
The Parliament of the Commonwealth of Australia

Advisory Report on the Northern Australia
Infrastructure Facility Bill 2016

Joint Select Committee on Northern Australia

April 2016

Canberra

© Commonwealth of Australia 2016

ISBN 978-1-74366-500-8 (Printed version)

ISBN 978-1-74366-501-5 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website: <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



Contents

Chair's Foreword	vii
Committee Membership	ix
Terms of Reference.....	xiii
List of Abbreviations	xv
Recommendation	xvii

REPORT

1 Introduction	1
Background	1
Overview and Purpose of the Bill	3
Financial Impact.....	4
Regulatory Impact Statement.....	4
About the Inquiry	5
Objectives and Scope	5
Inquiry Conduct.....	6
Reporting Date.....	6
Report Structure.....	6
2 Northern Australia Infrastructure Facility Bill 2016	7
Part 1 – Preliminary.....	7
Key Clauses.....	7
Part 2 – Northern Australia Infrastructure Facility	7
Key Clauses.....	7
Analysis.....	8
Conclusion	9

Part 3 – Investment Mandate	9
Key Clauses.....	9
Analysis.....	10
Conclusion	13
Part 4 – Consideration by Minister	14
Key Clauses.....	14
Analysis.....	15
Part 5 – Board of the Facility	16
Key Clauses.....	16
Analysis.....	17
Part 6 – Administration	18
Key Clauses.....	18
Analysis.....	19
Conclusion	19
Part 7 – Miscellaneous	19
Key Clauses.....	19
Analysis and Conclusion	20
3 Investment Mandate	21
Summary.....	21
Part 1 – Preliminary and Part 2 – Directions	21
Summary.....	21
Key Clauses.....	22
Schedule 1 – Eligibility for Financial Assistance – Mandatory Criteria	25
Summary.....	25
Mandatory Criteria.....	25
Schedule 2 – Eligibility for Financial Assistance – Non-Mandatory Criteria	27
Summary.....	27
Non-Mandatory Criteria.....	27

MINORITY REPORT

Minority Report – Australian Greens	29
--	-----------

APPENDIXES

Appendix A – Submissions and Exhibits33

Appendix B – Hearing and Witnesses35



Chair's Foreword

The release of the Committee's first report, 'Pivot North', underpinned the Government's White Paper on Developing Northern Australia and together they set in motion a new approach to tackling the economic and social issues which have plagued Northern Australia for over 100 years.

Northern Australia is a region of vast potential. The development of infrastructure that can generate long-term growth in the population and economy of Northern Australia is crucial in realising this potential. Through its first inquiry, the Committee recognised the vital role of growing infrastructure in developing Northern Australia.

Of the 42 recommendations in Pivot North, fourteen concerned the provision of new or existing infrastructure in Northern Australia. These recommendations included: the development of a 20 year strategy for infrastructure provision, as well as the development of critical road, rail, water resource, agriculture, digital communications, and energy infrastructure. The Committee also recommended the creation of a rural investment fund to make it easier for rural infrastructure projects to access capital investment.

The Northern Australia Infrastructure Facility, established by the Northern Australia Infrastructure Facility Bill 2016, is one of the Government's White Paper key proposals and it places the development of infrastructure at the centre of the Government's plan to unlock the economic and social potential of Northern Australia.

In its own right the Facility's \$5 billion investment in infrastructure would be significant, but by providing this money in the form of loans rather than grants, the Facility will support the delivery of more than \$10 billion worth of critical infrastructure.

By undertaking a risk-sharing role with the private sector, the Facility, through partnerships will develop projects that, despite being commercially viable, have not been able to attract sufficient investment to go ahead.

For these reasons I welcome, and support, the enactment of the Northern Australia Infrastructure Facility Bill 2016.

I also thank my fellow Committee Members for their participation in this short inquiry.

Hon Warren Entsch MP
Chair



Committee Membership

Chair Hon Warren Entsch MP

Deputy Chair Hon Alannah MacTiernan MP

Members Mr George Christensen MP Senator Deborah O'Neill
Hon Gary Gray AO MP Ms Melissa Price MP
Mrs Natasha Griggs MP Senator Rachel Siewert
Senator Joanna Lindgren Senator Dean Smith
Senator Hon Jan McLucas Hon Warren Snowdon MP

Participating Members

Senator Hon Eric Abetz Senator John Madigan
Senator Chris Back Senator Gavin Marshall
Senator Cory Bernardi Senator Jenny McAllister
Senator Catryna Bilyk Senator Anne McEwen
Senator Carol Brown Senator Bridget McKenzie
Senator David Bushby Senator Claire Moore
Senator Hon Doug Cameron Senator Barry O'Sullivan
Senator Hon Kim Carr Senator James Paterson
Senator Hon Jacinta Collins Senator Nova Peris OAM
Senator Hon Stephen Conroy Senator Helen Polley
Senator Sam Dastyari Senator Linda Reynolds

Senator Sean Edwards

Senator David Fawcett

Senator Alex Gallacher

Senator Katy Gallagher

Senator Hon Bill Heffernan

Senator Hon David Johnston

Ms Michelle Landry MP

Senator David Leyonhjelm

Senator Sue Lines

Senator Hon Joe Ludwig

Senator Hon Ian Macdonald

Senator Zed Seselja

Senator Hon Lisa Singh

Senator Glenn Sterle

Senator Anne Urquhart

Senator Larissa Waters

Senator John Williams

Senator Hon Penny Wong

Committee Secretariat

Secretary	Ms Stephanie Mikac
Senior Research Officer	Mr Timothy Brennan
Administrative Officer	Ms Carissa Skinner



Terms of Reference

In accordance with paragraph 4A of its resolution of appointment, on 17 March 2016, the Minister for Resources, Energy and Northern Australia referred the provisions of the Northern Australia Infrastructure Facility Bill 2016 to the Joint Select Committee on Northern Australia (the Committee) for inquiry and report by Friday, 22 April 2016.

Abstract from the Resolution of Appointment of the Joint Select Committee on Northern Australia

(4A) following presentation of its [first] report, the Committee:

- (a) Monitor issues relevant to the development and implementation of the government's white paper;
- (b) Consider any relevant issues as may be referred to it by either House of the Parliament or a Minister;
- (c) Report from time to time; and
- (d) Continue its work until the House of Representatives is dissolved or expires by effluxion or time;



List of Abbreviations

CEO	Chief Executive Officer
EM	Explanatory Memorandum
ES	Explanatory Statement
IM	Investment Mandate
Ltd	Limited
MP	Member of Parliament
R&D	Research and Development



Recommendation

2 Northern Australia Infrastructure Facility Bill 2016

Recommendation 1

The Committee recommends that the Northern Australia Infrastructure Facility Bill 2016 be passed by the Parliament.

Introduction

Background

- 1.1 On 17 March 2016, the Hon. Josh Frydenberg MP, Minister for Resources, Energy and Northern Australia¹ presented the Northern Australia Infrastructure Facility Bill 2016 (the Bill) and accompanying Explanatory Memorandum (EM)² to the Parliament.
 - 1.2 An associated bill, the Northern Australia Infrastructure Facility (Consequential Amendments) Bill 2016 was also presented to the Parliament on 17 March 2016.
 - 1.3 The purpose of the Bill is to establish the Northern Australia Infrastructure Facility (the Facility). The Facility will appropriate up to \$5 billion from the Consolidated Revenue Fund to provide financial assistance to infrastructure projects that stimulate economic and population growth in Northern Australia.³
 - 1.4 The Facility will be established in response to existing economic and social constraints to growing infrastructure in Northern Australia outlined as:
 - Greenfield projects which include: ‘... the halving of tenor for infrastructure debt, with the average duration for falling from around 11 years in 2007 to around six years in 2015’.⁴
 - Extreme climatic conditions.
-

1 The definition of Northern Australia used in the Bill is ‘based on Infrastructure Australia’s Northern Australia Infrastructure Audit Report, which defined Northern Australia to be: “all of the Northern Territory, and those parts of Queensland and Western Australia above the Tropic of Capricorn. It also includes all Australian Bureau of Statistics’ medium-sized areas (Statistical Area Level 2) with boundaries that intersect the Tropic of Capricorn, but with adjustment to reflect stakeholders’ understanding of northern Australia by including all SA2s in the Northern Territory, the Gladstone and Gladstone Hinterland SA2s and Newman SA2 and the town of Exmouth, but excluding the Carnarvon and Exmouth SA2s”’, EM, p.6.

2 On 1 April 2016 a revised Explanatory Memorandum (EM) was provided to the Committee and included in the evidence provided to the Committee as Submission 3.

3 Northern Australia Infrastructure Facility Bill 2016 (the Bill), p 2,20.

4 The Department of Industry, Innovation and Science, *Submission 3.1*, p.1.

- Low population density.
 - Remoteness.⁵
- 1.5 The second bill will provide the Export Finance and Insurance Corporation with the function of assisting the Facility.⁶
- 1.6 The Facility was announced by the Australian Government in the 2015-16 Budget. The Facility is also one of the major initiatives contained in the *Our North, Our Future: White Paper on Developing Northern Australia*.⁷
- 1.7 Clause 9 of the Bill requires that the Minister give directions to the Facility through a legislative instrument to be known as the Investment Mandate.⁸ On 17 March 2016, the Hon Josh Frydenberg MP, Minister for Resources, Energy and Northern Australia released a draft copy of the Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (the Investment Mandate) for public consultation.⁹
- 1.8 The Department of Industry, Innovation and Science outlined the purpose of the Facility and governance structure of the Facility and stated:

The Facility has been designed to provide concessional financing mechanisms for northern Australia economic infrastructure projects by operating in partnership with commercial and other financiers. It is intended to enable the construction of economic infrastructure which would not otherwise proceed, or would not proceed for some time without the Facility. The Facility aims to be credible in financial markets and will have an independent statutory board operating on a commercial basis to make investment decisions. The Board will be comprised of experts in a range of relevant infrastructure financing fields. The Minister will only have limited powers of direction in relation to the investment decisions of the Board. The Minister will not be able to direct the Board to make investments, and can only prevent an investment if it is against the national interest. The Facility is also working in partnership with the State and Territory Governments who will be responsible for delivering financing mechanisms on behalf of the Australian Government. The Facility will be consistent with all

5 The Department of Industry, Innovation and Science, *Submission 3.1*, p.1.

6 Northern Australia Infrastructure Facility (Consequential Amendments) Bill 2016: Explanatory Memorandum, p.1.

7 Northern Australia Infrastructure Facility Bill 2016: Explanatory Memorandum (EM), p.1.

8 Bill, p.7.

9 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.

existing State, Territory and Commonwealth regulatory approvals processes.¹⁰

- 1.9 The Department of Industry, Innovation and Science also advised that ‘the design of the Facility has been informed by extensive stakeholder consultation.’¹¹ Further, ‘feedback received has been broadly positive and was reflected in the exposure draft of the Bill which was released for public comment on 28 January 2016.’¹²

Overview and Purpose of the Bill

- 1.10 The Bill establishes the Facility and the governance and administrative structures necessary for the Facility to perform the function of providing financial assistance to economic infrastructure projects in Northern Australia.
- 1.11 The Facility will commence on 1 July 2016 and will be authorised to make investment decisions for a period of five years until 30 June 2021.¹³
- 1.12 The Bill establishes a Facility Board comprising a Chair and between four and six additional members.¹⁴ The Board is required to include members with experience or expertise from a range of fields including ‘banking, finance, and infrastructure’.¹⁵
- 1.13 Operating on a commercial basis, the Board will be responsible for making investment decisions on project proposals.¹⁶
- 1.14 The Bill enables the Facility to employ staff, seek the services of staff from other Government agencies, and to employ consultants.¹⁷
- 1.15 The Bill requires that the (responsible) Minister provide direction on the functions of the Facility to the Board through the Investment Mandate. The Minister may not direct the Facility to provide financial assistance to a particular person or project.¹⁸
- 1.16 The Minister is required to consider financial assistance for proposed projects. The Minister may reject a proposal to provide financial assistance to a project on national interest grounds. In such a case the Minister must

10 The Department of Industry, Innovation and Science, *Submission 3.1*, p.1.

11 The Department of Industry, Innovation and Science, *Submission 3.1*, p.1.

12 The Department of Industry, Innovation and Science, *Submission 3.1*, p.1.

13 EM, pp 6 and 8.

14 Bill, p.10.

15 EM, p.1.

16 EM, p.1.

17 EM, pp 13-15.

18 EM, pp 1 and 9.

present to the Parliament a rejection notice outlining the reasons for rejecting the proposal.¹⁹

- 1.17 The Facility will 'act in partnership with relevant State and Territory Governments as well as private financiers who will provide the majority of financial support'.²⁰
- 1.18 The Investment Mandate includes a list of mandatory criteria that project proposals must meet in order to be eligible to receive financial assistance from the Facility. The Investment Mandate also includes non-mandatory criteria with preference to be given to projects that also meet these criteria.²¹
- 1.19 The mandatory criteria require that financial assistance may only be given to projects that would be 'unlikely to proceed, or would only proceed at a much later date', without financial assistance.²² The mandatory criteria also require that any loan provided to a project must be able to be repaid or refinanced.²³

Financial Impact

- 1.20 The cost of operating the Facility is estimated to be \$39.7 million over a five year period commencing in 2016-17. The cost is expected to be recovered by the Facility through fee revenue, which is estimated to be \$40.2 million over the same period.²⁴

Regulatory Impact Statement

- 1.21 The Department of Industry, Innovation, and Science has estimated (based on the provision of 25 loans with an average value of \$200 million over a 30 year period) that the regulatory cost of the Bill to business will be \$0.49 million per annum.²⁵ The regulatory implications for large businesses are anticipated to be low and there is no anticipated regulatory impact on 'small business, community organisations or individuals'.²⁶ The Bill will be 'offset against savings identified from the R&D Tax Incentive'.²⁷

19 EM, p.9 and 10.

20 EM, p.2.

21 Northern Australia Infrastructure Facility Investment Mandate Direction 2016: Explanatory Statement (ES), p.8.

22 Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (IM), p.7.

23 IM, p.8.

24 EM, p.2.

25 EM, p.3.

26 EM, p.3.

27 EM, p.3.

About the Inquiry

Objectives and Scope

- 1.22 The purpose of the inquiry was to examine the legislative and implementation aspects of the Bill, rather than policy issues underpinning the proposed legislation.
- 1.23 The Seafarms Group Ltd, (a contributor to the Inquiry into Opportunities for Expanding Aquaculture in Northern Australia) was mainly concerned about the multiple user service approach of the proposed Facility in its 'potential to seriously compromise the Government's stated policy outcomes'.²⁸ A more detailed outline of the issues raised by the Seafarms Group Ltd. is included in Chapter 2.
- 1.24 Suncorp Group Limited (Suncorp), an insurance provider, suggested that when undertaking investment decisions the Facility should consider the resilience and disaster mitigation features of proposed infrastructure projects.²⁹
- 1.25 Suncorp also suggested the model of support used by the Facility 'should be extended to provide government support for specific mitigation projects that would assist in making homes and communities in Northern Australia more resilient to the significant impacts of cyclones'³⁰.
- 1.26 The Northern Australia Insurance Premiums Taskforce (the Insurance Taskforce) has recently been considering options to lower insurance premiums in areas of Northern Australia 'where the risk of cyclones has caused affordability concerns'.³¹
- 1.27 The Insurance Taskforce stated that mitigation measures were 'a sustainable way of reducing premiums [in] the long run'.³² The Insurance Taskforce suggested that there were 'a range of relatively low-cost' options available to Governments to promote mitigation. These options included 'public works spending to reduce the risk of some forms of cyclone damage, such as flooding'.³³ The Government intends to provide a

28 Seafarms Group Ltd., *Submission 1*, p. 2.

29 Suncorp Group Limited (Suncorp), *Submission 2*, p.1.

30 Suncorp, *Submission 2*, p.1.

31 The Hon. Kelly O'Dwyer MP, Media Release: 'Northern Australia Insurance Premiums Taskforce report released', <http://kmo.ministers.treasury.gov.au/media-release/020-2016/>, Accessed 5 April 2016.

32 Department of the Treasury, *Northern Australia Insurance Premiums Taskforce: Final Report*, November 2015, p.xvi.

33 Department of the Treasury, *Northern Australia Insurance Premiums Taskforce: Final Report*, November 2015, p.xvi.

response to the recommendations of the Insurance Taskforce by 30 June 2016.³⁴

Inquiry Conduct

- 1.28 The Bill was introduced into the House of Representatives on 17 March 2016 in addition to the Northern Australia Infrastructure Facility (Consequential Amendments) Bill 2016. Later that day, the Hon Josh Frydenberg MP, Minister for Resources, Energy and Northern Australia referred the Bill to the Joint Select Committee on Northern Australia (the Committee) for inquiry and report by 22 April 2016. The Committee subsequently adopted and commenced the inquiry into the provisions of the Bill, also on 17 March 2016.
- 1.29 On 17 March 2016, the inquiry was announced and submissions invited via a media release. Submissions to the inquiry were invited to be received by 31 March 2016.
- 1.30 The Committee received seven submissions and two exhibits, which are listed at Appendix A, and held one public hearing in Canberra on 8 April 2016. Witnesses who appeared before the Committee are listed at Appendix B.

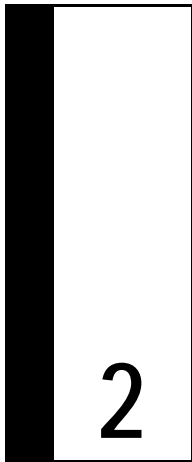
Reporting Date

- 1.31 The required reporting date for the Committee's inquiry into the Bill was 22 April 2016, however with the proroguing of the Parliament on 15 April 2016, the Committee will report out of session prior to the proroguing of the Parliament.

Report Structure

- 1.32 Chapter 2 outlines the key clauses of the Bill and the issues presented in relation to these provisions and subsequent recommendations.
- 1.33 Chapter 3 outlines the key clauses and mandatory criteria of the Draft Northern Australia Infrastructure Facility Investment Mandate Direction 2016 which is to be made under proposed subsection 9(1) of the Northern Australia Infrastructure Facility Act. The Investment Mandate is created as part of the Bill.

34 The Hon. Kelly O'Dwyer MP, Media Release: 'Northern Australia Insurance Premiums Taskforce report released', <http://kmo.ministers.treasury.gov.au/media-release/020-2016/>, Accessed 5 April 2016.



Northern Australia Infrastructure Facility Bill 2016

Part 1 – Preliminary

Key Clauses

- 2.1 **Subclause 2(1)** provides for commencement of the Northern Australia Infrastructure Facility Bill 2016 (the Bill) from 1 July 2016.¹
- 2.2 **Subclause 3(1)** states that ‘the object of this Act is to provide grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure.’²
- 2.3 **Paragraphs 3(2)(a) and 3(2)(b)** respectively, defines the infrastructure covered by the Bill as infrastructure that: ‘provides a basis for economic growth in Northern Australia’ and ‘stimulates population growth in Northern Australia’.³
- 2.4 **Clause 4** provides an outline of the Bill noting that it: establishes the Northern Australia Infrastructure Facility; that the Facility ‘must act in accordance with directions given by the Minister’ in the Investment Mandate; and that the Minister may, after consideration, reject proposals for financial assistance.⁴

Part 2 – Northern Australia Infrastructure Facility

Key Clauses

- 2.5 **Clause 6** establishes the Northern Australia Infrastructure Facility (the Facility) as a body corporate that is subject to the *Public Governance, Performance and Accountability Act 2013* and is able to buy and sell property, can sue and also be sued.⁵

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

2 Bill, p.2.

3 Bill, p.2.

4 Bill, pp 2 and 3.

5 Bill, p.5.

- 2.6 **Paragraph 7(1)(a)** specifies that the function of the Facility is to ‘grant financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure’.⁶
- 2.7 **Paragraph 7(1)(b)** states that it is also a function of the Facility to ‘determine terms and conditions for the grants of financial assistance’.⁷
- 2.8 **Paragraph 7(1)(c)** states that the Facility may also provide incidental assistance to the States and Territories in relation to administering financial assistance.⁸
- 2.9 **Subclause 7(2)** grants the Facility the ‘power to do all things necessary or convenient ... in connection with the performance of its functions’.⁹ Subclause 7(2) enables the Facility to provide grants of financial assistance that include ‘loans, guarantees and other financing mechanisms’ with terms and conditions developed in agreement with the States and Territories.¹⁰
- 2.10 **Clause 8** ‘prohibits the Facility from making a decision to grant financial assistance after 30 June 2021’.¹¹ The Facility can however continue providing financial assistance after this date provided the decision to do so was made before 30 June 2021.¹²
- 2.11 **Subclause 8(2)** ‘allows the Facility to continue to deliver, manage and make decisions to vary any existing financial arrangements after 30 June 2021.’¹³

Analysis

- 2.12 Part 1 of the Bill outlines the objectives of the Bill and provides supplementary information for remaining sections of the Bill.
- 2.13 Part 2 of the Bill establishes the Facility as an agency that will ‘operate independently from Government and use a corporate model of governance.’¹⁴ Part 2 also specifies the functions of the Facility and provides a time limit for the Facility’s ability to make financial decisions.¹⁵

6 Bill, p.5.

7 Bill, p.5.

8 Bill, p.5.

9 Bill, p.6.

10 Northern Australia Infrastructure Facility Bill 2016, Explanatory Memorandum (EM), p.8.

11 EM, p.8.

12 Bill, p.6.

13 EM, p.9.

14 EM, p.8.

15 Bill, p.6.

Conclusion

- 2.14 The Committee's first report '*Pivot North: Inquiry into the Development of Northern Australia*' recognised that expansion and development of infrastructure in Northern Australia was crucial to generating long-term economic and population growth.
- 2.15 In *Pivot North* the Committee made fourteen recommendations concerning the provision of infrastructure to Northern Australia, including recommending the creation of a 'rural investment fund to provide opportunities for investors to participate in rural infrastructure development projects.'¹⁶
- 2.16 The Committee supports the establishment of the Northern Australia Infrastructure Facility. The Facility could potentially make a significant contribution to the development of critical infrastructure in Northern Australia.

Part 3 – Investment Mandate

Key Clauses

- 2.17 **Clause 9** stipulates that the Minister must provide direction for the Facility through the Investment Mandate and that the Facility must take 'all reasonable steps to comply with the Investment Mandate'.¹⁷ The Investment Mandate is exempted from disallowance under the *Legislative Instruments Act 2003* (Cwlth).¹⁸
- 2.18 **Subclause 9(4)** ensures the Minister cannot direct the Facility to provide financial assistance 'for the construction of particular infrastructure' or 'in relation to a particular person'.¹⁹
- 2.19 **Clause 10** outlines the matters that may be covered by the Investment Mandate. These matters are listed in **Paragraphs 10(a) to (g)**:
- '(a) objectives the Facility is to pursue in providing financial assistance;
 - (b) strategies and policies to be followed for the effective performance of the Facility's functions;
 - (c) loan characteristics for circumstances in which financial assistance is used to provide or support loans;
 - (d) providing financial assistance for purposes other than to provide or support loans;

16 Joint Select Committee on Northern Australia, *Pivot North: Inquiry into the Development of Northern Australia*, September 2014, p.185.

17 Bill, p.7.

18 EM, p.9.

19 Bill, p.7.

- (e) eligibility criteria for financial assistance;
- (f) risk and return in relation to providing financial assistance;
- (g) any other matters the Minister thinks appropriate.²⁰

Analysis

- 2.20 Part 3 outlines the role of the Investment Mandate, a legislative instrument used by the Minister to give directions to the Facility 'about the performance of its functions'.²¹ The Investment Mandate may include directions in relation to the objectives and policies of the Facility, eligibility criteria for financial assistance, and the terms and conditions of loans provided.²² The Minister cannot use the Investment Mandate to direct the Facility to provide financial assistance to a particular project or individual.²³
- 2.21 Clause 9 requires the creation of the Investment Mandate through which the Minister provides direction to the Facility. A draft copy of the Investment Mandate was released on 17 March 2016 for public consultation.
- 2.22 The draft Investment Mandate contains seven mandatory criteria that a proposal must meet to be eligible for financial assistance. A detailed outline of the draft Investment Mandate is the subject of Chapter 3.
- 2.23 The Committee received evidence in relation to specific parts of the Investment Mandate made under Clause 9 of the Bill.
- 2.24 The Department of Industry, Innovation and Science (DIIS) outlined the requirements (in mandatory criteria 7) for project proponents to develop an Aboriginal and Torres Strait Islander engagement strategy. The DIIS stated that the purpose of the Aboriginal and Torres Strait Islander engagement strategy was to ensure that:
- ...where infrastructure is being built, the project proponent take into consideration engaging the Indigenous community. That may be through employment opportunities. ...The second aspect I guess, in terms of engagement, could relate to Indigenous groups investing in projects as well.²⁴
- 2.25 The DIIS added that there would be a proportionality principle used in assessing the Aboriginal and Torres Strait Islander engagement strategy. Projects in areas with large Aboriginal and Torres Strait Islander
-

20 Bill, p.7.

21 EM, p.9.

22 Bill, p.7.

23 Bill, p.7.

24 Mr Nathan Dal Bon, General Manager, DIIS, *Proof Committee Hansard*, p. 3.

populations would be expected to have a corresponding depth of engagement with the local Aboriginal and Torres Strait Islander population.²⁵

- 2.26 Seafarms Group Ltd (Seafarms)²⁶ raised issues about Aboriginal and Torres Strait Islander cultural awareness, remoteness and biosecurity. In relation to Aboriginal and Torres Strait Islander awareness, Seafarms stated 'Indigenous and traditional owner rights and what an infrastructure investment may do to compromise sensitive cultural areas are also worthy of consideration'.²⁷
- 2.27 Further, Seafarms raised the issue that remote agricultural infrastructure projects may struggle to attract multiple users and stated 'the remoteness and additional costs of developments in Northern Australia means there are often-times no other existing natural users of infrastructure'.²⁸
- 2.28 Seafarms contended that project proposals should be based on commercial considerations rather than an arbitrary multi-user test and stated:
- ...applications should be based on commercial considerations such as the ability to service the loan under appropriate terms and considerations; an arbitrary 'multiple user test' would eliminate many projects in the north that could exhibit higher public returns in terms of economic impact and job creation.²⁹
- 2.29 Seafarms was concerned about the possible exclusion of project proposals under the mandatory criteria and explained:
- ...the eligibility criteria may inadvertently act to prevent otherwise attractive proposals from being considered simply because of practical considerations such as biosecurity, Indigenous cultural maintenance and the need to locate agri-business projects in remote places for biosecurity reasons.³⁰
- 2.30 The Department of Agriculture and Water Resources (DAWR) advised that it was 'in the process of developing guidelines for an aquaculture farm biosecurity plan'.³¹ The DAWR highlighted the biosecurity risks posed to farms from the movement of goods and people. The farm

25 Mr Dal Bon, DIIS, *Proof Committee Hansard*, p.3.

26 Seafarms Group Ltd (Seafarms) is the operator of a prawn farm in Queensland and the sponsor of a proposed 10 000 hectare prawn farm, parts of which are located in the Northern Territory and northern Western Australia.

27 Dr Christopher Mitchell, Executive Director, Seafarms Group Ltd., *Proof Committee Hansard*, Canberra, 8 April 2016, p. 15.

28 Seafarms, *Submission 1*, p. 2.

29 Seafarms, *Submission 1*, p. 2.

30 Seafarms, *Submission 1*, p. 3.

31 Department of Agriculture and Water Resources (DAWR), *Submission 4*, p.1.

biosecurity website³² states 'if it can move, it can carry diseases, pests and weeds. For this reason people, vehicles and equipment pose a high biosecurity risk and should be managed accordingly'.³³

- 2.31 In relation to the consideration of single-user infrastructure project proposals under the mandatory criteria the DIIS stated:

The mandatory criteria talk about this having public benefit. It has to have a capacity to spill over. Part of that is the dimension, which we have talked to a lot of stakeholders about, of single user or the potential to be multiuser infrastructure. It suggests in the criteria that the board will prefer that type of infrastructure that will allow many businesses to get going ... Ideally, a port expansion or a railway line obviously fills those things, because many users can use them and many businesses can take advantage of them. But we have been careful in the mandatory criteria to leave capacity for the board to consider a facility... that might be more suited to single user infrastructure, possibly the capacity in the future, but not at all [to] rule it out, and for it to be in front of the board.

Frankly, it is so an expert board can have a reasonable and sensible consideration of that type of issue.³⁴

- 2.32 The DIIS further stated that while there would be a preference given for infrastructure projects that will enable as many users as possible, the public benefit or spillover of all project proposals will also be considered. The DIIS explained:

...because it is our expectation that the capacity for many users to use a piece of infrastructure would provide the greatest public benefit, but the fundamental test is the 'public benefit' test – what will have the greatest public benefit or spillover. And remember all of the other features too; we really do not want this Facility to be funding an activity that was going to happen on its own. So it is frankly to give a Board some flexibility to be reasonable in its assessment of those types of projects. You are correct to say that we have put into the Facility this preference for infrastructure that will enable as many business opportunities as possible, but

32 The farm biosecurity website is a joint initiative of Animal Health Australia and Plant Health Australia. These two organisations are government-industry partnerships. See: www.farmbiosecurity.com.au, Accessed 13 April 2016.

33 DAWR, *Submission 4*, p.1.

34 Dr Steven Kennedy, Deputy Secretary, Department of Industry, Innovation and Science (DIIS), *Proof Committee Hansard*, Canberra, 8 April 2016, p.4.

fundamentally the test is one of what is going to have the greatest public benefit...³⁵

- 2.33 Suncorp Group Limited (Suncorp), a provider of personal and commercial insurance products, suggested that ‘resilience and natural disaster mitigation features should be a key consideration in projects approved for funding’.³⁶
- 2.34 Suncorp highlighted flood levees as an example of natural disaster mitigation infrastructure that can provide significant economic benefits. Suncorp stated that levees in the Queensland towns of Roma and St George have been estimated to provide ‘net benefits of \$64.7 million and \$25.7 million respectively over the next 50 years’.³⁷
- 2.35 The DIIS stated that it anticipated that the Facility Board would consider the natural disaster resilience of projects when assessing the ability of proposed projects to repay loans provided by the Facility.³⁸

Conclusion

- 2.36 In January 2015, Infrastructure Australia released its *Northern Australia Audit* report. The Audit identified gaps in the provision of infrastructure in Northern Australia resulting in ‘unmet demand, missed opportunity, excessive pricing or poor service standard’.³⁹ The Audit also highlighted that there were a number of sources of market failure in the provision of infrastructure in Northern Australia which could require government investment.⁴⁰ The Audit found that:

Government investment will be necessary in some cases, but should only proceed where there is a clearly defined value to the taxpayer. Public sector investment should seek to maximise the role of the private sector to achieve innovation, service quality and, where feasible, competition.⁴¹

- 2.37 Seafarms and Suncorp have raised issues in relation to the criteria for determining the eligibility of proposed projects for financial assistance. The criteria are specified in the Investment Mandate, which is a legislative instrument, used by the Minister to provide direction to the Facility.
- 2.38 Seafarms has validly highlighted that Aboriginal and Torres Strait Islander cultural awareness, remoteness and biosecurity considerations

35 Dr Kennedy, DIIS, *Proof Committee Hansard*, Canberra, 8 April 2016, p.4.

36 Suncorp Group Limited (Suncorp), *Submission 2*, p. 1.

37 Suncorp, *Submission 2*, p. 2.

38 Dr Kennedy, DIIS, *Proof Committee Hansard*, Canberra, 8 April 2016, p.9.

39 Infrastructure Australia, *Northern Australia Audit*, January 2015, p.6

40 Infrastructure Australia, *Northern Australia Audit*, January 2015, p.15.

41 Infrastructure Australia, *Northern Australia Audit*, January 2015, p.4.

may make it impractical for an infrastructure project to be accessed by multiple users.

- 2.39 The Committee understands it will be necessary for the Facility to exercise discretion in order to support infrastructure projects that will have significant public benefits but where there are legitimate reasons why multiple user access is not appropriate. Taking this into consideration it appears this would include projects such as the one proposed by Seafarms. The Committee also understands that the spillover effects or public benefit in such instances will also be considered.
- 2.40 The Committee also believes that this is the intent underpinning the mandatory criteria in the Bill as stated by the Minister for Resources, Energy and Northern Australia, the Hon Josh Frydenberg MP in the second reading speech on presentation of the Bill. The Minister stated:
- ...the objectives of the Facility reflect the Government's priorities for the development of northern Australia and the importance of ensuring public funds are invested responsibly and for the benefit of the wider community.⁴²
- 2.41 In areas that are vulnerable to natural disasters such as cyclones it may be appropriate for the Facility to consider the disaster resilience of proposed infrastructure projects.
- 2.42 The issues relating to the mandatory criteria in the Investment Mandate raised by Seafarms and Suncorp are worthy of consideration by the Department of Industry, Innovation and Science during the finalisation of the Investment Mandate. The Committee believes it is important to note that the issues raised by Suncorp are also matters which have been considered by the Northern Australia Insurance Premiums Taskforce and on which a Government response is expected by the end of June 2016.

Part 4 – Consideration by Minister

Key Clauses

- 2.43 **Subclause 11(1)** prohibits the Facility from providing financial assistance if the Minister has not finished considering the proposal or if the Minister has not approved financial assistance for the proposal.⁴³
- 2.44 **Subclause 11(2)** stipulates that the Facility must provide the Minister with written notice of any proposal to provide financial assistance.⁴⁴

42 Hon Josh Frydenberg MP, Minister for Resources, Energy and Northern Australia, Second Reading Speech, Northern Australia Infrastructure Facility Bill 2016, p. 7.

43 Bill, p.8.

44 Bill, p.8.

- 2.45 **Subclause 11(3)** provides the Minister with 21 days (after the proposal notice is given) to consider the proposal with the possibility of extending this to 60 days through a written request to the Facility.⁴⁵
- 2.46 **Subclause 11(4)** enables the Minister to reject financial assistance for a proposal by written notification to the Facility.⁴⁶
- 2.47 **Subclause 11(5)** allows the Minister to inform the facility in writing that a proposal is rejected if the Minister is satisfied that the proposal is 'inconsistent with the objectives and policies of the Commonwealth Government' or could have 'adverse implications' for Australia's national security or international relations.⁴⁷
- 2.48 **Clause 12** 'sets out the process whereby the Minister may reject a proposal to provide financial assistance under clause 11'.⁴⁸ Clause 12 also provides that the Minister must present their reasons for rejecting a proposal to Parliament within 20 sitting days of informing the Facility of the rejection.⁴⁹

Analysis

- 2.49 Part 4 of the Bill stipulates that the Facility must provide the Minister with written notice each time it proposes to provide financial assistance to a project. The Minister has 21 days (which may be extended by request to 60 days) in which to consider the proposal. The Minister may reject the proposal if it is not in the national interest, and if so, the Minister must present the reasons for their decision to the Parliament.⁵⁰
- 2.50 The DIIS stated that the requirement for Ministerial consideration was modelled on the process in place for similar boards. The DIIS also stated that:

We are not anticipating, at this stage, building in a formal process where, for every project, the minister looks at it from a national interest point of view. ... that would be counter to the intent of the legislation, which is to establish an independent Board with good guidance to get on making investment decisions.⁵¹

45 Bill, p.8.

46 Bill, p.8.

47 Bill, p.8.

48 EM, p.10.

49 Bill, p.9.

50 Bill, pp 8 and 9.

51 Dr Kennedy, DIIS, *Proof Committee Hansard*, p.8.

Part 5 – Board of the Facility

Key Clauses

- 2.51 **Clause 13** establishes the Board of the Facility and specifies that it consist of a Chair and between four and six members. The ‘Board may operate for up to six months with less than five Members without the function of the Board being affected.’⁵²
- 2.52 **Clause 14** specifies the functions of the Board which include deciding ‘within the scope of the Investment Mandate, the strategies and policies to be followed by the Facility’, and ensuring the ‘proper, efficient and effective performance of the Facility’s functions’.⁵³ The Board is empowered to undertake ‘all things necessary or convenient’ to perform its functions.⁵⁴
- 2.53 **Clause 15** stipulates that Board members are to be appointed (on a part-time basis) by the Minister and to hold office for a maximum of three years.⁵⁵
- 2.54 **Subclause 15(4)** ‘sets out the expertise required for a person to be appointed to the Board. This ensures that the Facility has the necessary skills to achieve the Board’s objective to a commercial standard, in order to provide credibility in financial markets’.⁵⁶ In particular, **paragraphs 15(4)(a) to (h)** outline the following fields of experience or expertise, for Board Members:
- ‘(a) banking or finance;
 - (b) private equity or investment by way of lending or provision of credit;
 - (c) economics;
 - (d) infrastructure planning and financing;
 - (e) engineering;
 - (f) government funding programs or bodies;
 - (g) financial accounting or auditing;
 - (h) law.’⁵⁷

52 EM, p.10.

53 Bill, p.10.

54 Bill, p.10.

55 Bill, p.11.

56 EM, p.10.

57 Bill, p.11.

- 2.55 **Clause 16** allows the Minister to make an acting appointment as Chair during a vacancy in the office of Chair or when the Chair is absent from Australia or unable to perform their duties.⁵⁸
- 2.56 **Clauses 17 and 18** outline the remuneration of Board members and other conditions including any leave of absence for the Chair or Board Members.⁵⁹
- 2.57 **Clause 19** 'allows the Minister to determine any terms of a Board members employment not within the scope of the Act.'⁶⁰
- 2.58 **Clause 20** allows Board Members to resign by written notice to the Minister.⁶¹
- 2.59 **Clause 21** provides the conditions under which the Minister can terminate Board appointments. These conditions include misbehaviour, unsatisfactory performance, bankruptcy, and being absent without leave from three consecutive meetings.⁶²
- 2.60 **Clause 22** requires that the Board meet at least twice in each financial year and that meetings may be convened at the direction of the Minister or the Chair.⁶³
- 2.61 **Clauses 23 to 26** outline the procedures to be used at Board meetings. If there are six or more appointed Members the quorum for a meeting is four Members, otherwise the quorum is three Members. The Chair must preside over the meeting if present or if absent the other Members must appoint a Member to preside during that meeting. Matters at the Board meeting are determined by majority vote and the Chair or Acting Chair has a casting vote in the event of equal votes. The Board must keep minutes for all of its meetings.⁶⁴
- 2.62 **Clause 27** 'allows the Board to make decisions without conducting meetings' and outlines the process for making, recording, and communicating decisions.⁶⁵

Analysis

- 2.63 Part 5 establishes the Board of the Facility, specifies the functions and terms of appointment of the Board and the procedures used at Board

58 Bill, p.11.

59 Bill, p.12.

60 EM, p.11.

61 Bill, p.12.

62 Bill, p.13.

63 Bill, pp 13-14.

64 Bill, p.14.

65 EM, p. 12.

meetings. The Minister will appoint a Chair and between four and six additional Board Members with relevant experience. The Board can continue operations for up to six months if its membership falls below five Members.⁶⁶

Part 6 – Administration

Key Clauses

- 2.64 **Clauses 28 to 31** outline the responsibilities and conditions of appointment of the Chief Executive Officer (CEO). The CEO is to be appointed by the Board, on a full or part time basis, for a period of up to five years.⁶⁷ A board member cannot serve as the CEO.⁶⁸ The CEO 'is responsible for the day-to-day administration of the Facility' but must act in accordance with the directions and policies determined by the Board.⁶⁹ The Board may appoint an acting CEO 'during a vacancy or when the CEO is absent from duty, on extended absence from Australia, or unable to perform the duties of the office.'⁷⁰
- 2.65 **Clauses 32 to 35** cover employment conditions of the CEO including that the Remuneration Tribunal determines the payment of the CEO, that the Board may approve leave of absence for the CEO, and that the CEO must obtain approval of the Chair to engage in outside work⁷¹ (if full time), or refrain from engaging in outside work⁷² that conflicts with the performance of their role (if part time).⁷³
- 2.66 **Clause 36** enables the CEO to resign their appointment by written notice to the Board.⁷⁴
- 2.67 **Clause 37** provides for conditions under which the CEO's appointment can be terminated by the Board, including misbehaviour, unsatisfactory performance, bankruptcy, extended absence without leave, and failure to comply with the *Public Governance, Performance and Accountability Act 2013*.⁷⁵
- 2.68 **Clause 38** allows the Facility to employ staff to undertake its functions, to determine the conditions under which it employs these staff, and to make
-

66 Bill, pp 10-15.

67 Bill, p.16.

68 Bill, p.16.

69 Bill, p.16.

70 EM, p.13.

71 Whether paid or unpaid.

72 Whether paid or unpaid.

73 Bill, pp 17-18.

74 Bill, p.18.

75 Bill, pp 18-19.

arrangements with other Government agencies for the recruitment of staff of these agencies.⁷⁶

- 2.69 **Clause 39** allows the Facility to 'engage consultants to assist in the performance of its functions'.⁷⁷

Analysis

- 2.70 Part 6 of the Bill deals with the administration and staffing of the Facility. Part 6 authorises the Board to appoint a Chief Executive Officer (CEO) to the Facility and provides for the conditions of employment of the CEO. Part 6 also allows the Facility to appoint staff and arrange to use the services of staff from other Government agencies, as well as employ consultants.⁷⁸

Conclusion

- 2.71 The Committee understands that the Minister is in the process of considering appointments to the Board⁷⁹ and a possible CEO for the Facility.⁸⁰ The Facility will be based in Cairns and it is anticipated that the Secretariat will employ five staff, including the CEO. In addition, there will be an 'originating team' of approximately five staff whose role will involve identifying projects that could potentially be funded by the Facility.⁸¹

Part 7 – Miscellaneous

Key Clauses

- 2.72 **Clause 40** authorises the Facility to charge fees in the performance of its functions. The Bill's Financial Impact Statement estimates the Facility will cost \$39.7 million to operate over a five year period, but will generate \$40.2 million in fee revenue in the same period.⁸²
- 2.73 **Clause 41** states that the Consolidated Revenue Fund will be 'appropriated to the extent of \$5 billion for the purposes of providing grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure.'⁸³
- 2.74 **Clause 42** requires that the Facility prepare an annual report to be presented to the Minister. The annual report must include:

76 Bill, p.19.

77 Bill, p.19.

78 Northern Australia Infrastructure Facility Bill 2016, pp 16-19.

79 Dr Kennedy, DIIS, *Proof Committee Hansard*, p.7.

80 Mr Dal Bon, DIIS, *Proof Committee Hansard*, p.7.

81 Mr Dal Bon, DIIS, *Proof Committee Hansard*, pp 5 and 6.

82 EM, pp 2, 16.

83 Bill, p.20.

- Information on any changes to the Investment Mandate and the impact of these changes;
 - A summary of proposal notices given by the Facility to the Minister and any rejection notices and reasons for rejection given by the Minister;
 - A summary of the amount of financial assistance provided by the Facility, the characteristics of loan contracts, risk and return to the Commonwealth, and any adjustments made to existing financial assistance due to projects not progressing as planned.⁸⁴
- 2.75 **Clause 43** requires the Minister to conduct a review of the operation of the Northern Australia Infrastructure Facility Act three years after the Act commences.⁸⁵ The review must consider whether the 30 June 2021 time limit for financial assistance decisions should be extended, and the most appropriate governance arrangements after that date.⁸⁶ 'The review must be tabled in each House of Parliament within 15 sitting days of the report being given to the Minister'.⁸⁷
- 2.76 **Clause 44** enables the Governor-General to 'make regulations where permitted by this Act, or where necessary or convenient for the carrying out of this Act.'⁸⁸

Analysis and Conclusion

- 2.77 Part 7 of the Bill specifies that the \$5 billion, the Facility is funded to distribute financial assistance 'to the States and Territories for the construction of Northern Australia economic infrastructure' and will be drawn from the Consolidated Revenue Fund.⁸⁹ Part 7 also outlines the Facility's reporting requirements and requires that after three years a review of the operations of the Northern Australia Infrastructure Facility Act be undertaken.⁹⁰

Recommendation 1

- 2.78 **The Committee recommends that the Northern Australia Infrastructure Facility Bill 2016 be passed by the Parliament.**

84 Bill, pp 20-21; EM, p.16.

85 Bill, p.21.

86 Bill, p.21.

87 EM, p.16.

88 EM, p.16.

89 Bill, p.20.

90 Bill, pp 20-21.

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;

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.
-

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

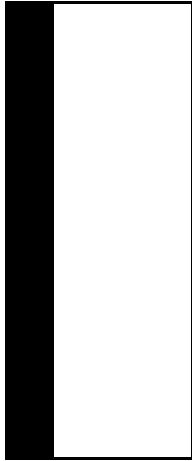
- 3.34 **‘The proposed Project is seeking financing from the Facility for an amount of \$50 million or more.** A Project proponent may aggregate multiple pieces of infrastructure into a single Project.’⁴⁵
- 3.35 **‘There is an identified need for the Project.’** Preference will be given to projects that 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



Minority Report – Australian Greens

Introduction

Northern Australia is a region with unique landscapes and ecosystems, a diverse economy, and is largely owned and managed by Aboriginal and Torres Strait Islander peoples. Supporting communities across Northern Australia is an important role of Government.

The outstanding natural values of the North are almost without parallel across the world. Its diverse landscapes include tropical rainforests, wetlands and mangroves, grasslands and desert. Many of these landscapes are globally significant and support rich biodiversity, with plant and animal species found nowhere else. As the Northern Australia Green paper states:

This is an important part of Australia's international reputation and tourism offering. The north is home to seven World Heritage Sites with outstanding natural and scientific values: the Great Barrier Reef, the Wet Tropics of Queensland, Kakadu National Park, Uluru-Kata Tjuta National Park, Ningaloo Coast, Purnululu National Park and the Riversleigh Australian Fossil Mammal Site.¹

The Australian Greens are supportive of investments in appropriate infrastructure, safer communities, improved health, education, social services and employment. However, investments need to be carefully assessed to ensure long term sustainability.

Development must be targeted towards the needs and priorities of local communities. It should also take full account of environmental impacts, including climate change. Local communities and environmental resources shouldn't be exploited for short term profits.

¹ *Green Paper on Developing Northern Australia*, page 6
<http://industry.gov.au/ONA/WhitePaper/Documents/Green-paper-report.pdf>

No Fossil Fuel Developments

The Australian Greens staunchly oppose subsidies for polluting fossil fuels. We will not support the Northern Australia Infrastructure Facility (NAIF) becoming a \$5 billion slush fund for polluting industries.

Projects such as the Adani coal mine and the other Galilee Basin mega coal mines are incompatible with a safe climate. Opening up these new coal mines would destroy any chance of keeping global warming below 1.5 degrees, which the global community committed to work towards at the Paris climate talks.

Scientists are telling us that we must transition to 100% clean energy as quickly as possible. That means keeping fossil fuels in the ground. The Greens are calling for an immediate ban on new coal mines and gas projects including fracking.

Not only would investment in fossil fuel projects be environmentally destructive, but economically reckless. Developing large, illiquid infrastructure for sunset industries would not be a good use of public finance.

Former Treasurer Joe Hockey hinted that the NAIF could be used to finance the disastrous Adani coal mine, rail and port proposal.² The Queensland government has actively pursued federal funding via the NAIF for Adani's Carmichael mega coal mine project.³ Minister for Resources and Energy, Josh Frydenberg has hinted that the project could receive support,⁴ before hinting that it would not after sustained political pressure.⁵ The Federal government has repeatedly failed to rule out financing the Adani coal mine, rail and port proposal, or other Galilee Basin coal mines out of the NAIF.

The Adani mine, rail way and the Abbot Point coal port expansion would be environmentally disastrous and economically reckless. With the price of coal in structural decline, more than a dozen international and domestic banks have ruled out providing finance. Australia needs a rapid transition to job-rich clean energy.

-
- 2 Sydney Morning Herald, 24 August 2015, Abbott government hints Adani could be considered for rail funding <http://www.smh.com.au/federal-politics/political-news/abbott-government-hints-adani-could-be-considered-for-rail-funding-20150824-gj6ci9.html>
 - 3 Townsville Bulletin, 5 September 2015, State won't say why it wants federal funding for coal project <http://www.townsvillebulletin.com.au/news/townsville/state-wont-say-why-it-wants-federal-funding-for-coal-project/news-story/e3de3ce26174cc0663d3374f76756234>
 - 4 Sydney Morning Herald, 23 September 2015, Josh Frydenberg says \$5 billion northern Australia fund could be used to finance coal <http://www.smh.com.au/federal-politics/political-news/josh-frydenberg-says-5-billion-northern-australia-fund-could-be-used-to-finance-coal-20150922-gjstnp.html>
 - 5 ABC Online, 19 October 2015, Carmichael mine: No federal subsidies for Adani but 'strong moral case' for coal, Energy Minister Josh Frydenberg says <http://www.abc.net.au/news/2015-10-18/no-federal-subsidies-carmichael-mine-strong-moral-case-for-coal/6863702>

The Adani mine is not the only piece of fossil fuel infrastructure threatening northern Australia. The proposed Northern Gas Pipeline which would open up the Northern Territory to dangerous fracking for shale gas is another example of an economically reckless project which may seek federal funding.

The Australian Greens oppose Federal government funding, including the NAIF, being used to support fossil fuel projects or nuclear projects, including mines, railways, pipelines, ports or electricity infrastructure. Global energy markets have rapidly moved on to 21st century technologies and public investment needs to be oriented towards reaping the benefits of sunrise industries. If we do not look to emerging trends, then the North will be saddled with last century's infrastructure while the rest of the country has moved on.

Responsible Development

The Greens' vision for Northern Australia is a conservation and hybrid economy that captures a zero-carbon economy, ecotourism, communications, clean energy hubs and services.

A sustainable future for Northern Australia should support the existing robust small enterprise economy of horticulture and agriculture industries already thriving in the area.

Unfortunately, many of the current proposals for northern Australia would involve massive environmental destruction and depletion of precious resources. Large industrial agriculture requiring broad scale land clearing or new dams would be a major step backwards for the north.

Any proposals which receive support through the NAIF must be assessed against rigorous environmental criteria. Since States and Territories are likely to be the proponents of many proposals, they should not be trusted to ensure that the environment and local communities are protected.

Dams and Water Infrastructure

It is important that investment in infrastructure not be used to fund environmentally damaging, unsustainable dams. As the Northern Australia Land and Water Taskforce noted in their final report:

Contrary to popular belief, water resources in the north are neither unlimited, nor wasted. Equally, the potential for northern Australia to become a 'food bowl' is not supported by evidence.⁶

6 Northern Australia Land And Water Taskforce, [Final Report](#), December 2009, p. iii.

The Australian Greens do not support Government subsidies to environmentally unsustainable dams, which can damage Northern Australia's river systems and environmental resources.

Recommendation 1: That the NAIF Bill be amended to exclude any proposal which is substantially linked with fossil fuel or nuclear projects, including mines, railways, pipelines, ports or electricity infrastructure.

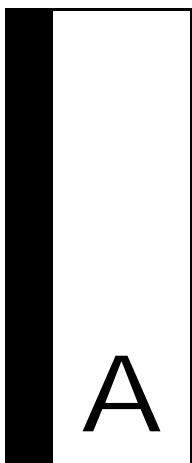
Recommendation 2: That the NAIF Bill be amended to ensure all proposals are subject to a rigorous independent cost-benefit analysis which includes environmental, climate, cultural and social costs.

Recommendation 3: That the NAIF Bill be amended to ensure that the Federal government cannot delegate responsibility for project approvals under the *Environment Protection and Biodiversity Conservation Act 1999* to State and Territory governments.

Recommendation 4: That the NAIF Bill be amended to ensure that the investment mandate for the NAIF includes the requirement that all proposals are consistent with the principles of ecologically sustainable development.

Senator Rachel Siewert

Senator for Western Australia



Appendix A – Submissions and Exhibits

Submissions

- 1 Seafarms Group Limited
- 2 Suncorp Group Limited
- 3 Department of Industry, Innovation and Science
- 3.1 Department of Industry, Innovation and Science
- 3.2 Confidential
- 3.3 Department of Industry, Innovation and Science
- 4 Department of Agriculture and Water Resources

Exhibits

- 1 **Suncorp Group Limited**
Build to Last: A Protecting the North initiative
a) *Economic benefits of flood mitigation investments, 9 October 2014*



Appendix B – Hearing and Witnesses

Friday, 8 April 2016 – Canberra

Department of Agriculture and Water Resources

Mr Richard McLoughlin, Assistant Secretary, Water Resources

Mr Anthony Slatyer, First Assistant Secretary

Department of Industry, Innovation and Science

Dr Steven Kennedy, Deputy Secretary

Mr Nathan Dal Bon, General Manager

Mr Mark Coffey, Head, Office of Northern Australia

Ms Louise Talbot, Manager

Seafarms Group Ltd

Dr Christopher Mitchell, Executive Director