

Investment Mandate

Summary

- 3.1 On 17 March 2016, the Government released a draft copy of the Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (the Investment Mandate) for public consultation.¹
- 3.2 The Investment Mandate is a legislative instrument which enables the Minister to direct the Northern Australia Infrastructure Facility (the Facility) in relation to the provision of financial assistance for infrastructure projects.²
- 3.3 The Investment Mandate is created under Subclause 9(1) of the Northern Australia Infrastructure Bill 2016 (The Bill).³ The Investment Mandate contains two sections outlining the nature of the direction as well as a schedule of mandatory eligibility criteria for financial assistance, and a schedule of non-mandatory eligibility criteria for financial assistance.

Part 1 – Preliminary and Part 2 – Directions

Summary

- 3.4 Part 1 of the Investment Mandate provides introductory information and states that the direction in the Investment Mandate will commence the day after registration.⁴

1 The Hon Josh Frydenberg MP and Senator the Hon Matthew Canavan, Media Release: Northern Australia Infrastructure Facility moves ahead', 17 March 2016, <http://www.minister.industry.gov.au/ministers/frydenberg-canavan/media-releases/northern-australia-infrastructure-facility-moves-ahead> Accessed 22 March 2016.

2 Northern Australia Infrastructure Facility Bill 2016 (the Bill), p.7.

3 Bill, p.7.

4 Draft Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (IM), p.1.

- 3.5 Part 2 of the Investment Mandate provides the direction to the Facility about how it will make decisions on financial assistance.⁵ Clause 10 states that loans will be the default financing mechanism used by the Facility,⁶ although Clause 11 contains directions for alternative financing mechanisms which may also be used.⁷ When making investment decisions the Facility must ensure that successful projects comply with the mandatory eligibility criteria,⁸ are projects that would otherwise not go ahead,⁹ and that the concessions provided, are the minimum needed to enable the project to proceed.¹⁰

Key Clauses

- 3.6 **Clauses 1 to 5** provide for the Investment Mandate to commence the day after registration as well as specifying the relationship of the Investment Mandate to the Northern Australia Infrastructure Facility Bill 2016 and providing definitions of terms used in the Investment Mandate.¹¹
- 3.7 **Clause 6** states that the Board of the Facility must make investment decisions and inform project proponents as soon as practicable of the decision being made.¹²
- 3.8 **Subclause 7(1)** stipulates that the Facility must not invest in a project unless the Board is satisfied that the project ‘would not otherwise have received sufficient financing from other financiers’.¹³
- 3.9 **Subclause 7(2)** requires that the Board is satisfied that a project that it intends to provide financial assistance to:
- meets all mandatory eligibility criteria;
 - will be able to repay the Commonwealth; and
 - will cover the Facility’s administrative costs and the Commonwealth’s costs of borrowing.¹⁴
- 3.10 **Subclause 7(3)** requires the Board to also consider whether:
- the project meets the non-mandatory criteria in Schedule 2 of the Investment Mandate;
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5 IM, pp 2-6.

6 IM, p.3.

7 IM, pp 3 and 4.

8 IM, p.2.

9 IM, p.2.

10 IM, p.3.

11 IM, p.1.

12 IM, p.2.

13 IM, p.2.

14 IM, p.2.

- a concession may be offered to a project proponent in accordance with Section 9 of the Investment Mandate;
 - the investment would encourage private sector financing; and
 - what effects the project would have on other infrastructure and the financial market.¹⁵
- 3.11 **Subclause 7(4)** that the Board must aim to assist a ‘diversified portfolio’ of projects ‘with respect to industrial and geographic spread across the States and Territory that comprise Northern Australia’.¹⁶
- 3.12 **Subclause 7(5)** allows for the Board to support a ‘large-scale project that has been unable to secure sufficient financing from other financiers due to the scale of debt required.’¹⁷ This subclause permits the Board to support large-scale projects ‘where there is a high proportion of debt to equity’, in these cases the Board may offer financial assistance on similar terms to that which would be provided by commercial financiers.¹⁸
- 3.13 **Clause 8** provides the Board with the discretion to decline investment proposals.¹⁹
- 3.14 **Clause 9** requires that the concessions provided to a project must be the minimum that are necessary for the project to proceed.²⁰ The Explanatory Statement provides that ‘the role of the Facility is not to increase the profitability of Project Proponents, but to support infrastructure projects that are highly unlikely to proceed otherwise’.²¹ Clause 9 also requires the Board to consider public benefit when determining possible concessions.²²
- 3.15 **Subclause 9(3)** ‘provides the Board the flexibility to amend the concessions granted to the Project, or exit the investment altogether if the Project Proponent is performing better than expected.’²³
- 3.16 **Clause 10** states that ‘loans will be the default financing mechanism’²⁴ used by the Facility and provides the following non-exclusive list of possible loan conditions:

15 IM, p.2.

16 IM, p.2.

17 IM, p.2.

18 Explanatory Statement: Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (ES), p.5.

19 IM, p.2.

20 IM, p.3.

21 ES, p.5.

22 IM, p.3.

23 ES, p.5.

24 IM, p.3.

- '(a) longer loan tenor than offered by Commercial Financiers, not exceeding the longest term of Commonwealth borrowings;
 - (b) lower interest rates than offered by Commercial Financiers, which must not be lower than the rate at which the Commonwealth borrows at;
 - (c) extended periods of capitalisation of interest beyond construction completion;
 - (d) deferral of loan repayments or other types of tailored loan repayment schedules;
 - (e) lower or different fee structures than those offered by Commercial Financiers;
 - (f) ranking lower than Commercial Financiers for security and/or cash flow purposes.'²⁵
- 3.17 **Clause 11** allows the Board to use alternative Financing Mechanisms (for example financial guarantees) where these are more appropriate for a particular project.²⁶ When the Facility proposes to use alternative Financing Mechanisms the Minister must 'seek the agreement of the Minister of Finance prior to determining if the alternative Financing Mechanism will be provided'.²⁷ The Facility is prohibited from providing equity for a project.²⁸
- 3.18 **Clause 12** requires that the Facility develops a 'Risk Appetite Statement' to guide its investment decisions and to 'have a greater tolerance for risk relative to Commercial Financiers, due to factors unique to Northern Australia.'²⁹
- 3.19 **Clause 13** requires the Facility to commence consultations with the relevant State and Territory Governments as soon as practicable. Projects may only be funded if they have the support of relevant State and Territory Governments.³⁰
- 3.20 **Clause 14** requires the Facility to consult with Infrastructure Australia on proposals that involve financial assistance greater than \$100 million.³¹
- 3.21 **Clause 15** allows the Facility to provisionally approve projects conditional on the proponent obtaining all regulatory and environmental approvals.
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25 IM, p.3.

26 ES, p.6

27 IM, p.4.

28 IM, p.4.

29 ES, p.6

30 IM, pp 4-5.

31 IM, p.5.

The Facility must not, however, provide financial assistance to a project proposal that has not yet received all relevant approvals.³²

- 3.22 **Clause 16** prohibits the Facility from acting ‘in a way that is likely to cause damage to the Commonwealth Government’s reputation, or that of a relevant State or Territory government.’³³
- 3.23 **Clause 17** requires the Facility to act consistently with ‘Australian best practice government governance principles’³⁴ and to publish on its website guidance for project proponents, and within 30 business days, the results of all investment decisions made by the Board, subject to commercial confidentiality.³⁵
- 3.24 **Clause 18** requires that project proposals receiving financial assistance must comply with the Australian Industry Participation Plan policy. This policy requires project proponents to communicate to Australian businesses the opportunities to supply goods and/or services. ‘The purpose of this clause is to maximise the opportunities for Australian businesses to participate in major Projects.’³⁶

Schedule 1 – Eligibility for Financial Assistance – Mandatory Criteria

Summary

- 3.25 Prior to recommending the provision of financial assistance to a project the Facility Board must be satisfied that the project meets all seven mandatory criteria.

Mandatory Criteria

- 3.26 **‘The proposed Project involves construction or enhancement of economic infrastructure.’** The Project Proponent must demonstrate how a project increases economic activity, ‘including efficiency in developing and connecting markets, and population in a region’. The Project ‘must bring new capacity online either through the construction of new infrastructure or by materially enhancing existing infrastructure’. Eligible

32 IM, p.5.

33 IM, p.5.

34 IM, p.5.

35 IM, pp 5-6.

36 ES, p.7.

infrastructure includes, but 'is not limited to, rail, water, energy, and communications networks, ports and airports.'³⁷

- 3.27 **'The proposed Project will be of public benefit.'** Preference will be given to projects that serve or have the capacity to serve multiple users and 'produce benefits to the broader economy and community beyond those able to be captured by Project Proponents.'³⁸
- 3.28 **'The proposed Project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope, without assistance.'**³⁹
- 3.29 **'The Project is located in, or will have a significant benefit for, Northern Australia'**. Projects may still be eligible if they are partially located outside Northern Australia⁴⁰ so long as they 'produce significant benefits for Northern Australia'.⁴¹
- 3.30 **'Facility's loan monies are not the majority source of debt funding'**. To ensure that the Facility is working in partnership with the private finance sector the financial assistance provided by the Facility must 'not exceed 50 per cent of total debt for the proposed Project'.⁴²
- 3.31 **'The loan will be able to be repaid, or refinanced'**. The Project Proponent 'must present comprehensive financial modelling to demonstrate the ability of the Project to repay the debt in full and on time, or refinance, based on assumptions acceptable to the Board.'⁴³
- 3.32 **'Indigenous engagement strategy'**. 'The Project Proponent must provide a strategy which sets out objectives for Indigenous participation procurement and employment that reflects the Indigenous population in the region of the proposed Project'.⁴⁴

37 IM, p.7.

38 IM, p.7.

39 IM, p.7.

40 Northern Australia includes: 'all of the Northern Territory, and those parts of Queensland and Western Australia above the Tropic of Capricorn. It also includes the important regional centres of Gladstone (Queensland), Newman (Western Australia) and Exmouth (Western Australia), which have boundaries that intersect with the Tropic of Capricorn.' IM, p.7.

41 IM, p.7.

42 IM, p.8.

43 IM, p.8.

44 IM, p.8.

Schedule 2 – Eligibility for Financial Assistance – Non-Mandatory Criteria

Summary

- 3.33 Projects that meet one or both of the non-mandatory criteria will be given preference in the Facility Board’s decision making process.

Non-Mandatory Criteria

- 3.34 **‘The proposed Project is seeking financing from the Facility for an amount of \$50 million or more.** A Project proponent may aggregate multiple pieces of infrastructure into a single Project.’⁴⁵
- 3.35 **‘There is an identified need for the Project.’** Preference will be given to projects that have been identified through Commonwealth, State or Territory assessment processes or priority lists ‘such as the *Northern Australia Infrastructure Audit*’.⁴⁶

45 IM, p.9.

46 IM, p.9.

Hon Warren Entsch MP
Chair

13 April 2016