

25 October 2024

Independent Expert Panel

Via email: NAIFactReview@infrastructure.gov.au

Dear the Hon Warren Snowdon, Professor Peter Yu, and Dr Lisa Caffery

Re: 2024 Independent Review of the *Northern Australia Infrastructure Facility Act 2016*

Thank you for the opportunity to provide a response to the discussion paper on the review of the *Northern Australia Infrastructure Facility Act*.

The *Northern Australia Infrastructure Facility Act 2016* stipulates that the current investment window of the Northern Australia Infrastructure Facility (NAIF) will end on 30 June 2026. Section 43 of the Act states that a review of the operation of the Act must be undertaken as soon as possible after 30 June 2024. The Minister for Northern Australia, the Hon Madeleine King MP, has announced an Independent Expert Panel to conduct the review of the NAIF Act.

The review will consider the effectiveness of the Act in delivering its intended goals of facilitating economic growth and ensuring future Australian Government investment in economic infrastructure in northern Australia genuinely reflects the operating environment, including sectoral diversity and enhancing opportunities for First Nations employment and procurement.

The ILSC's feedback provides comments on opportunities to support economic self-determination for First Nations people and organisations as part of this review. The ILSC wishes to clarify that our comments separate the NAIF's legislative framework from its investment framework, and our comments primarily focus on opportunities to change the investment mandate to improve First Nations outcomes.

This feedback assumes that almost all investment managed through the NAIF will have significant and irreversible impacts on Country. This presents both opportunities and challenges for First Nations communities, and their rights and interests must be upheld at each step of this process. The burden placed on First Nations peoples, communities and organisations to engage with these processes should not be underestimated.

The ILSC acknowledges that NAIF supported our subsidiary Voyages by providing finance primarily for a number of improvements at the Connellan Airport. The \$27.5m NAIF loan helped extend the useful life of the runway, securing the economic future of the area. The project was completed in 2019, and was a key economic enabler for the Yulara region, particularly tourism to the world-heritage Uluru-Kata Tjuta National Park, and has provided significant Indigenous training opportunities. This loan was possible in supporting First Nations benefits as there was sufficient certainty of return, and was also underwritten by the ILSC.

Our comments can summarised as follows:

- To support First Nations participation, a portion of NAIF's funds should be quarantined specifically for First Nations led projects.

- NAIF's investment mandate should be amended to allow for increased First Nations-led outcomes and prioritise community impact over capital returns.
- Consideration should be given to the adoption of an impact-led mandate similar to that of First Australians Capital, or the adoption of a mandate able to accept scaled risk and returns where they are offset by First Nations leadership and impact returns.

1. The Indigenous Land and Sea Corporation

The ILSC is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (Cth), first commencing as the Indigenous Land Corporation on 1 June 1995. It was established by the *Aboriginal and Torres Strait Islander Act 2005* (Cth) in response to the Mabo judgement and as such complements the *Native Title Act 1993* (Cth) in recognition of common law native title rights to land.

The ILSC acts as a strategic funder and facilitator, supporting First Nations people to access, use, and Care for Country on their own terms to achieve their aspirations; supports First Nations people to leverage, and continue to grow, their assets and rights to land and water, extend beyond grant-making and enable First Nations groups to take advantage of opportunities that optimise the use and Care of Country now and into the future; and improve our service to First Nations people and continue our efforts to return power and control to First Nations communities by divesting our operating businesses and landholdings.

2. The ILSC's National Indigenous Land and Sea Strategy

The National Indigenous Land and Sea Strategy (NILSS) 2023-2028, commits the ILSC to grow the resources and power of First Nations people. Our goal is to advance a First Nations economy that is grounded in self-determination, Country, and culture. We are doing this because we have heard First Nations people loud and clear, and we have also observed First Nations-led movements towards self-determination.

Commencing in 2022, this strategy is the culmination of the ILSC's largest ever nation-wide consultation. Agency staff spent over 1000 hours on ground, listening, and speaking to hundreds of Aboriginal and Torres Strait Islander people in dozens of communities across Australia, about their aspirations for Country and role of the ILSC.

Reflecting First Nations' aspirations heard through the consultation process, the NILSS 2023-2028 is underpinned by three guiding principles – Caring for Country, self-determination, and partnership – and informs the basis of our response here.

3. Feedback

Discussion Area 6: Does the NAIF legislative framework or processes preclude small to medium enterprises from securing support for projects that will create economic and community development benefits?

NAIF's investment mandate should be amended to allow for increased First Nations-led outcomes and prioritise community impact over capital returns. Consideration should be given to the adoption of an impact led mandate similar to that of First Australians Capital, or the adoption of a mandate able to accept scaled risk and returns where they are offset by First Nations leadership and impact returns. Publications from First Australians Capital¹ provide useful frameworks to guide investors through the context, principles and practices needed to facilitate long-term self-determined investments into First Nations enterprises.

First Nations Capital characterises impact investing as aiming to deploy capital to address pressing social and environmental challenges such as climate change, sustainable agriculture, renewables, land and sea restoration. These are areas of investment also identified under the NAIF's priorities.

Discussion Area 7: Is there an ongoing role for NAIF in small loans? In what circumstances?

To support First Nations participation, a portion of NAIF's funds should be quarantined specifically for First Nations led projects. This fund may consider a program element to operate in a complementary manner to a loan facility. The lending aspect of such a facility would require different eligibility criteria, and should offer a lower, more flexible

¹ For example, see the Indigenous First Impact Framework
https://firstaustralianscapital.org/investors/indigenous_first_impact_framework/

investment limit. It may seek direct co-investment in project readiness and support from a catalytic first-loss capital investment facility (potentially ILSC/Indigenous Business Australia/National Indigenous Australians Agency). Additionally, exploring the use of government guarantees to de-risk bank financing for remote area or native title land projects can be a valuable strategy.

Discussion Area 9: How can NAIF best support the needs and interests of First Nations businesses, communities and First Nations capacity building through its investments?

The government must coordinate the facilitation of support for independent First Nations groups to enter the market. To avoid the scenario where Indigenous people are passive recipients or mere consent authorities for non-Indigenous interests, the government should coordinate its efforts of engagement. Dedicated funds for project feasibility and start up should be quarantined, as well as underwriting the initial stages of project operations to ensure the project can pay wages and survive without becoming insolvent.

The review may consider the need for a dedicated First Nations loan facility to address market entry conditions and invest in specific methodologies that support Indigenous groups being better able to participate in the economy.² NAIF must seek to determine how the processes could be structured to ensure First Nations participation in project development and establishment rather than only passive benefit receipt models. The government must invest in enabling meaningful Indigenous sector participation to ensure First Nations outcomes are achieved.

Approximately half of the prescribed bodies corporate that facilitate First Nations projects and consent arrangements across Australia receive no operational funding. It is critical to ensure that these entities have the capacity to engage with this opportunity and drive benefits for their stakeholders and communities.

To support Indigenous engagement in the market, the government must consider the capacity support required for First Nations organisations that might facilitate Indigenous project development, partnering and consent for projects in their region. First Nations groups must also be provided with financial supports to participate in engagements as well as have their Indigenous Cultural and Intellectual Property (ICIP) protected and respected. There is momentum gathering internationally to ratify ICIP with a Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge being agreed among members of the World Intellectual Property Organization in May 2024. This treaty will specifically cover Intellectual Property and Traditional Knowledge and will be binding on all Member States who accede to or ratify it.³

Discussion Area 10: Is the Indigenous Engagement Strategy approach sufficient to support First Nations procurement and employment? How might this approach be improved or adapted?

Characterising First Nations involvement in NAIF as being satisfied by requirements to engage, and the identification of procurement and employment targets positions First Nations communities as passive beneficiaries of government investment.

Leadership of First Nations peoples in the new economy is critical to its success – in particular with energy and renewables, critical minerals, and agriculture and water. Historically, Indigenous people have not been active participants in the development on their land, instead tending to provide consent, or for access by others for passive economic benefits.

NAIF may consider implementing a 'concierge service' to support First Nations communities in their negotiation of consent for activities on their Country. This service should also establish a clearly defined and mapped process for the resolution of FPIC requirements which ensures the realisation of existing rights over Country, supports appropriate benefits sharing arrangements and simultaneously de-risks the commercialisation of opportunities on Indigenous-held lands and waters in the north.

² Please also refer to Murru waaruu (On Track) Economic Development Seminar Series — Outcomes Report, published in May 2024 by the First Nations Portfolio at the Australian National University <https://services.anu.edu.au/files/2024-06/Murru%20waaruu%20Outcomes%20Report.pdf>

³ Refer to IP Australia, Empowering Indigenous Knowledge and advancing IP systems <https://www.ipaustralia.gov.au/understanding-ip/indigenous-knowledge/empowering-indigenous-knowledge-and-advancing-ip-systems>

This suggestion is consistent with the proposed 'Front Door' mechanism within the Future Made in Australia Bill presented by the Treasury, the 'concierge service' would aim to simplify processes for investors with transformational proposals to invest on Indigenous held Country across the North.

Discussion Area 11: What are the impediments in First Nations led projects in meeting the requirements for NAIF concessional finance?

To effectively support Indigenous entrepreneurs, businesses, and communities in developing investment-ready proposals, it is essential to address the current market gap by providing resources and support. A combination of grant and investment capital is often necessary, particularly for Indigenous land-based or government-funded groups. Grant funding should be prioritised for deal development and due diligence before attracting investment capital.

To facilitate collaboration and streamline the process, a platform should be established for agencies to share and triage potential investment opportunities. This will allow for the assignment of appropriate grant funding roles, such as those provided by the ILSC, Indigenous Business Australia, and National Indigenous Australians Agency. Additionally, adapting a program like the Department of Social Services' Investment Ready Growth Grant Scheme can provide targeted grants and access to a panel of providers who can assist in developing investment proposals and determining the optimal grant/investment mix.


4. Concluding comments

The ILSC supports Australian Government reforms that contribute towards the realisation of outcomes that further First Nations Communities' ability to Care for Country, remove barriers to economic self-determination, and provide autonomy of choice in how they work in partnership to advance their economic interests.

The review of NAIF presents an opportunity to strengthen economic self-determination for First Nations communities in the north of Australia. The right to economic self-determination allows First Nations people to pursue their own economic development to prosper in their lives and is a pre-condition to the enjoyment of broader self-determination rights.

Should you or your department require any further information or detail on the proposals raised in this submission please contact my office directly via Rebecca Hayden, General Manager Policy, Strategy, Performance and Communications by email rebecca.hayden@ilsc.gov.au or mobile 0407 358 444.

Yours sincerely



Joe Morrison
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