



Northern Australia Infrastructure Facility Amendment (Extension and Other Measures) Act 2021

No. 41, 2021

***An Act to amend the Northern Australia
Infrastructure Facility Act 2016, and for related
purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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***An Act to amend the *Northern Australia
Infrastructure Facility Act 2016*, and for related
purposes***

[Assented to 27 May 2021]

The Parliament of Australia enacts:

*No. 41, 2021 Northern Australia Infrastructure Facility Amendment (Extension and
Other Measures) Act 2021 1*

1 Short title

This Act is the *Northern Australia Infrastructure Facility Amendment (Extension and Other Measures) Act 2021*.

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	The day after this Act receives the Royal Assent.	28 May 2021

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Northern Australia Infrastructure Facility Act 2016

1 Subsection 3(1)

Repeal the subsection, substitute:

- (1) The object of this Act is to establish the Northern Australia Infrastructure Facility to provide financial assistance to the States and Territories and other entities for the development of Northern Australia economic infrastructure.

2 Paragraph 3(2)(a)

Omit “and”, substitute “or”.

3 Subsection 3(2) (note)

Omit “requirements set out in paragraphs (2)(a) and (b)”, substitute “requirement set out in paragraph (2)(a) or (b)”.

4 Section 4

Repeal the section, substitute:

4 Simplified outline of this Act

This Act establishes the Northern Australia Infrastructure Facility to provide financial assistance to the States and Territories and to other entities for the development of Northern Australia economic infrastructure.

The Facility may determine terms and conditions for the provision of financial assistance.

The Board of the Facility must act in accordance with directions given by the responsible Ministers (the Finance Minister and the Minister for Northern Australia). The directions are known as the Investment Mandate.

The Minister for Northern Australia has the opportunity to consider proposals to provide financial assistance for the development of Northern Australia economic infrastructure, and may decide that particular financial assistance should not be provided.

5 Section 5

Insert:

appointed member means a member appointed under section 15.

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

financial assistance, in relation to the function conferred on the Facility by subsection 7(1A), includes assistance in the form of loans, letters of credit, guarantees, purchase of bonds, and equity investments.

Minister for Northern Australia means the Minister who administers this Act.

6 Section 5 (after paragraph (e) of the definition of *Northern Australia*)

Insert:

(ea) the Local Government Area of Ngaanyatjarraku;

7 Section 5

Insert:

responsible Ministers means the Finance Minister and the Minister for Northern Australia.

Secretary means the Secretary of the Department.

subsidiary of the Facility means a subsidiary of the Facility for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

8 At the end of Part 1

Add:

5A References to the Minister

In this Act, a reference to the Minister is a reference to the Minister for Northern Australia.

9 Before subsection 7(1)

Insert:

Grants of financial assistance to the States and Territories

10 Paragraph 7(1)(a)

Repeal the paragraph, substitute:

- (a) to provide grants of financial assistance to the States and Territories for the development of Northern Australia economic infrastructure; and

11 After subsection 7(1)

Insert:

Financial assistance to other entities

- (1A) It is also a function of the Facility to provide financial assistance to entities other than the States and Territories, and determine terms and conditions for the provision of that financial assistance, for the development of Northern Australia economic infrastructure:
 - (a) that is with respect to, or in, a Territory; or
 - (b) that is with respect to people to whom paragraph 51(xxvi) of the Constitution applies; or
 - (c) that is with respect to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory, or between 2 Territories; or
 - (d) that is with respect to a postal, telegraphic, telephonic or other like service to which paragraph 51(v) of the Constitution applies; or
 - (e) that is for the purposes of the defence of the Commonwealth and the States; or

- (f) if the entity is a corporation to which paragraph 51(xx) of the Constitution applies and the financial assistance is not in the form of equity investments; or
- (g) that is with respect to external affairs, including:
 - (i) giving effect to any international agreement to which Australia is a party; and
 - (ii) addressing matters external to Australia; or
- (h) that is with respect to railway construction or extension to which paragraph 51(xxxiv) of the Constitution applies; or
- (i) that is with respect to activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or
- (j) that is with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Equity investments

- (1B) The Facility may provide financial assistance in the form of equity investments under subsection (1A) by making investments itself (including as a participant in partnerships, trusts, joint ventures or similar arrangements), through subsidiaries or other investment vehicles, or by any combination of these means. The Facility must not provide financial assistance in any other form under subsection (1A) through subsidiaries.

Acquisition of derivatives

- (1C) The Facility may only acquire a derivative for the purpose of:
 - (a) protecting the value of financial assistance provided by the Facility (other than derivatives acquired by the Facility); or
 - (b) protecting the return on financial assistance provided by the Facility (other than derivatives acquired by the Facility); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Facility's function of providing financial assistance; or
 - (d) achieving transactional efficiency for a purpose in connection with the Facility's function of providing financial assistance;but must not acquire a derivative for the purpose of:

- (e) speculation; or
- (f) leverage.

(1D) Subsection (1C) does not apply in relation to guarantees given by the Facility in the ordinary course of providing financial assistance.

12 After section 7

Insert:

7A Terms and conditions for provision of financial assistance (other than equity investments) to corporations

- (1) If the Facility decides to provide financial assistance (other than in the form of equity investments) to a corporation to which paragraph 51(xx) of the Constitution applies:
 - (a) the terms and conditions on which the assistance is to be provided must be set out in a written agreement between the Facility and the corporation; and
 - (b) the corporation must comply with the terms and conditions.
- (2) Without limiting subsection (1), the terms and conditions must provide for the circumstances in which the corporation must repay amounts to the Facility.

13 Subsection 8(1)

Omit “30 June 2021”, substitute “30 June 2026”.

14 Subsection 8(1)

Omit “construction”, substitute “development”.

15 Paragraphs 8(2)(a) and (b)

Omit “30 June 2021”, substitute “30 June 2026”.

16 Subsection 9(1)

Omit “The Minister”, substitute “The responsible Ministers”.

17 Subsection 9(1)

Omit “to the Facility”, substitute “to the Board”.

18 Subsection 9(3)

Repeal the subsection, substitute:

- (3) The Board must take all reasonable steps to ensure that the Facility and its subsidiaries comply with the Investment Mandate.

19 Paragraph 9(4)(a)

Omit “construction”, substitute “development”.

20 After paragraph 10(d)

Insert:

- (da) matters relating to the provision of financial assistance in the form of equity investments, including limits on the amount that may be provided in this form, the rate of return, and the management of risks;

21 Paragraph 10(g)

Omit “the Minister thinks”, substitute “the responsible Ministers think”.

22 Paragraph 11(1)(a)

After “period”, insert “, unless the Minister has notified the Facility under subsection (3A) in relation to the financial assistance”.

23 After subsection 11(3)

Insert:

- (3A) At any time during the Minister’s consideration period, the Minister may notify the Facility in writing that the Minister does not intend to exercise the Minister’s power under subsection (4) in relation to the financial assistance.

24 Subsection 11(4)

Omit “At any time during the Minister’s consideration period, the Minister may”, substitute “If the Minister has not notified the Facility under subsection (3A) in relation to the financial assistance, the Minister may, at any time during the Minister’s consideration period,”.

25 At the end of subsection 13(2)

Add:

; and (c) the Secretary.

26 Subsection 13(3)

Omit “5”, substitute “6”.

27 Subsection 15(1)

After “the Chair”, insert “but not including the Secretary”.

28 Subsection 15(3)

Omit “A member”, substitute “An appointed member”.

29 At the end of subsection 15(4)

Add:

; (i) economic development for Indigenous communities.

30 Section 17 (heading)

Omit “of members”.

31 Subsections 17(1) and (2)

Omit “A member”, substitute “An appointed member”.

32 Subsection 18(1)

Omit “The Minister”, substitute “If the Chair is an appointed member, the Minister”.

33 Subsection 18(2)

Omit “a member (other than the Chair)”, substitute “any other appointed member”.

34 Section 19

Omit “A member”, substitute “An appointed member”.

35 Section 20 (heading)

Omit “of members”.

36 Subsection 20(1)

Omit “A member”, substitute “An appointed member”.

37 Subsection 21(1)

Omit “a member”, substitute “an appointed member”.

38 At the end of subsection 21(1)

Add:

- ; or (d) if the Minister is satisfied that the collective experience and expertise of the Board are not sufficiently diverse or appropriate to enable the Board to perform its functions effectively.

39 Subsections 21(2) and (3)

Omit “a member”, substitute “an appointed member”.

40 Subsection 21(3) (note)

Omit “a member may”, substitute “an appointed member may”.

41 Subsection 22(3)

Omit “4”, substitute “5”.

42 After section 22

Insert:

22A Secretary may nominate alternate to attend Board meetings

- (1) The Secretary may, by writing, nominate a specified person who is an SES employee or acting SES employee in the Department to attend a particular meeting, or all meetings, of the Board at which the Secretary is not present.
- (2) A person so nominated may attend a meeting to which the nomination applies and, if the person does so, the person is taken to be a member of the Board.

43 Paragraphs 24(a) and (b)

Repeal the paragraphs, substitute:

- (a) if there are 7 or more members—5 members; and
- (b) otherwise—4 members.

44 Before section 40

Insert:

39A Matters relating to subsidiaries

- (1) The Facility must not incorporate or otherwise form a subsidiary in a place other than Australia.
- (2) In providing financial assistance in the form of equity investments for the purposes of the performance of the Facility's functions under subsection 7(1A), a subsidiary of the Facility must:
 - (a) take all reasonable steps to comply with the Investment Mandate, to the extent to which the Investment Mandate is capable of applying to the activities of the subsidiary; and
 - (b) only acquire derivatives for a purpose for which the Facility may do so under subsection 7(1C).

45 Section 41

Omit "grants of financial assistance to the States and Territories for the construction", substitute "financial assistance to the States and Territories and other entities for the development".

46 Section 42

Before "The annual", insert "(1)".

47 Subparagraph 42(d)(ii)

Repeal the subparagraph, substitute:

- (ii) the forms in which financial assistance was provided, and their important features; and

48 At the end of section 42

Add:

- (2) The annual report must also do the things referred to in paragraphs (1)(d) and (e) in relation to financial assistance provided for the purposes of the performance of the Facility's functions under subsection 7(1A) by each subsidiary of the Facility in existence at the end of the period to which the annual report relates.

49 After section 42

Insert:

42A Delegation by Board

- (1) The Board may, in writing, delegate to the CEO any of its powers or functions under this Act.
- (2) In exercising any powers or performing any functions under the delegation, the CEO must comply with any directions of the Board.

50 Subsection 43(1)

Omit “the period of 3 years beginning when this Act commences”, substitute “30 June 2024”.

51 Paragraph 43(2)(a)

Omit “30 June 2021”, substitute “30 June 2026”.

*[Minister’s second reading speech made in—
House of Representatives on 24 February 2021
Senate on 11 May 2021]*

(9/21)
