

Independent Review of the Northern Australia Infrastructure Facility Act 2016

Submission of The Australian Workers' Union

October 2024

The AWU, the north and modern industry policy

The Australian Workers' Union (AWU) is one of Australia's largest and most diverse unions. We represent over 76,000 workers across the length of the country and breadth of the economy. Our membership includes many thousands of workers in northern Australia, plying their trade in industries such as mining, gas extraction and transport, civil construction and agriculture. The AWU's Queensland and Northern Territory branch is our largest by number of members, and we have thousands more members working in Western Australia's northern regions.

This affords the AWU a close interest in the development of Australia's northern regions. We have commended the Northern Australia Infrastructure Facility for its positive role in helping significant projects in the north come to life. That NAIF estimates it has facilitated the realisation of 32 projects and 18,300 new jobs is no small thing, particularly in an often-challenging development and investment environment.

But since NAIF was established under the Turnbull government in 2016, the Commonwealth's understanding of its role in driving economic development and related objectives has evolved considerably. In particular, the Albanese Labor Government has embraced modern industry policy via the creation of sophisticated new programs and specialist investment vehicles (SIV). This represents an important and overdue shift to enhance government's hands on role in Australia's development. Some aspects of NAIF's regulatory framework do not reflect these changes to the policy and investment landscape over the last eight years. The inclusion of a requirement in the *Northern Australia Infrastructure Facility Act 2016* for the framework to be reviewed in 2024 is thus prescient.

The AWU does not suggest that NAIF or its regulatory framework require wholesale change. The facility has played a largely positive role in supporting development in the north and will continue to do so. We advocate evolution rather than revolution, such that NAIF remains fit for purpose, and reflects modern understandings of how a SIV should be governed and what it can achieve.

We recommend amendments that would enhance NAIF's efficacy in advancing government policy priorities, support it in making equity investments, and improve its governance at board level. These recommendations are explored below.

Government policy priorities

That NAIF's investment mandate explicitly requires alignment between all investments and prescribed government policy priorities is welcome. Plainly, such a provision is necessary to ensure investment does advance the interests of the wider community, rather than project proponents exclusively. While the relevant priorities, prescribed in Schedule 2 of the investment mandate, are largely appropriate, they would benefit from some updating. To this end, the 'community benefits principles' set out in the *Future Made in Australia Bill 2024* are a sound and up to date reflection of key government priorities in the context of industry investment, including in sectors that are a priority for NAIF.¹ The community benefits principles include:

- 'Promoting safe and secure jobs that are well paid and have good conditions',
- 'Developing more skilled and inclusive workforces, including by investing in training and skills development', and
- 'Strengthening domestic industrial capabilities, including through stronger local supply chains'.²

The community benefits principles should be adopted as policy priorities in the NAIF investment mandate. Where there is overlap between the community benefits principles and current priorities prescribed in the investment mandate, the formulation used in the community benefits principles should be preferred.

Recommendation: The government policy priorities set out in NAIF's investment mandate should include the priorities prescribed as 'community benefits principles' in the *Future Made in Australia Bill 2024*.

The *Future Made in Australia Bill* also provides that any entity receiving support under a Future Made in Australia program must develop and implement a written plan explaining how that support will advance the community benefits principles. The NAIF investment mandate has no equivalent provision requiring proponents to show confluence between their project and policy priorities, in writing and in detail.

The investment mandate should both adopt and build on the requirement in the *Future Made in Australia Bill*. In addition to obliging proponents to develop a written plan demonstrating how investment would

¹ Northern Australia Infrastructure Facility n.d., 'Sectors we support'. Available at: <https://naif.gov.au/our-investments/sectors-we-support/>; Commonwealth Treasury (2024), 'Investing in a Future Made in Australia'. Available at: <https://budget.gov.au/content/03-future-made.htm>

² *Future Made in Australia Bill 2024* (Cth), s10(3)

advance prescribed policy priorities, the mandate should include a mechanism for monitoring and enforcement of the plan after support is provided. These requirements will go some way to ensuring public investment does advance public good in Australia's north.

Recommendation: The NAIF investment mandate should:

- Require an entity seeking support to provide a written plan demonstrating how that support would advance the mandate's policy priorities; and
- Include a mechanism for monitoring and enforcement of the plan after any support is provided.

Regulation of equity investment

The NAIF invest mandate's approach to equity investment is unduly restrictive. In making any equity investment, NAIF must adhere to a number of requirements not applicable to loans provided by the facility. NAIF is:

- Prevented from holding a majority or controlling interest in an entity;
- Required to target a medium to long-term return of at least the Australian government bond rate plus 3%;
- Prohibited from holding total equity investments valued at over \$500 million; and
- Prohibited from investing less than \$5 million or more than \$50 million in any one project.³

These requirements are limiting - both in the practical sense and, we suggest, in the negative signal they send to those at NAIF responsible for investment decisions. Indeed, the review's discussion paper supporting notes that NAIF is yet to make a single equity investment.⁴

We suggest these restrictions also reflect a failure to appreciate or leverage the positive potential of equity investment by NAIF. Particularly in emerging industries and challenging operating environments, a government stake in a project can provide an important means of driving investor confidence. In northern Australia, the Commonwealth and Western Australian governments played a hands-on role in establishing and developing now-behemoth Woodside, including through direct investment in infrastructure. Equity

³ *Northern Australia Infrastructure Facility Investment Mandate Direction 2023 (Cth)*, s14

⁴ Discussion paper, p. 10

investment also provides the Commonwealth with enhanced visibility and influence over a project to ensure it meets the policy objectives for which it has received state support.

There might also be geostrategic benefits to government taking an equity stake in a project. For instance, the AWU recognises the immense potential for the Pilbara region to move up the steel value chain as an exporter of 'green iron'. But given the political and strategic significance of domestic ironmaking for countries that import Pilbara iron ore, a shift to ironmaking in the Pilbara would have a level of sensitivity. By taking a direct stake in developing the region's green iron industry, the Commonwealth could provide greater assurance that this shift would support rather than threaten the interests of Australia's trade partners.

That NAIF's restrictions on equity investment unduly limit its impact was recognised early in the facility's life by the Australian Strategic Policy Institute. As ASPI noted in 2020:

*"The debt-based Northern Australia Infrastructure Facility....[is] unlikely to result in anything more than passing peaks of economic activity. Unfortunately, those arrangements aren't supporting to kinds of massive nation-building efforts needed in the north, where the federal government should consider ambitious investments."*⁵

Furthermore, restrictions on holding more than \$500 million in total equity, and less than \$5 million or more than \$50 million in a single project, appear arbitrary. This is particularly so in light of NAIF's support for projects of widely varying size and scale. An investment of \$4.9 million or \$50.1 million might be highly significant or relatively minor, depending on the nature of the project in question. NAIF's total financing capacity has also increased significantly since the \$500 million limit was introduced in 2020.⁶

The National Reconstruction Fund (NRF) offers useful guidance as to how NAIF might better approach equity investment. The NRF is a large SIV established in 2023, investing in similar industries to those supported by

⁵ Coyne, J. et al (2020), 'In a crisis, Australians might soon be running on empty', Australian Strategic Policy Institute. Available at: <https://www.aspistrategist.org.au/in-a-crisis-australians-might-soon-be-running-on-empty-2/>

⁶ Northern Australia Infrastructure Facility (2022), 'Entity resources and planned performance', p. 460. Available at: https://www.infrastructure.gov.au/sites/default/files/documents/2022-23_infra_pbs_21_naif.docx; Northern Australia Infrastructure Facility (2023), '2023 Reforms'. Available at: <https://www.naif.gov.au/our-investments/how-and-where-we-invest/reforms/>

NAIF.⁷ The NRF's investment mandate also prevents the fund from taking a majority or controlling stake in an entity. This is reasonable, given the expertise of a SIV should be in investing and supporting policy goals, rather than in the day-to-day concerns of running a company. But the NRF mandate prescribes no further special restrictions on equity investment. There is no limit on the size of equity investment permitted (either in a single project or in total), and the NRF's whole-of-portfolio target rate of return applies equally to equity investment as to other types of investment.⁸ This approach, we suggest, is much better suited to supporting the Commonwealth to realise the considerable benefits of equity investment through its SIVs. It should be adopted for NAIF accordingly.

Recommendation: The Commonwealth should abolish all special restrictions on equity investment in the NAIF investment mandate, other than the restriction on holding a majority or controlling stake in an entity.

Governance

The *Northern Australia Infrastructure Facility Act* requires all NAIF board members to possess expertise or experience in one or more prescribed areas. These areas are banking and finance; private equity or investment; economics; infrastructure planning and financing; engineering; government funding programs or bodies; financial accounting or auditing; law; and economic development for Indigenous communities.⁹

Any of the above may well evince a suitable background for a person to serve effectively on NAIF's board. However, the prescribed areas fail to give due consideration to an important facet of the facility's purpose: to support the interests of workers. The policy priorities in NAIF's investment mandate set out a wide range of worker-centred objectives - concerning job creation, security of employment, workforce participation, upskilling, and local economic diversification.¹⁰ The importance of supporting workers to NAIF's work is not reflected in the eligibility requirements to sit on the board that governs the facility.

⁷ Northern Australia Infrastructure Facility n.d., 'Sectors we support'. Available at: <https://naif.gov.au/our-investments/sectors-we-support/>; National Reconstruction Fund (2023), 'Our priority areas'. Available at: <https://www.nrf.gov.au/what-we-do/our-priority-areas>

⁸ *National Reconstruction Fund Corporation (Investment Mandate) Direction 2023* (Cth), ss 8, 17

⁹ *Northern Australia Infrastructure Facility Investment Mandate Direction 2023* (Cth), s15(4)

¹⁰ *Northern Australia Infrastructure Facility Investment Mandate Direction 2023* (Cth), Schedule 2

The NRF again provides instruction as to how NAIF should be reformed to give better effect to its goals. In a relatively close confluence with NAIF, the NRF's guiding policy objectives include the creation of secure jobs, and of a skilled and adaptable workforce.¹¹ Reflecting these priorities, the *National Reconstruction Fund Corporation Act 2023* allows for a person to be appointed to the NRF's board on the basis that they possess experience or expertise, and credibility and standing, in either industrial relations or industry growth.¹² The NRF's board, in turn, gives substantial voice to people whose standing derives from a career serving and fighting for workers. The board's nine members include former AWU National Secretary Daniel Walton, as well as Australian Manufacturing Workers' Union National Assistant Secretary Glenn Thompson.¹³ To better empower workers, NAIF should mirror the approach of the NRF to appointing its board.

Recommendation: The *Northern Australia Infrastructure Facility Act* should provide for appointment to NAIF's board on the basis of expertise or experience in industrial relations or industry growth

More information

The AWU welcomes the opportunity to assist further with review of the Northern Australia Infrastructure Facility's regulatory framework. For any queries or more information on this submission, please contact Thomas Mortimer, National Policy Director, at Thomas.Mortimer@nat.awu.net.au and 0422 361 462.

¹¹ *National Reconstruction Fund Corporation Act 2023* (Cth), s17(3A)

¹² *National Reconstruction Fund Corporation Act 2023* (Cth), s19

¹³ National Reconstruction Fund (2023), 'Our board'. Available at: <https://www.nrf.gov.au/who-we-are/our-board>