Not An Independent Fund?

Submission to *Inquiry into the governance and operation of the Northern Australia Infrastructure Facility (NAIF)*

Submission

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Introduction

The Australia Institute is a Canberra-based think tank conducting a wide range of policy and economic research. We welcome the opportunity to make this submission to the Senate Economic Committee's *Inquiry into the governance and operation of the Northern Australia Infrastructure Facility (NAIF).*

Over the past year The Australia Institute has investigated the governance and operations the NAIF. NAIF is entrusted with $5 billion of public funds and has an important role in facilitating economic development. Despite this, NAIF is an under-resourced agency with a sparse governance framework. It is facing enormous government pressure to fund a particular and highly problematic project. Recent developments at the NAIF do little to allay these concerns. Similarly, our research into Efic, the agency conducting NAIF's project assessment, has raised concerns about its project assessments. We note similar concerns have been recently, and repeatedly, raised by the Productivity Commission.

This detailed submission addresses each of the Inquiry's Terms of Reference in sequence, focusing in detail on the adequacy and transparency of its policies and governance. Recommendations to clarify and reform the NAIF are listed below.

Before directly addressing the Terms of Reference, this submission first addresses NAIF's assessment of a proposed $1 billion concessional loan to Adani's coal rail line. NAIF's ongoing consideration of this proposal raises serious concerns about NAIF governance and operations.

Put simply, the proposal makes no economic or environmental sense. As the Productivity Commission has made clear, there is no economic basis for taxpayer support for resource projects in Australia, and on this basis former Minister for Trade Andrew Robb in late 2014 directed Efic to stop funding such projects – yet NAIF, with Efic assistance, is now doing just that. Spending 20% of the NAIF's funds on subsidising new coal supply would have the dubious distinction of damaging both existing coal regions and the climate. It would also redirect NAIF's capital away from investment and jobs in other industries like tourism, agriculture and renewable energy.

Not only is Adani's project inappropriate, but Adani has proven itself to be an inappropriate applicant. In Australia, Adani has been dishonest about the public benefits and viability of the project, and has even claimed they do not need the NAIF support to proceed – this statement alone should be grounds for disqualification.

Others have raised significant concerns about Adani's corporate track record and its links to tax havens.

Despite all of this, NAIF has not only continued with assessment of Adani's project, but allowed its deliberations to be prejudiced by the now former Minister's inappropriate and sustained public support for the loan. This is in a context of clear public opposition to the proposal.

NAIF's handling of this proposal is already damaging both the NAIF's and the government's reputation. To offer this loan would be disastrous for the NAIF's credibility as an independent and responsible financing agency.

Reforms are needed to ensure NAIF can play a responsible role in supporting prosperous and sustainable development in Northern Australia. But until it has resolved the Adani issue NAIF will not get clear air.

RECOMMENDATIONS

Adani

1. ***NAIF should publicly write to Ministers requesting that they stop prejudicing NAIF decision making. Ministers should refrain from commenting on projects currently being assessed by NAIF.***
2. ***NAIF should explain why it did not cease assessing Adani's proposal when Adani said it did not need the loan, or when it changed its story to one that was incoherent and contradicted previous legal statements.***
3. ***NAIF should develop a clear policy for how it will deal with public statements by proponents, in particular when they are disqualifying, contradictory or damage NAIF's reputation.***
4. ***NAIF should say when it told the Minister that Adani had consented to disclose its loan proposal and explain where the media report about the loan proposal came from.***
5. ***NAIF should disclose the specific Adani company that has applied for the loan.***
6. ***The former Minister should explain why he was promoting a proposal when the NAIF was bound not to acknowledge its existence.***

Application and assessment policies

7. ***The NAIF should bind project proponents to confidentiality, as they bind the NAIF, and have a clear policy around when either proponent can make public***

mutually agreed comments on the proposal. Alternatively, the NAIF could provide full public disclosure of what projects are being assessed and the stage of their assessment.

8. *NAIF should not assess projects until it is fully set up, and explain why it has been prior to this occurring. NAIF should clarify whether it considers itself fully set up.*
9. *NAIF should create and publicise basic standards and processes for application.*
10. *NAIF should release its detailed assessment policies and procedures, or have these independently audited by the Productivity Commission and the Australian National Audit Office.*

Role of Efic

11. *NAIF should detail Efic's role in NAIF application and assessment processes.*
12. *Parliament should seek clarity over whether and how NAIF decisions during assessment, but pre-Investment Decision, are subject to legal review.*
13. *NAIF should ensure that project development and project assessment is conducted by different teams.*
14. *NAIF and/or Efic should report in detail exactly how much work Efic is doing for NAIF. Efic should not let its work for NAIF reduce assistance for small and medium exporters.*
15. *Efic's work for NAIF should not be exempt from Freedom of Information requests.*
16. *NAIF's agreement with Efic should be made public.*

Resourcing and staffing

17. *NAIF should explain how it is able to conduct responsible assessments with significantly less capacity than comparable agencies.*
18. *NAIF's operational capacities should be increased.*

Refocus away from resources to other industries

19. *Consistent with the Productivity Commission's advice, and directions given to Efic in 2014 by Minister for Trade Andrew Robb, NAIF should be prevented from financing resource related projects.*
20. *NAIF should have its capacities expanded, and Mandate reformed, so that it can direct more of its funds to promote opportunities in industries like*

tourism, agriculture and remote renewable energy. This could include a specific small and medium enterprise program, including appropriate resourcing.

21. *NAIF and the government should give much greater priority to overcoming barriers to tourism industry engagement with the NAIF, including through increased operational capacity.*

Mandate

22. *If the NAIF Act is to be reformed, more of the basic financial definitions and mechanisms should be put in the Act rather than the Mandate.*
23. *All Ministerial decisions should involve at least two Ministers, not one, as currently.*

Risk Appetite Statement

24. *NAIF and CEFC should be given the same concessionality and portfolio return requirements.*
25. *NAIF and the Department of Finance should clarify how they have calculated the cost of NAIF's concessionality as listed in the Budget Papers, including how risk of non-repayment is accounted for, and how they will review this cost as NAIF takes on risk.*
26. *The RAS should be publicly released. Failing that, it should be subject to external professional audit as a priority.*

Public Benefit test

27. *NAIF should greatly clarify its public benefits test. Specifically*
    - *It should in a 'national interest' test with scope of assessment covering all of Australia.*
    - *It should clarify whether and how it is prioritising job creation.*
    - *It should include impacts on other actors in relevant markets, not just other infrastructure.*
    - *Guidance on acceptable models and parameters should be greatly clarified.*
28. *Cost-benefit analyses should be made public for scrutiny. Failing that, summaries should be released, and the full analysis should be should be subject to thorough critical external expert review.*

Environmental and social risk

29. *The NAIF should greatly strengthen its consideration of environmental and social risks.*
30. *The NAIF should be required to consider climate risk and to develop appropriate risk mitigation strategies. It should be required to consider the Australian government's policy commitment in the Paris Agreement, both its current domestic pledges and international goals under that agreement, and in its project assessments should use energy scenarios aligned with that goal.*
31. *NAIF should be subject to a prohibited technology provision, similar to the Clean Energy Finance Corporation. Consistent with the Paris Agreement, this provision should prohibit NAIF financing to infrastructure primarily to be used to extract, refine, transport or burn coal. (Note this would be partly covered by a prohibition on resource industry financing, consistent with Productivity Commission recommendations.)*
32. *NAIF should be required to consider the history of the applicant with regards to social, environmental and governance risks.*

Alternative mechanisms

33. *The Alternative Mechanism provisions should either be removed from the Mandate, or clarified greatly, in line with similar provisions in the legal frameworks of other agencies.*
34. *The Act should require the Minister to have consideration to the need for a range of expertise when appointing the Board. The list of expertise for eligibility should include environmental science.*

Conflict of interest

35. *NAIF should disclose steps it is taking to manage conflicts of interest.*
36. *NAIF Board members should not comment on projects they are assessing; this should be grounds for potential disciplinary action and in extreme cases, dismissal.*

Independence

37. *The NAIF should be required to publish details of Investment Decisions as soon as possible after they are made, well within the Minister's rejection period.*
38. *The NAIF should be required to publish the cost-benefit analyses used to assess the projects, and details about the concessionality of the financing.*

States and territories

39. ***NAIF should not be assessing projects while it does not have agreements with all states and territories across its entire jurisdiction.***
40. ***The agreements between the states and federal government over NAIF funding should be disclosed.***
41. ***The states and territory should disclose their own assessment and approval processes.***
42. ***NAIF should clarify how it intends to allocate funds available to states, for example, per capita to the regions covered by the fund.***

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NAIF and the Adani proposal

NAIF's handling of Adani's rail line proposal for NAIF funding provide the clearest grounds for concern about NAIF's governance and operations. The Adani application is highly problematic on multiple grounds, both as a project that makes no economic or environmental sense, and in light of the history and behaviour of the proponent. Adani's corporate history has been highlighted elsewhere. Here we argue that Adani's engagement in Australia public debate has also been dubious. NAIF's continued assessment of the proposal has already damaged the government's reputation and clearly indicates the need for reforms to NAIF's policy and strategy.

PREJUDICED BY POLITICAL INFLUENCE

The NAIF goes to great lengths to insist that its deliberations are confidential and independent. Despite this, the government has loudly promoted a loan to Adani to build a coal rail line into the Galilee Basin.

During his time as Minister for Resources and Northern Australia, Matthew Canavan took every opportunity to promote the NAIF's consideration of public financial support. His advocacy was supported by Deputy Prime Minister Barnaby Joyce, now acting Minister for Northern Australia. Bizarrely, these Cabinet Ministers were loudly supporting the proposal even when the NAIF was refusing to say whether it even existed.[1]

The political pressure exerted by Ministers has prejudiced NAIF deliberations. Any decision to fund the project will now reasonably be judged as politically influenced.

Yet NAIF has at no point attempted to defend itself against this interference. This stands in contrast to the actions of the Clean Energy Finance Corporation (CEFC) which has repeatedly and publicly defended its obligations for assessment under its Mandate.

NAIF should publicly write to Ministers requesting that they stop prejudicing NAIF decision making.

Ministers should refrain from commenting on projects currently being assessed by NAIF.

[1] Swann (2017) *Don't be so NAIF*
http://www.tai.org.au/sites/defualt/files/P318%20Dont%20be%20so%20naif%20FINAL_0.pdf

IS IT CRITICAL OR NOT?

Adani appears unable to maintain a coherent story about whether they need a NAIF loan.

Days after it was reported that NAIF was putting Adani's project into due diligence, Adani's spokesperson boasted

> It's not critical. We have obviously applied for it because it's available … It doesn't necessarily mean it's make or break for the project.[2]

As The Australia Institute pointed out at the time, this meant the project was not eligible for financing.[3] NAIF's Mandate means it can only fund projects that would not otherwise go ahead. Either Adani was lying about its project or it was not eligible. NAIF should have disqualified the proposal from consideration. It didn't.

In June, Adani changed its story. Now the loan is critical because "Subsequent requirements from the state and Commonwealth to make the rail project an open access/common user line increased costs."[4]

This story is incoherent: if Adani can finance a private line itself without need for a subsidy, why then is it asking for a subsidy for a multi-user line?

The reality is that the project has been multi-user since before the NAIF existed. The requirement for a multi-user line is part of the project's planning approval; in the 2013 environmental impact statement, the word "multi-user" is in the first sentence.[5] Multi-user infrastructure is a clear preference in the NAIF Mandate and the former Minister publicly promoted the project many times on exactly these ground – including on the very same day when Adani said the loan was not critical, and later when attacking the

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[2] Koziol (2016) *'It's not critical': Adani says it doesn't even need controversial $1 billion government loan* http://www.smh.com.au/federal-politics/political-news/its-not-critical-adani-says-it-doesnt-even-need-controversial-1-billion-government-loan-20161205-gt425r.html

[3] Briggs (2016) *'It's not critical': Adani claim for government loan questioned after company's admission* http://www.abc.net.au/news/2016-12-06/adani-claim-for-government-loan-questioned-after-admission/8097666

[4] Stott (2017) *Adani Doesn't Seem To Know What It Wants, And That's A Big Problem For The Government* https://www.buzzfeed.com/robstott/adani-doesnt-seem-to-know-what-it-wants-and-thats-a-big?utm_term=.xpEr7719d#.sd9VKK8Zy

[5] Adani (2013) *North Galilee Basin Rail Project; Environmental Impact Statement* http://www.statedevelopment.qld.gov.au/resources/project/north-galilee-basin-rail/ngbr-eis.pdf

Shadow Minister Jason Clare over his comments that Adani wanted to build a private rail line.[6]

In short, Adani is now blaming rules and expectations that have always been in place. That is tantamount to a confession of incompetence. Such a confession implicates both the former Minister and the NAIF, for failing to respond.

NAIF should explain why it did not cease assessing Adani's proposal when Adani said it did not need the loan, or when it changed its story to one that was incoherent and contradicted previous legal statements.

NAIF should develop a clear policy for how it will deal with public statements by proponents, in particular when they are disqualifying, contradictory or damage NAIF's reputation.

DISHONEST CLAIMS ABOUT PUBLIC BENEFITS

Adani has repeatedly stated that their project will create '10,000 jobs', including in paid advertising aimed at influencing the outcome of the Queensland election. This figure is based on 'input-output' modelling, which assumes no resource constraints. WA Treasury has been critical of this type of modelling, as has the Productivity Commission and the ABS.[7]

Adani has repeatedly altered the size of its proposal, yet keeps promising '10,000' jobs.

In court, Adani's economist Jerome Fahrer testified that the total jobs from the Carmichael Coal Mine and Rail Project would likely be 1,464 jobs on average over the life of the project, both direct and indirect. This modelling included resource constraints, which mean it accounted for substantial negative impacts on other industries, in particular on jobs in manufacturing and agriculture. These negative 'spill-

[6] Canavan (2017) *Labor's got the facts – and its priorities – wrong on Northern Australia* http://minister.industry.gov.au/ministers/canavan/media-releases/labor%E2%80%99s-got-facts-%E2%80%93-and-its-priorities-%E2%80%93-wrong-northern-australia

[7] See for example Layman (2000) *The use and abuse of input-output multipliers*, https://www.treasury.wa.gov.au/uploadedFiles/ecoresearchart2002.pdf; Gretton (2013) *On input-output tables: uses and abuses*, http://www.pc.gov.au/research/supporting/input-output-tables/input-output-tables.pdf; ABS (2010) *Input output multipliers*, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/5209.0.55.001Main%20Features4Final%20release%202006-07%20tables?opendocument&tabname=Summary&prodno=5209.0.55.001&issue=Final%20release%202006-07%20tables&num=&view=

over' economic impacts on other industries are acknowledged by the Reserve Bank, CSIRO and other economic analyses.[8]

While Adani's own economist has contradicted Adani's 10,000 jobs claims, so has Adani's Australian CEO, Jeyakumar "JJ" Janakaraj. Boasting to investors, JJ said

> When we ramp up the mine, everything will be autonomous from mine to port. In our eyes, this is the mine of the future.[9]

Not only does this undermine the claimed public benefits, but also the proponent's suitability for financing.

NEGATIVE IMPACTS ON EXISTING COAL, AND CLIMATE

Subsidising new supply will inevitably suppress coal prices, damaging both the existing coal industry and the climate.

A recent analysis by Wood Mackenzie showed that subsidising Galilee Basin coal developments would substantially impact coal mining activities across Queensland and New South Wales.[10] This confirms comments from Glencore's head of Australian coal in 2015 that "bringing on additional tonnes with the aid of taxpayer money would materially increase the risk to existing coal operations".[11] This would impact both on jobs and reduced coal royalties paid to NSW.[12]

At the same time, increased coal supply and suppressed coal prices will encourage global use of coal, and the 'lock-in' of new coal power, increasing global emissions. This is clearly contrary to both Australia's national interest and the Paris Agreement on climate change, in which the Australian government committed to decarbonising the world economy, and to G20 commitments to phase out fossil fuels. The International

[8] See discussion in Swann, Ogge (2016) *The mining construction boom and regional jobs in Queensland* http://www.tai.org.au/content/mining-construction-boom-and-regional-jobs-queensland

[9] White (2016) *Adani Mining CEO explains the $16.5B Carmichael coal mine* http://www.miningglobal.com/operations/adani-mining-ceo-explains-165b-carmichael-coal-mine

[10] Greber (2017) *Adani rail subsidy to hurt southern Queensland mine jobs, report shows* http://www.afr.com/news/special-reports/resources/adani-rail-subsidy-to-hurt-southern-queensland-mine-jobs-report-shows-20170705-gx52p3#ixzz4lynzV69n

[11] Smyth (2017) *Adani pushes ahead with Australia coal mine despite protests* https://www.ft.com/content/5164e582-4a6d-11e7-919a-1e14ce4af89b

[12] Leeson (2017) *Adani could cost $10bn in royalties, lead to mine closures* http://www.theaustralian.com.au/business/mining-energy/adani-could-cost-nsw-10bn-in-royalties-lead-to-mine-closures-report/news-story/db485d56fc4a7d3563b0df121b6cff1b

Energy Agency's 2-degree scenario shows there is no space for new coal supply; new coal investments in this 'danger zone' are at great risk of becoming stranded.[13]

RISKS TO PUBLIC FINANCES

A loan to this project will put public funds at great risk. The rail line will service Adani's Carmichael mine; if the mine becomes unviable, so too will the rail line.

Eminent UQ economist Professor John Quiggin's recent analysis for found "the Adani mine-rail project is highly unlikely to be economically viable, and that any public money lent to the project, whether through the NAIF or through a deferral of royalties is unlikely to be recovered."[14] John Hewson, economist, carbon risk expert and former Liberal leader, said

> I think it's already a stranded asset in the terms that I'd look at many of these fossil fuel assets. … There is no way we should give them concessional finance. … that's the last thing we should be doing.[15]

Queensland Treasury assessed the mine as "unbankable"; so too does "anyone with a calculator", in the words of analyst Tristan Edis.[16]

DEPRIVE OTHER INDUSTRIES OF FUNDS

Funds allocated to the Adani project cannot also be allocated to other industries. The NAIF is supposed to fund opportunities in a wide range of industries. The NAIF itself highlights opportunities in agriculture, tourism, education and renewable energy.[17] Spending 20% of the fund on one coal project would deprive these other industries of capital.

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[13] Carbon Tracker (2015) *The $2 trillion stranded assets danger zone* http://www.carbontracker.org/report/stranded-assets-danger-zone/

[14] Quiggin (2017) *The Economic (non) Viability of the Adani Galilee Basin Project* http://tai.org.au/content/economic-nonviability-adani-galilee-basin-project

[15] Hutchens (2017) *John Hewson says $1bn loan to Adani the 'last thing' Coalition should be doing* https://www.theguardian.com/business/2017/apr/16/john-hewson-says-1bn-loan-to-adani-the-last-thing-coalition-should-be-doing

[16] Edis (2015) *Adani Mine unbankable says Qld Treasury… and anyone with a calculator* http://www.theaustralian.com.au/business/business-spectator/adani-mine-unbankable-says-qld-treasuryand-anyone-with-a-calculator/news-story/eca1b1c764b25888d6b5e86df60e6057

[17] NAIF (2017) *CEDA Presentation* https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/07/CEDA-Qld-Economic-Forum-13-July-FINAL.pdf

Recently NAIF highlighted its assessment of a Genex proposal to build Stage 2 of its solar and hydro pumped storage facility at Kidston in North Queensland.[18] The financing proposal is reported to be between $200-$300 million.[19] In other words, NAIF could choose to fund up to five of these projects, or one Adani coal rail line.

Other projects that could be deprived include current proposals to build factories to manufacture batteries in both Townsville and Darwin, tourism facilities, roads, telecommunications infrastructure, ports and airports.

Mining projects are highly capital intensive: they tend to employ far fewer people relative to their output, compared with other industries. Support for other industries is more likely to create more jobs, in particular in the services industries. These industries make up the vast majority of all jobs in Australia, including in Northern Australia.

DAMAGING THE GOVERNMENT'S REPUTATION

NAIF is required by its Mandate not to do anything that would damage the government's reputation. Already NAIF's continued assessment of this project is threatening the government's reputation.

Strong public opposition to this proposal is demonstrated repeatedly in opinion polls across jurisdictions and across voting groups and demographics.[20] This includes in Queensland and among LNP and One Nation voters.[21]

[18] NAIF (2017) *NAIF Genex press release* https://naif-gov-au.industry.slicedtech.com.au/wp-content/uploads/2017/07/NAIF-Genex-release-12-July-2017.pdf

[19] Smith (2017) *FNQ renewable energy project pushes towards NAIF funding* http://www.cairnspost.com.au/news/cairns/fnq-renewable-energy-project-pushes-towards-naif-funding/news-story/9a4f17280c8396292222230d5d30c1bb

[20] The Australia Institute (2017) *Almost two thirds of Australians oppose billion dollar loan subsidy to Adani: poll* https://www.theguardian.com/environment/2017/may/25/most-queensland-voters-oppose-taxpayer-support-for-adani-coalmine-poll

[21] Murphy (2017) *Most Queensland voters oppose taxpayer support for Adani coalmine* https://www.theguardian.com/environment/2017/may/25/most-queensland-voters-oppose-taxpayer-support-for-adani-coalmine-poll

Inquiry Terms of Reference

(A) THE ADEQUACY AND TRANSPARENCY OF THE NAIF'S GOVERNANCE FRAMEWORK, INCLUDING ITS PROJECT ASSESSMENT AND APPROVAL PROCESSES

Inconsistent approach to confidentiality

NAIF has strictly refused to disclose information about specific project proponents, citing confidentiality. Whatever the merits of this, NAIF has not been consistent.

In December when the Minister was promoting the Adani application, the NAIF was not part of the media coverage, and bizarrely refused to acknowledge whether or not the project existed. NAIF subsequently did acknowledge this, however refused to say which Adani company has applied for the loan. NAIF has told Senate Estimates that Adani had consented to disclosure, and that NAIF had told the Minister, but did not say when they indicated this. In July NAIF has put out a press release about progress on the Genex solar and pumped hydro proposal.

NAIF should say when it told the Minister that Adani had consented to disclose its loan proposal and explain where the media report about the loan proposal came from. NAIF should disclose the specific Adani company that has applied for the loan.

The former Minister should explain why he was promoting a proposal when the NAIF was bound not to acknowledge its existence.

The NAIF should bind project proponents to confidentiality, as they bind the NAIF, and have a clear policy around when either proponent can make public mutually agreed comments on the proposal.

Alternatively, the NAIF could provide full public disclosure of what projects are being assessed and the stage of their assessment.

NAIF has recently commented it has engaged with over 1,500 stakeholders.[22] At the same time, we understand that it has also rejected offers to meet and discuss matters relevant to its Mandate with eminent and qualified experts, citing confidentiality. This

[22] NAIF update email 18 July

not only appears to be a misuse of confidentiality, but raises concerns about whether NAIF is adequately considering all risks relevant to its operations.

NAIF assessments began without any policies in place

NAIF was established in July 2016. Well before NAIF had any governance framework in place, it was already progressing and assessing projects. Adani's application went into due diligence in December 2016, attracting extensive reporting. Yet at that time, the NAIF still lacked any serious governance framework. The NAIF had:

- no Risk Appetite Statement (RAS), which it is required to have in the Mandate;
- no Public Interest or Indigenous Engagement policy, to address mandatory criteria in the Investment Mandate;
- no detailed project assessment policy;
- no formal contract with Efic, supposedly conducting the project assessment.[23]

NAIF should not assess projects until it is fully set up, and explain why it has been prior to this occurring.

Following earlier criticisms of NAIF's policies and process, the NAIF website now lists a number of policies. Most of these were posted in June 2017. All of these are short and highly general, consisting largely of cover pages, content pages, and basic definitions. Few of these policies relate to project assessment and none provide substantive detail about assessment processes or procedures. It is unclear what other policies exist but are confidential and if NAIF considers itself fully set up. This contrasts with the CEFC, which announced it was fully set up before offering financing.

NAIF should clarify whether it considers itself fully set up.

The NAIF website for submissions provides a form with three fields for "name", "email" and "message", with no place to attach files.[24] As the Minister for Northern Australia told estimates in October 2016, there "not really any formal application or submission process".[25] This does not appear appropriate for a fund managing $5 billion.

NAIF should create and publicise basic standards and processes for application.

[23] Swann (2017) FOI Requests – Adani and Northern Australia Infrastructure Facility (NAIF) http://www.tai.org.au/content/foi-requests-adani-and-northern-australia-infrastructure-facility-naif
[24] NAIF (2016) Submit my proposal http://naif.gov.au/application-process/submit-my-proposal/
[25] Hansard (2016) Estimates, Economics Legislation Committee, 20 October 2016, http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/adc62de8-dc09-471d-ac4b-326d93515f75/toc_pdf/Economics%20Legislation%20Committee_2016_10_20_4520_Official.pdf p177

Application and assessment guidance

The NAIF website outlines guidance about NAIF's 'Application and Approval Procedure'.[26] This document summarises the four stages of the NAIF process, listing some considerations the NAIF might take into account when assessing and progressing a project.

Further detailed documentation would be needed conduct such a procedure. However, NAIF has refused to release such documents. They have even rejected requests under FOI. While they have argued that to do so would negatively impact the agency's operations, by altering the behaviour of applicants, they have not explained why this would be against the public interest.[27]

It is of particular concern that this 'Application and Approval Procedure' does not once mention Efic, the agency that is actually conducting NAIF's project assessment.

The Productivity Commission recently raised serious concerns about NAIF, in light of its previous review and criticisms of Efic's governance. This is discussed below. We also note the Australian National Audit Office is currently considering whether to conduct an Audit of NAIF assessment processes.

NAIF should release its detailed assessment policies and procedures, or have these independently audited by the Productivity Commission and the Australian National Audit Office.

NAIF should detail Efic's role in NAIF application and assessment processes.

The procedure guidance shows that NAIF makes substantive decisions all throughout the process, to progress applications, to help develop proposals, to expend resources on some applications and not others. Yet the guidance emphasises that such decisions do not in any way indicate likelihood of formal Investment Decisions. Such comments appear designed to downplay the extent to which assessment decisions are subject to legal review.

Parliament should seek clarity over whether and how NAIF decisions during assessment, but pre-Investment Decision, are subject to legal review.

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[26] NAIF (2017) *Application and Approval Procedure* http://naif.gov.au/application-process/application-and-approval-procedure/

[27] Swann (2017) FOI Requests – Adani and Northern Australia Infrastructure Facility (NAIF) http://www.tai.org.au/content/foi-requests-adani-and-northern-australia-infrastructure-facility-naif

It is unclear how NAIF ensures that assistance it provides in developing applications does not inappropriately influence their project assessment. This is a particular concern in light of the low levels of staffing capacity.

NAIF should ensure that project development and project assessment is conducted by different teams.

Low levels of resourcing and staffing

Throughout its operation NAIF has had just a handful of staff and much lower levels of operational funding than other agencies managing comparable funds.[28] It is not clear how NAIF can conduct responsible assessment with much lower staff capacity.

The NAIF has an average annual operating cost of $8.8 million per year. By contrast, in 2015-16, the CEFC's operating expenses were $23 million and Efic's operating costs in its Commercial Account were $34 million. Notably, the NAIF expects to spend $3 million each year outsourcing assessment work to Efic, rather than building internal capacity.

When it began assessing the Adani proposal, NAIF had two staff.[29] Now NAIF says it has 10.6 FTE staff.[30] Most of NAIF's capacity is supposed to be via Efic. Efic indicated in December 2016 there were only 2 Efic staff assisting the NAIF, and on 23 January 2017 NAIF said there was no formal agreement between NAIF and Efic.[31] Efic subsequently told Senate Estimates on 2 March 2017 that five Efic staff were working for the NAIF.[32]

The NAIF staffing level, even including Efic, is far lower than either CEFC (around 60 staff) or Efic in total (110 staff), despite these agencies managing similar volumes of funds.

Following some critical media coverage about staff capacities, the Minister said that NAIF had 'accessed' 43 of Efic's staff. Now NAIF states in answers to questions on

[28] Swann (2017) *Don't be so NAIF* http://www.tai.org.au/sites/defualt/files/P318%20Dont%20be%20so%20naif%20FINAL_0.pdf page 29

[29] Swann (2017) *FOI Requests – Adani and Northern Australia Infrastructure Facility (NAIF)* http://www.tai.org.au/content/foi-requests-adani-and-northern-australia-infrastructure-facility-naif

[30] Estimates 2017, Question on Notice 462, Minister for Resources and Northern Australia,

[31] Swann (2017) *FOI Requests – Adani and Northern Australia Infrastructure Facility (NAIF)* http://www.tai.org.au/content/foi-requests-adani-and-northern-australia-infrastructure-facility-naif

[32] Efic, by correspondence

notice from Senator Chisholm, that they have "access to" all 110 Efic staff, and "have accessed" 53 staff, including 21 staff working on project assessment.[33]

Talk of "access to" staff obfuscates the amount of work Efic has done for NAIF. Nonetheless, these figures strongly suggest that Efic has been mainly helping set up NAIF. Efic had indicated in March Estimates that some other Efic staff had assisted with establishing NAIF's governance policies – in other words, work that needs to be done *before* starting project assessment.

The extent of Efic's work for NAIF has consequences for both agencies. Either NAIF is cannibalising up to half of the staff capacity at Efic, and preventing Efic from providing its important services to small and medium sized exporters, or NAIF activity is far more limited than NAIF wishes to portray.

NAIF and/or Efic should report in detail exactly how much work Efic is doing for NAIF.

Efic should not let its work for NAIF reduce assistance for small and medium exporters.

NAIF should explain how it is able to conduct responsible assessments with significantly less capacity than comparable agencies.

NAIF's operational capacities should be increased.

Arrangements with Efic are opaque

Details of NAIF's assessment processes are particularly difficult for the public to understand as parts of them are conducted by the Export Finance and Insurance Corporation (Efic). Efic is largely exempt from Freedom of Information requests, which obviously reduces transparency around its operations. This creates a potential conflict between requirements on NAIF processes and on Efic.

Efic's work for NAIF should not be exempt from Freedom of Information requests.

The Australia Institute and Jubilee Australia also have suggested Efic's exemption from FoI should be removed.

The Australia Institute participates in Efic's multi-stakeholder engagement forum. At these meetings, Efic's involvement with NAIF and its assessment processes have been raised by civil society representatives. However, Efic provides minimal detail and suggests approaching NAIF for details, requests which are routinely rejected.

[33] Estimates 2017, Industry Innovation and Science, Question on Notice 462, Minister for Resources and Northern Australia

NAIF indicated in January that there was "no formal agreement" between NAIF and Efic.[34] This is concerning. Now NAIF says there is such an agreement, but it is no public.

NAIF's agreement with Efic should be made public.

Issues with Efic's governance

Given the lack of transparency around Efic and NAIF, the public can only go on Efic's track record. Efic's track record on risk assessment provides significant grounds for concern about its own risk management framework and about its assistance to NAIF.

The Productivity Commission recently summarised serious criticisms of Efic:

> **There is much to be learned from the long experience of EFIC providing concessional export finance. Some of these lessons cover what not to do.** The Commission's review of EFIC (PC 2012) found that it was **failing to support small and medium size enterprises (SMEs)** where market gaps in access to export financing were more likely (box 3.3). The Commission also **found governance problems, such as insufficient internal and independent oversight of compliance with its mandate.** The Commission was **not satisfied that the EFIC Board was provided with sufficient information in board papers to evaluate whether finance facilities submitted for approval met the requirements** set out in the Minister's Statement of Expectations with regard to pricing, or to determine that EFIC was not competing with the private sector (PC 2012).[35]

While the Productivity Commission states "EFIC have since made changes to improve its governance arrangements, which should inform the arrangements for the NAIF",[36] it did not state they have been able to assess the adequacy of these reforms. This is concerning, given most of NAIF's activity occurs within Efic.

[34] Swann (2017) FOI Requests – Adani and Northern Australia Infrastructure Facility (NAIF) http://www.tai.org.au/content/foi-requests-adani-and-northern-australia-infrastructure-facility-naif

[35] bold added, Productivity Commission (2017) *Trade Assistance Review 2015-16* http://www.pc.gov.au/research/ongoing/trade-assistance/2015-16/trade-assistance-review-2015-16.pdf page 45

[36] Ibid

The PC warned that failing to learn these lessons mean “The risk for the NAIF is more likely to be that some infrastructure projects will fail to cover their operational costs, let alone meet their loan servicing and repayment obligations.”[37]

Efic’s poor track record on large projects

Efic has provided finance and insurance services to many of the most egregious social and environmental disasters in the Asia Pacific region. Efic has financed the Ok Tedi mine in Papua New Guinea which had shocking environmental impacts, and Bougainville’s Panguna mine which led to civil war between Bougainvillians affected by the mine and the PNG military. Efic’s abysmal track record continues with its major role in the PNG LNG project, which is currently exacerbating tensions in the region of the project leading to armed conflict.[38]

No economic case for NAIF mining finance

NAIF and Efic are both established as ‘market gap’ financiers. The policy rationale is only to fund projects as needed to ensure the project goes ahead, and not otherwise.

The Productivity Commission’s 2012 review of Efic argued

> While few, if any, markets conform to the competitive ideal, there is no convincing evidence of systemic failures that impede access to finance for large firms or for resource-related projects in Australia.
>
> > **EFIC should not continue to provide facilities to large corporate clients or for resource related projects in Australia**, including suppliers to those projects, on the commercial account.[39]

In response, Minister for Trade Andrew Robb wrote to Efic in November 2014 stating his expectations that “EFIC shall cease to support onshore resource projects (and

[37] Productivity Commission (2017) *Trade Assistance Review 2015-16* http://www.pc.gov.au/research/ongoing/trade-assistance/2015-16/trade-assistance-review-2015-16.pdf page 44

[38] For details and references, see Fletcher and Campbell (2017) *Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016 [provisions] Submission* http://www.tai.org.au/sites/defualt/files/TAI%20Jubilee%202017%20Efic%20Bill%20submission%20FINAL.pdf

[39] Bold added, Productivity Commission (2012) *Australia’s export credit arrangements* http://www.pc.gov.au/inquiries/completed/export-credit/report

related infrastructure) given that the private finance sector is active in this part of the market."[40] Efic was also directed to focus on small and medium exporters.

Yet two years later Efic was again supporting mining projects in Australia, through its role with the NAIF.

No justification has been provided for why the arguments from Productivity Commission and former Minister Robb should not apply equally to NAIF.

Consistent with the Productivity Commission's advice, and directions given to Efic in 2014 by Minister for Trade Andrew Robb, NAIF should be prevented from financing resource related projects.

Small and medium enterprises disadvantaged

NAIF's Mandate requires it to give preference for projects over $100m. In other words, NAIF is directed to deprioritise opportunities in Northern Australia for smaller scale investment despite significant aggregate public benefits. This includes in industries like tourism, agriculture and remote renewable energy. As a result, NAIF is not set up to search for and promote such opportunities. If funding for large resource projects was ruled out, greater attention could be focused on these opportunities.

NAIF should have its capacities expanded, and Mandate reformed, so that it can direct more of its funds to promote opportunities in industries like tourism, agriculture and remote renewable energy. This could include a specific small and medium enterprise program, including appropriate resourcing.

Need for greater focus on tourism

The Joint Standing Committee on Northern Australia is currently conducting an *Inquiry into Opportunities and Methods for Stimulating the Tourism Industry in Northern Australia.* 52 submissions have been made to this Inquiry.[41] Yet it is remarkable how few submissions from the tourism industry itself actually refer to the NAIF. This strongly suggests that the Northern Australian tourism industry does not see the NAIF as relevant to their industry. This is remarkable given NAIF regularly highlights tourism

[40] Efic was nonetheless allowed to continue to fund "off-shore" resource projects, which it intends to do. Robb Statement of Expectations https://www.efic.gov.au/media/1541/efic_soe_february_2015.pdf

[41] *Inquiry into Opportunities and Methods for Stimulating the Tourism Industry in Northern Australia*, Submissions http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/TourismIndustry/Submissions

as a major focus, and the NAIF is the government's flagship policy for economic development in the north.

One reason may be the NAIF's focus on large projects. There may also be issues with NAIF priorities in industry engagement.

We note Tropical Tourism North Queensland, in its submission, called on the government to "Expand the Northern Australia Infrastructure Fund to include funding opportunities for smaller Tourism businesses."[42]

NAIF and the government should give much greater priority to overcoming barriers to tourism industry engagement with the NAIF, including through increased operational capacity.

[42] Tourism Tropical North Queensland, Submission to *Inquiry into Opportunities and Methods for Stimulating the Tourism Industry in Northern Australia* http://www.aph.gov.au/DocumentStore.ashx?id=4df94672-8c80-44d2-99e4-d492e0e82b02&subId=463780

(B) THE ADEQUACY OF THE NAIF'S INVESTMENT MANDATE, RISK APPETITE STATEMENT AND PUBLIC INTEREST TEST IN GUIDING DECISIONS OF THE NAIF BOARD;

Ministerial discretion

NAIF's Investment Mandate contains almost all of NAIF's substantive guidance with respect to its financing activities. Indeed the NAIF Act itself does not mention 'Investment Decisions' or 'Financing Mechanisms', which are defined in the Mandate.

This is concerning as the Mandate is a Ministerial directive that can be altered at Ministerial discretion. As it is non-disallowable, it cannot be scrutinised by the Senate before changes are made, nor can the Senate prevent those changes.

Moreover, nearly all Ministerial powers in the NAIF Act and Mandate are exercised by just one Minister. This is unlike most other comparable agencies which are answerable to at least two Ministers. This provides for considerable influence over NAIF activities and lower levels of oversight.

If the NAIF Act is to be reformed, more of the basic financial definitions and mechanisms should be put in the Act rather than the Mandate.

All Ministerial decisions should involve at least two Ministers, not one, as currently.

Concessionality and returns

The CEFC Mandate gives it limits on the amount of concessional finance that can be offered in a year, and provides for a portfolio target for returns, set above the bond rate. Both of these are absent from the NAIF. Indeed, the NAIF simply needs to have its loans repaid, with repayments covering costs. The policy rationale for this difference is unclear.

NAIF and CEFC should be given the same concessionality and portfolio return requirements.

NAIF is able to provide concessionality in many ways, not simply subcommercial interest rates but also longer-term, deferred or contingent repayment, or to take lower priority debt, such that other debtors take priority in recovering funds. As discussed below, it is also able to provide non-loan 'alternative' financing, although the Mandate is very unclear on what these are and how they would be offered.

The Budget Papers list the NAIF as expenditure amounting to the full cost of concessions in the year in which the loans are to be made, totalling $1.6 billion over estimates.[43] It is unclear how this was calculated, given the NAIF did not yet exist and had not determined the appropriate level of concessions. Moreover, as the PC notes the assistance

> is difficult to quantify, especially when several types of concession are combined. The largest component is usually the value of the interest rate discount, where the 'grant equivalent' depends mainly on the size of the loan and the difference between the market interest rate and the rate charged under the facility. The contingent liabilities incurred by the NAIF, which convert to real liabilities if the firms find themselves unable to repay or refinance their loans, are particularly difficult to quantify[44]

NAIF and the Department of Finance should clarify how they have calculated the cost of NAIF's concessionality as listed in the Budget Papers, including how risk of non-repayment is accounted for, and how they will review this cost as NAIF takes on risk.

Risk Appetite Statement (RAS)

The RAS is one of the key documents guiding the NAIF's assessments. It is developed in consultation with the Minister. The NAIF refuses to release it.

It is highly concerning NAIF was progressing applications well before it had its RAS in place.[45]

The Australia Institute has requested this document under Freedom of Information law. Our request was refused and then refused again through Internal Review. This is currently under external review by the Office of the Information Commissioner.

The Senate has requested this document through a formal Order for the Production of Documents. NAIF has said publicly that it does not intend to comply.

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[43] Departmental Budget Paper, Department of Industry, Innovation and Science Budget Statement https://industry.gov.au/AboutUs/Budget/Documents/PBS-2017-18.pdf p33

[44] Productivity Commission (2017) *Trade Assistance Review 2015-16* http://www.pc.gov.au/research/ongoing/trade-assistance/2015-16/trade-assistance-review-2015-16.pdf page

[45] Swann (2017) *Don't be so NAIF* http://www.tai.org.au/sites/defualt/files/P318%20Dont%20be%20so%20naif%20FINAL_0.pdf

NAIF argues that releasing this document would not be in the public interest as it would cause applicants to alter their applications. NAIF did not explain why this would be contrary to the public interest.

Following criticisms, NAIF has released guidance about its risk framework. This is of a very general nature.[46] Notably, this information emphasises NAIF's high risk tolerance:

> NAIF has a high financing risk tolerance to complement and encourage ("crowd in") private sector participation in financing a Project, which may include a high risk tolerance for concessions in relation to tenor, pricing, repayment terms, cash flow priority, and willingness to partner with Commercial and other financiers. NAIF also has a high risk tolerance for risk factors that are unique to investing in Northern Australia, including but not limited to distance, remoteness and climate. The RAS accepts that during the initial years of NAIF's operation, the portfolio of NAIF's investments may have high concentration risk.[47]

This emphasis on high risk raises concerns about how the RAS will ensure NAIF's funds are repaid. These concerns cannot be addressed as the RAS is not public.

These considerations have consequences for the Commonwealth Budget. As the NAIF takes on risks, and indeed if it makes losses, Budget allocations need to be reviewed.

Efic's submission to this Inquiry notes they refuse to release their Risk Appetite Statement, which they can do under legal protection including exemption from FOI. However, NAIF is not exempt from FOI. We note that even Efic provides substantially greater volumes of information about how it assesses and manages risk, outlining quantitative and qualitative controls on certain kinds of risk.[48] Nonetheless, Efic's refusal to release the underlying document could be questioned on exactly the same grounds.

The RAS should be publicly released. Failing that, it should be subject to external professional audit as a priority.

Public Benefit test

The most important part of the NAIF Mandate is the schedule of mandatory criteria.

[46] NAIF (2017) Risk Management Framework http://www.naif.gov.au/risk-management-framework/
[47] Ibid
[48] Efic Annual Report 2015-16 https://www.efic.gov.au/media/3484/efic-annual-report-2015-2016.pdf page 74

Mandatory Criterion 2 states

> In considering public benefit, the Board will give preference to those Projects that will:
>
> 1. serve or have the capacity to serve multiple users; and
> 2. produce benefits to the broader economy and community beyond those able to be captured by Project Proponents.[49]

This criterion is highly general and clearly requires substantial interpretation to guide NAIF decisions.

NAIF's Public Benefit policy was published only in June 2017. Admirably, it requires proposals to include a cost benefit assessment (for funding of greater than $50 million). The analysis which must show public benefits exceed public costs. But the terms for any cost-benefit analysis are not specified in detail, raising many questions.

- **What costs and benefits will be included and how will they be measured or modelled?**

  There is only a very general list of factors that may be included, but no guide to determining what must be included, or how. Cost benefit analysis should include environmental and social impacts as well as financial revenues and costs. The evaluation of these costs is often subjective and requires close review and guidance on how they should be considered.

- **What models and parameters will be used for economic impacts?**

  Cost benefit analysis of mining and infrastructure projects have been hotly contested in courts and planning hearings in Queensland and NSW in recent years. Following criticism of proponent-commissioned cost benefit analyses by courts and the NSW Planning and Assessment Commission, the NSW government launched review of economic assessment guidelines and subsequently published economic assessment guidelines specifically for mining and coal seam gas projects.[50] Queensland and WA Treasuries and planning departments have also published useful documents, including some critical of

[49] NAIF Investment Mandate https://www.legislation.gov.au/Details/F2016L00654

[50] Mckenny and Whitbourn (2014) *Mining assessments to be beefed up after scathing review*, http://www.smh.com.au/nsw/mining-assessments-to-be-beefed-up-after-scathing-review-20140616-zs9sd.html; NSW Government (2015) *Guidelines for the economic assessment of mining and coal seam gas proposals*, http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/~/media/C34250AF72674275836541CD48CBEC49.ashx

economic assessment methodologies that have been used by known NAIF proponents.

In particular we highlight Adani's claim of producing 10,000 jobs, based on 'input output' modelling. WA Treasury has been critical of this type of modelling, as has the Productivity Commission and the ABS.[51]

Given the controversy around economic assessment of major projects, the NAIF does not adequately consider how this cost benefit analysis is to be done, or provide guidance to ensure it is robust.

- **What geographic scope will be used -- the region of the project, the state, the whole country or the world economy?**

  A key point of contention over economic assessment of major projects has been the scope of assessments – whether cost benefit analysis should focus on local, state, national or global costs and benefits. Given NAIF's focus on northern Australia, rather than a particular state, guidance is required. Furthermore, given the national or global nature of some of the potential impacts of projects that could be funded by NAIF, serious consideration is required as to the scope of assessment.

- **How will it prioritise projects or consider the opportunity cost of failing to finance other projects?**

  A key advantage of cost benefit analysis is the potential to compare the relative net benefits of different projects, thereby considering what a state or the NAIF might be giving up by funding an alternative project. It is unclear how this will occur in NAIF's processes, with each project apparently considered individually. Without making these costs benefit assessments public, or ensuring they are of a standard to enable comparison, assurance cannot be provided to the public.

[51] See for example Layman (2000) *The use and abuse of input-output multipliers*, https://www.treasury.wa.gov.au/uploadedFiles/ecoresearchart2002.pdf; Gretton (2013) *On input-output tables: uses and abuses*, http://www.pc.gov.au/research/supporting/input-output-tables/input-output-tables.pdf; ABS (2010) *Input output multipliers*, http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/5209.0.55.001Main%20Features4Final%20release%202006-07%20tables?opendocument&tabname=Summary&prodno=5209.0.55.001&issue=Final%20release%202006-07%20tables&num=&view=

Despite the Mandate requirement to give preference to multi-user or projects with positive spill-overs, the Mandate nor the Public Benefit policy does not require NAIF to give *greater* preference to projects that deliver a *greater* benefit. It is therefore unclear how NAIF decides how to prioritise projects. Assessment of the Adani proposal prior to policies being set up suggests it is not based on policy.

- **How will the CBA consider the distribution of costs and benefits? Will it favour job creation and service provision over generation of revenue for investors?**

  Cost benefit analysis generally does not consider employment as a 'benefit'. The assumption of much cost benefit analysis is that workers could get another job if any particular project does not go ahead. This assumption may or may not hold in regional areas. If employment effects are to be considered within NAIF analysis guidance is essential to ensure proponents do not overstate potential job impacts. A clear example is again the controversy over whether the Adani project would generate 10,000 jobs or 1,464 jobs or is to be fully automated.

This lack of clarity is concerning. The Australia Institute's research over many years has shown proponents of large extractive projects, including Adani, have used questionable economic modelling in order to promote their projects. Yet the policy says NAIF may simply use a proponent's CBA. Since these will not be made public they will not be subject to public scrutiny.

We note that the Galilee Basin rail line is not on Infrastructure Australia's Priority Infrastructure List. While it is included in the Northern Australia Infrastructure Audit, that document essentially lists all projects of a certain scale that could be built in Northern Australia, and notes explicitly that it does not prioritise amongst projects. The fact that such a large project is not identified as a priority by Australia's main infrastructure prioritisation agency surely weighs against NAIF giving it priority.

The Mandate requires NAIF to consider impacts on financing markets for infrastructure and on other infrastructure. However, there is no requirement to consider impacts on other markets in general. NAIF should be required to at least to consider impacts in the markets in which the infrastructure is seeking to operate -- for example, the negative impact of Galilee Basin coal expansion on other existing coal regions in Australia.

NAIF should greatly clarify its public benefits test. Specifically

- ***It should in a 'national interest' test with scope of assessment covering all of Australia.***
- ***It should clarify whether and how it is prioritising job creation.***
- ***It should include impacts on other actors in relevant markets, not just other infrastructure.***
- ***Guidance on acceptable models and parameters should be greatly clarified.***

Cost-benefit analyses should be made public for scrutiny. Failing that, summaries should be released, and the full analysis should be should be subject to thorough critical external expert review.

Indigenous Engagement

Another Mandatory Criterion in the Mandate is that NAIF fund only projects that have an Indigenous Engagement Strategy. However, the NAIF does not yet have a finalised policy on this matter and has refused to release the current version of this document when requested under FOI.

We note the concerns of Indigenous leader Peter Yu that the government's Northern Australia agenda, including the NAIF, are sidelining those sectors in which Indigenous Australians are taking the lead, including land management, carbon sequestration, conservation and eco-tourism.[52] We also note the NAIF does not have any Indigenous Australians on its Board.

Environmental and social factors

The Mandate requires NAIF to have social and environmental policies informed by 'best practice'. Yet these matters are almost entirely absent from NAIF's governance framework.

The *Environmental and Social Review* policy entails only that the NAIF refuse funding to projects that do not have approval. It does not require assessment of environmental or social risks beyond those considered in the project approval. It explicitly rejects the idea of policies excluding certain forms of investment on the grounds of their environmental or social risk. At a time where investors increasingly recognise their legal duties to consider these risks, including placing limits on industries they will not

[52] Brann (2016) *Plans to develop northern Australia no embracing Indigenous population says Peter Yu* http://www.abc.net.au/news/rural/2016-06-21/developing-northern-australia-plans-ignore-indigenous-owners/7528516

invest in, NAIF's approach is clearly not 'best practice'. As Noel Hutley SC has advised with regards to climate risk in particular, consideration of such risks is a director's duty.[53] NAIF's policies ignore that duty.

Similarly, the Public Interest policy mentions environmental and social factors only in cursory, general terms, stating a cost benefit analysis should include:

> Impacts on the community. Examples include positive and negative environmental and social impacts during the construction and operation of the Project.

Remarkably, there is no mention of climate change in the NAIF Act, Mandate or any of its governance documents. These documents nowhere require, or even encourage, NAIF to prioritise projects that promote climate change adaptation or mitigation, or to consider and avoid risks associated with carbon investment and stranded assets. Ironically, the Risk Appetite Statement includes a high tolerance for risks from the (existing) Northern Australian climate.

As a result, NAIF is not only at risk of exposing taxpayers to social and environmental risks that it has failed to consider, but at risk of undermining Australian government policy commitments on these matters. For example, NAIF is at risk of funding projects that are inconsistent with Australian commitments under the Paris Agreement, both its domestic pledges and its commitment to international goals of decarbonising the world economy. In doing so it also risks the Australian government's reputation.

There is also no mention in any of these documents of a consideration of the history of the applicants. The track record of a company and its directors provides a clear indication of risks associated with financing that company's operations.

Little solace is provided by the fact that Efic is conducting NAIF's assessment. As noted above, Efic has an abysmal track record on assessment of social and environmental risk.

The NAIF should greatly strengthen its consideration of environmental and social risks.

The NAIF should be required to consider climate risk and to develop appropriate risk mitigation strategies. It should be required to consider the Australian government's policy commitment in the Paris Agreement, both its current domestic pledges and

[53] Hutley SC, Hartford-Davis (2016) *Climate Change and Directors' Duties* https://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf

international goals under that agreement, and in its project assessments should use energy scenarios consistent with that goal.

NAIF should be subject to a prohibited technology provision, similar to the Clean Energy Finance Corporation. Consistent with the Paris Agreement, this provision should prohibit NAIF financing to infrastructure primarily to be used to extract, refine, transport or burn coal. (Note this would be partly covered by a prohibition on resource industry financing, consistent with Productivity Commission recommendations.)

NAIF should be required to consider the history of the applicant with regards to social, environmental and governance risks.

Alternative Mechanisms

The Mandate gives capacity for the NAIF to provide non-loan financing, in an 'Alternative Financing Mechanism'. These provisions are remarkably unclear.

Alternative mechanisms can be offered on recommendation of the NAIF, which must 'seek agreement' of the Minister, who must then 'seek agreement' from the Finance Minister. It is not clear if the Finance Minister can here exercise veto power.

The Mandate does not say what an alternative mechanism might be. While the Mandate rules out equity, it does not rule out grant transfers. Requirements that loans be repaid (mandatory criterion 6) do not apply; while mandatory criterion 6 says that a relevant substitute should apply, it does not say what this is or how it is determined. Moreover, this caveat is included in the very criterion from which alternative mechanisms are exempted.

The Alternative Mechanism provisions should either be removed from the Mandate, or clarified greatly, in line with similar provisions in the legal frameworks of other agencies.

(C) PROCESSES USED TO APPOINT NAIF BOARD MEMBERS, INCLUDING ASSESSMENT OF POTENTIAL CONFLICTS OF INTEREST;

NAIF has a Mandate of promoting infrastructure across many industries. Despite this the NAIF Board seems to have limited expertise in industries such as agriculture, tourism and renewable energy. There appears to be little experience with public administration.

The NAIF Act lists requirements for expertise for a person to be eligible to be a Board member. There is no requirement for the Minister need for a broad range of expertise on the Board.

The list of expertise for eligibility does not include environmental science. Environmental considerations are likely to be key to Northern Australian development and should be central to all NAIF Board deliberations.

The Act should require the Minister to have consideration to the need for a range of expertise when appointing the Board. The list of expertise for eligibility should include environmental science.

(D) THE TRANSPARENCY OF THE NAIF'S POLICIES IN MANAGING PERCEIVED, ACTUAL OR POTENTIAL CONFLICTS OF INTEREST OF ITS BOARD MEMBERS

The NAIF's Conflicts of Interest policy was published on the NAIF website on June 2017. It is not clear how conflicts of interest were managed before the policy was in place. It is also not clear what if any actions have been taken under this policy, nor why NAIF should not disclose these matters.

We note there are potential conflicts of interest between some Board members and projects on which they are making decisions, in particular regarding Galilee Basin coal projects. It is also concerning that one Board member should respond to concerns about these conflicts of interest by breaching strictures about confidentiality and stating she is “very supportive” of the Adani project as “vital” to North Queensland.[54]

NAIF should disclose steps it is taking to manage conflicts of interest.

NAIF Board members should not comment on projects they are assessing; this should be grounds for potential disciplinary action and in extreme cases, dismissal.

(D) 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

Concerns about independence have been raised by the Productivity Commission, who urge that “Project selection must be on merit and not succumb to political pressures”.[55]

NAIF is designed to be an independent agency. Under the Act, the Minister cannot direct NAIF to fund a particular project. However, the Minister can veto projects at any time during assessment, and up to three weeks after financing has been offered.

We note these veto powers are unique to NAIF and allow the Minister to exert influence over NAIF’s work program.

Similarly, the state governments can veto the project at any time, either in writing or simply by refusing to sign the contract.

The NAIF is required to publish information about Investment Decisions – offers or rejections of financing – within six weeks. This is three weeks after the Minister’s rejection period has closed. The public may first hear of financing after contracts have been signed. This means the Minister and state governments have ultimate discretion without public scrutiny.

[54] Robertson (2017) *Adani: director on board that will consider $900m loan says project is ‘vital’* https://www.theguardian.com/environment/2017/may/31/adani-director-on-board-that-will-consider-900m-loan-says-project-is-vital

[55] Productivity Commission (2017) *Trade Assistance Review 2015-16* http://www.pc.gov.au/research/ongoing/trade-assistance/2015-16/trade-assistance-review-2015-16.pdf page 44

The NAIF should be required to publish details of Investment Decisions as soon as possible after they are made, well within the Minister's rejection period.

The NAIF is only required to publish very basic information about Investment Decisions: the name, location, type of project and financing amount. This does not even include the form or degree of concession. Nor does it include any information about cost-benefit analyses used to assess the project's public benefit.

The NAIF should be required to publish the cost-benefit analyses used to assess the projects, and details about the concessionality of the financing.

NAIF has failed to respond adequately to inappropriate and sustained government pressure regarding the Adani rail proposal. This is not simply a matter of the Act and Mandate, but the Board's behaviour. As discussed above, the NAIF should request government Ministers stop prejudicing its decision-making and undermining. Failure to do so undermines perceptions of independence.

(E) THE STATUS AND ROLE OF STATE AND TERRITORY GOVERNMENTS UNDER THE NAIF, INCLUDING ANY AGREEMENTS BETWEEN STATES AND TERRITORIES AND THE FEDERAL GOVERNMENT

The NAIF is set up to fund projects via 'grants of financial assistance' to states and territories. This is for constitutional reasons.

The WA Government has noted in its submission to the NAIF Inquiry that it has not yet entered an agreement with the NAIF. News coverage suggests the NT Government is still negotiating with the NAIF. This means the NAIF is effectively operating as a Queensland Investment Facility, despite the fact it is supposed to ensure it funds are allocated across all jurisdictions.

NAIF should not be assessing projects while it does not have agreements with all states and territories across its entire jurisdiction.

The 'Master Facility Agreement' with Queensland has not been made public, nor has the Queensland government disclosed the extent of its own internal project assessment. While the Palaszczuk government is saying it will not 'stand in the way' of the funding but will not be the 'middleman', in reality they will be legally responsible for it, will sign off on it, and likely will be doing their own internal assessment of proposals.

The agreements between the states and federal government over NAIF funding should be disclosed.

The states and territory should disclose their own assessment and approval processes.

NAIF is required to diversify its financing across jurisdictions and across industries. However, it is unclear how NAIF intends to ensure this.

NAIF should clarify how it intends to allocate funds available to states, for example, per capita to the regions covered by the fund.

The government's proposed Regional Investment Corporation uses 'constitutional trade' as a head of power for spending money on farms and water infrastructure, rather than grants of assistance to the states. The reason for the discrepancy between these agencies is unclear.