



Australian Government



Northern Australia Infrastructure Facility

Conflicts of Interest Policy

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Document Purpose

This policy sets out NAIF's approach to the effective identification and management of Conflicts of Interest that affect it, its Staff, Directors and its Service Providers.

1. Definitions

1.1 What is a Conflict of Interest?

A **Conflict of Interest** means a situation where one or more of one person's interests are inconsistent with, or diverge from, one or more of the interests of another person to whom the first person owes a duty. For the purposes of this policy and NAIF's approach to identifying and managing Conflicts of Interest, the term includes actual, apparent or potential Conflicts of Interest.

An actual Conflict of Interest arises where an analysis of the interests of the parties reveals that there are inconsistent or divergent interests between the parties, in the situation where one owes a duty to the other.

An apparent Conflict of Interest arises where a situation or relationship exists that could appear to involve a Conflict of Interest. This situation may or may not involve actually divergent or inconsistent interests. Careful analysis of the interests of the parties may be required to determine whether there is an actual Conflict of Interest.

A potential Conflict of Interest is a situation which does not involve an actual or apparent Conflict of Interest at the present time, but where there is a reasonable possibility of such a Conflict of Interest arising.

1.2 Other Defined Terms

CEO means NAIF's Chief Executive Officer.

Director means a member of the NAIF Board (including the Chair) appointed under section 15 of the *Northern Australia Infrastructure Facility Act 2016 (NAIF Act)*.

Efic means the Export Finance and Insurance Corporation.

Financing Mechanism means a loan or any grant of financial assistance by NAIF under the *Northern Australia Infrastructure Facility Investment Mandate Direction 2018*

MIS means Management Information Systems function.

NAIF means the Northern Australia Infrastructure Facility.

Service Provider means a provider of support services to NAIF.

Staff means all employees of NAIF including full-time and part-time employees, agents, consultants and contractors.

Transaction means the provision of a Financing Mechanism to a Transaction Entity.

Transaction Entity means a person or entity that has received or is negotiating the receipt of a Financing Mechanism from NAIF pursuant to a Transaction.

2. Scope

This policy addresses Conflicts of Interest generally. In addition NAIF recognises that Conflicts of Interest can arise in 5 business contexts; namely through Transactions, through the use of Service Providers and through the actions of legal Staff, other Staff and Directors as set out below. This policy provides particular guidance on managing Conflicts of Interest arising in these five contexts. Staff Conflicts of Interest, Director Conflicts of Interest and Legal Conflicts of Interest are also subject to more specific policy guidance contained in other policies and procedures, namely:

- the Staff Securities Trading Policy;
- the Code of Conduct;
- the Board Charter;
- the Director and CEO and Travel Expenses Policy; and
- the Anti-corruption Policy.

These policies operate in a manner consistent with, and complementary to, this Policy and the mechanisms used to manage Conflicts of Interest set out in this Policy are consistent with the mechanisms referred to in those other policies.

2.1 Transactional Conflicts of Interest

Where NAIF and an entity acting as a service provider to NAIF, such as Efic, have both been approached to provide finance to the same project a Conflict of Interest may arise.

2.2 Service Provider Conflicts of Interest

Where a service provider to NAIF, such as Efic, provides support services to NAIF, Conflicts of Interest may occur where NAIF's interest are inconsistent with those of the service provider.

2.3 Staff Conflicts of Interest

From time to time Staff may be involved in a situation where their private interest is in conflict with, or could reasonably be perceived to be in conflict with, the proper performance of their duties and responsibilities and their duty to NAIF as their employer. Staff have a duty under the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* to discharge their duties in good faith and for a proper purpose and not to improperly use their position or information obtained in the course of their duties. Examples of Staff Conflicts of Interest are where a Staff member holds a position of influence in a company which is a supplier to NAIF or where a Staff member has shares in, or is associated with, a company which has applied to NAIF for a financial facility.

Staff should also consider whether family relationships or relationships formed through work or engagement with the local community, including sporting, social, cultural or voluntary activities, have the potential to create a conflict (or create an apparent conflict) with official duties.

NAIF's Code of Conduct, Staff Securities Trading Policy and Anti-Corruption Policy also address situations that may give rise to actual, potential or apparent Conflicts of Interest, and should be read in conjunction with this Policy.

Staff must make a written declaration to NAIF as soon as the Staff member becomes aware of an actual, potential or apparent Conflict of Interest, including any Conflict of Interest that arises in relation to the Staff member's immediate family. Declarations in connection with Conflicts of Interest should be given to CEO, who is responsible for ensuring a register of all Conflicts of Interest is maintained.

2.4 Directors' Conflicts of Interest

Members of NAIF's Board of Directors may be involved in Conflicts of Interest where their other duties or interests conflict with their duty to govern NAIF in accordance with the NAIF Act and the PGPA Act and otherwise in accordance with the principles of good corporate governance. Examples of Directors' Conflicts of Interest are where a NAIF Director also sits on the Board of another company which is applying for a Financing Mechanism from NAIF or where a NAIF Director holds shares in a company which has applied to NAIF for a Financing Mechanism.

Directors should also consider whether family relationships or relationships formed through work or engagement with the local community, including sporting, social, cultural or voluntary activities, have the potential to create a conflict (or create an apparent conflict) with official duties.

NAIF's approach to managing Director's Conflicts of Interest requires Directors to provide a disclosure of non-portfolio shareholdings and other material personal interests which may give rise to the potential for conflicts of interest upon joining the NAIF Board and to keep this disclosure updated by notifying NAIF's Board Secretary of changes. The Board Secretary tables a summary of all disclosed interests at each Board meeting. The Board Secretary takes into account the disclosed interests when distributing Board papers prior to a meeting to ensure that Directors are not provided with information on a matter where they have a Conflict of Interest. Directors have a duty to disclose material personal interests that relate to NAIF's affairs on an ongoing basis and must absent themselves from Board discussions where they have a Conflict of Interest.

Directors have voluntarily agreed to adhere to the Staff Securities Trading Policy to ensure that the purchase or trading of any securities by them does not cause a Conflict of Interest and should ensure they understand the requirements of that policy.

Directors should also be aware of their obligations under the Anti-Corruption Policy and the Director and CEO Travel and Expenses Policy, which should be read in conjunction with this Policy.

2.5 Legal Conflicts of Interest

NAIF or Service Provider legal staff have professional or statutory duties to avoid Conflicts of Interest in relation to the provision of legal services and advice to NAIF. NAIF manages legal conflicts by only employing or engaging legal practitioners with current Australian or relevant overseas practising certificates (or equivalent) which require adherence to standards that include the avoidance of Conflicts of Interest under professional and/or regulatory penalty.

3. Policy Statement

NAIF is committed to identifying and appropriately managing Conflicts of Interest.

3.1 Identifying Conflicts of Interest

NAIF will arrange for training to be provided to all Staff who are involved in Transactions with Transaction Entities or who are engaging with Service Providers to allow them to identify Conflicts of Interest that may arise in these contexts. Staff must report such Conflicts of Interest in accordance with section 4.4 of this Policy.

3.2 Mechanisms for Managing Conflicts of Interest

Depending on the nature of the Conflict of Interest, NAIF may adopt any of the following three mechanisms for managing it:

- disclosing the Conflict of Interest;
- controlling the Conflict of Interest; or
- avoiding the Conflict of Interest.

Disclosing Conflicts of Interest

All Conflicts of Interest subject to this Policy (other than Director and CEO Conflicts of Interest) must be disclosed to the CEO who will arrange for the maintenance of a register of Conflicts of Interest. Once such a report is made, the CEO will make a determination on whether disclosure of the Conflict of Interest to affected parties (which may include the Transaction Entity) is necessary to manage the Conflict of Interest and/or whether additional mechanisms are necessary. If the CEO has a Conflict of Interest he/she should report this matter to the Chair of the Board. The Chair of the Board will make a determination about how the matter should be managed. Director Conflicts of Interest must be disclosed to the Board Secretary.

Controlling Conflicts of Interest

Where the CEO has determined that disclosure of the Conflict of Interest to the affected parties is insufficient to effectively manage the Conflict of Interest, the CEO may require the implementation of other measures he/she decides are appropriate, including those set out in section 3.3 of this Policy. Where Directors or the CEO have disclosed a Conflict of Interest, the Chair of the Board will determine whether additional measures to control the Conflict of Interest are appropriate.

When Efic is acting as a Service Provider to NAIF in respect of a proposed or active Transaction, the CEO will use the decision tree in **Attachment 1** to determine whether additional measures are necessary to manage the Conflict of Interest.

Avoiding Conflicts of Interest

NAIF and its Staff and Directors must avoid an actual Conflict of Interest where the nature of the inconsistent interests between the parties is such that it is not possible for NAIF, its Staff or Directors to appropriately manage the Conflict of Interest. Generally, such a decision will be informed by how well the Conflict of Interest is able to be controlled by existing policies, procedures and systems. Factors that indicate that the Conflict of Interest must be avoided are where there is a risk of damage to a party to whom NAIF owes a duty, where NAIF may make a financial gain at the expense of a party to whom NAIF owes a duty or where the party to whom NAIF owes a duty is subject to a financial detriment by virtue of NAIF's actions in relation to a Transaction.

Where NAIF has decided it must avoid an actual Conflict of Interest it may appoint independent parties to represent those entities having inconsistent or divergent interests.

3.3 Controlling Conflicts of Interest

NAIF has developed the internal controls listed below to manage Conflicts of Interest. NAIF's CEO will make a decision on which of these internal controls or any others should be adopted in an individual case. In the case of Directors' Conflicts of Interest the Chair of the Board will determine whether additional controls are appropriate.

- The establishment of information barriers for particular Transactions.
- Having separate working environments for Staff members working on different sides of a Transaction subject to an information barrier.
- Requiring an individual who is subject to a Conflict of Interest not to take part in any considerations or discussions regarding the matter.
- Arranging for entities on different sides of a Transaction subject to an information barrier to be listed on NAIF's embargo list under the Staff Securities Trading Policy to prevent insider trading of listed securities.
- Board Audit and Risk Committee oversight of information barrier arrangements to bring an independent perspective on the appropriateness of Conflict of Interest management practices.
- Requiring Staff operating on either side of information barriers to provide declarations as to their own independence in relation to the listed entities involved in a Transaction which involves a Conflict of Interest.

4. Roles and Responsibilities

4.1 CEO Responsibilities

The CEO is responsible for:

- accountability to the Board for ensuring that NAIF manages Conflicts of Interest appropriately;
- making decisions on how reported Conflicts of Interest should be managed under this Policy;
- communicating those decisions to the affected business areas and the Board Audit and Risk Committee; and
- disclosing any Conflicts of Interest he/she may have to the Chair of the Board.

4.2 Compliance Responsibilities

NAIF will make arrangements either itself or via a Service Provider to:

- maintain the currency of the Conflicts of Interest Policy;
- provide induction and ongoing training to Staff on the Conflicts of Interest Policy, as required; and
- maintain the Conflicts of Interest Register.

4.3 Management Information Systems (MIS)

NAIF, or its Service Provider's MIS Staff, is responsible for implementing information barriers for electronic documents when directed to do so by the CEO.

4.4 Staff

All Staff must:

- read and comply with the Conflicts of Interest Policy;
- disclose Conflicts of Interest to their manager and the CEO; and
- complete mandatory training relating to Conflicts of Interest.

5. Reporting and record keeping

The CEO will report on the effectiveness of the Policy and compliance with the Policy.

5.1 Record Keeping Relating to Conflicts of Interest

NAIF will maintain, or make arrangements for a third party Service Provider to maintain, a register of all reported Conflicts of Interest.

5.2 Review and Approval

This Policy will be reviewed by the NAIF Board annually, or more frequently if required, to approve material changes to ensure it remains aligned with governing legislation and best practice.

The Manager, Governance, Compliance and Risk will ensure material changes to this Policy are communicated to Staff in a timely manner.

6. Non Compliance

Failure to comply with this Policy may result in disciplinary action being taken, including termination of employment with NAIF. Where Directors fail to comply with their obligations with respect to managing Conflicts of Interest the Minister may remove them.

7. Seeking assistance

If Staff have any queries or need any assistance in relation to this Policy, they should contact the CEO.

Attachment 1

Stylised approval process – conflict process for NAIF and Efic

