and refined as necessary.

All NAIF staff, including those dedicated through a services level agreement with Efic, have shared ownership of strategic priorities through having participated in planning workshops to develop NAIF's forward vision and overarching strategy.

Those workshops were facilitated by renowned strategy experts to facilitate planning which incorporates all aspects of the business and understanding of priorities and strategic outcomes. Outcomes from the team planning were fed directly into Board strategy deliberations to provide for a bottom up and top down approach to planning.

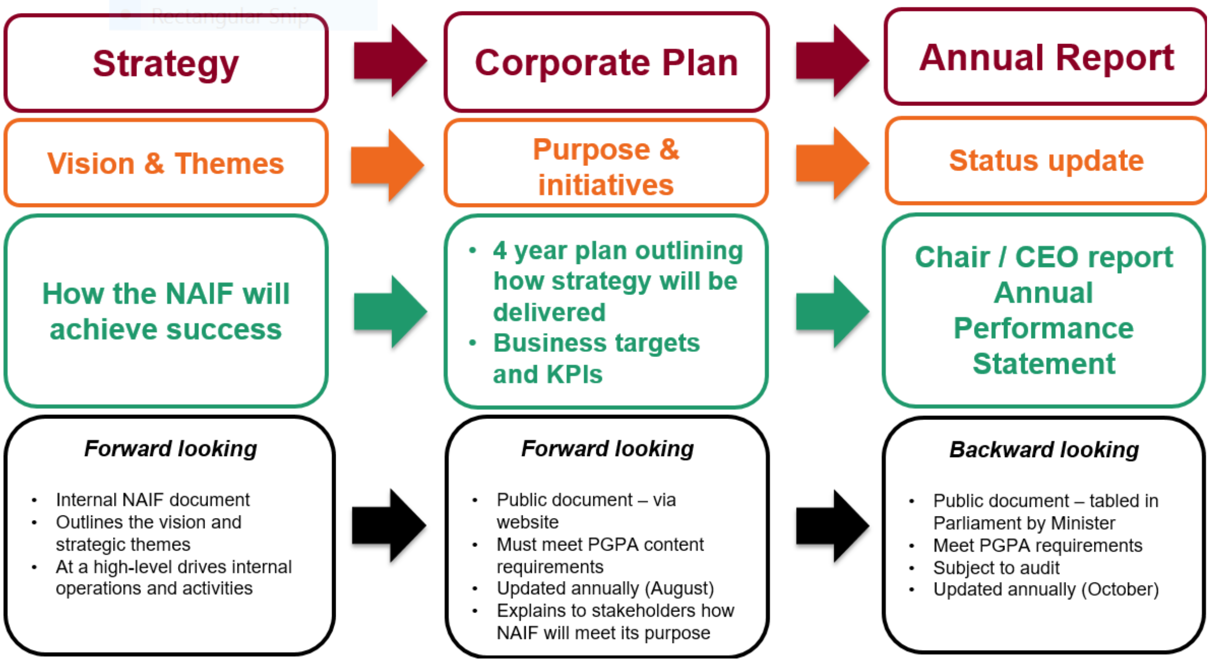
Corporate Plan and Annual Report

The 2016-17 Corporate Plan, available on the NAIF website provides an overview of the strategies of the organisation in its first 12 months of operation.

The 2017-18 Corporate Plan to be published in August 2017 will outline the NAIF's KPI's and metrics for achievement of identified short and long term targets in line with the strategic priorities outlined in the NAIF's Strategic Plan.

NAIF's first Annual Report for 2016-17 will be published in October 2017, in line with the requirements of the PGPA Act. The Annual Report including the Annual Performance Statement will report on the NAIF's actual performance and achievements for its first year of operation.

From Strategy to Reporting



Deal Team Transactional Due Diligence and consultation

NAIF has employed specialist senior infrastructure financiers to drive the identification of potential transactions that align with the requirements of the NAIF Act and Investment Mandate.

Extensive due diligence on potential investments is undertaken in collaboration with Project Participants (e.g. sponsors, proponent, financial advisers, consultants, contractors, operators, suppliers and other lenders). This involves analysis of all components of a transaction and detailed risk assessment including: technical; legal; compliance; market; insurance; accounting and tax; environmental; public benefit; and Indigenous engagement considerations. NAIF intends to consult with independent, specialist experts where considered necessary and NAIF will have appropriate reliance on those reports in making its credit decisions.

In addition, there are the legal requirements and matters that the Board must be satisfied as to or have regard to as outlined in the NAIF Act and Investment Mandate (Refer to Schedule 4 for consolidated list). The Investment Mandate specifies that for a project to be eligible for financial assistance the Board must be satisfied that seven mandatory criteria have been met, and preference will be given to projects, which meet one or both of two non-mandatory criteria. The mandatory criteria are as follows:

- The proposed Project involves construction or enhancement of economic infrastructure
- the proposed Project will be of public benefit
- the proposed Project is unlikely to proceed or will only proceed at a much later date, or with a limited scope, without financial assistance

- The Project is located in, or will have a significant benefit for, Northern Australia
- NAIF's loan monies are not the majority source of debt funding
- the loan will be able to repaid, or refinanced and
- Indigenous engagement strategy.

Non-mandatory criteria are as follows:

- The proposed Project is seeking financing from NAIF for an amount of $50 million or more
- There is an identified need for the Project

There is a more detailed description of each of the criteria in Schedule 1 of the Investment Mandate.

The NAIF Investment Mandate also provides for NAIF to consult relevant government stakeholders including Commonwealth departments as required including during its due diligence processes. Protocols are established to consult across government on matters relevant to project assessment and required regulations as well as with Infrastructure Australia on prescribed projects, which may include on public benefit claims provided by proponents.

Risk Management Framework (RMF)

NAIF has developed a RMF (which includes a RAS) in consultation with leading experts in the risk policy field. The NAIF's approach to risk management is consistent with the International Standard for Risk Management, ISO31000 and the requirements of the NAIF Act and the Commonwealth Risk Policy. This approach to risk management is designed to support NAIF in the achievement of its strategic objectives.

While NAIF is not bound by the Australian Prudential Regulation Authority (APRA), its Risk Management Standard (CPS220) and associated Prudential Practice Guide (CPG220) provide a good framework for corporate governance and risk management and relevant requirements have been incorporated where appropriate.

The Three Lines of Defence (3LOD) risk management and assurance model, recommended by APRA, is embedded within NAIF's RMF[55].This approach to risk management is shown in the Figure below:

55 NAIF combines the Board Risk Committee and Board Audit Committee into a single Board Audit & Risk Committee.

APRA Three Lines of Defence Risk Management and Assurance model

Source: Based on *APRA Prudential Practice Guide – CPG 220 – Risk Management* (January 2015).

The 3LOD model supports NAIF's risk culture through clear ownership of risks by business management, ongoing monitoring and review of risks and controls by compliance and risk management, and periodic testing of risk awareness and adherence to the RMF by Internal and External Audit functions.

The RMF forms part of a hierarchy of documents that govern NAIF's approach to risk management as per the Figure below. An Overview of the RMF is on NAIF's website.

The Hierarchy of Risk Management Documents

Risk Appetite Statement (RAS)

The NAIF's approach to risk management is based around assessing the level of risk and establishing the appropriate appetite for risk in a manner consistent with the Board's strategic objectives. Risk appetite is a fundamental part of risk management. It is regularly reviewed.

NAIF's RAS was first approved by the Board in February 2017, and subsequently has been reviewed and endorsed again in April 2017. This approach to risk management is consistent with best practice. The ANAO Guide states:

"*For risk management to be effective, there should be an emphasis on ongoing actions and outcomes. Risk management is not just a paper-based exercise that occurs once a year; rather, it needs to be actively implemented, monitored and adjusted if required.*"[56]

The RAS has two parts:

- NAIF's appetite for risk - a high level statement of NAIF's attitude towards risk taking, which is summarised in terms of the residual risk that NAIF is willing to take by risk category.
- NAIF's tolerance for risk – a more detailed statement specifying the individual risks that NAIF is willing to take to meet specific objectives.

NAIF leverages its risk management strategies in assessing whether or not to contribute its finance to enable a project to proceed, or proceed much earlier than it would otherwise while also assessing the other requirements under the NAIF Act and Investment Mandate (refer Schedule 4). NAIF uses its strategic approach to risk to encourage other financiers and crowd-in capital to fill any funding gaps.

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[56] ANAO Guide pages 26, 32

NAIF culture of risk management

A key role of the BARC is to set a culture that embraces risk management as an essential part of business operations. The four key elements of NAIF's risk culture are:

- Setting the "tone from the top" through the Board and BARC's active involvement in the risk management process.
- Risk awareness entrenched throughout the organisation so that it becomes a core function that is considered in the course of day-to-day business processes. This is achieved through recruitment of personnel knowledgeable in project financing risks and through ongoing communication of risks.
- Appropriate risk taking behaviours are rewarded and inappropriate behaviours challenged and sanctioned.
- Adequate disclosure of incidents through 'no-fault' incident reporting.

There is within NAIF an awareness and commitment to a single purpose, common principles, shared values and a Code of Conduct that is regularly updated. This is achieved including through the following:

- NAIF's RMF is part of NAIF's strategy and corporate planning processes and is linked with other NAIF Governance documents, such as, human resources planning, communication strategies and audit programs to promote an enterprise-wide approach to risk.
- Risk assessment is undertaken at the same time as NAIF programs are designed but also continues past the initial implementation stage so as to inform a continuous improvement approach to delivery. NAIF also uses its risk appetite to innovate. Key aspects of NAIF's risk appetite are articulated to the market to inform potential project participants of NAIF's decision making risk parameters.
- The terms of the RMF including the RAS are communicated to the NAIF executives. The NAIF operational philosophy seeks to anticipate and mitigate risks before they occur and to reflect on the lessons learned when the problems arise. As noted earlier, risk management is embedded into day to day business processes and decision making, and all staff are expected to take responsibility for risk management within their roles.
- The Board specifically requires the CEO and NAIF Executive to have risk accountability assessed as part of the annual performance review.
- All new staff participate in an induction programme which provides information on policy requirements, and all staff undertake annual compliance training, which includes risk management coverage.
- NAIF's risk management is supported by a suite of best practice policies and procedures which are supplemented by supportive systems and processes.
- Risk management performance is evaluated through control processes including management reporting and a system of independent review and Board oversight through the compliance plan, external audit and internal audit reviews. Risk

Management performance is reported to BARC, Board and through government required reporting such as the Annual Report. The BARC will use this information as part of its Charter to assess the adequacy of the internal control environment, and that management is effectively managing the risks.

Governance is a live process

NAIF has developed appropriate policies, procedures and a risk management framework, including a Risk Appetite Statement. Given the start up nature of the organisation it is appropriate to have a staged approach to the development and refinement of policies and procedures.

The NAIF Board and its executives do not regard its governance as static. NAIF's Governance Framework has and will be regularly reviewed and adjusted as required, to ensure NAIF operates effectively and efficiently and meets best practice governance as required by the Investment Mandate. The Investment Mandate requires the Risk Appetite Statement to be reviewed annually to address emerging risks, changes to existing risks and changes to Government policy[57]. Review of policies is also specifically built into NAIF's policies. This also aligns with NAIF's approach to adapt to emerging risks, consultation and better understanding of its stakeholders and mandate, the environment in which it operates and its innovation culture. Against that evolving background, NAIF's governance arrangements are regularly reviewed and adjusted as required which allows NAIF to continue effectiveness and efficiency of its operations.

Risk based credit assessment

Responsibilities and accountability for outcomes are clearly articulated throughout the NAIF organisation including in relation to credit assessment:

- Deal Team Leader roles on lending transactions;
- Credit recommendations in relation to Investment Proposals, to be made by the CEO and Chief Credit Officer in respect of all credit approval applications submitted in relation to a proponent's Investment Proposal (applying for NAIF financial assistance) before they are considered by the Board; and
- the Board making an Investment Decision (to offer or not to offer financial assistance) independently including of the responsible Minister.[58]

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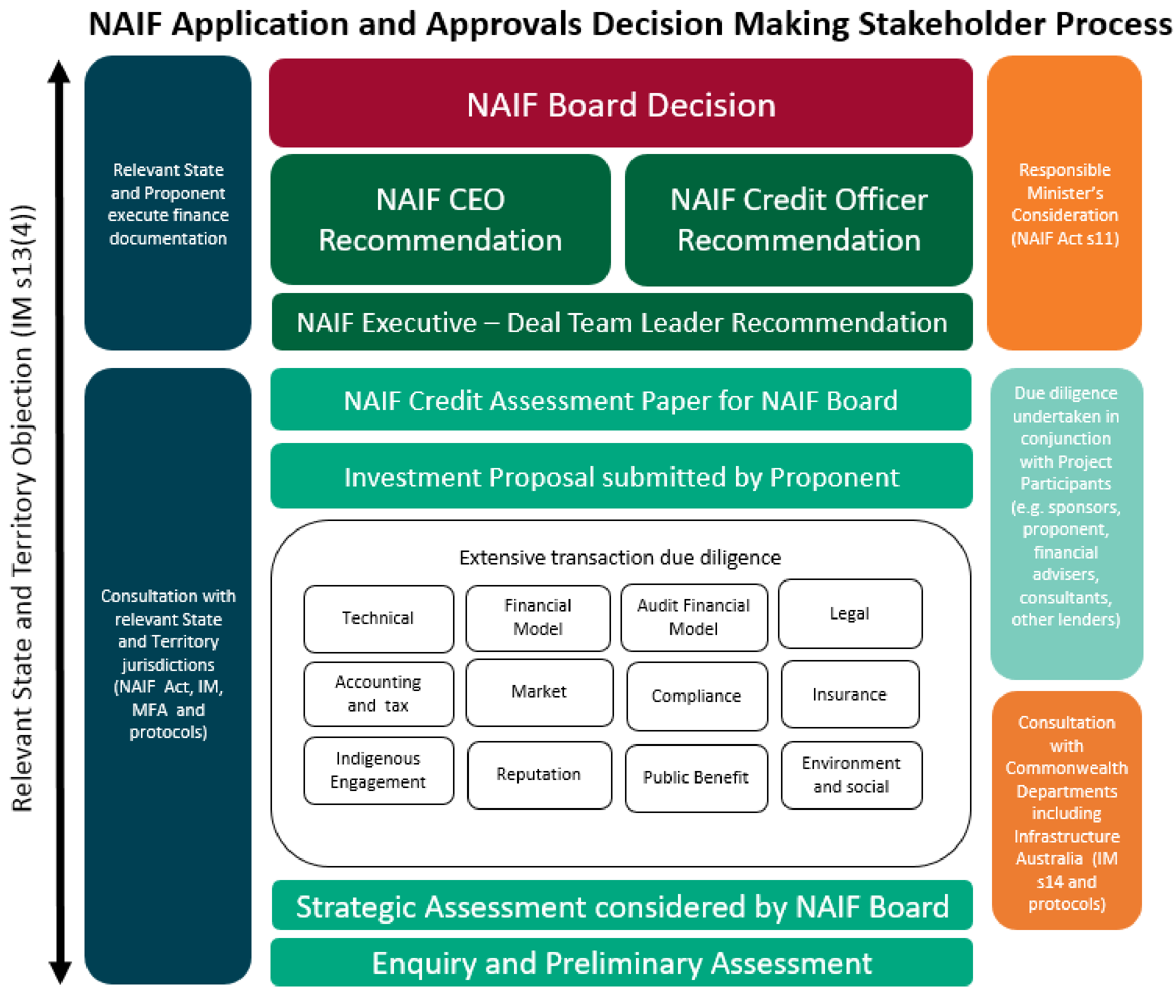
[57] Investment Mandate, Section 12(4)

[58] Refer to Section 1 Introduction of this submission

Credit decision-making hierarchy



An extensive risk assessment of any Investment Proposal will be undertaken by the NAIF deal team. The CEO and Chief Credit Officer and Board will have direct access to the deal team executives and other persons as they may require in performing their roles. The NAIF Executive also have the flexibility to obtain outside expertise as necessary and appropriate to assist the input and development of credit papers.

In Board deliberations generally there will be regular consideration of significant risks facing major programs, projects and activities and the entity as a whole.

Efic Service Level Agreement (SLA) arrangements

Services in place at all relevant times

Australia's export credit agency, Efic provides services to NAIF through a SLA. This agreement allows NAIF to access the expertise of Efic's > 95 full time equivalent staff.

Efic is an experienced 'market gap' financier, with expertise in managing large and complex lending transactions. NAIF also exists to fill market gaps in infrastructure lending, leveraging off its own and Efic's expertise and resources to support the provision of infrastructure investment in northern Australia.

Since its establishment, NAIF has utilised more than half of Efic's personnel in various capacities including the Chief Financial Officer, General Counsel, Senior Legal Counsel, Board Secretary, Head of Compliance, Head of Human Resources, Head of Information Technology, Project Finance Environment & Technical review and Portfolio Management.

The services provided by Efic under the SLA include:

a. transaction services such as due diligence, credit assessment, environmental and technical review and loan management; and
b. administrative and corporate services, such as secretariat and board secretary, legal, compliance, financial management and reporting, human resources, information technology and communications, and property management.

A key benefit of the SLA is the flexibility for NAIF to use Efic's services as and when required, to use its own resources, or to access other specialist resources as considered necessary. This allows NAIF to meet the unique needs of its business, proponents and other stakeholders effectively.

The SLA arrangement also ensures an efficient use of existing Commonwealth resources, reducing the duplication of resourcing requirements across government entities.

Efic performing to best practice standard

Efic is a corporate Commonwealth entity governed by its own bespoke legislation and by the terms of the PGPA Act. It is governed by an independently appointed Board, which is an 'accountable authority' for PGPA Act purposes. The Efic Board is responsible for its own corporate governance, managing its affairs and overseeing its operations.

Efic has informed NAIF of the following (where references to RAS and RCM refers to the Efic RAS and RCM):

'*As service provider to the NAIF under the SLA, Efic is responsible for providing a range of services to NAIF to a high professional standard and in accordance with relevant best practice and in compliance with all applicable laws. The Efic Board has well established governance practices to satisfy itself that senior management are implementing the Board-approved risk management strategy and developing policies, processes, procedures and controls for identifying and managing risks in all areas of activity, including NAIF. A key document the Efic Board has approved is the Risk Management Framework that sets out the core principles and the types of risks it faces, which forms the basis of the Risk Appetite Statement (RAS) and the Risk Control Matrix (RCM).*

The RAS, while not a public document, describes in detail the manner in which Efic's risk appetite and tolerances (qualitative and quantitative limits) are established and subsequently controlled. In relation to NAIF, the RAS states "…in performing services for the NAIF, there may be unique risks that need to be identified and managed consistent with NAIF's Risk Appetite Statement". Similarly, the RCM is not a public *document as it sets out each of the individual risks that Efic faces, as well as the processes and the people responsible for managing these risks. It also includes management's ratings regarding the likelihood and consequences of each risk. Risks are classified depending on their nature: strategic, reputation, credit/country, market and operational/financial. The RCM also identifies the obligations that Efic has in the provision of services to the NAIF.*

A key aspect of the SLA with NAIF is that Efic is using the same key systems and processes that are used for Efic. These services and processes and associated internal controls are subject to regular review by an independently appointed internal audit provider, currently Deloitte. This arrangement ensures that NAIF can draw on Efic's systems and expertise and be comforted that internal audit have established a rigorous audit plan that is reviewed and approved by the Efic Audit Committee and Board. Additionally, in preparing financial information for NAIF, Efic is subject to review by the Australian National Audit Office and its appointed agent, currently KPMG, to perform an independent review of the financial statements.

Together, Deloitte and the ANAO provide a high level of assurance that key systems and controls used by Efic in its day to day operations, including services provided to NAIF, are consistent with best practice and satisfy PGPA Act good governance requirements.'[59]

Financial Monitoring

The $5 billion of NAIF financial assistance has been appropriated[60]. The loans or other assistance advances as well as revenue earned by the NAIF (including interest earned and fees charged) are reported in the accounts of the Department of Industry, Innovation and Science (Department). Protocols have been developed between NAIF and the Department to manage the transaction of investment funds and the monitoring of repayments made.

In preparing financial information for NAIF, Efic is subject to review by the Australian National Audit Office and its appointed agent, currently KPMG. The financial services provided to NAIF includes monthly management reporting to the Board and to Government via the Central Budget Management System (CBMS) covering actual performance and comparison to budgets. A financial commentary is also provided to NAIF management to highlight particular aspects of the months performance and to ensure actual expenditure is consistent with budget and forecast. In addition, annual statutory accounts are prepared for inclusion in the Annual Report, as well as annual reporting via CBMS. The Efic CFO is required to represent and warrant to the ANAO and the NAIF Board that the NAIF accounts are true and fair and all accounting policies have been adhered to. The finance function is also responsible for the preparation of budgets for the Corporate Plan and detailed analysis of data for other government reporting including for senate estimates. The reporting framework for NAIF mirrors the reporting framework for Efic and this allows a high level of automation with payroll and accounts payable fed directly into the NAIF general

[59] Efic Chief Financial Officer & Chief Risk Officer email dated 24 July 2017

[60] Section 41, NAIF Act provides 'The Consolidated Revenue Fund is appropriated to the extent of $5 billion …'

ledger. All financial payments by NAIF are made by Efic through Efic systems and key controls relating to segregation of duties to minimize fraud risk are subject to regular audit.

Portfolio management and performance monitoring

Through the SLA with Efic, NAIF is leveraging the expertise of the Efic portfolio management function. NAIF is adopting and tailoring Efic established frameworks to create a system which will monitor the performance of NAIF's investments. Efic has also developed protocols in conjunction with NAIF and the Commonwealth and Jurisdictions to ensure conditions precedent are met prior to funds being dispersed, monitor timely repayments and provide detailed reporting to NAIF, the relevant jurisdiction and Commonwealth on the performance of project construction and operations.

Budget

NAIF through the Commonwealth Budget reports on its operating expenses. These costs are budgeted at circa $8 million per annum. Expenditure includes expenses relating to the SLA with Efic, specialist staff engaged under contract and Board, travel and overhead costs.

The establishment of the SLA with Efic has generated significant efficiencies, as reflected in the substantially lower estimated expenses of $6.1M[61] (vs budget of $8.1M) for NAIF in its first year of operation including expenses incurred under the SLA with Efic and the operation of NAIF headquarters in Cairns, Queensland. This is also substantially lower than other similar new government stand alone entities in their first year of operation. Therefore, through the SLA arrangements NAIF has already generated substantial efficiencies.

Audit

The Australian National Audit Office (ANAO) has been appointed as external auditors of NAIF's operating expenses. NAIF is finalising arrangements to appoint an internal auditor. NAIF's Board is giving consideration to outsourcing internal audit to a panel of specific experts as is common practise in small, specialist organisations. Best practice consideration is being given to the scope of NAIF's internal audit function to reflect the maturity of NAIF's business model. NAIF's internal audit programme will build on the assurances and testing through the Efic audit functions as NAIF leverages many of the established processes within Efic to undertake its functions.

Contributing to whole of government processes

Through NAIF's Executive, NAIF contributes to whole of government reporting processes including government accountability, budget and financing reporting. This includes for example, development of its Corporate Plan and Annual Report as required under the PGPA Act, development of budget material as part of the Portfolio Budget Statements, reporting obligations regarding contracts, procurements, regional and office footprints and remuneration expenditure and processes in response to

[61] NAIF 2016-2017 Corporate Plan, p10

whole of government coordination and circular requests and reporting on occasions of public interest disclosures and freedom of information requests.

ANAO Fundamental - Performance Orientation

Behaviours that enable sustained performance success

NAIF combines the 'hard' structured governance arrangements and processes referred to previously with 'soft' governance behaviours to support an overall governance performance oriented framework.[62] Some of the ways this is evidenced in NAIF's practices are set out in the Table below using the ANAO Guide behavioural indicators.

Values driven leadership approach	
Action Orientation	Bi weekly Origination business development team meetings. Prioritise pipeline, workshop most promising opportunities/ knowledge sharing and determine where effort/resources should be directed in the short to medium term. Regular Transaction/Execution team meetings to focus on issues and risks to progress deals through stages to financial close.
Long term vision and responsiveness to environmental trends	Leadership and strategic planning workshops. Regular horizon scanning to assess need to adjust strategy. Corporate culture of continuous improvement and tailoring of approaches to governance to optimise organisational outcomes.
Disciplined culture which provides autonomy to individuals	Strong risk culture via taking ownership of risk at all levels of the organisation and in identification and management of risk including emerging risk. Linkage of risk plans with strategic and corporate plans, audit programs, human resources planning and communications strategies.
Strong focus on selecting the right team for the job	Recruitment of talented team with specialist capability (refer below).

62 ANAO Guide p 3

Respect for the individual	Nurturing and empowering of talent by Board and CEO and by senior executives to develop juniors. For example Executives present their deal analysis directly to the Board. Collaborative, consultative style of leadership throughout NAIF organisation and in how its executives interact with other stakeholders. Supported by key policies such as the Code of Conduct.
Employees engaged as vital contributors	Staff input into development of key governance arrangements and strategic scorecard to operationalise Strategic Plan.
Trust based relationships	Significant responsibility and autonomy given to team members at all levels and in all roles. Open transparent communication between management and staff.
High performance is rewarded and underperformance is addressed	Clear understanding of NAIF objectives and how outcomes will be measured. Key Performance Indicators (KPIs) agreed with staff and constructive feedback in performance reviews semi-annually. Managers trained to coach for performance and behaviour improvement.
Strong commitment to quality and reliability	Staff input into strategic planning, RMF (including RAS) and credit assessment guidelines and reflected in KPI frameworks.
Superior client focus	Significant stakeholder engagement refer to Corporate Plan 2016-17. (p 7)

Some of those items are addressed specifically below.

NAIF talent strategy

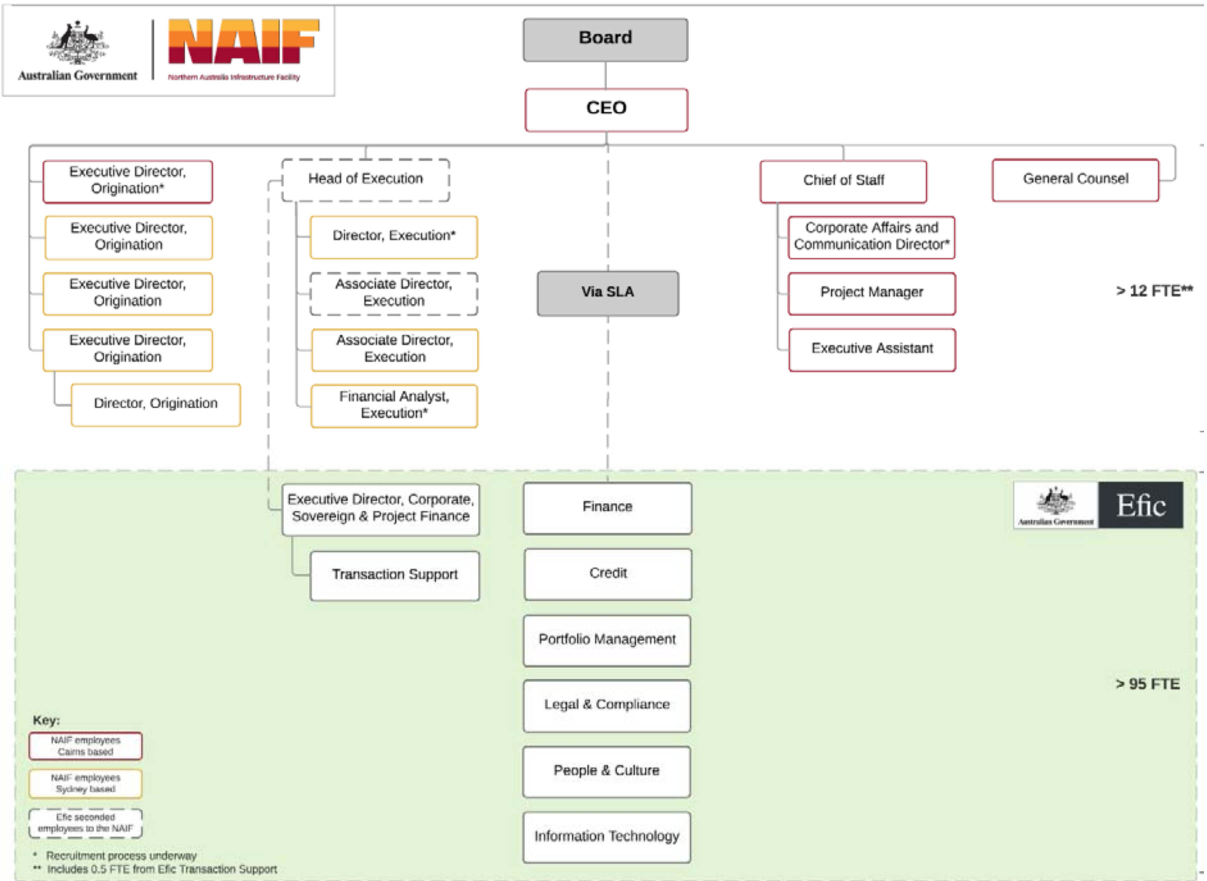
The NAIF team understands that the projects NAIF invests in must promote the proper use and management of public resources for which NAIF is accountable and responsible to its Commonwealth stakeholder. They are focussed on promoting the achievement of the NAIF objectives but also understand that there is an expectation that the Commonwealth funds advanced by NAIF will be repaid or refinanced[63] (Section 15 of the PGPA and Section 7(b) of the Investment Mandate).

[63] Section 15 of the PGPA and Section 7(b) of the Investment Mandate

The NAIF understands that it must be a viable, credible and reliable source of finance for the market to engage with it. Building a high performing organisation that is agile, flexible and easy to do business with is critically important to achieving the NAIF's strategic vision.

NAIF has built a team with the commercial acumen, project finance, lending experience and government insight to achieve those goals. In recruiting, NAIF has focussed on strong technical and credit skills combined with behaviours to develop a stakeholder centric, risk aware, results focussed culture of engaged team members who can maintain a one team seamless approach to delivering on the NAIF mandate.

NAIF Organisational Chart



NAIF has recruited a talented team of executives. As at 31 July 2017 there are 12.1 Full Time Equivalent (FTE) positions dedicated to NAIF (in addition to the more than 95 Efic staff available to NAIF under the SLA). These include:

- Four Origination specialists with responsibility to work with stakeholders to identify opportunities for NAIF to finance. These are highly experienced infrastructure financiers from a mix of commercial and investment banks with lending, financial advisory and equity arranging skills, to help structure bankable projects aligned with the NAIF's Investment Mandate.
- NAIF also has four dedicated transaction execution executives experienced in project financing. We have a full time General Counsel and Chief of Staff with extensive government expertise.

ANAO Fundamental - Openness, transparency and integrity

THE ANAO Guide states that:

'*Accountability is the process by which public sector entities, and the individuals within them, are held responsible for their overall results, decisions and actions and are subject to appropriate external scrutiny. Appropriate levels of openness, transparency and integrity are required to ensure that stakeholders have confidence in public sector decision-making processes and actions.*

Openness and transparency involve meaningful consultation with stakeholders and the consistent communication of reliable information, having regard to charter responsibilities, privacy obligations and other legal and policy requirements. They are supported by good information and records management practices.'[64]

NAIF stakeholder engagement

Stakeholder engagement is one of the five pillars of NAIF's Strategic Plan.

As the ANAO Guide prescribes,[65] NAIF has developed a detailed Stakeholder Engagement Plan which:

- identifies the significant number of different stakeholder groups with whom NAIF engages;
- takes into account the nature and extent of the engagement required, noting that different approaches are required to position NAIF to engage with each key stakeholder effectively;
- reflects key risk management perspectives, which inform the nature and extent of NAIF stakeholder engagement after considering the risks and benefits of stakeholder involvement, as well as the risks associated with inadequate engagement.
- NAIF has prioritised stakeholders to focus more effort on those who are most important to helping NAIF achieve its vision and objectives;
- focus the right NAIF resources on the right stakeholders;
- use multiple platforms and adjust the communication approach for each stakeholder group with the communication plan identifying who to engage with, what the core messages are, why NAIF is engaging, and how, and with the aim of being proactive not reactive; and
- NAIF's communication platforms have included direct engagement (including direct engagement with more than 1630 individuals); conference speaking events (more than 22 events); industry networking, website and media interviews. Refer to NAIF's website for a selection of speeches given by NAIF CEO.

Government interested parties

Under the NAIF Act and Investment Mandate the responsible Minister (at the Commonwealth level) and the States and Territories governments (at a jurisdictional level) have rights of veto on a project proposal proceeding and there are consultation

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64 ANAO Guide p 17

65 ANAO Guide p 45-6.

obligations on NAIF to consult with those entities and also others such as Infrastructure Australia (where NAIF's debt will exceed $100 million) and other government stakeholders as required.

NAIF has engagement protocols operating with those entities, which reflect the provisions of the NAIF Act and Investment Mandate. The information sharing between NAIF and the various stakeholders, which has been undertaken, has been very cognisant of the need to maintain proponent information as commercial in confidence. NAIF is also mindful of maintaining the independence of the Board in making decisions and managing conflicts of interest that may arise between various arms of government.

Other communications

With a view to providing, as much transparency to stakeholders as feasible within NAIF's framework, which requires it to act in the public interest in achievement of its objectives NAIF has:

- tabled Opening Statements to Senate Estimates (on 2 March 2017 and I June 2017) to provide communication updates on NAIF activities and responded to Senate Committee questions on notice;
- provided briefings to Parliamentarians across three northern jurisdictions including the Shadow Minister for Resources and Northern Australia;
- briefed the Joint Standing Committee on Northern Australia;
- published its 2016-17 Corporate Plan;
- distributed a newsletter to over 700 stakeholders on 14 July 2017. This is also available on the NAIF website; and
- The NAIF CEO and Chair have given media interviews on selected topics.

Freedom of Information

NAIF has received and responded to over 1,300 enquiries made under the *Freedom of Information Act 1982*. Where it has been able to disclose information requested it has done so. Many of the enquiries have related to information which is commercial in confidence and which is protected in the public interest.

ANAO Fundamental - Effective collaboration

The ANAO identify the following steps as key principles in developing effective collaboration[66]:

- *Understand the cross-entity environment*
- *Promote cross-entity performance and accountability*
- *Establish clear roles, responsibilities and governance arrangements*
- *Work towards a shared objective or outcome*
- *Manage shared risk*

66 ANAO Guide p 57

- *Facilitate good governance through written agreements*
- *Where appropriate, develop partnerships outside of government*

These principles are the basis of NAIF's operational procedures including core components of the Investment Mandate and NAIF's engagement and consultation activities through its Application and Approval Procedure as demonstrated by:

- undertaking consultation with government stakeholders including as required under the Investment Mandate regarding NAIF's RMF and RAS. NAIF has also actively sought to learn from the experience of other Commonwealth lenders (CEFC and Efic) in the development of those governance and risk management frameworks;
- the development of written protocols with Commonwealth departments and agencies as well as the Queensland, Northern Territory and Western Australian Governments to seek feedback on potential transactions and relevant policy considerations;
- NAIF's approach to policy development has been to draw on internal (Board and executive experience), external stakeholders input and independent expert review as appropriate;
- the Board is provided with an update on relevant policy matters at each Board meeting by and has also sought briefings from Commonwealth Departments and other stakeholders for example on matters such as water infrastructure and indigenous engagement initiatives;
- collaboration with government networks and organisations including the Regional Development Australia network, Austrade and CSIRO and the Office of Northern Australia in regards to advice and on the ground expertise regarding regional economic, population, trade and infrastructure priorities and potential investors or stakeholders;
- collaborative relationships have been also established across the State and Territory governments with a range of policy and government stakeholders to promote and support NAIF's objectives for economic and population growth in the north;
- the establishment of the service level agreement with Efic, outlining clear roles, responsibilities and accountability to ensure efficient and effective use of government funds in the administration and operations of the NAIF; and
- leveraging networks with commercial lenders and advisers to support the promotion and awareness raising activities as a new source of finance for northern Australia infrastructure, and discussion of shared strategic market opportunities and trends and identification of potential transactions that may suit the requirements of the NAIF Investment Mandate.

Part B: NAIF Governance – ASX Principles

The Australian Securities Exchange (ASX) Governance Council has established eight core Corporate Governance Principles and Recommendations for ASX-listed companies (Principles). As a Corporate Commonwealth entity, we have used these Principles as a guide to the extent to which they are applicable given NAIF's size and unlisted nature. They are:

ASX Principles	
1.	Lay solid foundations for management and oversight
2.	Structure the Board to add value
3.	Act ethically and responsibly
4.	Safeguard integrity in financial reporting
5.	Make timely and balanced disclosures
6.	Respect the rights of security holders
7.	Recognise and Manage risk
8.	Remunerate fairly and responsibly

Comments in Part A, which are applicable to these principles, are not repeated but are assumed to be read in the context of the Principles.

Principle 1: Lay solid foundations for management & oversight

The NAIF Act sets out parameters for the Board and the administration of NAIF through the CEO. Additional requirements are incorporated in the PGPA Act, which has duties that apply to all Board members and NAIF employees.

NAIF's Board has also determined its formal responsibilities and documented them in the Board Charter. The powers and high level responsibilities of the CEO and Executives of NAIF, as delegated by the Board, are documented in the Board Charter section entitled "Duties & Responsibilities of the CEO" and "Duties & Responsibilities of the Executive".

The Board assesses the performance of the CEO annually. In turn, the CEO assesses the performance of the Executive team on a twice-yearly basis under NAIF's performance management program.

There are various Board approved policies (refer to Schedule 2) which operate to govern management actions and provide Board oversight. There include the Anti–corruption Policy, Business Continuity Policy, CEO and Director Travel Expense Policy, Code of Conduct, Compliance Policy and Plan, Conflict of Interest, Confidentiality Policy, Complaints Handling Policy, Diversity Policy, Fraud Control Policy, Freedom of Information Policy, Incident Reporting Policy, Public Interest Disclosure Policy, Privacy Policy, Procurement Policy, Remuneration Policy, Staff Securities Trading Policy and Staff Travel Policy and Media Protocols.

Principle 2: Structure the Board to add value

The Board has been given a mandate to achieve transformational change and public benefit to develop northern Australia and to catalyse growth in the population and economies of the north and take advantage of the opportunities particularly with the emerging middle class in the Asia Pacific. It is also tasked with encouraging greater private sector involvement in financing the north and in proponents to deliver sustainable indigenous engagement employment, participation and procurement strategies. These are important objectives to add value for northern Australia and nationally for which the Board is responsible.

NAIF's Board has been established as the accountable authority for NAIF as a corporate Commonwealth entity governed by its own legislation and more generally by the terms of the PGPA. The Efic and CEFC Boards also operate under that framework.

It has also been mandated to operate commercially (refer to its Section 17 (1) Investment Mandate governance to have regard to Australian best practice corporate governance for Commercial Financiers) within the directions given for the performance of its functions under the Investment Mandate.

Under the NAIF Act its Board is an independent decision maker being the only entity tasked to make a decision to offer or not to offer financial assistance.[67] However, its decisions to offer finance or propose to provide financial assistance can be objected to by the Commonwealth responsible Minister and /or the relevant Jurisdiction and a project would then not be able to proceed. [68] Therefore, NAIF's Board has additional layers compared with CEFC and Efic, which, while also independent decision making bodies, are not constrained by the veto that can be applied to NAIF Board decisions. This may be regarded an added protection in the way NAIF's governance has been mandated.

All NAIF Directors have relevant experience as required under section 15 of the NAIF Act. Additionally, all Directors have a broad range of skills relevant to the effective management, accountability and responsibility for a public lending organisation. Refer also to Schedule 5.

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[67] Refer to Section 1 Introduction of this Submission.

[68] Refer to Section 1 Introduction of this Submission.

Skill Category		Explanation	Number of Directors with experience
Northern Australia Experience		Deep understanding of Northern Australia issues	7
Business Leadership		Successful career at a senior executive level	7
Board Experience		Held Chair, Deputy Chair or Company Secretary role in a listed or unlisted company	7
Financial Acumen		Experience in corporate and investment banking, Treasury, financial management	7
Risk Management		Oversight of risk frameworks and practices, skilled at identifying and managing key corporate risks	7
Corporate Governance and Compliance		Commitment and understanding of the highest standards and systems of public sector and/or Commercial Financier systems of governance	7
Strategy		Development, oversight and implementation of strategic vision	7
Industry Sector Experience		Deep understanding and professional experience working in industry sectors relevant to northern Australia.	7

Table information as at 30 July 2017.

The performance of the Board will be reviewed, regularly.

The Executive team provides the Board with comprehensive and timely information on relevant matters to enable the Board to discharge its duties effectively, including providing Board papers, at least one week prior to each meeting. Board members are also able to obtain additional information as they wish and have access to all members of NAIF's Executive team. With the approval of the Chairman, a Board member in the furtherance of his or her duties is able to seek independent professional advice at NAIF's expense or consult with the General Counsel for advice.

Key performance indicators and measures for the forward four year period will be published in NAIF's 2017 – 2020 Corporate Plan, with performance against the indicators outlined in the Annual Report.

Principle 3: Act ethically and responsibly

Under the Investment Mandate NAIF must not act in a way that is likely to cause reputational damage to the Commonwealth Government's reputation or that the relevant State or Territory government.[69]

[69] Section 16 Investment Mandate

NAIF must also have regard to best practice including developing and annually reviewing policies with regard to environmental, social and governance issues as prescribed by the Investment Mandate.[70]

All NAIF employees are required to adhere to its Code of Conduct which outlines their obligations and responsibilities.

Building and maintaining a diverse workforce with the technical skills and behaviours to fulfil the NAIF mandate is a strategic priority for NAIF. NAIF believes diversity helps to build employee engagement, be more innovative, and respond better to the diverse needs of all its stakeholder groups.

NAIF champions a constructive and inclusive culture that embraces the different perspectives, identities and experiences of our people.

Principle 4: Safeguard integrity in financial reporting

The BARC is discussed in above. Its accountabilities are set out in the NAIF Board Audit and Risk Committee Charter. The BARC has broad responsibilities to the Board regarding financial and risk oversight and management, including:

- Risk setting and parameters
- Internal and external audit function
- Compliance controls and oversight
- Management and internal controls
- Financial and performance reporting
- Audit review

The three Committee members, including the Chair of the Committee, are independent, non-executive Board members and all are required to have appropriate qualifications, knowledge, skill and experience to perform their functions. The BARC Chair is not permitted to be the Chair of the Board. The current BARC Chair is a Chartered Accountant and member of the Governance Institute.

Principle 5: Make timely and balanced disclosure

There are a number of disclosure obligations, which NAIF as an accountable authority satisfies:

- NAIF's Corporate Plan for 2016-17 is published on its website. The 2017-20 Corporate Plan and 2016 Annual Report (including financial statements) will be published on the NAIF website in August and October respectively.
- NAIF's Investment Mandate requires that within 30 business days of an Investment Decision, it must publish information regarding the transaction on its website, subject to commercial confidentiality. [71]
- NAIF has responsibilities under the PGPA Act to keep the responsible Minister and the Minister for Finance informed about its operations.

[70] Section 17 (1) Investment Mandate

[71] Section 17(3) Investment Mandate

With a view to providing, in line with the public interest as much transparency to stakeholders as feasible within NAIF's framework, which requires it to act in the public interest in achievement of its objectives NAIF has:

- tabled Opening Statements to Senate Estimates (on 2 March 2017 and 1 June 2017) to provide communication updates on NAIF activities;
- provided briefings to Parliamentarians across the three northern jurisdictions including the Shadow Minister for Resources & Northern Australia
- briefed the Joint Select Committee on Northern Australia;
- distributed a newsletter to over 700 stakeholders (available on NAIF's website); and
- Media interviews by the NAIF Chair and CEO on selected topics.

NAIF has received and responded to >1,300 enquiries made under the *Freedom of Information Act 1982*. Where it has been able to disclose information requested it has done so. Many of the enquiries have related to information which is commercial in confidence and which was protected in the public interest.

Principle 6: Respect the rights of Security holders

NAIF understands that projects it invests in must promote the proper use and management of public resources for which NAIF is accountable and responsible to its Commonwealth Government stakeholder. [72] NAIF must also not act in a way that is likely to cause damage to Commonwealth or relevant State & Territory Governments' reputation.[73]

While focused on promoting the achievement of NAIF objectives, NAIF also understands that there is an expectation that the Commonwealth funds advanced by NAIF will be repaid or refinanced.[74]

NAIF has working relationship with the Commonwealth Government, at various levels, under protocols to ensure that the independence of NAIF and its Board is maintained at all times. This includes consulting as required under the Investment Mandate and on the RAS to guide its Investment Decisions[75] or as NAIF determines is appropriate.[76] NAIF also consults with other relevant government stakeholders including Infrastructure Australia and Commonwealth Government Departments in accordance with the Investment Mandate. [77]

In addition, NAIF must have regard to Australian best practice government governance principles when performing its functions.

Principle 7: Recognise and manage risk

NAIF's risk management systems and procedures are structured around key requirements of the PGPA Act, the NAIF Act, the Investment Mandate and other relevant legislation, regulatory guidance and prudential standards, along with prudent commercial practice.

The NAIF RMF incorporates the core principles, tools and processes that govern NAIF's approach to risk management. This framework describes the manner in which NAIF's risk

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[72] Section 15 PGPA Act

[73] Section 16 Investment Mandate

[74] Section 7(b) Investment Mandate

[75] Section 12(1) Investment Mandate

[76] Section 14(2) Investment Mandate

[77] Section 14 (1) & (2) Investment Mandate

appetite and tolerances are established and subsequently controlled. It also sets out core principles, outlines responsibilities, categorises the risks that NAIF faces and identifies the strategies adopted to manage those risks. NAIF recognises that risk identification and management is ongoing. Risks are reviewed with a focus on potential new risks that may arise.

NAIF's executive team will consult with relevant staff regarding any control deficiencies or lapses, any compliance breaches or incidents and provide assurances to the Board in regard to the currency of NAIF's risk profile and the effectiveness of its compliance and control measures.

The appointed internal auditor/s will report to the NAIF executive team and be accountable to the BARC. The BARC is responsible for overseeing the scope of NAIF's internal audit and recommends to the Board the appointment or dismissal of the internal auditor. The BARC has access to the internal auditor without the presence of management.

Principle 8: Remunerate fairly and responsibly

In accordance with legislative requirements, the fees and other amounts payable to NAIF Board members are determined by the Australian Government's Remuneration Tribunal (Tribunal). The Tribunal also determines the CEO's remuneration package. Therefore, key remuneration decisions are made outside of NAIF.

Board members do not receive any performance related remuneration. They are not entitled to any retirement benefits beyond statutory superannuation entitlements. For more information on the Remuneration Tribunal's operations, visit their website.

Under the NAIF Act, NAIF may employ persons it considers necessary for the performance of its functions and exercise of its powers. The NAIF Staff Remuneration Policy requires that employees salaries should be determined using salary data from the financial services sector, specifically the Financial Institutions Remuneration Group or similar. Each position is benchmarked, comparing relevant experience and skills, along with key accountabilities.