

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Resources, Energy and Northern Australia

Northern Australia Infrastructure Facility Act 2016

Northern Australia Infrastructure Facility Investment Mandate Direction 2016

Authority

Subsection 9(1) of the *Northern Australia Infrastructure Facility Act 2016* (the Act) requires the Minister, to give directions to the Northern Australia Infrastructure Facility (the Facility) about the performance of the Facility's functions.

Purpose

Under the Act, the role of the Facility is to provide grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure.

The Facility operates commercially and is governed by an independent Board Subject to the Minister's limited powers of direction with respect to Investment Decisions (set out in sections 11 and 12 in the Act), and the consultation process with the State and Territory governments of Northern Australia set out in clause 13 in this Investment Mandate, the Facility will make investment decisions independently of the Commonwealth. The purpose of the Investment Mandate is to provide a mechanism for the Commonwealth to articulate its broad expectations on the functions of the Facility and how it invests.

The Facility will fill the gaps in the infrastructure financing market for Northern Australia by supplementing private financing for Projects that produce benefits to the region. Any financial assistance provided by the Facility will be repaid in full, and will only provide the level of concession necessary to allow a particular project to proceed. The Board, established by Part 5 of the Act, is responsible for the Facility's Investment decisions.

Background

The Commonwealth announced the Facility in the 2015–16 Budget. It is a major initiative of the Government's White Paper on Developing Northern Australia (*Our North, Our Future*), and is integral to the Commonwealth's strategy for the north. The Facility will offer up to \$5.0 billion in concessional finance to encourage and complement private sector investment in economic infrastructure that otherwise would not be built, or would not be built for some time.

Consultation

Extensive consultation has been undertaken on the Facility. In determining implementation arrangements for the Facility, intensive consultation occurred across a broad range of stakeholders including project proponents, the finance sector and the governments of Northern Territory, Queensland and Western Australia.

On 28 January 2016, an exposure draft of the Northern Australia Infrastructure Facility Bill 2016 (the Bill) was released for public comment.

The following Commonwealth agencies were provided the exposure draft Bill for comment: Treasury; Finance; Agriculture and Water Resources; Infrastructure and Regional Development; Australian Public Service Commission; Geoscience Australia; Foreign Affairs and Trade; Export Finance and Insurance Corporation; Australian Government Solicitor; Attorney General's Office of Parliamentary Counsel; and Prime Minister and Cabinet.

Responses from these consultations have been incorporated into the Bill that was introduced into the House of Representatives on 17 March 2016.

A draft of the Investment Mandate was released for comment on 17 March 2016.

Details of the accompanying instrument are set out in the Attachment.

REGULATION IMPACT STATEMENT

The Regulation Impact Statement for the Northern Australia Infrastructure Facility can be found in the Explanatory Memorandum for the Bill.

DETAILED EXPLANATION OF THE INVESTMENT MANDATE

PART 1—PRELIMINARY

Clause 1—Name of Instrument

Specifies the title of the Direction as the Northern Australia Infrastructure Facility Investment Mandate Direction 2016 (the Investment Mandate).

Clause 2—Authority

Clause 2 specifies the provision in the Northern Australia Infrastructure Facility Act 2016 (the Act) under which the Investment Mandate is made.

Clause 3—Commencement

Clause 3 specifies the commencement of the Investment Mandate is the day after it is registered.

Clause 4—Definitions

Clause 4 provides the definitions of key terms used in the Investment Mandate.

Clause 5—Purpose

Clause 5 provides that the purpose of this Investment Mandate is to direct the Facility in relation to the performance of its functions. As set out in section 7 of the Act, the function of the Facility is to provide grants of financial assistance to States and Territories for the construction of Northern Australia Economic Infrastructure and determine the terms and conditions for these grants of financial assistance. The matters on which the Investment Mandate can provide detailed directions to the Board are listed in section 10 of the Act.

PART 2—DIRECTIONS

Clause 6—Making Investment Decisions

Clause 6 provides that the Board must make Investment Decisions on behalf of the Facility, in relation to whether to provide financial assistance to States and Territories for the construction of Northern Australia economic infrastructure.

Subclause 6(2) provides that upon making an Investment Decision, the Facility must notify Project Proponents of the Board's Investment Decisions as soon as practicable after a decision has been made.

Clause 7—Matters to be considered when making Investment Decisions

Subclause 7(1) provides that the Facility must not invest in a Project unless the Board is satisfied the Project would not otherwise have received sufficient financing from other financiers. The Facility will operate in partnership with other lenders, not in competition.

Paragraph 7(2)(a) provides that before the Board makes an Investment Decision, it must be satisfied that the Investment Proposal meets all seven mandatory criteria in Schedule 1 to the Investment Mandate.

The Facility aims to promote economic and population growth in northern Australia through the construction of new or enhanced economic infrastructure. In particular, Criterion one of the eligibility criteria provides the definition of economic infrastructure and includes examples of projects that are consistent with this definition and Criterion two requires that projects will be of public benefit. The Board will preference multiple user infrastructure that benefits the broader economy. It is not intended that the Facility fund a project's operating assets (such as plant and equipment).

Paragraph 7(2)(b) provides that the Board must be satisfied that when making an Investment Decision there is an expectation that the Commonwealth will be repaid, or the investment can be refinanced. The purpose of this subclause is to ensure that the Project Proponent demonstrates to the Board its ability to repay the debt to the Facility in full, and on time, or can be refinanced. Mandatory criterion 6 in Schedule 1 to the Investment Mandate requires that the Project Proponent must present comprehensive financial modelling to the Board to demonstrate the ability of the Project to repay, or refinance the debt.

In addition to the requirements under paragraphs 7(2)(a) and 7(2)(b), paragraph 7(2)(c) provides that any return on the Facility's investment will cover at least the Facility's administrative costs, and the Commonwealth's cost of borrowing and may include a risk premium.

Subclause 7(3) sets out the matters that the Board must have regard to when making Investment Decisions.

Paragraph 7(3)(a) provides that these matters include the non-mandatory criteria in Schedule 2 to the Investment Mandate.

Paragraph 7(3)(b) provides that these matters include the extent of any concessions that can be offered under clause 9 of the Direction.

Paragraph 7(3)(c) requires the Board to consider the consequences of the Investment Decision on other infrastructure in the region, both existing and planned. For example, if for a particular Project to proceed other infrastructure in the region of the Project would be required to be upgraded, (such as roads, telecommunications, and rail lines), then the Board should consider these circumstances in making that Investment Decision.

Paragraph 7(3)(d) requires the Board to consider the effects of the Financing Mechanism on the financial market. The Financing Mechanism includes loans and alternative Financing Mechanisms under clause 11 of this Direction. The purpose of this clause is to ensure that the Board fully considers the implications and potential distortions the provision of financial assistance, and the type of financial assistance provided, may have on the operation of the Australian infrastructure financing markets.

Paragraph 7(3)(e) provides that there is a consideration of the necessity of investing in the Project for the purposes of encouraging private sector participation in the Project.

Subclause 7(4) provides that the Board must have regard to the location and related industry sector of the Project and give preference to an overall portfolio of Projects with a diverse geographical and sector representation. It is the Government's preference for the Facility to invest in a range of different types of economic infrastructure, which are spread across the three Northern Australia jurisdictions.

Clause 8—Discretion

Clause 8 gives the Board the discretion to decline an Investment Proposal for a grant of financial assistance.

Clause 9—Determining Concessions

Paragraphs 9(1)(a) and 9(1)(b) require the Board to have regard to the extent and mix of all concessions necessary for the Investment Proposal to proceed, and the extent of the Project's public benefit.

Subclause 9(2) requires the Board to provide only the level of concessionality necessary to allow the Project to proceed. The role of the Facility is not to increase the profitability of Project Proponents, but to support infrastructure Projects that are highly unlikely to proceed otherwise, or would only proceed at a much later date, without the Facility's assistance.

Paragraphs 9(3)(a) and 9(3)(b) provides the Board the flexibility to amend the concessions granted to the Project, or exit from the investment altogether if the Project Proponent is performing better than expected.

Clause 10—Loan conditions

Clause 10 provides that loans are the primary form of funding mechanism that the Board should consider for all Investment Proposals. This clause sets out a non-exhaustive list of loan concessions that the Facility may propose.

Paragraph 10(2)(b) requires that interest rates offered by the Facility are not lower than the rate at which the Commonwealth borrows. The Commonwealth borrows at different rates for different loan tenors. For example, if the Facility is lending for a 10-year period, then the rate offered by the Facility should not be below the rate that the Commonwealth borrows at for a similar 10-year period. In determining the interest rates to be offered, the Facility should also take into account possible fluctuations to the Commonwealth's cost of borrowing that will occur over time. This paragraph should be read with paragraph 7(2)(c), which specifies that any return the Facility generates from an investment meets the Commonwealth's cost of borrowing.

Clause 11—Alternative financing mechanisms

Subclause 11(1) allows the Board to consider alternative Financing Mechanisms where it is more appropriate for a particular Project. This includes where it is more efficient or effective to use an alternative Financing Mechanism. This provides the Board the ability to be flexible in its Financing Mechanism offerings to the unique needs of the Project. This can include financial guarantees and other financial mechanisms. Any alternative Financing Mechanisms fully account against the Facility's \$5 billion funding allocation.

Subclause 11(2) makes it clear that all clauses of, and schedules to, this Investment Mandate apply to any alternative Financing Mechanisms, other than clause 10 (which is specific to loans), or where otherwise stated.

Subclause 11(3) sets out the process for the Board to seek agreement from the responsible Minister to the use of an alternative Financing Mechanism.

Subclause 11(4) specifies that the responsible Minister needs to seek agreement from the Minister for Finance, and consult with the relevant jurisdiction(s), prior to agreeing to the use of an alternative Financing Mechanism.

Subclause 11(5) states that the Facility will not provide equity for a Project. This means the Facility will not take on an ownership stake in a Project. This does not prevent the Board from utilising alternative Financing Mechanisms that subject the Commonwealth to risks associated with the operation and performance of a Project.

Clause 12—Investment risk

Clause 12 outlines how the Facility is to approach managing risk. The Facility is expected to develop a Risk Appetite Statement to guide its Investment Decisions, and to have a greater tolerance for risk relative to Commercial Financiers, due to factors unique to Northern Australia.

Clause 13—Consultation

Clause 13 provides information on the consultation processes the Facility is to undertake with jurisdictions. It specifies that the Facility's consultation process with relevant jurisdictions must commence as soon as practicable after receiving an Investment Proposal. The relevant jurisdiction is where the Project is located, and can include multiple jurisdictions. The purpose of this clause is for the relevant jurisdiction to be fully engaged on a Project, and for the Project Proponent to be informed as soon as possible if the Project will not be supported. Where a Project crosses jurisdictional boundaries, consultation is to occur with all jurisdictions in which the Project falls, but this does not preclude the jurisdictions agreeing to appoint a lead jurisdiction for a particular Project.

Clause 14—Relationship with other Government entities

Clause 14 specifies that the Facility must consult with Infrastructure Australia on Project Proposals where the Commonwealth's investment is \$100 million or greater. As appropriate, the Facility must consult with relevant government stakeholders including for example Commonwealth departments and local councils.

Clause 15—Regulatory and environmental approvals

Clause 15 requires that finance cannot be provided to a Project Proponent unless such approvals are in place in order to ensure that all Projects invested in by the Facility are compliant with all relevant regulatory, environmental and Native Title approvals and arrangements for each stage of the Project.

This could include the implementation of water arrangements under the National Water Initiative; as well as all relevant Native Title requirements.

Clause 16—Reputation

Clause 16 provides that the Facility has a responsibility to act in a way that is not likely to cause reputational damage to the Commonwealth, or the Northern Territory, Queensland, and Western Australia governments.

Clause 17—Corporate governance

Subclause 17(1) provides that in undertaking its investment function, the Facility must act consistent with, and establish policies in relation to, Australian best practice corporate governance. This is so the Facility has credibility in financial markets and maintains a positive commercial reputation. For the purposes of transparency, the Facility is required to publish information regarding the Board's Investment Decisions on its website within 30 days of a final Investment Decision (subclause 17(2)). Final Investment Decisions can only be made after the Ministerial consideration period as required by Clause 11 of the NAIF Bill has elapsed. Subclause 17(3) specifies that the Facility will publish guidance on its website to assist Project Proponents in their development of Investment Proposals.

Clause 18—Application of Australian Industry Participation Plans

Clause 18 provides that Projects must comply with the Commonwealth's Australian Industry Participation (AIP) Plan policy, before the Board can make an Investment Decision on an Investment Proposal. AIP Plans are designed to provide details on the expected opportunities to supply goods and/or services to the Project; how these opportunities will be communicated to potential suppliers; and how Australian businesses will be assisted in longer-term participation, including encouraging capability development and integration into global supply chains. The purpose of this clause is to maximise the opportunities for Australian businesses to participate in major Projects.

SCHEDULE 1—ELIGIBILITY FOR FINANCIAL—MANDATORY CRITERIA

Schedule 1 to the Investment Mandate specifies the mandatory criteria that an Investment Proposal must satisfy. To be eligible for financial assistance from the Facility, Project Proponents must satisfy all seven criteria.

SCHEDULE 2—ELIGIBILITY FOR FINANCIAL—NON-MANDATORY CRITERIA

Schedule 2 to the Investment Mandate specifies the non-mandatory criteria that Project Proponents should satisfy. Preference will be given to those Projects, which meet one or both of the non-mandatory criteria.