

# KIMBERLEY LAND COUNCIL

ABN 96 724 252 047 ICN 21



9 October 2024

Hon Warren Snowdon, Professor Peter Yu and Dr Lisa Caffery  
Independent Expert Panel  
Review of the *Northern Australia Infrastructure Facility Act 2016*  
Submitted via online portal at [www.infrastructure.gov.au](http://www.infrastructure.gov.au)

Dear Independent Expert Panel members,

## **Kimberley Land Council submission to the review of the *Northern Australia Infrastructure Facility Act 2016***

1. The Kimberley Land Council (**KLC**) is an Aboriginal organisation established in 1978 for the purpose of working for and with Kimberley Traditional Owners to get back Country, care for Country and get control of the future. As the native title representative body for the Kimberley, the KLC has achieved native title determinations across 97 per cent of the region, and there are currently 31 prescribed bodies corporate (**PBCs**) in the Kimberley holding and managing native title rights and interests.
2. The KLC works with PBCs to expand capacity and build economic development opportunities. The KLC also supports 18 Aboriginal ranger groups through the Kimberley Ranger Network, and conducts a range of land and sea management activities. In its representative capacity, the KLC plays a leading role amplifying the views and voices of Kimberley Aboriginal people locally, nationally and internationally.
3. The Northern Australia Infrastructure Facility (**NAIF**) is an important vehicle for economic development in northern Australia with the potential to provide tangible benefits for Indigenous communities. The KLC welcomes the opportunity to provide a submission to the 2024 independent review (**review**) of the *Northern Australia Infrastructure Facility Act 2016* (Cth) (**NAIF Act**). The KLC's submission focuses on discussion areas 9, 10 and 11, as identified in the review's discussion paper.
4. In summary, the KLC submits that there is a compelling need to amend the NAIF Act and *NAIF Investment Mandate Direction 2023* (**Investment Mandate**) to ensure that Aboriginal and Torres Strait Islander-owned businesses and projects can directly access concessional financing through the NAIF. The remainder of the submission provides context around Indigenous participation in the northern Australia economy and discusses barriers to Indigenous access to NAIF finance products and corresponding solutions.

## **Northern Australia agenda and Indigenous participation**

5. The NAIF, established in 2016, was a key initiative proposed through the 2015 *Our North, Our Future: White Paper on developing northern Australia* (**White Paper**). The White Paper sets out the Australian Government's 20-year plan for investment and industry development to build the economy of northern Australia. In August this year, the Australian Government launched the *Northern Australia Action Plan 2024-2029* (**Action Plan**) as a 'refreshed agenda' that reflects new opportunities and ongoing challenges relating

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to economic development in northern Australia. The Action Plan clearly positions the north as essential to Australia's future economic transformation and success. In turn, it notes that northern Australia "cannot achieve its full potential unless First Nations people are empowered with economic opportunities and an enabling environment".<sup>1</sup>

6. The unique qualities of northern Australia are in many ways tied to the connection and presence of Aboriginal and Torres Strait Islander people over millennia. Aboriginal and Torres Strait Islander people currently make up 17.4 per cent of northern Australia's population, compared to 3.1 per cent of southern Australia's population.<sup>2</sup> In the Kimberley, Aboriginal and/or Torres Strait Islander people currently make up at least 41 per cent of the population.<sup>3</sup> The NAIF acknowledges that it is anticipated that by 2040 more than half of the population in northern Australia will be made up of Indigenous Australians.<sup>4</sup>
7. Approximately 78 per cent of northern Australia is subject to native title and/or Aboriginal land rights.<sup>5</sup> In the Kimberley, over 97 per cent of the region is recognised as subject to native title rights and interests. Kimberley Aboriginal people also hold other legal rights and interests in their land, including Indigenous Protected Areas (which cover more than 90,000 square kilometres and are expanding), Aboriginal Lands Trust estate (which comprises around 17 per cent of the Kimberley) and other forms of private interests, such as pastoral leases.
8. 'Unlocking' the Indigenous estate to realise its economic potential is recognised in the Action Plan as a key factor in activating the northern economy, alongside support for First Nations businesses.<sup>6</sup>

#### **Supporting Indigenous-owned projects as a priority**

9. One of five government policy priorities set out in the Investment Mandate is: *Materially improving the lives of Indigenous people and communities*. Currently, the requirement for proponents applying for financial support from NAIF to have an Indigenous Engagement Strategy (IES) is the primary way through which the NAIF works towards this priority. As set out in Schedule 1 of the Investment Mandate:

For Projects not solely in the Indian Ocean Territories, the Project Proponent must provide an Indigenous Engagement Strategy which sets out objectives for Indigenous participation, procurement, training and employment to improve outcomes for the Indigenous population in the region of the proposed Project. These objectives should be designed in partnership with local Indigenous people, where feasible and where agreement can reasonably be reached. The Strategy must contain details of Indigenous procurement and employment plans demonstrating a commitment to Indigenous communities.<sup>7</sup>

10. While the IES requirement – and any associated improved outcomes in employment and procurement for Aboriginal and Torres Strait Islander people and businesses – is a welcome element of the NAIF process, it does not go far enough in facilitating the economic empowerment of Aboriginal and Torres Strait Islander communities and businesses in northern Australia.

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<sup>1</sup> Office of Northern Australia, [Northern Australia Action Plan 2024-2029](#), Office of Northern Australia, Australian Government, 2024, p 25.

<sup>2</sup> Office of Northern Australia, [Northern Australia Action Plan 2024-2029](#), p 7.

<sup>3</sup> Australian Bureau of Statistics, [Kimberley: 2021 Census Aboriginal and/or Torres Strait Islander people QuickStats](#), Australian Bureau of Statistics website, n.d., accessed 24 September 2024.

<sup>4</sup> Northern Australia Infrastructure Facility, [NAIF Strategy Overview](#), NAIF website, n.d., accessed 24 September 2024.

<sup>5</sup> Northern Australia Infrastructure Facility, [Indigenous Outcomes](#), NAIF website, n.d., accessed 24 September 2024.

<sup>6</sup> Office of Northern Australia, [Northern Australia Action Plan 2024-2029](#), p 25.

<sup>7</sup> [Northern Australia Infrastructure Facility Investment Mandate Direction 2023](#), Schedule 1.

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11. Aboriginal and Torres Strait Islander people have long-held aspirations for economic development that produces intergenerational wealth and is consistent with development that sustains and conserves lands, seas and waterways for future generations. Indigenous businesses and organisations no longer want to be mere stakeholders in projects occurring on their lands. They can and should be equity partners or outright owners of projects. To this end, the KLC is an equal partner in the ground-breaking Aboriginal Clean Energy Partnership, which comprises three Kimberley Aboriginal organisations – MG Corporation, Balanggarra Ventures Limited and the KLC – and climate change investment and advisory firm Pollination. The Partnership has been created to oversee the feasibility, design and capital-raising phases of the East Kimberley Clean Energy Project, which will create Australia’s first 100 per cent renewable energy hydrogen and ammonia production hub.<sup>8</sup>
  12. Beyond the participation, employment and procurement opportunities covered in the IES approach, and in line with the government’s priority to “materially improve” Indigenous lives, the NAIF should realign its products and investment decisions to enable it to support Indigenous-owned projects.
  13. Currently, the NAIF is failing in this respect. The NAIF’s performance target of supporting at least two projects annually with significant Indigenous ownership has not yet been met. This indicates that the NAIF’s approach is not compatible with the profile of Indigenous businesses and projects, and that emerging Indigenous businesses need increased and tailored support to establish themselves.

#### **Barriers to Indigenous access to NAIF support**

14. Attracting investment in northern Australia can be difficult due to the unique challenges presented by distance, remoteness and climate.
15. Further, Aboriginal and Torres Strait Islander people have been largely excluded from the economic development of northern Australia through historical discriminatory laws and policies (such as stolen wages), which have contributed to structural inequalities that remain today, including limited intergenerational wealth. In the Kimberley, Indigenous households have a significantly lower weekly income than non-Indigenous households, and the rate of Indigenous home ownership is low – according to the 2021 Census, only 14.4 per cent of Kimberley dwellings with at least one Aboriginal and/or Torres Strait Islander resident were owned (with a mortgage or outright).<sup>9</sup>
16. In light of these structural inequalities, Indigenous businesses tend to be delayed in entering the traditional economy and building the assets required to attract established financing and investment. Indigenous businesses are more likely to be in an early stage without a significant collateral base or assets which can be used as security in concessional or other lending. As a consequence, there is a unique need in Indigenous communities to attract investment on concessional or flexible terms.
17. Native title rights and interests in lands and waters are an important asset held by Aboriginal and Torres Strait Islander people across northern Australia. However, under the *Native Title Act 1993* (Cth), native title holders are prevented from using their native title rights and interests in land as collateral for finance. Current policy and statutory frameworks elevate rights and interests derived from colonisation over those derived from the traditional Aboriginal ownership of land, to the detriment of Aboriginal people.<sup>10</sup> Many other assets of Aboriginal and Torres Strait Islander people, such as compensation payments and land-

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<sup>8</sup> Aboriginal Clean Energy Partnership, [Aboriginal Clean Energy](#), ACE website, n.d., accessed 24 September 2024.

<sup>9</sup> Australian Bureau of Statistics, [Kimberley: 2021 Census Aboriginal and/or Torres Strait Islander people QuickStats](#), ABS website, n.d., accessed 24 September 2024.

<sup>10</sup> E Wensing and The Australia Institute, [‘Comparing native title and Anglo-Australian land law: Two different timelines, two different cultures and two different laws’](#), The Australia Institute, 1999.

access agreements, are kept in limited-access trust structures.<sup>11</sup> The ability to leverage these assets as equity or collateral is key to Indigenous inclusion in financing.

18. Further, despite PBCs being key and permanent bodies managing native title, the funding of PBCs is severely inadequate, which hampers PBCs' ability to build organisational capacity and actively participate in economic development opportunities. The KLC discusses this issue in more detail in its submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs' inquiry into economic self-determination and opportunities for First Nations Australians.<sup>12</sup>
19. Another foundational barrier that inhibits Indigenous access to project financing is that Indigenous organisations – including PBCs – often lack a comprehensive understanding of economic development opportunities that exist on their Country. To date, there has been a lack of industry development support that aligns with Indigenous assets and values.
20. The NAIF currently holds itself out as a leader in Indigenous engagement; however, effective Indigenous engagement must lead to improved outcomes for Indigenous people – including, critically, through the NAIF investing in Indigenous-owned businesses. Increasing Indigenous employment and procurement through the IES is insufficient to unlock the significant potential of Indigenous projects for northern Australia's future. The NAIF must consider how it can amend its investment rules to address structural inequities and ensure access for Indigenous-owned projects.

#### *Limitations of risk-sharing*

21. The NAIF's current statement of expectations focuses on the requirement for NAIF's investments to provide support to private-sector lenders. The NAIF is not able to be the sole holder of financial risk in a project.<sup>13</sup>
22. The NAIF is required to engage with stakeholders and proponents to crowd in private market finance. However, where the market is unwilling to take on risk for broader structural reasons, this leaves many businesses with no avenue except grant funding, which is limited in scope and nature.
23. There needs to be a recognition of the different forms that Indigenous assets and collateral take when assessing potential security. Currently the NAIF focuses on loans and equity investments. Given the differing risk profile associated with bonds and guarantees, these instruments could potentially provide a different avenue for the NAIF to support Indigenous businesses to attract investment or funding from existing private sector financing partners. Such instruments could focus on creating value from unique Indigenous assets rather than liquid capital or traditional asset-based security and providing such assets with a form more recognisable to the market.

#### *Minimum loan size and equity investment*

24. The current minimum loan size of \$10 million dollars does not reflect the scale at which many Indigenous communities and businesses are approaching infrastructure – for example, seed funding for renewable energy projects.
25. Financing needs to take different forms to meet business needs, including options for small-medium businesses to access. Viewing infrastructure as large capital-intensive projects locks out many Indigenous

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<sup>11</sup> Australian National University – First Nations Portfolio, [Murru waaruu \(On Track\) Economic Development Seminar Series: Outcomes Report](#), Australian National University, 2024, p 28.

<sup>12</sup> Kimberley Land Council, [Submission on economic self-determination and opportunities for First Nations Australians](#), Kimberley Land Council, 2024, p 6-7.

<sup>13</sup> Minister for Finance and Minister for Northern Australia, ['Statement of Expectations for the Northern Australia Infrastructure Facility'](#), Australian Government, 2022.

businesses.

#### *Equity power not fit for purpose for funding Indigenous businesses*

26. The equity power as currently structured is not fit for purpose in respect of Indigenous-owned projects in northern Australia. The current minimum equity investment of \$5 million represents a significant portion of businesses and projects. The NAIF targets a portfolio return of at least the five-year Australian Government bond rate plus 3 per cent per annum, before operating expenses, and is unable to offer concessional terms for equity investments. These requirements indicate that the NAIF is targeting investing in institutional investors, as their larger portfolio and consequently more diverse risk profile provide for a wider margin for error and more consistent returns, allowing more conservative risk management. This approach is not inclusive for many Indigenous businesses.

#### **Solutions for increased Indigenous access to NAIF support**

27. With the NAIF so far having failed to support any projects with majority Indigenous ownership, the status quo is clearly not serving Indigenous businesses and projects. Noting that the NAIF's mission is to be "an innovative financing partner in the growth of northern Australia",<sup>14</sup> and given that improved outcomes for Aboriginal and Torres Strait Islander communities are "vital to the success of the northern Australia agenda",<sup>15</sup> the KLC considers that significant structural reform of the NAIF is essential to make concessional finance support tailored and accessible to Indigenous businesses in northern Australia.

#### *Grants and blended finance*

28. The NAIF Act defines financial assistance as loans, letters of credit, guarantees, purchase of bonds and equity investments. The NAIF should seek a power to provide grants to support Indigenous entrepreneurship and provide opportunities for innovation to northern Australian communities for the gestation and creation of infrastructure projects.
29. The NAIF could also consider implementing blended finance options for Indigenous-owned businesses. Through the combination of grant funding and concessional finance, for example, Indigenous-owned businesses are more likely to attract the attention of private market investors and financiers. Indigenous interest holders and stakeholders need to be able to leverage their unique rights to get into discussions earlier in project considerations. By providing a blended finance option, the NAIF could provide an incentive for project proponents to engage with Indigenous businesses earlier in the project and enable Indigenous businesses to set themselves up for success by allowing projects to find financing at an earlier stage, making them more likely to attract outside investment.

#### *Adjustments to due-diligence processes*

30. There may be adjustments that can be made to the NAIF application and lending process that reduce red tape for Indigenous businesses without compromising the integrity or outcomes of the NAIF lending process. The NAIF IES Toolkit identifies that Indigenous businesses are over 100 times more likely to hire Indigenous workers than non-Indigenous workers.<sup>16</sup> By their very nature Indigenous businesses are also much better placed to undertake engagement with Indigenous stakeholders and communities, as in many cases they are a part of those communities.
31. In this context, when an Indigenous-owned business is seeking financial support, the NAIF should consider

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<sup>14</sup> Northern Australia Infrastructure Facility, [NAIF Strategy Overview](#), accessed 18 September 2024.

<sup>15</sup> Office of Northern Australia, [Northern Australia Action Plan 2024-2029](#), p 12.

<sup>16</sup> Northern Australia Infrastructure Facility, [Indigenous Engagement Strategy Toolkit](#), NAIF website, n.d., accessed 25 September 2024.

removing or limiting the requirement for the IES, and reducing or adapting the public benefit assessment.

#### *Updated concept of Indigenous engagement as defined in the Investment Mandate*

32. As currently drafted, the Investment Mandate requires that an IES include only Indigenous procurement and employment plans. Consultation with Indigenous people on IES outcomes is only required “where feasible”.<sup>17</sup> These concepts are relatively narrow in terms of wider Indigenous economic development and the NAIF Act’s stated aim to facilitate the provision of financial assistance for the development of northern Australia economic infrastructure that meets the particular needs of Indigenous people.
33. At a minimum, consultation with Indigenous stakeholders in the development of an IES must be made compulsory. The Investment Mandate could also be expanded to include more diverse requirements for Indigenous engagement, such as supporting incubator programs for Indigenous entrepreneurs in the region or contributions to a grant fund.

#### *Reduced loan size*

34. The NAIF should make smaller loans accessible to Indigenous-owned businesses, to better align with the needs and profiles of those businesses.
35. In the Northern Territory, the NAIF’s financing partnership with the Northern Territory Local Jobs Fund (through Investment Territory) has enabled on-lending of loans of up to \$10 million, with no minimum amount. This has enabled smaller infrastructure projects to access concessional finance. The NAIF should consider establishing similar partnerships with government investment organisations in other states, such as Invest and Trade WA, focusing explicitly on smaller infrastructure projects and/or Indigenous-owned projects.
36. Smaller value loans provide flexibility to recognise localised requirements. Proponents would benefit from more localised decision-making on loan approvals and simplified public benefit and Indigenous engagement requirements for lower value loans. This would allow the relevant processes to be streamlined.

#### *Earmarked funds for Indigenous projects*

37. A portion of the NAIF’s funding could be carved out to support only Indigenous-owned projects.
38. Following a request from the Minister for Resources and Northern Australia and Minister for Finance, section 9(3) of the Investment Mandate now requires the NAIF to set aside \$500 million to support projects which materially contribute to Priority 4 of the Government Policy Priorities: *Realising the Critical Minerals Strategy 2023-2030*. In this way, the Australian Government has demonstrated that it has the will and capacity to allocate a defined fund to support particular investment opportunities. Consideration should be given to establishing an equivalent arrangement in the NAIF’s legislative instruments to support Indigenous-owned projects. An earmarked amount for Indigenous projects should be combined with other measures outlined in this section, including lower loan amounts.

#### *Shift in risk-sharing*

39. There may be circumstances where it is appropriate for the NAIF to take on 100 per cent of the risk on a project to demonstrate that a project that does not comply with the traditional risk profile of an infrastructure project which attracts funding from the private market can be viable. This may particularly be the case for smaller projects where the consequences of default would have less impact on the viability of the NAIF's overall portfolio.

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<sup>17</sup> [Northern Australia Infrastructure Facility Investment Mandate Direction 2023](#), Schedule 1.



### *Support for Indigenous identification of project opportunities*

40. Indigenous organisations require greater support to assess and engage with economic development opportunities that exist. The KLC supports the mapping of assets and opportunities across the Indigenous estate through an economic development lens that aligns with Indigenous values. This concept is highlighted in the *Murru waaruu (On Track) Economic Development Seminar Series: Outcomes Report*, which proposes a program be established “to support First Nations to undertake a MOLA [Multi-Objective Land Allocation] analysis of their traditional lands to identify and plan for culturally aligned development opportunities or opportunities that can co-exist with cultural values”.<sup>18</sup>
41. While this earlier stage of the business development process is not one that the NAIF has typically targeted, it is something the NAIF should consider supporting through grants or partnerships with other funding bodies.

### *Adjustments to equity power*

42. The NAIF should consider introducing different equity return requirements to better accommodate the needs and profile of Indigenous businesses. The NAIF could consider offering Indigenous businesses smaller value equity investments which recognise the different circumstances in which these businesses exist. Smaller value equity could then attract different due-diligence requirements.
43. Another option would be for the NAIF to identify a private sector institutional investor partner with whom to invest funds. This would deliver equity funding to majority-owned Indigenous businesses under terms agreed between the NAIF and the private sector partner to more efficiently reach the market. An example of this is Housing Australia’s First Home Guarantee and its participating lenders.
44. The KLC appreciates the opportunity to provide a submission to the review and trusts that the Independent Expert Panel’s report will include recommendations to facilitate Indigenous access to NAIF funding and, in turn, support Indigenous businesses and communities to realise their pivotal role in the development of northern Australia.

Yours sincerely



Sarah Parriman  
Deputy Chief Executive Officer

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<sup>18</sup> Australian National University – First Nations Portfolio, [Murru waaruu \(On Track\) Economic Development Seminar Series: Outcomes Report](#), p 22.