



Australian Government



Northern Australia Infrastructure Facility

# Environmental and Social Review of Transaction Policy

November 2016

[www.naif.gov.au](http://www.naif.gov.au)

# 1. Purpose

The Northern Australia Infrastructure Facility (NAIF) provides finance to assist in the development of economic infrastructure in Northern Australia. This policy for Environmental and Social Review of Transactions (**Policy**) applies to all requests of financial facilities considered by the NAIF.

# 2. Background

NAIF is a financier not a regulatory authority. As such, the NAIF understands that the regulation and management of environmental and social matters is the responsibility of the Commonwealth, State and Territory (**Australian Government**) departments and agencies.

Some economic infrastructure projects (**Project**) have the potential to result in significant adverse environmental and social impacts. Where relevant, such impacts will be evaluated when the NAIF Board makes an Investment Decision. Understanding a Project's environmental and social impacts is also commercially prudent for NAIF as significant environmental and social issues can impact the repayment of a financing facility.

The Minister for Resources, Energy and Northern Australia's (the **Minister**) provides the Government's direction to the NAIF in relation to the performance of the functions of the NAIF, through the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (**Investment Mandate**).

Section 15 of the Investment Mandate provides for the Board to approve Investment Proposals conditional on obtaining all relevant regulatory, environmental and Native Title approvals. Section 17 of the Investment Mandate states that the NAIF must have regard to Australian best practice government and corporate governance for commercial financiers, when performing its functions, including developing and annually reviewing policies with regard to environmental and social issues.

# 3. Policy

It will be a condition of all financial facilities provided by NAIF to a Project that the Project Proponent is contractually obliged to obtain and maintain all relevant State or Territory and Federal Government regulatory, environmental and Native Title approvals and warrants that it has done so.

The Board considers its regulatory, environmental, social and Native Title requirements are met when expert regulatory, environmental, social and Native Title due diligence reviews on which NAIF has reliance confirms (or otherwise) that all relevant approvals have been obtained. If required, the Board may make an Investment Decision prior to a Project receiving all such approvals, but funds will not be distributed to the Project until the review of approvals has been achieved to the satisfaction of the Board.

When appropriate, conditions in the NAIF financing documents will allow NAIF to exercise contractual remedies if relevant approvals' obligations of the Proponent are breached.

NAIF will publish details of all transactions 30 days after an Investment Decision has been approved by the Board.

# 4. Definitions

**Investment Decision** means a decision by the Board to support, or not support, a project.

**Investment Proposal** means the application submitted by the Project Proponent.

**Project** means the infrastructure activity that is the subject of the Project Proponent's Investment Proposal.

**Project Proponent** means the entity responsible for a Project.

## 5. Review

This Policy will be reviewed annually or more frequently if required, to ensure that it remains current. Where material changes have been made as a result of the review, Staff will be given training on the revised Policy.

## 6. Seeking assistance

If Staff have any queries or need any assistance in relation to their responsibilities under this Policy, they should discuss them with the CEO.

## Policy Explanation

This Policy is consistent with the Government expectations outlined in the Investment Mandate in regard to regulatory, environmental, social and Native Title matters.

### Section 15 – Regulatory and environmental approvals

Section 15 requires that finance cannot be provided to a Project Proponent unless such approvals are in place. This is to ensure that all Projects supported by the NAIF are compliant with all relevant regulatory, environmental, social and Native Title approvals.

*“(1) The Facility may consider and approve Investment Proposals conditional upon the Project Proponent obtaining all relevant regulatory, environmental and Native Title approvals and arrangements as required by the relevant jurisdiction.*

*“(2) The Facility must not provide financial assistance to Projects that have not received all relevant regulatory, environmental and Native Title approvals.”*

The NAIF Policy is consistent with Section 15. When making an Investment Decision, the Board will consider the implications of the relevant regulatory, environmental, social and Native Title impacts and the approval conditions imposed by the relevant level of Government. However, as a Commonwealth Government financier the NAIF will not be introducing an additional layer of Government approval – except for the approval to provide NAIF financing.

This is consistent with Commonwealth Government policy, for example, the Commonwealth Department of Environment and Energy (DEE) is required to work *“with partner agencies and co-regulators so as to ensure an appropriate whole-of-government approach is taken on compliance and enforcement matters”*. The DEE Policy aims to streamline the regulatory process by avoiding duplicative or unnecessary approval conditions between jurisdictions, in circumstances where state or territory conditions appropriately manage the environmental impact.

### Section 16 - Reputation

Section 16 (1) requires that the Facility has a responsibility not to act in a way that is likely to cause reputational damage to the Commonwealth, or the Northern Territory, Queensland, and Western Australian governments.

*“The Facility must not act in a way that is likely to cause damage to the Commonwealth Government’s reputation, or that of a relevant State or Territory government”*

By ensuring that NAIF financial facilities to Projects is conditional upon expert due diligence upon which NAIF is able to rely and appropriate contractual representations, warranties and other protections in respect of the obtaining and maintaining of all relevant State or Territory and Federal Government regulatory, environmental, social and Native Title approvals, NAIF will not be acting in a way that is likely to cause reputational damage to Australian Governments from an environmental or social risk perspective.

Section 16 (2) requires that NAIF publish a range of information around Projects supported.

*“Within 30 business days of an Investment Decision, the NAIF will publish information regarding all transactions on its website, subject to commercial confidentiality including:*

*(a) the name of the Project Proponent;*

*(b) the goods/services involved;*

- (c) *the location; and*
- (d) *the type and amount of financial assistance.”*

## Section 17 – Corporate Governance

Section 17(1) provides that in undertaking its investment function, the Facility must have regard to Australian best practice government governance principles and corporate governance for commercial financiers. This includes developing and annually reviewing policies with regard to environmental issues and social issues.

*“The Facility must have regard to Australian best practice government governance principles, and Australian best practice corporate governance for Commercial Financiers, when performing its functions, including developing and annually reviewing policies with regard to:*

- (a) environmental issues;*
- (b) social issues”*

This NAIF Policy is consistent with this expectation in Section 17 of the Investment Mandate.

The NAIF Policy is consistent with the Equator Principles. The Equator Principles are a globally recognised risk management framework for determining, assessing and managing environmental and social risk in Projects. Many international banks involved in project financing in Australia, as well as the major Australian banks, are Equator Principle Financial Institutions (EPFIs).

A project that has obtained approval under Australian government regulatory systems is considered to already be consistent with review requirements of the Equator Principles and commercial financiers are likely to be able to consider providing support.

Some commercial financiers have adopted additional policies related to environmental and/or social issues in different industry sectors. NAIF's role is to implement the Investment Mandate provided to it by Government. Consistent with this role, NAIF cannot bias NAIF financing to one industry or another outside of the guidelines contained in the NAIF Investment Mandate and the Act.