

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Northern Australia and the Minister for Finance

Northern Australia Infrastructure Facility Investment Mandate Direction 2023

Authority

Subsection 9(1) of the *Northern Australia Infrastructure Facility Act 2016* (the NAIF Act) provides that the responsible Ministers (the Minister for Northern Australia and the Minister for Finance) must, by legislative instrument, give directions to the Board about the performance of the Facility's functions. Subsection 9(3) provides that the Board must take all reasonable steps to comply with those directions.

Purpose

Under the NAIF Act, the role of the Northern Australia Infrastructure Facility (the Facility) is to provide financial assistance to the States, Territories and other entities to support the development of Northern Australia economic infrastructure. Development includes activities to grow the capacity of existing infrastructure.

Under the NAIF Act, the Board of the Facility (the Board) is responsible for ensuring the proper, efficient and effective performance of the Facility's functions. The Board is also responsible for deciding the strategies and policies to be followed by the Facility, within the scope of the directions given to the Board about the performance of the Facility's functions under subsection 9(1) of the NAIF Act. Directions issued in this manner are known collectively as the Facility's Investment Mandate. The purpose of the Investment Mandate is to provide a mechanism for the Commonwealth Government to direct the Board as to the functions of the Facility and how it invests and engages with risk.

The Facility has responsibility for making Investment Decisions. Within the scope of the Investment Mandate, the Facility will make individual Investment Decisions independently of the Government. Those decisions are subject only to the Minister's limited powers of rejection set out in section 11 of the NAIF Act.

The Facility will fill gaps in the infrastructure financing market for Northern Australia by providing financial assistance for Projects that produce benefits to the region. Any applicant must be able to demonstrate the ability to repay a debt investment, or deliver a positive return on an equity investment. The Facility will only provide a level of concession on debt investments where it is considered necessary to ensure the Project proceeds.

The *Northern Australia Infrastructure Facility Investment Mandate Direction 2023* (the Investment Mandate) repeals and replaces the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021* (the 2021 Investment Mandate). The reforms of the 2023 Mandate are intended to:

- operationalise amendments made to the NAIF Act through the *Northern Australia Infrastructure Facility Amendment (Miscellaneous Measures) Act 2023* to increase the Facility's appropriation to \$7 billion and to expand the definition of Northern Australia to incorporate the Indian Ocean Territories;

- ensure the Facility continues to support projects aligned with the Government’s priorities, including those outlined in the 2022 Statement of Expectations;
- codify the Government’s commitment that the Facility set aside \$500 million for projects supporting the *Critical Minerals Strategy 2023-2030*; and
- incorporate other amendments, including amendments aimed at improving the Facility’s risk and financial management, and supporting the Facility to actively manage its investment portfolio.

Further details about the 2023 Mandate are outlined in [Attachment A](#).

Background

The then Australian Government announced the Facility in the 2015–16 Budget. The Facility was a major initiative of the 2015 White Paper on Developing Northern Australia (*Our North, Our Future*), and remains integral to the Government’s strategy for Northern Australia. The Facility is a \$7 billion Corporate Commonwealth Entity offering financial assistance to encourage investment in infrastructure in Northern Australia. The Facility’s financial assistance primarily takes the form of loans, but can include guarantees and other financial mechanisms and can be provided on concessional terms.

Consultation

The Commonwealth undertook extensive consultation on the Facility when it was established. Along with the Facility, the following Commonwealth agencies were consulted during the development of the 2023 Mandate:

- Department of the Prime Minister and Cabinet
- Department of the Treasury
- Department of Finance
- Department of Foreign Affairs and Trade
- Department of Social Services
- Department of Industry, Science and Resources
- Department of Infrastructure, Transport, Regional Development, Communications and the Arts
- Department of Agriculture, Fisheries and Forestry
- Department of Climate Change, Energy, the Environment and Water
- National Indigenous Australians Agency.

The Western Australia, Queensland and Northern Territory Governments were also consulted during the development of the 2023 Mandate.

Regulation Impact Statement

The Office of Impact Analysis (OIA) was consulted in developing the Investment Mandate. The OIA reference number for this matter is OIA23-05413. OIA considers the update to the 2021 Investment Mandate to have a minor regulatory impact, given the amendments to the Investment Mandate are of a technical and operational nature, with low to minimum regulatory impacts on businesses, community or individuals in its operation.

Details of the *Northern Australia Infrastructure Facility Investment Mandate Direction 2023*

Part 1—Preliminary

Section 1—Name

Section 1 provides that the title of the Direction is the *Northern Australia Infrastructure Facility Investment Mandate Direction 2023* (the Direction).

Section 2—Commencement

Section 2 provides that the Direction commences the day after it is registered. The Direction will be published on the Federal Register of Legislation.

Exemption from Disallowance

A note to section 2 clarifies that the Direction, as a direction by a Minister to a body, is exempt from Parliamentary disallowance. Section 44(2) of the *Legislation Act 2003* (Cth) (“**Legislation Act**”) (which deals with the disallowance of legislative instruments) states that “section 42 (disallowance of legislative instruments) does not apply in relation to a legislative instrument if ... (b) the legislative instrument is prescribed by regulation for the purposes of this paragraph”. Instruments that constitute directions by a Minister to a body, such as this Direction made pursuant to section 9(1) of the Act, are prescribed for these purposes under section 9 item 2 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (“**LEOMR Regulations**”).

Exemption from Sunsetting

Note 2 to section 2 of the Direction further clarifies that the Direction is not subject to sunsetting. Section 54(2) of the *Legislation Act* provides that: “This Part [sunsetting of legislative instruments] does not apply in relation to a legislative instrument if (b) the legislative instrument is prescribed by regulations for the purposes of this paragraph”. Instruments that constitute directions by a Minister to a body, such as this Direction made pursuant to s 9(1) of the Act, are prescribed for these purposes under section 11 item 3 of the *LEOMR Regulations*.

Section 3—Authority

Section 3 provides that the Direction is made under subsection 9(1) of the *NAIF Act*.

Section 4—Definitions

Section 4 provides the definitions of key terms used in the Direction. A note to section 4 confirms that other terms bear the meanings found in the *NAIF Act*.

The definition of *Alternative Financing Mechanism* covers the types of financing mechanisms the NAIF may use as an alternative to a loan. The term ‘loan’ takes its common meaning, in that a grant of financial assistance by the Facility creates an obligation on the Proponent that it shall repay the loan amount (principal) plus interest and any applicable fees to the Facility at an agreed future date. These alternative mechanisms broadly fall into either ‘debt or debt-like’ instruments or ‘equity or equity-like’ instruments.

The definition of *Project* covers the overall Project that embodies or incorporates the Northern Australia economic infrastructure for which the Project Proponent is seeking financial assistance from the Facility. For example, a Project could be an agricultural venture that also includes transportation infrastructure to export its goods to the market, or a regional financier running a finance program for small infrastructure projects.

The definition of *State* includes Queensland, Western Australia and the Northern Territory. This definition is used in the Direction to provide distinction between these jurisdictions and the Indian Ocean Territories, where appropriate.

Section 5—Repeal of previous Direction

Section 5 provides that the Direction repeals and replaces the Facility’s previous Investment Mandate (the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021*).

The repeal and making of the Direction does not require the Facility to divest investments that were in place before the commencement of this direction or to make investments that are not complying investments.

The power to repeal a previous investment mandate is implied in the power of the responsible Minister under subsection 9(1) of the NAIF Act to issue new investment mandates to the Facility. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Section 6—Purpose

Section 6 provides that the purpose of the Direction is to direct the Board in relation to the performance of the Facility’s functions, in accordance with section 9 of the NAIF Act. As set out in section 7 of the NAIF Act, the function of the Facility is to provide financial assistance to states, territories and other entities for the development of Northern Australia economic infrastructure and to determine the terms and conditions for this financial assistance. The matters on which the Direction can provide detailed directions to the Board are covered in section 10 of the NAIF Act.

Part 2—Directions about all Investment Decisions

Section 7—Making Investment Decisions

Section 7 provides that the Facility has responsibility for making Investment Decisions, in relation to whether to provide financial assistance to states, territories and other entities to

support the development of Northern Australia economic infrastructure. Upon making an Investment Decision, the Facility must notify the Project Proponent of the outcome of that Investment Decision – whether or not financing in the form of a particular Financing Mechanism will be offered by the Facility to the Project Proponent – as soon as practicable after the decision is made. This includes notifying the Project Proponent of a rejection notice made by the Minister for Northern Australia in accordance with the Minister’s ability to reject Projects for financial assistance under subsection 11(4) of the Act.

Section 8—Matters to be considered when making Investment Decisions

Subsection 8(1) provides that before the Facility makes an Investment Decision to offer a Financing Mechanism, it must consult with and consider advice from the Department (the Commonwealth agency with portfolio responsibility for the Facility) and any Commonwealth entities or other persons or bodies the Department notifies the Facility should be consulted to determine the suitability of the Project for financing. It must also consult with, and consider the views of, the relevant jurisdictions according to section 16.

Section 8(2) provides the matters that the Facility must be satisfied of prior to making an Investment Decision to offer a Financing Mechanism.

Paragraph 8(2)(a) provides that before the Facility makes an Investment Decision to offer a Financing Mechanism, it must be satisfied the Project meets all relevant Mandatory Criteria in Schedule 1 to the Direction.

Paragraph 8(2)(b) provides that before the Facility makes an Investment Decision to offer a Financing Mechanism, it must be satisfied of the Project’s alignment with the policy priorities of Government detailed in Schedule 2 to the Direction.

Paragraphs 8(2)(d) and (e) are intended to ensure that there is a reasonable allocation of risk for the Project between the Facility and other sources of finance. Paragraph 8(2)(f) ensures that the Facility must be satisfied that it only takes on risks that it can appropriately manage, such as through the appropriate legal documentation for each Project, including but not limited to covenants and reporting mechanisms.

For the avoidance of doubt, satisfaction of paragraph 8(2)(d) and (e) does not preclude the Facility from being the sole provider of financial assistance to a Project.

Paragraph 8(2)(g) requires the Facility to identify its exposure to risk in a Project, including factors such as reputational, legal and financial risk. This includes the risks to the Facility and the Commonwealth in the event that the Project Proponent breaches the terms of their financial assistance (for example, by failing to repay their loan). The due diligence undertaken should be proportionate to the nature, scale and risk of the Project under consideration and should identify whether the Facility’s exposure in the Project would be consistent with the Facility’s Risk Appetite Statement.

Subsection 8(3) sets out the matters that the Facility must have regard to when making Investment Decisions.

Paragraph 8(3)(c) requires the Facility to have regard to an appropriate interest rate or target rate of return depending on the Financing Mechanism being used, in conjunction with 8(3)(d) which requires the inherent risk of the underlying Project and its capital structure be

considered. The purpose of these paragraphs is to ensure the Facility considers the specific characteristics of each Project and Financing Mechanism.

Paragraph 8(3)(e) requires the Facility to have regard to the potential effect of the Project on other economic 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, (for example roads, telecommunications and rail lines), then the Facility should consider these circumstances in making that Investment Decision.

Paragraph 8(3)(f) requires the Facility to have regard to the effects of the Financing Mechanism on the Australian infrastructure financing market. Financing Mechanisms include loans, guarantees, letters of credit, the purchase of primary-issue bonds, and equity and equity-like instruments such as ordinary shares, units in trusts, interests in joint ventures, convertible notes and preference shares. The purpose of this paragraph is to ensure that the Facility fully considers the potential positive implications as well as any potential negative distortions the provision of the financial assistance, and the type of financial assistance provided, may have on the operation of the Australian infrastructure financing market. For example, the Facility may consider the benefits of developing the commercial finance market's capability or capacity in an emerging sector by crowding in investment; or it may consider whether its investment would detrimentally crowd out commercial financiers. Crowding in private finance, replacing the need for the Facility's finance in projects is viewed as a positive outcome and consistent with the objective of the Facility in the development of Northern Australia economic infrastructure.

Paragraph 8(3)(g) requires the Facility to have regard for the potential for the investment to impact or support investments made by other Commonwealth Entities. An investment made by the Facility may impact or support other projects in the sector, including those receiving a Commonwealth grant, or financed by other Commonwealth Entities (for example other Commonwealth specialist investment vehicles (SIVs), such as Export Finance Australia (EFA), National Reconstruction Fund Corporation (NRFC) or the Clean Energy Finance Corporation (CEFC)).

Paragraph 8(3)(i) requires the Facility to consider the costs (including opportunity cost) and benefits of making a particular Investment Decision relative to other projects in the Facility's pipeline, noting the Facility's limited appropriation. The Facility should seek to provide financing to Projects likely to deliver the greatest economic or social benefit to Northern Australia.

Paragraph 8(3)(j) provides that the Facility must have regard to the location and related industry sector of the Project and consider that there are benefits to an overall portfolio of Projects with a diverse geographical and sector representation. It is the Commonwealth's preference for the Facility to invest in a range of different types of infrastructure which are spread across the geographical area defined as Northern Australia in section 5 of the NAIF Act.

Paragraph 8(3)(k) provides that the Facility should have regard to whether a Project has been identified as a priority Project through a Commonwealth, State or Territory assessment process, pipeline or priority list. This reflects the Government's preference for the investments of the Facility to overcome identified economic infrastructure gaps. For the

avoidance of doubt, it does not limit the Facility to investing only in projects identified in those processes, pipelines or lists.

Paragraphs 8(3)(l) and 8(3)(m) provide that the Facility should have regard to projects that materially improve the infrastructure of a region and provide public benefit of sufficient scale. This reflects the Government's preference for the Facility's investment to focus on those projects offering the greatest public benefit to affected communities.

Section 9—Discretion

Subsection 9(1) gives the Facility the discretion to decline an Investment Proposal for financial assistance.

Subsection 9(2) provides that no restrictions shall be placed on particular sectors to make Investment Proposals for consideration by the Facility.

Subsections 9(3) and 9(4) require the Facility to earmark \$500 million of its appropriation to support projects in Northern Australia which materially contribute to Priority 4 of the Government Policy Priorities contained in Schedule 2 to the Direction. This requirement creates a floor for the Facility's investment in projects that support Priority 4 and does not prevent the Facility from investing more than \$500 million in these projects. For avoidance of doubt, projects may support Priority 4 if they are enabling projects such as transport or other infrastructure that will advance the objectives of the *Critical Minerals Strategy 2023-2030*. These subsections codify the Government's commitment, provided in the 2023 Addendum to the NAIF Statement of Expectations, that the Facility set aside \$500 million for projects that support the *Critical Minerals Strategy 2023-2030*.

Part 3—Directions about specific types of Investment Decisions and derivatives

Section 10—Determining loan conditions and concessions

Subsection 10(1) provides that loans are the primary form of Financing Mechanism that the Facility should consider for all Investment Proposals.

Financial assistance in the form of a loan includes an obligation that the loan amount (principal) plus interest and any applicable fees shall be repaid at a future date. The terms and conditions of loans provided by the Facility shall be determined on a case-by-case basis taking into consideration the repayment circumstances and underlying objectives of the Project, as well as the Facility's Mandatory Criteria and Risk Appetite Statement. Such terms will document, amongst others, the repayment terms of the loan and the recourse rights that the Lender will have – namely, either recourse rights to the Project and the Project's assets (which is typically the position in non-recourse Project Finance loans) or recourse rights to the Proponent and its assets (which is typically the position in recourse Corporate Finance loans).

Subsections 10(2) and 10(3) requires the Facility to provide only the level of concession the Facility considers 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 provide a public benefit.

Subsection 10(4) provides narrower requirements for the Facility to provide loans on concessional terms. Paragraphs 10(4)(a) through 10(4)(c) apply only to Projects requiring concessional loans and in addition to the matters to be considered prior to making Investment Decisions at subsection 8(2).

Paragraph 10(4)(a) requires that the Facility must only provide financial assistance on concessional terms if it is satisfied that these concessional terms are the most appropriate and effective method for achieving the public benefit sought by the Facility through the investment.

Paragraph 10(4)(b) requires that if concessional terms are offered by the Facility, the level of forecast economic and public benefit of the investment based on the Facility's assessment must in the Facility's view reasonably exceed the concessions offered by the Facility.

Paragraph 10(4)(c) requires that the concessionality provided must be necessary for the Investment Proposal to proceed and be the minimum required to achieve the desired economic and public benefit sought by the Facility.

Subsection 10(5) sets out a non-exhaustive list of loan concessions that the Facility may propose.

Paragraph 10(5)(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 8(2)(c), which specifies that any return the Facility generates from an investment needs at least cover the Commonwealth's cost of borrowing.

Paragraph 10(5)(e) allows the Facility flexibility to put in place fee structures should they be required to enable the project to proceed.

Paragraph 10(5)(f) allows, only when required for a project to proceed, for the Facility to take a subordinate position in an investment relevant to other financiers, including but not limited to other Commonwealth entities and Commercial Financiers. The Facility should seek to take the highest-ranking secured position, (this can include equal rank with other financiers) as a mitigation strategy to minimise its exposure in the event a Project Proponent is unable to fulfil its contractual obligations.

Subsection 10(6) provides that, where appropriate, the Facility should propose contract terms that provide for the reduction of concessions or exit from the investment altogether. For example, this could be if the Project is performing better than expected and is commercially viable on non-concessional terms. The purpose of this paragraph is to emphasise that while concessional assistance can be crucial for success of a Project in early stages, if a Project delivers larger than expected returns there should be a mechanism to increase compensation to the Commonwealth by reducing concessions. For the avoidance of doubt, the inclusion of such triggers is not mandatory but should be considered when negotiating the terms of financial assistance.

Section 11—Alternative Financing Mechanisms

Subsection 11(1) requires the Facility to minimise the use of Alternative Financing Mechanisms, as defined in section 4, and only consider Alternative Financing Mechanisms when necessary for a particular Project. This includes where the Facility is satisfied that the Project would not proceed without the provision of an Alternative Financing Mechanism, or where the Project would proceed, but an Alternative Financing Mechanism is necessary to produce the full economic or social benefits forecast for a specific investment. While the Facility should default to loans as the primary form of financial assistance, this provision provides the Facility the ability to be flexible in its Financing Mechanism offerings to the unique needs of the Project. Any Alternative Financing Mechanisms fully count against the Facility's \$7 billion funding allocation.

Subsection 11(2) sets out the additional information that must be provided in the Proposal Notice if an Alternative Financing Mechanism is proposed for a Project.

Subsection 11(3) prohibits the Facility from committing to guarantees that would exceed the uncommitted balance of the Facility's appropriation.

Subsection 11(4) states that Mandatory Criterion 6 in Schedule 1 to the Direction only applies to Alternative Financing Mechanisms where the Facility is proposing to offer financial assistance in the form of an equity or equity-like investment.

Section 12—Derivatives

Section 12 allows the Facility to enter into a derivative contract only where it is a more effective means of achieving an effective hedge than less complex mechanisms (including loans, guarantees and equity investments), while 12(b), (c) and (d) requires the Facility to consider the risks associated with the derivative and the counter-party, and only enter into a derivative contract where expected benefits of acquisition outweigh the risk and associated costs.

Section 13—Direct funding

Section 13 provides parameters for the Facility to provide financial assistance directly to entities other than States or the Northern Territory. In making the decision to provide financial assistance directly to an entity other than a State, the Facility must have consideration of the functions listed in subsection 7(1A) of the NAIF Act.

Subsection 13(3) requires the Facility to obtain advice from the Department as soon as practicable once it identifies it may be considering a decision to provide financial assistance directly. The Facility should continue to consult the Department as the Investment Proposal is developed.

Subsection 13(4) requires that the Facility not provide direct assistance within a State on a concessional basis.

Subsection 13(5)(b) requires the Facility to consult the Minister for Northern Australia and the Minister for Finance prior to taking a decision to directly provide financial assistance to a Project Proponent. The section requires that the Facility consider the views of those Ministers when taking decision to provide direct assistance.

Subsection 13(6) clarifies that the preceding provisions in Section 13 do not apply to Projects in the Indian Ocean Territories, and so the Facility can make Investment Decisions relating to Projects in the Indian Ocean Territories subject to the same requirements applicable to grants of financial assistance provided through a State for a project within those jurisdictions.

Section 14—Limits on equity investments

Subsection 14(1) prohibits the Facility from making an investment that would result in the Commonwealth directly owning a majority or controlling stake in a Project. This subsection is intended to reduce the Commonwealth's risk exposure and management obligations when making investments in infrastructure projects.

Subsection 14(2) and subsection 14(3) should be read together. If the Facility holds one or more equity interests in an entity and becomes aware these holdings constitute a majority of the equity interests in an entity, or place the Facility in a position to control the entity, then the Facility must reduce its equity interests so the situation no longer exists. The Facility must take this action as soon as reasonably practicable in the circumstances after the Facility becomes aware of the fact.

Subsection 14(5) outlines the considerations that must be accounted for when the Facility is considering making an equity or equity-like investment. To ensure that the costs of making and managing equity investments are recovered across the Facility's equity portfolio, a benchmark rate of return is set at subsection 14(5)(a). All Mandatory Criteria must be applied by the Facility in making a decision to provide an equity or equity-like investment, with the exception of Mandatory Criterion 4.

Paragraph 14(6) requires the Facility, unless exempted by written agreement of the responsible Ministers, to cap its equity or equity-like investments to \$500 million to limit the Commonwealth's financial risk associated with equity investments. Paragraph 14(6)(b) sets a minimum value for equity or equity-like investments of \$5 million, and a maximum value of \$50 million, determined at the time of making an Investment Decision.

Part 4—Directions about risk, governance and consultation

Section 15—Investment risk and monitoring

Subsection 15(1) and subsection 15(2) requires the Facility to develop a Risk Appetite Statement in consultation with the Minister for Northern Australia and the Minister for Finance and approved by the Board of the Facility. The Facility should engage with the Department and the Finance Department in developing the Risk Appetite Statement. The Risk Appetite Statement sets out risk related matters that the Facility must have regard to for each Project it provides assistance to before making an Investment Decision.

Subsection 15(3)(a) requires the Risk Appetite Statement to preference a diversified portfolio.

Paragraph 15(3)(b) permits the Facility to have a greater tolerance for risk (relative to Commercial Financiers and other SIVs) due to factors unique to investing in Northern Australian economic infrastructure.

Paragraph 15(3)(c) requires the Facility to consider the impact of risks shared between the Facility and the Department. A shared risk is one extending beyond a single entity which requires a collaborative effort of shared oversight and management.

Paragraph 15(3)(d) requires the Facility to identify and consider climate change related risks. This would include, inter alia, the risk of more extreme seasonal variations in weather patterns and more intense weather events such as cyclones and floods.

Paragraph 15(3)(e) requires the Facility to consider risks arising from Australia's transition to net zero emissions. For example, as new energy technology is commercialised at scale, there is a risk that the commerciality of Projects in traditional energy generation are impacted due to industry transition toward clean energy.

Paragraph 15(3)(f) requires the Facility to review the Risk Appetite Statement at least annually.

Subsection 15(4) provides that in managing its investments, the Facility must undertake appropriate due diligence and credit and investment risk assessment processes. The Facility must also seek to develop a geographically and sectorally diversified portfolio so that the overall level of portfolio risk is, in aggregate, an acceptable but not excessive level of risk. In recognition of any volatility in the Facility's returns, subsection 15(4)(c) sets out the Government's direction that the Facility will periodically review its investment and operational practices for the purposes of managing the risk of its portfolio over time.

Subsection 15(5) requires the Facility to actively manage the performance of each individual financial mechanism provided to Project Proponents. The purpose of the paragraph is to give Direction on reporting to the responsible Ministers on the management of impaired or troubled investments.

Paragraph 15(5)(b) requires the Facility to develop early-warning systems for the identification of emerging issues in its investments.

Paragraphs 15(5)(c), 15(5)(d), 15(5)(e) and 15(5)(f) refer to investments which have become impaired or troubled. The Facility must take appropriate action to limit its exposure to impaired or troubled assets. The Facility may do this by enforcing its protections and rights according to the relevant contract for the provision of the Financial Mechanism and, in the event of impairment, by appointing and indemnifying a receiver.

Subsection 15(6) requires the Facility to actively manage and monitor the risks associated with the use of derivatives and provides ways in which the risks must be managed.

Paragraph 15(6)(a) requires the Facility to develop a derivatives risk policy and review it annually to ensure it remains appropriate. It is expected that the risk policy would provide guidance on appropriate due diligence practices, such as including minimum counter-party credit quality requirements.

Paragraph 15(6)(b) requires the Facility to ensure that there are appropriate contracts in place between the Facility and counterparties. Paragraph 15(6)(c) requires the Facility to incorporate derivative exposure and risk management into its regular reporting. This will ensure that the Government is appropriately informed of the Facility's use of derivative contracts.

To limit the financial risk to the Commonwealth, paragraph 15(6)(d) stipulates that at no time can derivative liabilities exceed the uncommitted balance of the Facility's appropriation.

Section 16—Consultation with relevant jurisdictions

Section 16 provides guidance 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. For Investment Proposals located in the Indian Ocean Territories, the 'relevant jurisdiction' for consultation is considered to be the Department of State of the Commonwealth that deals with administration of the Indian Ocean Territories.

The purpose of this section is for the relevant jurisdiction to be engaged on a Project. If a jurisdiction advises the Facility that financial assistance should not be provided to a Project, the Facility should not provide that assistance, and notify the Project Proponent as soon as possible (within five business days of the Facility receiving a written notification from the jurisdiction). Where a Project impacts multiple jurisdictions, 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.

Section 16(4) is intended to require the Facility to not proceed with an Investment Decision should it receive written notification from the relevant jurisdiction that it does not support the Project. For clarity – written communication that would satisfy the purposes of this provision would include written communication from a Premier, Chief Minister, responsible Minister, or a Secretary-equivalent in the responsible department of State. Written communication of this type may be revoked or rescinded.

Section 17—Relationship with other Commonwealth entities and other persons and bodies

Subsection 17(1) requires the Facility to consult with the Department prior to taking an Investment Decision. The Department must then consult with relevant Commonwealth agencies. If the Department deems it necessary, the Department may require the Facility to consult directly with another Commonwealth entity.

Subsection 17(2) specifies that the Facility must consult with Infrastructure Australia on Investment Decisions where the Facility would provide financial assistance of greater than \$250 million, whether through use of a single investment tool or in aggregate. This consultation should allow a reasonable time for considered assessment.

Subsection 17(3) requires the Facility to consult with the Department and the Finance Department to advise of the effectiveness of the Facility or its projects in meeting the policy priorities of Government, including those outlined in Schedule 2 to the Direction.

Subsection 17(4) requires the Facility to consult with any relevant Commonwealth entities, persons or bodies in the general discharge of its functions. For example, the Facility may consult with other SIVs to support its considerations under Section 8(3)(g). Subsection 17(5) has been added to make it clear that 17(4) does not impose a duty on the Facility to consult any Commonwealth entity or State entity in relation to a project (whether or not the project is the subject of an Investment Proposal or an Investment Decision) either before or after the Facility makes a decision whether to offer financial assistance for the project.

Subsection 17(7) makes clear that for the purposes of subsection 17(4), State entities include States (as defined under section 4 of the Direction) and body corporates established for a public purpose by or under a law of a State. The entities listed under subsection 17(6) are Commonwealth entities.

Subsection 17(7) specifies the Facility must consider advice from the Net Zero Economy Agency to support the Facility's role in the orderly and positive economic transformation to a net zero economy.

Section 18—Regulatory and environmental approvals

Section 18 allows that the Facility may make an Investment Decision to provide financial assistance to a Project Proponent where regulatory or other approvals are pending on a Project, subject to any conditions the Facility considers appropriate. The Facility should act with all due care and diligence in this regard, and ensure that relevant approvals are in place as needed prior to releasing any funding is released to a Project Proponent.

Section 19—Reputation

Section 19 provides that the Facility has a responsibility to act in a way that is not likely to cause reputational damage to the Commonwealth, a Commonwealth entity, a State (as defined in section 4 in the Direction), or an agency or authority of a State.

Section 20—Corporate governance

Subsection 20(1) provides that in undertaking its investment function, the Facility must have regard to Australian best practice governance principles and Australian best practice corporate governance for Commercial Financiers. This is so the Facility has credibility in financial markets and maintains a positive commercial and public reputation.

Subsection 20(2) requires the Facility, as part of its annual report in accordance with section 42 of the Act, to also report on the non-financial outcomes of its Investment Decisions.

Subsection 20(3) provides, for the purposes of transparency, that the Facility is required to publish information regarding the Facility's Investment Decisions on its website within 30 business days of the end of the Minister's consideration period required by section 11 of the Act. Final Investment Decisions can only be made after the Ministerial consideration period as required by Section 11 of the Act has elapsed.

Subsection 20(4) specifies that the Facility will publish guidance on its website to assist Project Proponents in their development of Investment Proposals.

Subsection 20(5) specifies that the Facility will, within 30 days of an Investment Decision, publish a publicly available summary of Indigenous Engagement Strategies from Project Proponents on its website.

Section 21—Providing information to the Minister for Northern Australia and the Finance Minister

Section 21 allows the Minister for Northern Australia and the Minister for Finance, as the responsible Ministers for the Facility, to request information from the Facility on an ad hoc

basis, and requires the Facility to respond to that request for information within 30 days, providing its response to both responsible Ministers. Section 21(3) requires the Facility to provide the Minister for Northern Australia a quarterly brief on three topics, which are: the status of its Investment Decisions; each project's performance against any key metrics requested by the Minister (for example, progress against its forecast public benefit); and the Facility's impact delivered against the Government's policy objectives set out in Schedule 2 to the Direction.

Section 22—Australian industry participation

Section 22(1) outlines the application of Australian Industry Participation (AIP) Plans¹ to the Facility's investment activities. The application of AIP Plans to investments made by the Facility is aimed at increasing opportunities for capable and competitive Australian and New Zealand small and medium sized enterprises to participate in major projects where government investment is equal to or exceeds \$20 million (GST inclusive).

An AIP Plan details how a project proponent will provide full, fair and reasonable opportunity to Australian industry to participate in a project. This applies to any subcontracting or purchasing opportunities that may be available. AIP Plans do not mandate the use of Australian industry, but rather aim to provide Australian industry with the opportunity to demonstrate their capabilities and capacity.

It is anticipated that prior to contract execution with a loan recipient, the Facility should engage with the Commonwealth AIP team within the Department of Industry, Science and Resources. The Commonwealth AIP team will contact the Facility if it determines that a full AIP plan would likely increase opportunities for Australian Businesses.

If required, the Facility may engage with the Commonwealth AIP team to assist in drafting contract terms to include in funding agreements that assist recipients in their AIP obligations.

Subsection 22(2) directs the Facility to consult with the Finance Department regarding the application of the Australian Government's Buy Australian Plan. The Buy Australian Plan is intended to improve the way government contracts work and builds domestic industry capability through the Australian Government's purchasing power. In respect of the Buy Australian Plan, the Facility will consult with the Department of Finance on relevant investment policies or strategies, rather than specific decisions or issues in relation to particular investments or non-investment matters. The Facility must also consider, where practical, ways to encourage the use of local content in Projects.

Schedule 1—Eligibility criteria for financial assistance

Schedule 1 to the Direction specifies the Mandatory Criteria that an Investment Proposal must satisfy. To be eligible for financial assistance from the Facility, Project Proponents must satisfy all relevant criteria.

The Facility aims to promote economic or population growth in Northern Australia through the development of new or enhanced infrastructure. Mandatory Criterion 1 reflects this, requiring projects to incorporate development or enhancement of physical structures, assets

¹ Further information on the application of AIP Plans can be found at: <https://www.industry.gov.au/major-projects-and-procurement/australian-industry-participation> or by contacting the aip@industry.gov.au.

(including moveable assets), technology or facilities which underpin, facilitate or are associated with several factors of success. These factors include the transport or flow of people, goods, services or information, the establishment or enhancement of business activity in a region, an increase in economic activity in a region, including efficiency in developing or connecting markets, an increase in population, or an increase in existing local workforce availability or capability. Examples of the type of projects that may be eligible include, but are not limited to, ports, airports, rail, roads, water, energy and communications networks, social infrastructure (including health facilities, education facilities, research facilities, convention facilities, training and related accommodation facilities), processing facilities (including abattoirs and agricultural processing plants) and trans-shipment vessels. Preference should be given to Projects which bring new capacity online, however Projects involving the material modernisation or refurbishment of existing capacity may also be eligible for assistance, provided they can demonstrate the potential to increase capacity. In satisfying Mandatory Criterion 1, the Project may involve the Project Proponent either conducting a program of works over a specified time involving expenditure or procurement for the development or enhancement of economic infrastructure in Northern Australia, or providing financing that facilitates the development or enhancement of economic infrastructure in Northern Australia. Mandatory Criterion 1 notes that the refinancing of existing debt without an increase in the overall amount or tenor of financial accommodation or that does not involve the creation of new capacity is ineligible. The Facility is enabled to refinance a Project from a commercial lender if it would lead to the development of further economic infrastructure.

Mandatory Criterion 2 requires that the Project will be of public benefit. In assessing a Project to be of public benefit, the Facility must be satisfied that the Project will deliver benefits for the broader economy and community beyond an economic return to the Project Proponent. This includes providing a basis for economic growth in the region or community by providing employment opportunities (especially employment opportunities for Indigenous people), growing regional income, providing local procurement opportunities (including Indigenous procurement opportunities), or increasing business for local suppliers. The Facility is expected to undertake a cost-benefit or similar analysis that would satisfy a reasonable person that the project will deliver public benefit beyond the economic return to the Proponent.

Mandatory Criterion 3 requires the Project be located in or have a significant benefit for Northern Australia, with the definition of Northern Australia given in section 5 of the NAIF Act.

Mandatory Criterion 4 requires the Facility be satisfied that a loan will be able to be repaid or refinanced. The purpose of this Mandatory Criterion is to ensure that prior to an Investment Decision the Project Proponent demonstrates to the Facility, through comprehensive financial modelling, its ability to repay or refinance the debt in full and on time as set out in the proposed contract terms to the Facility. The proposed contract terms must be acceptable to the Facility according to its risk profile and Risk Appetite Statement. This Mandatory Criterion does not apply to equity investments.

Mandatory Criterion 5 requires Project Proponents to have an Indigenous Engagement Strategy if the Project is not located entirely within the Indian Ocean Territories. As the Indian Ocean Territories do not have an indigenous population, Proponents of Projects taking place largely or entirely within the Indian Ocean Territories will, instead of an Indigenous Engagement Strategy, provide a Local Employment and Procurement Strategy outlining local

employment and procurement targets and the plan to deliver those targets. Where it is reasonable to do so, the Project Proponents must agree, as required by the Facility, to report regularly on achievements against the objectives set out in their Indigenous Engagement or Local Employment strategies, including participation, procurement, training and employment outcomes. The objectives of an Indigenous Engagement Strategy should be designed in partnership with local indigenous populations, where feasible. The Facility must provide guidance to Proponents on the collection of relevant data to ensure that reported data from Indigenous Engagement and Local Employment strategies can be aggregated across the Facility's portfolio of investments.

Mandatory Criterion 6 replaces Criterion 4 in any instance of the Facility providing an Alternative Financing Mechanism in the form of an equity or equity-like investment, rather than a debt investment, and requires that the Project Proponent must demonstrate to the Facility's satisfaction that the Project will contribute positively to the target portfolio return in the medium term. It also requires the Facility be satisfied by its own assessments and modelling provided by the Project Proponent that the Project presents opportunities or mechanisms by which the equity or equity-like investment can be exited or monetised in the medium to long term. Exit or monetisation will be at the discretion of the Facility.

Schedule 2—Government policy priorities

Schedule 2 to the Direction specifies the policy priorities of Government to which the Facility is expected to contribute. Prior to making an Investment Decision, the Facility must be satisfied that the Project aligns with one or more of the relevant Government priorities, in accordance with Paragraph 7(2)(b) in the Direction.

Government Priority 1 describes the Government's policy that the Facility support sustainable and resilient economic development and the alleviation of economic or social disadvantage in Northern Australia. Projects contributing to this Priority are those which provide for long-term improvement in economic outcomes for communities in Northern Australia which may have the ultimate effect of stimulating population growth. Examples of projects aligning to this Priority could include: development of a new mine site including the construction of common-use sealed roads, the construction of new student accommodation, and the development of an agricultural project providing year-round employment and training opportunities for local people.

Government Priority 2 describes the Government's policy that the Facility work with jurisdictions in Northern Australia to deliver key infrastructure projects. Projects contributing to this Priority are those which assist the State and Territory Governments of Northern Australia to develop essential water, electricity, communications and transport infrastructure. Other projects contributing to this Priority are those which develop the necessary supporting businesses and industries of the economic base in a region in Northern Australia. This Priority also involves improving Australia's sovereign capability through the development of manufacturing industries in Northern Australia supporting vulnerable or strategically important supply chains. Examples of projects aligning to this Priority could include: the construction of electricity transmission lines from a hydroelectric power station to the main electrical grid, the expansion of a rail freight business to improve the capacity of goods transport, and the development of facilities for the manufacture of high-purity alumina – a critical battery metal and essential material in the production of LED lights.

Government Priority 3 describes the Government’s policy that the Facility contribute to the development of sustainability, emissions reduction, clean energy production, and the circular economy in Northern Australia. Projects contributing to this Priority are those based in Northern Australia which support Australia’s transition to net zero emissions by 2050, utilise principles of sustainability and the circular economy, and enable regional economies to diversify and reduce concentration in emissions-intensive industries. Examples of projects aligning to this Priority could include: construction of a photovoltaic power station, development of a manufacturing plant for production of disposable packaging products using recycled materials, and supporting a company engaged in offshore oil production to transition its business to developing offshore wind farms.

Government Priority 4 describes the Government’s policy that the Facility support the implementation of the Government’s Critical Minerals Strategy. Projects contributing to this Priority only include those supporting the objectives of the *Critical Minerals Strategy 2023-2030*². In accordance with section 9 of this Direction, the Facility must earmark \$500 million of its appropriation to support critical minerals projects. Examples of projects aligning to this Priority could include: development of a new vanadium mine, the construction of downstream processing facilities to convert spodumene concentrate to lithium hydroxide, and development of a new silicone manufacturing plant in a strategic industrial area to leverage the benefits of industrial-scale clustering. Projects might also be in enabling infrastructure, that helps create clusters of heavy industry where critical minerals producers, users and exporters are co-located. For clarity, the Facility should consider projects that increase production of critical minerals, without contributing to the objectives in Government Priority 4, as not aligned with the Critical Minerals Strategy. For example, the Facility may seek assurance that the Proponent’s offtake agreements will support the objectives of the Critical Minerals Strategy over the life of the project.

Government Priority 5 describes the Government’s policy that the Facility’s investments materially improve the lives of Indigenous persons and communities. Projects contributing to this Priority include those supporting Government’s Closing the Gap Strategy and which develop economic infrastructure in Northern Australia for the benefit of Indigenous people. Examples of projects aligning to this Priority could include: supporting establishment of a beef cattle farm utilising a targeted recruitment strategy for Indigenous people, supporting the expansion of an Indigenous owned and operated health service, and development of a copper mining enterprise which provides an equity stake in the project to the Traditional Owners of the site.

² The Critical Minerals Strategy can be found at <https://www.industry.gov.au/sites/default/files/2023-06/critical-minerals-strategy-2023-2030.pdf>