



Australian Government



Northern Australia Infrastructure Facility

# NAIF Board Charter

March 2023

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## Document Review and Approval

VERSION	AUTHOR/REVIEWER	REVISION	APPROVAL	APPROVAL DATE	NEXT REVIEW DATE
1.0	NAIF Management	Original	Board	August 2016	August 2017
2.0	NAIF Management	Annual review	Board	June 2017	June 2018
3.0	Manager, Governance, Compliance & Risk	Annual review	Board	June 2018	June 2019
4.0	Manager, Risk & Compliance	Annual review	Board	May 2019	May 2020
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6	CEO, CLO and Company Secretary	Biannual review	Board	21 March 2023	March 2025

## Document Purpose

This Board Charter sets out the structure, function, duties and responsibilities of the Board and the duties and responsibilities of the management of the Northern Australia Infrastructure Facility.

# 1. Governance

## 1.1 Overview

The Northern Australia Infrastructure Facility (**NAIF** and the **Facility**) has been established to provide financial assistance to the States and Territories and other entities for the development of Northern Australia economic infrastructure.

## 1.2 Purpose of the Board Charter

This Board Charter sets out the function, duties and responsibilities of the Board of NAIF and its relationship with the CEO.

## 1.3 Board Composition

The Board is established under and governed by the provisions of the *Northern Australia Infrastructure Facility Act 2016 (Cth)* (**NAIF Act**).

Section 13 of the NAIF Act establishes the Board composition as:

- the Chair;
- no less than 4 and no more than 6 other Board members; and
- the Secretary of the Department.

## 1.4 Role of the Board

Pursuant to section 14(1) of the NAIF Act, the functions of the Board are:

- to decide, within the scope of the NAIF Act and the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021 (Cth)* (**Investment Mandate**), the strategies and policies to be followed by the Facility; and
- to ensure the proper, efficient and effective performance of the Facility's functions; and
- any other functions conferred on the Board by the NAIF Act.

It is noted that under section 14(3) of the NAIF Act, the Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

In doing so, the Board sets the strategic direction of NAIF, determines the corporate governance structures, sets the risk appetite and also approves key policies to be followed by NAIF. This also includes ensuring compliance with this Board Charter, the NAIF Act, the Investment Mandate, any Ministerial directions received under the NAIF Act, any Statement of Expectations received from NAIF's Ministers and the 'general duties of accountable authorities' as prescribed under the *Public Governance, Performance and Accountability Act 2013 (Cth)* (**PGPA Act**). These PGPA duties, current at the date of this document, are provided for convenience in **Annexure 1**.

The Board collectively, and each member individually, has the right to seek independent professional advice regarding the performance of the Board's functions, subject to the approval of the Chair, or in the Chair's absence, the Board. Any individual Board member may obtain such independent advice, at the cost of NAIF, with the prior approval of the Chair.

## 1.5 Matters Reserved for the Board

The following matters are specifically reserved for the Board:

- making formal investment decisions as defined in the Investment Mandate;
- defining the strategies and policies to be followed by the Facility;
- ensuring the proper, efficient and effective performance of the Facility's functions;
- selecting, appointing and, in specific circumstances set out in the NAIF Act, terminating the appointment of the CEO, subject to Australian Government processes;
- defining the functions and powers of the CEO through an Instrument of Delegation;
- approving decisions where the value and/or nature is such to fall outside the Board's Instrument of Delegation;
- approving payments associated with redundancy, resignation or termination that exceed statutory entitlements;
- the establishment of committees of the Board pursuant to s45 of the PGPA Act, their membership and delegated powers;
- approving NAIF's Risk Management Framework, including NAIF's Risk Appetite Statement in consultation with NAIF's Ministers;
- approving the NAIF's annual budget, Corporate Plan, key performance indicators (**KPIs**), financial statements, the Annual Report and other significant reports to Government; and
- appointing, re-appointment or removing NAIF's internal auditors.

## 1.6 Role of Individual Board Members

In addition to the duties under the PGPA Act NAIF Board members have the following key duties to maintain:

- **Duty of Care and Diligence** - this requires each Board member to act with the degree of care and diligence that a reasonable person might be expected to show in the role.
- **Duty to act honestly, in good faith and for proper purpose** - this requires each Board member to act in good faith in the best interests of NAIF and for a proper purpose, including to avoid conflicts of interest, and to reveal and manage conflicts if they arise.
- **Duty in relation to the use of position** - this requires each Board member to not improperly use their position to gain an advantage for themselves or someone else, or to the detriment of NAIF.
- **Duty in relation to the use of information** - this requires each Board member to not improperly use the information they gain during their director duties to gain an advantage for themselves or someone else, or to the detriment of NAIF.
- **Duty to disclose interests** - this requires each Board member to disclose the details of material interests. The concept of materiality is anything that has the capacity to impact on the ability of the Board members to honestly discharge their duties to NAIF.

In addition to the above, NAIF also requires its Board members to:

- prepare for, attend and participate at Board meetings and, where relevant, Committee meetings;
- perform with the expertise, competence and integrity required by the Board;
- communicate openly within the Board and with NAIF's Executive Management Group (**EMG**);
- acquire and develop general knowledge of NAIF, its business and regulatory environment;
- comply with their obligations under relevant law, including the NAIF Act, Investment Mandate and the PGPA Act;
- comply with their obligations under applicable NAIF policies as updated from time to time; and
- work with management to represent NAIF at external meetings or functions and advocate for and on behalf of NAIF where appropriate.

Individual Board members shall have complete and open access to the CEO, Company Secretary and other members of NAIF, after consultation with the Chair and CEO.

## 1.7 Role of the Chair

The Chair of the Board is appointed by the Minister and acts as an important link between the Board and management via the CEO.

The Chair is responsible for leadership of the Board including:

- facilitating proper information flow to the Board;
- facilitating the effective functioning of the Board including managing the conduct, frequency and length of board meetings; and
- communicating the views and decisions of the Board, in conjunction with the CEO, to Government, broader stakeholders and to the public.

In performing their role, the Chair's responsibilities also includes:

- in consultation with the CEO and the Company Secretary:
  - setting the agenda for the matters to be considered by the Board;
  - seeking to ensure that the information provided to the Board is relevant, accurate, timely and sufficient to keep the Board appropriately informed of the performance of NAIF and of any developments that may have a material impact on NAIF or its performance; and
  - seeking to ensure that NAIF's communications with stakeholders and the public are accurate and effective;
- seeking to ensure that the Board has the opportunity to maintain adequate understanding of the organisation's financial position, strategic performance, operations and affairs generally and the opportunities and challenges facing NAIF;
- reviewing and signing all formal correspondence to NAIF's Ministers and documentation in the capacity as NAIF's 'accountable authority';
- facilitating open and constructive communications amongst Board members and the EMG and encouraging their contribution to Board deliberations;
- overseeing and facilitating Board, Committee and Board member evaluation reviews;
- liaising and interfacing with the CEO as the primary contact between the Board and management; and
- liaising with and counselling, as appropriate, Board members.

The Chair will also separately agree in writing with the CEO those communications, activities or matters that can only be exercised by the Chair and those communications, activities or matters that can be exercised by the CEO (**Communication Protocol**).

## 1.8 Role of the CEO

The CEO is appointed by the Board via written instrument and is the head of the EMG which consists of senior NAIF executives.

The CEO is responsible for managing the day to day operations of NAIF, its people and resources, implementing the strategy approved by the Board and ensuring that NAIF's structure and processes meet the strategic and cultural needs of the organisation.

The CEO has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions. Broadly, the CEO is responsible for:

- managing NAIF in accordance with the strategy, risk appetite, directions and policies approved by the Board;
- instilling in NAIF a culture of trust, honesty and integrity in relationships with NAIF's internal and external stakeholders;
- communicating with key Government stakeholders, including NAIF's Ministers and their advisors in accordance with the Communication Protocol;

- implementing the strategy set by the Board and manage NAIF's activities in accordance with the Board's risk appetite and policy objectives;
- being ultimately responsible to the Board for the performance of NAIF;
- selecting, appointing and removing employees of NAIF, subject to employee costs being within approved operating cost budgets;
- delegating responsibilities and authorities to appropriate employees of NAIF;
- complying with all directions provided by the Board regarding the CEO's functions; and
- in the event of an acting CEO, any delegation of CEO's powers within the Instrument of Delegation, will be agreed in writing with the Chair.

## 1.9 Role of the Company Secretary

The Company Secretary is appointed by the CEO and plays an important role in supporting the effectiveness of the Board and its committees.

In accordance with the *Corporate Governance Principals and Recommendations 3e* (2014) the role of NAIF's Company Secretary includes:

- advising the Board and its committees on governance matters;
- monitoring that Board and committee policy and procedures are followed and reporting deviations where required;
- coordinating the timely completion and despatch of Board and committee papers;
- ensuring that the business at Board and committee meetings is accurately captured in the minutes; and
- helping to organise and facilitate the induction and professional development of Board members.

Each Board member should be able to communicate directly with the Company Secretary and vice versa.

# 2. Key Board Functions

## 2.1 The Board and Strategy

Together with the EMG, the Board will develop the strategic direction, objectives, key performance metrics and budgets as developed by management in a manner which is at all times consistent with NAIF's functions under the NAIF Act and the Investment Mandate; and monitor and assess NAIF's performance against these objectives and metrics.

The Corporate Plan must be prepared by NAIF in accordance with the requirements of the PGPA Act and the *Public Governance, Performance and Accountability Rule 2014* (Cth).

## 2.2 The Board and the CEO

The CEO is responsible for implementing the strategies, plans, policies and procedures approved by the Board, and for managing the operations of NAIF.

To assist the CEO in discharging their duties, the Board will, amongst other things:

- give written directions to the CEO about the performance of the CEO's role and the CEO must comply with those directions;
- define the functions and powers of the CEO through an Instrument of Delegation to conduct the business of NAIF generally, including all matters necessary, incidental or connected with the day-to-day operations of NAIF, consistent with the NAIF Act, the Investment Mandate, any Ministerial directions received under the NAIF Act and any Statement of Expectations received from NAIF's Ministers;
- approve decisions which are beyond the CEO's functions and powers and, where appropriate, refer matters to the Commonwealth, State and Territory Governments as required by the NAIF Act; and

- monitor, review and assess the performance of the CEO and review and approve the executive remuneration policy framework.

## 2.3 Monitoring

The Board is responsible for monitoring NAIF's performance against the Board's approved strategic directions whilst ensuring the Board and NAIF complies with their legal obligations. This includes monitoring the EMG's performance against the approved Corporate Plan.

To facilitate the Board to monitor NAIF's performance, the Board will receive amongst other things, the following information:

- at semi-annual reviews of the Corporate Plan, focusing on performance against KPIs;
- a monthly pipeline review;
- a monthly portfolio dashboard review;
- quarterly reports including, human resources, compliance and risk management;
- NAIF's guidance on an annual risk appetite statement: and
- monthly performance reports against operating cost and revenue budgets.

## 2.4 Risk Management and Governance

In discharging its risk management and governance obligations, the Board will:

- oversee the audit, risk management, internal control and compliance systems in place to support the Risk Management Framework and monitor their effectiveness and implementation, including through reports from the Board Audit and Risk Committee;
- maintain corporate governance practices for NAIF's responsible and ethical compliance with relevant regulatory requirements and governance standards; and
- receive regular risk management and compliance reports (no less than quarterly).

## 2.5 Financial Management and Reporting

The Board will monitor the operational and financial position of NAIF on a regular basis, promote financial sustainability and ensure compliance with the financial reporting requirements of Government.

## 2.6 Compliance and Policy Framework

NAIF has a commitment to a strong compliance program and the Board recognises that compliance with legislation is mandatory and it will ensure the continuation and refinement NAIF's compliance program through the Board's review and approval of key organisational policies.

## 2.7 Decision - making

In making formal investment decisions, Board members:

- will approach all Board deliberations in an independent, objective, impartial and unbiased manner;
- will not do anything, whether in their capacity as a Board member or otherwise, to harm, or which has the potential to harm, NAIF's reputation and brand; and
- must not provide any commentary (on social media or otherwise) that may lead a reasonable person to conclude that they cannot serve in their capacity as a Board member impartially and professionally.

Although Board members may hold directorships or other roles with other organisations, they must ensure these roles do not prejudicially affect the proper performance of their duties and obligations as Board members of NAIF.

This includes compliance with all relevant NAIF policies such as NAIF's Conflict of Interest Policy and Confidentiality Policy.

## 3. Board Practices

### 3.1 Board meetings

The NAIF Act contains requirements regarding the convening of Board meetings, quorums for Board meetings, voting and decision making by the Board and records of Board decisions.

### 3.2 Board meeting agenda

The Company Secretary will work with both the CEO and the Chair to set Board agendas. In doing so, information may be drawn from the Board Workplan and incorporated as planned.

### 3.3 Board papers

Board papers will be uploaded to a board paper review platform and will be available to Board members within seven days of a scheduled Board meeting, subject to exception and as agreed with the Chair. Where out of session or emergency Board meetings are required, board papers will be provided at the earliest opportunity.

Board minutes will be settled with the Chair within 1 week of a Board meeting and will be distributed to Board members within 14 days for their feedback. Minutes are taken as draft until they are ratified by the Board at the following Board meeting.

### 3.4 Board Workplan

An annual Board Workplan, including matters to be addressed throughout the year, dates, times and locations of meetings will be agreed in the October Board meeting of the preceding year.

### 3.5 Committees

The Board has established the Board Audit and Risk Committee and the Performance and Remuneration Committee as committees of the Board.

The Board may establish other such committees as it considers necessary for the purpose of overseeing its functions. Each committee will have a Chair and a clearly defined charter approved by the Board setting out its structure, functions, duties and responsibilities. Committees do not have any decision-making power, though may make recommendations to the Board from time to time.

## 4. Board Effectiveness

### 4.1 Directors and Officers Insurance

Board members are currently covered under CommCare Director's and Officer's insurance.

Where a claim for loss is made against a Board member during their service they will be indemnified for damages and judgements, defence costs incurred and legal costs awarded, so long as the Board member adheres to their duties under the PGPA Act.

### 4.2 Board evaluation

The NAIF Board recognises that there can be several benefits arising out of an evaluation of its own performance, including:

- team building among Board members;
- clarifying individual as well as collective roles within NAIF's governance framework;
- improving the effectiveness of Board meetings;
- improving the working relationships between the Board and the EMG; and

- identifying areas for improving statutory and other reporting requirements.

The Board will arrange for a review of its performance to be conducted, at a minimum, every two years. It may, from time to time, engage an appropriately qualified person to evaluate Board performance or alternatively may elect to do an internal self-evaluation.

## 5. Annexure 1

### General duties of 'accountable authorities' as prescribed under the Public Governance, Performance and Accountability Act 2013 (Cth)

#### Division 2, Subdivision A

##### 15 Duty to govern the Commonwealth entity

- (1) The accountable authority of a Commonwealth entity must govern the entity in a way that:
- (a) promotes the proper use and management of public resources for which the authority is responsible; and
  - (b) promotes the achievement of the purposes of the entity; and
  - (c) promotes the financial sustainability of the entity.

Note: Section 21 (which is about the application of government policy) affects how this duty applies to accountable authorities of non-corporate Commonwealth entities.

- (2) In making decisions for the purposes of subsection (1), the accountable authority must take into account the effect of those decisions on public resources generally.

##### 16 Duty to establish and maintain systems relating to risk and control

The accountable authority of a Commonwealth entity must establish and maintain:

- (a) an appropriate system of risk oversight and management for the entity; and
  - (b) an appropriate system of internal control for the entity;
- including by implementing measures directed at ensuring officials of the entity comply with the finance law.

Note 1: An example of a measure directed at ensuring officials of the entity comply with the finance law is a measure:

- (a) requiring, as a condition of employment of an official of the entity, that the official complies with the finance law; and
- (b) specifying sanctions (such as termination) that apply to the official for contravening that condition.

Such a measure would not be needed for officials to whom the *Public Service Act 1999* or *Parliamentary Service Act 1999* applies because, under that Act, sanctions may be imposed on those officials for contravening the finance law: see section 32 of this Act.

Note 2: This duty includes managing consultants and independent contractors who work for the entity, even if they are not officials of the entity.

##### 17 Duty to encourage cooperation with others

The accountable authority of a Commonwealth entity must encourage officials of the entity to cooperate with others to achieve common objectives, where practicable.

##### 18 Duty in relation to requirements imposed on others

When imposing requirements on others in relation to the use or management of public resources for which the accountable authority of a Commonwealth entity is responsible, the accountable authority must take into account:

- (a) the risks associated with that use or management; and
- (b) the effects of imposing those requirements.

## 19 Duty to keep responsible Minister and Finance Minister informed

- (1) The accountable authority of a Commonwealth entity must do the following:
  - (a) keep the responsible Minister informed of the activities of the entity and any subsidiaries of the entity;
  - (b) give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
  - (c) notify the responsible Minister as soon as practicable after the accountable authority makes a significant decision in relation to the entity or any of its subsidiaries;
  - (d) give the responsible Minister reasonable notice if the accountable authority becomes aware of any significant issue that may affect the entity or any of its subsidiaries;
  - (e) notify the responsible Minister as soon as practicable after the accountable authority becomes aware of any significant issue that has affected the entity or any of its subsidiaries.
- (2) However, for a Commonwealth entity that is related to a court or tribunal, subsection (1) applies only to activities, reports, documents, information or notifications about matters of an administrative nature.
- (3) Without limiting subsection (1), the rules may prescribe matters to be taken into account in deciding whether a decision or issue is significant.
- (4) The accountable authority must comply with a requirement under paragraph (1)(b) within the time limits set by the Minister concerned.

### *Relationship with other laws and powers*

- (4A) If a Commonwealth entity has enabling legislation, then subsection (1) applies only to the extent that compliance with that subsection is not inconsistent with compliance with that legislation.
- (4B) This section is subject to any Commonwealth law that prohibits disclosure of particular information.
- (5) This section does not limit any other power that a Minister has to require information from a Commonwealth entity.