



Northern Australia Infrastructure Facility Act 2016

No. 41, 2016

**An Act to establish the Northern Australia
Infrastructure Facility, and for related purposes**

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No. 41, 2016

**An Act to establish the Northern Australia
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[Assented to 4 May 2016]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Northern Australia Infrastructure Facility Act 2016*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2016.	1 July 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

- (1) 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) *Northern Australia economic infrastructure* is infrastructure that:
- (a) provides a basis for economic growth in Northern Australia; and
 - (b) stimulates population growth in Northern Australia.

Note: Infrastructure located outside Northern Australia can be Northern Australia economic infrastructure as long as it meets the requirements set out in paragraphs (2)(a) and (b).

4 Simplified outline of this Act

- This Act establishes the Northern Australia Infrastructure Facility and provides for the Facility:
 - (a) to grant financial assistance to States and Territories for the construction of Northern Australia economic infrastructure; and
 - (b) to determine terms and conditions for the grants of financial assistance; and
 - (c) as agreed between the Facility and the States and Territories, to provide incidental assistance to the States and Territories in relation to financial arrangements and agreements related to the terms and conditions of the grants of financial assistance.
- The Facility must act in accordance with directions given by the Minister. The directions are known as the Investment Mandate.
- The Minister has the opportunity to consider proposals to provide financial assistance for Northern Australia economic infrastructure, and may decide that particular financial assistance should not be provided.

5 Definitions

In this Act:

Board means the Board of the Facility.

CEO means the Chief Executive Officer of the Facility.

Chair means the Chair of the Board.

Facility means the Northern Australia Infrastructure Facility established by section 6.

Section 5

Investment Mandate: see subsection 9(2).

Local Government Area means a local government area recognised by the Australian Bureau of Statistics.

member means a member of the Board and includes the Chair.

Minister's consideration period: see subsection 11(3).

Northern Australia means the area that includes the following:

- (a) the Northern Territory;
- (b) the areas of Queensland and Western Australia that are North of the Tropic of Capricorn other than the Meekatharra Statistical Area level 2;
- (c) the areas South of the Tropic of Capricorn of each Statistical Area level 2 that has an area covered by paragraph (b);
- (d) the following Statistical Areas level 2:
 - (i) Gladstone;
 - (ii) Gladstone Hinterland;
 - (iii) Carnarvon;
- (e) the Local Government Areas of Meekatharra and Wiluna (despite paragraph (b));
- (f) the territorial sea adjacent to areas covered by paragraphs (a) to (d).

Northern Australia economic infrastructure: see subsection 3(2).

proposal notice: see subsection 11(2).

rejection notice: see subsection 11(4).

Statistical Area level 2 means a statistical area level 2 recognised by the Australian Bureau of Statistics.

Part 2—Northern Australia Infrastructure Facility

6 Establishment

- (1) The Northern Australia Infrastructure Facility is established by this section.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Facility. That Act deals with matters relating to Commonwealth entities, including reporting and the use and management of public resources.

- (2) The Facility:
- (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.
- (3) The Facility's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

7 Functions of Facility

- (1) The functions of the Facility are:
- (a) to grant financial assistance to States and Territories for the construction of Northern Australia economic infrastructure; and
 - (b) to determine terms and conditions for the grants of financial assistance; and
 - (c) as agreed between the Facility and the States and Territories, to provide incidental assistance to the States and Territories in relation to financial arrangements and agreements related to the terms and conditions of the grants of financial assistance.

Section 8

- (2) The Facility has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

8 Time limit for making decisions to provide financial assistance

- (1) The Facility must not make a decision after 30 June 2021 to provide financial assistance for the construction of Northern Australia economic infrastructure.
- (2) However, subsection (1) does not prevent the Facility from doing either of the following:
 - (a) deciding before 30 June 2021 to provide financial assistance after that day;
 - (b) varying the terms and conditions for financial assistance provided before or after 30 June 2021.

Part 3—Investment Mandate

9 Investment Mandate

- (1) The Minister must, by legislative instrument, give directions to the Facility about the performance of the Facility's functions.

Note: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 44(2)(b) of that Act.

- (2) The directions are the *Investment Mandate*.
- (3) In performing its functions, the Facility must take all reasonable steps to comply with the Investment Mandate.

Limit on Investment Mandate

- (4) The Investment Mandate must not direct, or have the effect of directing, the Facility to provide financial assistance:
 - (a) for the construction of particular infrastructure; or
 - (b) in relation to a particular person.

10 Matters covered by Investment Mandate

The Investment Mandate may include directions about the following:

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

Part 4—Consideration by Minister

11 Consideration by Minister

- (1) The Facility must not provide financial assistance:
 - (a) before the end of the Minister’s consideration period; or
 - (b) if the Minister has notified the Facility in writing that the financial assistance should not be provided.
- (2) If the Facility proposes to provide financial assistance, the Facility must give the Minister written notice of the proposal (the *proposal notice*).
- (3) The *Minister’s consideration period* is:
 - (a) unless paragraph (b) applies—the period that ends 21 days after the proposal notice is given; or
 - (b) if, within that period of 21 days, or that period as extended, the Minister requires by written notice given to the Facility an extension of that period—that extended period, which must end not later than 60 days after the proposal notice is given.
- (4) At any time during the Minister’s consideration period, the Minister may notify the Facility in writing (the *rejection notice*) that the financial assistance should not be provided.
- (5) However, the Minister may give the rejection notice only if the Minister is satisfied that providing the financial assistance would:
 - (a) be inconsistent with the objectives and policies of the Commonwealth Government; or
 - (b) have adverse implications for Australia’s national or domestic security; or
 - (c) have an adverse impact on Australia’s international reputation or foreign relations.

12 Process if Minister decides that financial assistance should not be provided

- (1) A rejection notice must be accompanied by the Minister's written reasons for the notice.
- (2) Within 20 sitting days after the rejection notice is given, the Minister must table the notice in each House of the Parliament.

Note: The rejection notice must also be included in the Facility's annual report: see paragraphs 42(b) and (c).

Part 5—Board of the Facility

13 Establishment of Board

- (1) The Board of the Facility is established by this section.
- (2) The Board consists of:
 - (a) the Chair; and
 - (b) no less than 4 and no more than 6 other members.
- (3) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of the number of members falling below 5 for a period of not more than 6 months.

14 Functions of Board

- (1) The functions of the Board are:
 - (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the Facility; and
 - (b) to ensure the proper, efficient and effective performance of the Facility's functions; and
 - (c) any other functions conferred on the Board by this Act.
- (2) Anything that the Board does in the Facility's name, or on the Facility's behalf, is taken to have been done by the Facility.
- (3) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (4) If a function or power of the Facility is dependent on the opinion, belief or state of mind of the Facility in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

15 Appointment of members

- (1) Members of the Board (including the Chair) are to be appointed by the Minister by written instrument.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A member must be appointed on a part-time basis.
- (3) A member holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.
- (4) A person is not eligible for appointment as a member unless the person has experience or expertise in one or more of the following fields:
- (a) banking and 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.

16 Acting appointment as Chair

The Minister may, by written instrument, appoint a member to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Section 17

17 Remuneration of members

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed under subsection (4).
- (2) A member is to be paid the allowances that are prescribed under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

18 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to a member (other than the Chair) on the terms and conditions that the Chair determines.

19 Other terms and conditions

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

20 Resignation of members

- (1) A member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

21 Termination of appointment

- (1) The Minister may terminate the appointment of a member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity; or
 - (c) if the Minister is satisfied that the member's performance has been unsatisfactory.
- (2) The Minister may terminate the appointment of a member if the member:
 - (a) becomes bankrupt; or
 - (b) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with one or more of his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors.
- (3) The Minister may terminate the appointment of a member if the member is absent, except on leave of absence, from 3 consecutive meetings of the Board.

Note: The appointment of a member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

22 Board meetings

- (1) The Chair:
 - (a) must convene at least 2 meetings of the Board in each financial year; and
 - (b) may convene other meetings of the Board if, in the Chair's opinion, the meetings are necessary for the efficient performance of the Board's functions.
- (2) The Minister may, at any time, direct the Chair to convene a meeting of the Board.

Section 23

- (3) The Chair must convene a meeting of the Board if at least 4 members by writing request the Chair to convene a meeting.

23 Presiding at Board meetings

- (1) The Chair must preside at a meeting at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present must appoint a member to preside.

24 Quorum at Board meetings

At a meeting of the Board a quorum is constituted by:

- (a) if there are 6 or more appointed members—4 members; and
- (b) otherwise—3 members.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

25 Voting at Board meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the members present and voting.

Note: For rules about members being present and voting, see section 29 of the *Public Governance, Performance and Accountability Act 2013*, and rules made under that section.

- (2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

26 Conduct of Board meetings

- (1) The Board may regulate proceedings at its meetings as it considers appropriate.
- (2) The Board must keep minutes of its meetings.

27 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
-

- (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
- (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 6—Administration

28 Chief Executive Officer

- (1) There is to be a Chief Executive Officer of the Facility.
- (2) The CEO is responsible for the day-to-day administration of the Facility.
- (3) The CEO also has any functions conferred on the CEO by or under this Act or any other law.
- (4) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

29 CEO to act in accordance with policies and directions of Board

- (1) The CEO must act in accordance with policies determined by the Board.
- (2) The Board may give written directions to the CEO about the performance of the CEO's functions. The CEO must comply with a direction.
- (3) A direction made under subsection (2) is not a legislative instrument.

30 Appointment of CEO

- (1) The CEO is to be appointed by the Board by written instrument for a period of up to 5 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The CEO may be appointed on a full-time or part-time basis.
- (3) A member must not be appointed as the CEO.

31 Acting appointment as CEO

The Board may appoint a person to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

32 Remuneration of CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed under subsection (4).
- (2) The CEO is to be paid the allowances that are prescribed under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

33 Leave of absence of CEO

- (1) A full-time CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Board may grant a full-time CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.
- (3) The Board may grant leave of absence to a part-time CEO on the terms and conditions that the Board determines.

Section 34

34 Outside employment

- (1) If the CEO is appointed on a full-time basis, the CEO must not engage in any work (whether paid or unpaid) outside the duties of his or her office without the Chair's approval.
- (2) If the CEO is appointed on a part-time basis, the CEO must not engage in any work (whether paid or unpaid) that conflicts or could conflict with the proper performance of his or her duties.

35 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

36 Resignation of CEO

- (1) The CEO may resign his or her appointment by giving the Board a written resignation.
- (2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.

37 Termination of appointment of CEO

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity.
 - (c) if the Board is satisfied that the CEO's performance has been unsatisfactory.
- (2) The Board may terminate the appointment of the CEO if the CEO:
 - (a) becomes bankrupt; or
 - (b) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with one or more of his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors.

- (3) If the CEO is appointed on a full-time basis, the Board may terminate the appointment if:
 - (a) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (b) the CEO engages, without the Chair's approval, in work (whether paid or unpaid) outside the duties of his or her office (see subsection 34(1)).
- (4) If the CEO is appointed on a part-time basis, the Board may terminate the appointment if the CEO engages in work (whether paid or unpaid) that conflicts or could conflict with the proper performance of his or her duties (see subsection 34(2)).
- (5) The Board may terminate the appointment of the CEO if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

38 Staff

- (1) The Facility may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the Facility determines in writing.

Arrangements relating to staff

- (3) The Facility may make arrangements for the services of officers or employees of the following to be made available to the Facility:
 - (a) the Commonwealth, a State or a Territory;
 - (b) an authority of the Commonwealth or of a State or Territory;
 - (c) any other organisation or body.

39 Consultants

The Facility may engage consultants to assist in the performance of its functions.

Part 7—Miscellaneous

40 Facility may charge fees

- (1) The Facility may charge a fee in relation to anything done in performing its functions.
- (2) A fee must not be such as to amount to taxation.

41 Appropriation of Consolidated Revenue Fund

The Consolidated Revenue Fund is 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.

42 Annual report

The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following:

- (a) the particulars of any changes to the Investment Mandate during the period and their impact on the operations of the Facility;
- (b) a summary of the proposal notices given by the Facility to the Minister during the period;
- (c) a summary of any rejection notices given by the Minister during the period and the Minister's reasons for giving the notices;
- (d) for financial assistance provided by the Facility during the period, a summary of:
 - (i) the amounts of financial assistance and kinds of Northern Australia economic infrastructure concerned; and
 - (ii) the kinds of loan contracts used, and their important features;
 - (iii) the risks and returns to the Commonwealth;

- (e) a summary of any adjustments or concessions made by the Facility during the period in relation to Northern Australia economic infrastructure projects that have not progressed as planned.

43 Review of operation of Act

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after the period of 3 years beginning when this Act commences.
- (2) Without limiting the matters to be covered by the review, the review must consider:
 - (a) whether the time limit of 30 June 2021 set out in section 8 for making decisions to provide financial assistance should be extended; and
 - (b) the appropriate governance arrangements for the Facility after that date.
- (3) The persons undertaking the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

44 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 17 March 2016
Senate on 19 April 2016]*

(29/16)
