



Northern Australia Infrastructure Facility Act 2016

No. 41, 2016

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About this compilation

This compilation

This is a compilation of the *Northern Australia Infrastructure Facility Act 2016* that shows the text of the law as amended and in force on 28 May 2021 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Objects of this Act	1
4 Simplified outline of this Act	2
5 Definitions	2
5A References to the Minister	4
Part 2—Northern Australia Infrastructure Facility	5
6 Establishment	5
7 Functions of Facility	5
7A Terms and conditions for provision of financial assistance (other than equity investments) to corporations	8
8 Time limit for making decisions to provide financial assistance	8
Part 3—Investment Mandate	9
9 Investment Mandate	9
10 Matters covered by Investment Mandate	9
Part 4—Consideration by Minister	11
11 Consideration by Minister	11
12 Process if Minister decides that financial assistance should not be provided	12
Part 5—Board of the Facility	13
13 Establishment of Board	13
14 Functions of Board	13
15 Appointment of members	14
16 Acting appointment as Chair	14
17 Remuneration	15
18 Leave of absence	15
19 Other terms and conditions	15
20 Resignation	16
21 Termination of appointment	16
22 Board meetings	17
22A Secretary may nominate alternate to attend Board meetings	17
23 Presiding at Board meetings	17
24 Quorum at Board meetings	17

25	Voting at Board meetings	18
26	Conduct of Board meetings	18
27	Decisions without meetings.....	18
Part 6—Administration		20
28	Chief Executive Officer.....	20
29	CEO to act in accordance with policies and directions of Board	20
30	Appointment of CEO.....	20
31	Acting appointment as CEO	21
32	Remuneration of CEO	21
33	Leave of absence of CEO	21
34	Outside employment.....	22
35	Other terms and conditions.....	22
36	Resignation of CEO.....	22
37	Termination of appointment of CEO	22
38	Staff.....	23
39	Consultants	24
Part 7—Miscellaneous		25
39A	Matters relating to subsidiaries.....	25
40	Facility may charge fees	25
41	Appropriation of Consolidated Revenue Fund	25
42	Annual report.....	25
42A	Delegation by Board.....	26
43	Review of operation of Act	27
44	Regulations.....	27
Endnotes		28
Endnote 1—About the endnotes		28
Endnote 2—Abbreviation key		30
Endnote 3—Legislation history		31
Endnote 4—Amendment history		32

An Act to establish the Northern Australia Infrastructure Facility, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Northern Australia Infrastructure Facility Act 2016*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2016.	1 July 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

- (1) The object of this Act is to establish the Northern Australia Infrastructure Facility to provide financial assistance to the States

Section 4

and Territories and other entities for the development of Northern Australia economic infrastructure.

- (2) **Northern Australia economic infrastructure** is infrastructure that:
- (a) provides a basis for economic growth in Northern Australia;
 - or
 - (b) stimulates population growth in Northern Australia.

Note: Infrastructure located outside Northern Australia can be Northern Australia economic infrastructure as long as it meets the requirement set out in paragraph (2)(a) or (b).

4 Simplified outline of this Act

This Act establishes the Northern Australia Infrastructure Facility to provide financial assistance to the States and Territories and to other entities for the development of Northern Australia economic infrastructure.

The Facility may determine terms and conditions for the provision of financial assistance.

The Board of the Facility must act in accordance with directions given by the responsible Ministers (the Finance Minister and the Minister for Northern Australia). The directions are known as the Investment Mandate.

The Minister for Northern Australia has the opportunity to consider proposals to provide financial assistance for the development of Northern Australia economic infrastructure, and may decide that particular financial assistance should not be provided.

5 Definitions

In this Act:

appointed member means a member appointed under section 15.

Board means the Board of the Facility.

CEO means the Chief Executive Officer of the Facility.

Chair means the Chair of the Board.

Facility means the Northern Australia Infrastructure Facility established by section 6.

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

financial assistance, in relation to the function conferred on the Facility by subsection 7(1A), includes assistance in the form of loans, letters of credit, guarantees, purchase of bonds, and equity investments.

Investment Mandate: see subsection 9(2).

Local Government Area means a local government area recognised by the Australian Bureau of Statistics.

member means a member of the Board and includes the Chair.

Minister for Northern Australia means the Minister who administers this Act.

Minister's consideration period: see subsection 11(3).

Northern Australia means the area that includes the following:

- (a) the Northern Territory;
- (b) the areas of Queensland and Western Australia that are North of the Tropic of Capricorn other than the Meekatharra Statistical Area level 2;
- (c) the areas South of the Tropic of Capricorn of each Statistical Area level 2 that has an area covered by paragraph (b);
- (d) the following Statistical Areas level 2:
 - (i) Gladstone;
 - (ii) Gladstone Hinterland;
 - (iii) Carnarvon;
- (e) the Local Government Areas of Meekatharra and Wiluna (despite paragraph (b));

Section 5A

- (ea) the Local Government Area of Ngaanyatjarraku;
- (f) the territorial sea adjacent to areas covered by paragraphs (a) to (d).

Northern Australia economic infrastructure: see subsection 3(2).

proposal notice: see subsection 11(2).

rejection notice: see subsection 11(4).

responsible Ministers means the Finance Minister and the Minister for Northern Australia.

Secretary means the Secretary of the Department.

Statistical Area level 2 means a statistical area level 2 recognised by the Australian Bureau of Statistics.

subsidiary of the Facility means a subsidiary of the Facility for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

5A References to the Minister

In this Act, a reference to the Minister is a reference to the Minister for Northern Australia.

Part 2—Northern Australia Infrastructure Facility

6 Establishment

- (1) The Northern Australia Infrastructure Facility is established by this section.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Facility. That Act deals with matters relating to Commonwealth entities, including reporting and the use and management of public resources.

- (2) The Facility:
- (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.
- (3) The Facility's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

7 Functions of Facility

Grants of financial assistance to the States and Territories

- (1) The functions of the Facility are:
- (a) to provide grants of financial assistance to the States and Territories for the development of Northern Australia economic infrastructure; and
 - (b) to determine terms and conditions for the grants of financial assistance; and
 - (c) as agreed between the Facility and the States and Territories, to provide incidental assistance to the States and Territories in relation to financial arrangements and agreements related to the terms and conditions of the grants of financial assistance.

Section 7

Financial assistance to other entities

- (1A) It is also a function of the Facility to provide financial assistance to entities other than the States and Territories, and determine terms and conditions for the provision of that financial assistance, for the development of Northern Australia economic infrastructure:
- (a) that is with respect to, or in, a Territory; or
 - (b) that is with respect to people to whom paragraph 51(xxvi) of the Constitution applies; or
 - (c) that is with respect to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory, or between 2 Territories; or
 - (d) that is with respect to a postal, telegraphic, telephonic or other like service to which paragraph 51(v) of the Constitution applies; or
 - (e) that is for the purposes of the defence of the Commonwealth and the States; or
 - (f) if the entity is a corporation to which paragraph 51(xx) of the Constitution applies and the financial assistance is not in the form of equity investments; or
 - (g) that is with respect to external affairs, including:
 - (i) giving effect to any international agreement to which Australia is a party; and
 - (ii) addressing matters external to Australia; or
 - (h) that is with respect to railway construction or extension to which paragraph 51(xxxiv) of the Constitution applies; or
 - (i) that is with respect to activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or
 - (j) that is with respect to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Equity investments

- (1B) The Facility may provide financial assistance in the form of equity investments under subsection (1A) by making investments itself (including as a participant in partnerships, trusts, joint ventures or similar arrangements), through subsidiaries or other investment vehicles, or by any combination of these means. The Facility must not provide financial assistance in any other form under subsection (1A) through subsidiaries.

Acquisition of derivatives

- (1C) The Facility may only acquire a derivative for the purpose of:
- (a) protecting the value of financial assistance provided by the Facility (other than derivatives acquired by the Facility); or
 - (b) protecting the return on financial assistance provided by the Facility (other than derivatives acquired by the Facility); or
 - (c) achieving indirect exposure to financial assets (other than derivatives) for a purpose in connection with the Facility's function of providing financial assistance; or
 - (d) achieving transactional efficiency for a purpose in connection with the Facility's function of providing financial assistance;
- but must not acquire a derivative for the purpose of:
- (e) speculation; or
 - (f) leverage.
- (1D) Subsection (1C) does not apply in relation to guarantees given by the Facility in the ordinary course of providing financial assistance.
- (2) The Facility has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Section 7A

7A Terms and conditions for provision of financial assistance (other than equity investments) to corporations

- (1) If the Facility decides to provide financial assistance (other than in the form of equity investments) to a corporation to which paragraph 51(xx) of the Constitution applies:
 - (a) the terms and conditions on which the assistance is to be provided must be set out in a written agreement between the Facility and the corporation; and
 - (b) the corporation must comply with the terms and conditions.
- (2) Without limiting subsection (1), the terms and conditions must provide for the circumstances in which the corporation must repay amounts to the Facility.

8 Time limit for making decisions to provide financial assistance

- (1) The Facility must not make a decision after 30 June 2026 to provide financial assistance for the development of Northern Australia economic infrastructure.
- (2) However, subsection (1) does not prevent the Facility from doing either of the following:
 - (a) deciding before 30 June 2026 to provide financial assistance after that day;
 - (b) varying the terms and conditions for financial assistance provided before or after 30 June 2026.

Part 3—Investment Mandate

9 Investment Mandate

- (1) The responsible Ministers must, by legislative instrument, give directions to the Board about the performance of the Facility's functions.

Note: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction—see regulations made for the purposes of paragraph 44(2)(b) of that Act.

- (2) The directions are the *Investment Mandate*.
- (3) The Board must take all reasonable steps to ensure that the Facility and its subsidiaries comply with the Investment Mandate.

Limit on Investment Mandate

- (4) The Investment Mandate must not direct, or have the effect of directing, the Facility to provide financial assistance:
 - (a) for the development of particular infrastructure; or
 - (b) in relation to a particular person.

10 Matters covered by Investment Mandate

The Investment Mandate may include directions about the following:

- (a) objectives the Facility is to pursue in providing financial assistance;
- (b) strategies and policies to be followed for the effective performance of the Facility's functions;
- (c) loan characteristics for circumstances in which financial assistance is used to provide or support loans;
- (d) providing financial assistance for purposes other than to provide or support loans;

Section 10

- (da) matters relating to the provision of financial assistance in the form of equity investments, including limits on the amount that may be provided in this form, the rate of return, and the management of risks;
- (e) eligibility criteria for financial assistance;
- (f) risk and return in relation to providing financial assistance;
- (g) any other matters the responsible Ministers think appropriate.

Part 4—Consideration by Minister

11 Consideration by Minister

- (1) The Facility must not provide financial assistance:
 - (a) before the end of the Minister’s consideration period, unless the Minister has notified the Facility under subsection (3A) in relation to the financial assistance; or
 - (b) if the Minister has notified the Facility in writing that the financial assistance should not be provided.
- (2) If the Facility proposes to provide financial assistance, the Facility must give the Minister written notice of the proposal (the *proposal notice*).
- (3) The *Minister’s consideration period* is:
 - (a) unless paragraph (b) applies—the period that ends 21 days after the proposal notice is given; or
 - (b) if, within that period of 21 days, or that period as extended, the Minister requires by written notice given to the Facility an extension of that period—that extended period, which must end not later than 60 days after the proposal notice is given.
- (3A) At any time during the Minister’s consideration period, the Minister may notify the Facility in writing that the Minister does not intend to exercise the Minister’s power under subsection (4) in relation to the financial assistance.
- (4) If the Minister has not notified the Facility under subsection (3A) in relation to the financial assistance, the Minister may, at any time during the Minister’s consideration period, notify the Facility in writing (the *rejection notice*) that the financial assistance should not be provided.
- (5) However, the Minister may give the rejection notice only if the Minister is satisfied that providing the financial assistance would:

Section 12

- (a) be inconsistent with the objectives and policies of the Commonwealth Government; or
- (b) have adverse implications for Australia's national or domestic security; or
- (c) have an adverse impact on Australia's international reputation or foreign relations.

12 Process if Minister decides that financial assistance should not be provided

- (1) A rejection notice must be accompanied by the Minister's written reasons for the notice.
- (2) Within 20 sitting days after the rejection notice is given, the Minister must table the notice in each House of the Parliament.

Note: The rejection notice must also be included in the Facility's annual report: see paragraphs 42(b) and (c).

Part 5—Board of the Facility

13 Establishment of Board

- (1) The Board of the Facility is established by this section.
- (2) The Board consists of:
 - (a) the Chair; and
 - (b) no less than 4 and no more than 6 other members; and
 - (c) the Secretary.
- (3) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of the number of members falling below 6 for a period of not more than 6 months.

14 Functions of Board

- (1) The functions of the Board are:
 - (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the Facility; and
 - (b) to ensure the proper, efficient and effective performance of the Facility's functions; and
 - (c) any other functions conferred on the Board by this Act.
- (2) Anything that the Board does in the Facility's name, or on the Facility's behalf, is taken to have been done by the Facility.
- (3) 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.
- (4) If a function or power of the Facility is dependent on the opinion, belief or state of mind of the Facility in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

Section 15

15 Appointment of members

- (1) Members of the Board (including the Chair but not including the Secretary) are to be appointed by the Minister by written instrument.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

- (2) A member must be appointed on a part-time basis.
- (3) An appointed member holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.
- (4) A person is not eligible for appointment as a member unless the person has experience or expertise in one or more of the following fields:
- (a) banking and finance;
 - (b) private equity or investment by way of lending or provision of credit;
 - (c) economics;
 - (d) infrastructure planning and financing;
 - (e) engineering;
 - (f) government funding programs or bodies;
 - (g) financial accounting or auditing;
 - (h) law;
 - (i) economic development for Indigenous communities.

16 Acting appointment as Chair

The Minister may, by written instrument, appoint a member to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or

- (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

17 Remuneration

- (1) An appointed member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed under subsection (4).
- (2) An appointed member is to be paid the allowances that are prescribed under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

18 Leave of absence

- (1) If the Chair is an appointed member, the Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other appointed member on the terms and conditions that the Chair determines.

19 Other terms and conditions

An appointed member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Section 20

20 Resignation

- (1) An appointed member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

21 Termination of appointment

- (1) The Minister may terminate the appointment of an appointed member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity; or
 - (c) if the Minister is satisfied that the member's performance has been unsatisfactory; or
 - (d) if the Minister is satisfied that the collective experience and expertise of the Board are not sufficiently diverse or appropriate to enable the Board to perform its functions effectively.
- (2) The Minister may terminate the appointment of an appointed member if the member:
 - (a) becomes bankrupt; or
 - (b) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with one or more of his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors.
- (3) The Minister may terminate the appointment of an appointed member if the member is absent, except on leave of absence, from 3 consecutive meetings of the Board.

Note: The appointment of an appointed member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the

appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

22 Board meetings

- (1) The Chair:
 - (a) must convene at least 2 meetings of the Board in each financial year; and
 - (b) may convene other meetings of the Board if, in the Chair's opinion, the meetings are necessary for the efficient performance of the Board's functions.
- (2) The Minister may, at any time, direct the Chair to convene a meeting of the Board.
- (3) The Chair must convene a meeting of the Board if at least 5 members by writing request the Chair to convene a meeting.

22A Secretary may nominate alternate to attend Board meetings

- (1) The Secretary may, by writing, nominate a specified person who is an SES employee or acting SES employee in the Department to attend a particular meeting, or all meetings, of the Board at which the Secretary is not present.
- (2) A person so nominated may attend a meeting to which the nomination applies and, if the person does so, the person is taken to be a member of the Board.

23 Presiding at Board meetings

- (1) The Chair must preside at a meeting at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present must appoint a member to preside.

24 Quorum at Board meetings

At a meeting of the Board a quorum is constituted by:

Section 25

- (a) if there are 7 or more members—5 members; and
- (b) otherwise—4 members.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

25 Voting at Board meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the members present and voting.

Note: For rules about members being present and voting, see section 29 of the *Public Governance, Performance and Accountability Act 2013*, and rules made under that section.

- (2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

26 Conduct of Board meetings

- (1) The Board may regulate proceedings at its meetings as it considers appropriate.
- (2) The Board must keep minutes of its meetings.

27 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all members of the proposed decision.

- (2) Subsection (1) applies only if the Board:

- (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 6—Administration

28 Chief Executive Officer

- (1) There is to be a Chief Executive Officer of the Facility.
- (2) The CEO is responsible for the day-to-day administration of the Facility.
- (3) The CEO also has any functions conferred on the CEO by or under this Act or any other law.
- (4) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

29 CEO to act in accordance with policies and directions of Board

- (1) The CEO must act in accordance with policies determined by the Board.
- (2) The Board may give written directions to the CEO about the performance of the CEO's functions. The CEO must comply with a direction.
- (3) A direction made under subsection (2) is not a legislative instrument.

30 Appointment of CEO

- (1) The CEO is to be appointed by the Board by written instrument for a period of up to 5 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The CEO may be appointed on a full-time or part-time basis.
- (3) A member must not be appointed as the CEO.

31 Acting appointment as CEO

The Board may appoint a person to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

32 Remuneration of CEO

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed under subsection (4).
- (2) The CEO is to be paid the allowances that are prescribed under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

33 Leave of absence of CEO

- (1) A full-time CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Board may grant a full-time CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.

Section 34

- (3) The Board may grant leave of absence to a part-time CEO on the terms and conditions that the Board determines.

34 Outside employment

- (1) If the CEO is appointed on a full-time basis, the CEO must not engage in any work (whether paid or unpaid) outside the duties of his or her office without the Chair's approval.
- (2) If the CEO is appointed on a part-time basis, the CEO must not engage in any work (whether paid or unpaid) that conflicts or could conflict with the proper performance of his or her duties.

35 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

36 Resignation of CEO

- (1) The CEO may resign his or her appointment by giving the Board a written resignation.
- (2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.

37 Termination of appointment of CEO

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity.
 - (c) if the Board is satisfied that the CEO's performance has been unsatisfactory.
- (2) The Board may terminate the appointment of the CEO if the CEO:
 - (a) becomes bankrupt; or

- (b) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with one or more of his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors.
- (3) If the CEO is appointed on a full-time basis, the Board may terminate the appointment if:
- (a) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (b) the CEO engages, without the Chair's approval, in work (whether paid or unpaid) outside the duties of his or her office (see subsection 34(1)).
- (4) If the CEO is appointed on a part-time basis, the Board may terminate the appointment if the CEO engages in work (whether paid or unpaid) that conflicts or could conflict with the proper performance of his or her duties (see subsection 34(2)).
- (5) The Board may terminate the appointment of the CEO if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

38 Staff

- (1) The Facility may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the Facility determines in writing.

Arrangements relating to staff

- (3) The Facility may make arrangements for the services of officers or employees of the following to be made available to the Facility:
 - (a) the Commonwealth, a State or a Territory;
 - (b) an authority of the Commonwealth or of a State or Territory;

Section 39

(c) any other organisation or body.

39 Consultants

The Facility may engage consultants to assist in the performance of its functions.

Part 7—Miscellaneous

39A Matters relating to subsidiaries

- (1) The Facility must not incorporate or otherwise form a subsidiary in a place other than Australia.
- (2) In providing financial assistance in the form of equity investments for the purposes of the performance of the Facility's functions under subsection 7(1A), a subsidiary of the Facility must:
 - (a) take all reasonable steps to comply with the Investment Mandate, to the extent to which the Investment Mandate is capable of applying to the activities of the subsidiary; and
 - (b) only acquire derivatives for a purpose for which the Facility may do so under subsection 7(1C).

40 Facility may charge fees

- (1) The Facility may charge a fee in relation to anything done in performing its functions.
- (2) A fee must not be such as to amount to taxation.

41 Appropriation of Consolidated Revenue Fund

The Consolidated Revenue Fund is appropriated to the extent of \$5 billion for the purposes of providing financial assistance to the States and Territories and other entities for the development of Northern Australia economic infrastructure.

42 Annual report

- (1) The annual report prepared by the Board and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following:

Section 42A

- (a) the particulars of any changes to the Investment Mandate during the period and their impact on the operations of the Facility;
 - (b) a summary of the proposal notices given by the Facility to the Minister during the period;
 - (c) a summary of any rejection notices given by the Minister during the period and the Minister's reasons for giving the notices;
 - (d) for financial assistance provided by the Facility during the period, a summary of:
 - (i) the amounts of financial assistance and kinds of Northern Australia economic infrastructure concerned; and
 - (ii) the forms in which financial assistance was provided, and their important features; and
 - (iii) the risks and returns to the Commonwealth;
 - (e) a summary of any adjustments or concessions made by the Facility during the period in relation to Northern Australia economic infrastructure projects that have not progressed as planned.
- (2) The annual report must also do the things referred to in paragraphs (1)(d) and (e) in relation to financial assistance provided for the purposes of the performance of the Facility's functions under subsection 7(1A) by each subsidiary of the Facility in existence at the end of the period to which the annual report relates.

42A Delegation by Board

- (1) The Board may, in writing, delegate to the CEO any of its powers or functions under this Act.
- (2) In exercising any powers or performing any functions under the delegation, the CEO must comply with any directions of the Board.

43 Review of operation of Act

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after 30 June 2024.
- (2) Without limiting the matters to be covered by the review, the review must consider:
 - (a) whether the time limit of 30 June 2026 set out in section 8 for making decisions to provide financial assistance should be extended; and
 - (b) the appropriate governance arrangements for the Facility after that date.
- (3) The persons undertaking the review must give the Minister a written report of the review.
- (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

44 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous (prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
ed = editorial change	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment can be given effect	SR = Statutory Rules
(md not incorp) = misdescribed amendment cannot be given effect	Sub-Ch = Sub-Chapter(s)
mod = modified/modification	SubPt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Northern Australia Infrastructure Facility Act 2016	41, 2016	4 May 2016	1 July 2016 (s 2(1) item 1)	
Northern Australia Infrastructure Facility Amendment (Extension and Other Measures) Act 2021	41, 2021	27 May 2021	28 May 2021 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 41, 2021
s 4	rs No 41, 2021
s 5	am No 41, 2021
s 5A	ad No 41, 2021
Part 2	
s 7	am No 41, 2021
s 7A	ad No 41, 2021
s 8	am No 41, 2021
Part 3	
s 9	am No 41, 2021
s 10	am No 41, 2021
Part 4	
s 11	am No 41, 2021
Part 5	
s 13	am No 41, 2021
s 15	am No 41, 2021
s 17	am No 41, 2021
s 18	am No 41, 2021
s 19	am No 41, 2021
s 20	am No 41, 2021
s 21	am No 41, 2021
s 22	am No 41, 2021
s 22A	ad No 41, 2021
s 24	am No 41, 2021
Part 7	
s 39A	ad No 41, 2021
s 41	am No 41, 2021

Endnote 4—Amendment history

Provision affected	How affected
s 42	am No 41, 2021
s 42A	ad No 41, 2021
s 43	am No 41, 2021
