

# *Murru waaruu*

(On Track)

Economic Development Seminar Series



**FNP**  
FIRST NATIONS PORTFOLIO

**Seminar 6 – Institutional settings for economic self-determination**  
**Working Paper**

Keeping on track to economic self-determination for Australia's First Nations

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All artworks and creative designs in this *Murru waaruu* Seminar Working Paper have been created by **Rohit Rao**. Rohit is a young artist and graduate students at the Australian National University Fenner School of Environment and Society.

Rohit is interested in using art and stories to challenge and communicate complex social and ecological issues and working with communities to imagine and implement alternatives to meet them.

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*Marramarra murru* is a local Ngambri, Ngunnawal and Wiradyuri term that describes the creation of pathways. The pathways were created by Biyaami, the creator and protector who gifted and shared them with the ancestors. Passed on from generation to generation, these pathways serve to ensure survival and wellbeing through the maintenance and transfer of knowledge, lore, custom and cultural authority, as well as facilitating trade.

Like these ancient pathways, the *Marramarra murru* First Nations Economic Development Symposium identified contemporary pathways to economic self-determination for Australia's First Nations peoples.

We speak to each other in many different ways such *widyung* (which way?), *widyundhu* (which way you?) or *widyunggandhu* (how you?). First Nation languages can be described as free word order languages which have a different foundational principle from that of English, a fixed word language. In fixed word order European languages such as English, everything is based on one framework or another of continuum (linear) logic. In the free word order of Australian Indigenous languages, it appears that the foundational frame is one of an unchanging (although manipulative) network of relationships. Behind these two different systems of logic is a different basic assumption about the nature of the cosmos.<sup>1</sup>

Australian Indigenous people place a very high value on relationships and identity and constantly think about relationships with other people, with the spiritual world, with place, and with the things in the living and spiritual world. The identity of all things (and people) is defined by their relationships with, or to, all 'identities' in the social, the spiritual and the physical environment.<sup>2</sup>

Our identity, relationship, actions, focus and transformation help keep our people 'on track'. A Ngambri, Ngunnawal and Wiradyuri term for this is ***murru waaruu***.

Foreshadowed by the *Marramarra murru* Symposium, the *Murru waaruu* First Nations Economic Development

Seminar Series, the subject of this document, will comprise a series of topic-specific seminars that are designed to bring together leading scholars and practitioners to develop solutions for specific relevant issues, ensuring we remain on track to deliver a compelling, evidence-based case to transition the existing First Nations economic development policy paradigm in Australia to one that supports economic self-determination.

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<sup>1</sup> Grant, S. and Rudder, J. 2014, *A Grammar of Wiradjuri Language*, Restoration House, Canberra, page 4.

<sup>2</sup> Ibid.

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## Introduction

The outcome of the fifth *Murru waaruu* Seminar – Establishing the Right Policy Framework – was a preliminary draft of a Policy Position Paper ('Draft Policy Position Paper'). It sets out a series of proposed reforms and initiatives with respect to land, freshwater, sea country, and cultural and intellectual property rights, beneficial interests in financial assets, treaty and settlement frameworks that are designed to deliver a new policy framework that facilitates economic self-determination for Australian First Nations. The Draft Policy Position Paper also provides an argument to support a pivot in the First Nations economic development policy of Australian Governments toward this objective.

This sixth and final *Murru waaruu* Seminar – Institutional Settings for Economic Self-determination – goes to the institutional arrangements that are necessary to optimally implement and operate the reforms and initiatives identified in the Draft Policy Position Paper. Its outcomes will inform the drafting of Chapter 9 of the Draft Policy Position Paper – Institutional Reform.

This Working Paper for *Murru waaruu* Seminar #6 is designed to support deliberations at the Seminar by providing an overview of the existing institutional framework that implements First Nations economic development in Australia, as well as a high-level overview of the nature of the institutional framework that implements policy in jurisdictions that have made significantly greater progress down the economic self-determination pathway – Canada and Aotearoa/New Zealand.

**Intentionally, this paper is only descriptive in nature and does not make comment on the suitability or otherwise of the institutional framework that supports First Nations economic development in Australia. Its purpose is to merely serve as a reference document to be used by participants in Seminar #6 to support deliberations.**

## The role of institutions in policy implementation

The term 'institution' typically refers to informal or formal frameworks that provide humanly devised constraints and incentives that structure, incentivise or restrict human exchange in political, social, environmental or economic contexts. Whilst not entirely necessary, institutions typically revolve around a public or private organisation (commonly referred to as 'the institution') the function of which is to promote, manage and enforce that framework, making possible transactions that are desirable, but without the institution would be unlikely to occur<sup>1</sup>. In an economic development context institutions typically address actual or perceived market failure.

Institutions can be further described across the following three dimensions:

- **Degree of formality:** institutions can adopt varying degrees of formality, ranging from legislation, to written codes of conduct or rules of engagement, to a basic common understanding;
- **Level of hierarchy:** institutions can operate at a level designed to merely influence societal norms, customs and traditions; implement conventions or laws; deploy resources to incentivise certain interactions or transactions; or directly influence prices and markets by deploying resources to shift supply or demand; and
- **Area of analysis:** institutions can focus on a wide range of economic, social, environmental, cultural, political, legal and other areas.<sup>2</sup>

From the perspective of economic development, institutions are typically implemented to achieve the following general policy outcomes:

- The supply of goods and services that cannot be delivered efficiently by the market because of market failure that is derived from factors such as 'free-rider effect' or natural monopolistic conditions (e.g. public health, road networks, fundamental and basic research, etc.);
- Transfer resources that are surplus to one sector or geographical region of the economy to another (e.g. frameworks for new sector or regional development);

<sup>1</sup> North, D. (1990), *Institutions, Institutional Change and Economic Development*, Cambridge Press, London

<sup>2</sup> Jutting, J. (2003) 'Institutions and Development: A Critical Review, Technical Paper No. 210, OECD Development Centre

- Incentivisation of entrepreneurial resources in the economy more generally, or to facilitate the development and growth of desirable sectors (e.g. frameworks designed to reduce business and investment risk and cost or to increase profitability or returns); and
- Shift the balance of resource ownership between different actors in the economy.<sup>3</sup>

Given that economic institutions shape the incentives for economic actors in society, influencing the allocation of resources across land, labour, capital and entrepreneurship, it should not be surprising that differences in economic institutions are a major source of variation in economic growth and prosperity.<sup>4</sup>

There is a significant body of literature that points to the importance of firstly, the key role that high quality institutions perform in the facilitation of economic growth (particularly in the context of transitioning marginalised groups within a society out of lower socio-economic conditions),<sup>5, 6</sup> and secondly, that trust in public institutions is a necessary condition for the processes of investment, innovation and trade that drive economic development at the most fundamental level.<sup>7</sup>



*A bureaucracy can only be as effective as the tasks delegated to it allow: if it is called upon to undertake economic management tasks that are incoherent or inconsistent...it is not surprising if its effectiveness...is impaired.*

**Brian Van Arkadie**  
**World Bank Annual Conference on Development Economics (1989)**



Any discussion interrogating an institutional framework that implements policy in an area where there is variability in the efficacy of that policy is likely to be contentious. Across much of the institutional framework that applies to First Nations economic development in Australia, institutions are governed by statute that is prescriptive as to their purpose.

The purpose of the discussion in this paper is not to critique the effectiveness or otherwise of the institutions that comprise the Australian First Nations economic development agenda, but rather to simply provide some background information on each of the key institutions to support deliberations at *Murru waaruu* Seminar #6.

<sup>3</sup> Van Arkadie, B. (1989), 'The role of institutions', Proceedings of the World Bank Annual Conference on Development Economics, The International Bank for Reconstruction and Development, The World Bank

<sup>4</sup> Acemoglu, D., Johnson, S., Robinson, J. Chapter 6 in: Aghion, P. and Durlauf, S. (2005), Handbook of Economic Growth, Volume 1, Elsevier

<sup>5</sup> Myrdal, G. (1956) IN: Shame, M. (2021), 'The missing link between economists and economic development: Indigenous Institutions Matters, International Journal of Information, Business and Management, 13(3)

<sup>6</sup> Elizalde, A. (2020), 'On the economic effects of Indigenous institutions: evidence from Mexico, Journal of Development Economics, (147)

<sup>7</sup> United Nations Development Programme (2021) Trust in Public Institutions: A conceptual framework and insights for improved governance programming, Policy Brief, United Nations Development Programme Governance Centre, Oslo

# The current Australian First Nations economic development institutional framework

## National Indigenous Australians Agency

### **A brief history of First Nations Affairs and the machinery of the Commonwealth Government**

The first formalised Commonwealth Government agency charged with the broader Australian First Nations affairs agenda took the form of the Commonwealth Office of Aboriginal Affairs, established by the Gorton Liberal Government following the 1967 constitutional amendments that empowered the Commonwealth Government to make laws for First Nations Australians. In 1971, William Wentworth became the first Commonwealth Minister for Aboriginal Affairs under the short term of the McMahon Liberal Government.

In 1972, the Whitlam Labor Government initiated significant reform, replacing the Office of Aboriginal Affairs with a fully-fledged Commonwealth Government Department, the Department of Aboriginal Affairs, which operated under various remits until 1990. In 1980, the Fraser Government established the Aboriginal Development Commission, a separate Commonwealth Government agency charged with furthering the economic development of Australia's First Nations people.

In 1990, the Hawke Government replaced the Department of Aboriginal Affairs and the Aboriginal Development Commission with the Aboriginal and Torres Strait Islander Commission (ATSIC), a distinctly different instrumentality which operated as a First Nations governed Commonwealth body implementing First Nations policy initiatives. ATSIC served as the principal agency for Commonwealth First Nations affairs for 15 years until it was abolished by the Howard Liberal-National Government in 2005, representing the longest period of stability (albeit at times controversial) of a Commonwealth First Nations Affairs agency.

Since the abolition of ATSIC, the administration of Australian First Nations affairs has been facilitated variously through a stand-alone Department of Indigenous Affairs or under the auspices of the Department of Prime Minister and Cabinet.

In 2017, under the Turnbull and subsequent Morrison Liberal-National Governments, for the first time the Commonwealth First Nations agency became accountable to a Minister for Indigenous Affairs who was in fact Indigenous, Noongar, Yamatji and Wongi man, Hon. Ken Wyatt and has remained so since with the appointment of the present Minister for Indigenous Australians, Wiradjuri woman, Hon. Linda Burney, MLA.

Since the Commonwealth Government acquired the Constitutional powers to make laws for First Nations people, with the exception of the First Nations-governed ATSIC, its departmental and agency structures have been supplemented by various First Nations advisory frameworks, including the Council for Aboriginal Affairs (1967-1976), National Conference for Aboriginal and Torres Strait Islander Advisory Councillors (1972), National Aboriginal Consultative Committee (1973 to 1977), National Aboriginal Conference (1977 to 1985), Council for Aboriginal Reconciliation (1991 to 2000), National Indigenous Council (2005 to 2007), National Congress of Australia's First Peoples (2009 to 2019), Prime Minister's Indigenous Advisory Council (2013-2019), and from 2018 to present, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of the Peaks).

Established in response to the Closing-the-Gap framework, the Coalition of the Peaks is a non-incorporated, non-government organisation comprised of around 80 First Nations controlled peak and member organisations from across Australia, including mainly sector specific bodies across areas such as justice, health and housing, but also some representative bodies such as some land councils. As of 2020, the Coalition of the Peaks has been party to the National Agreement on Closing the Gap.

### **First Nations Affairs and the current machinery of Government**

In 2019, under Hon. Ken Wyatt's tenure as Minister for Indigenous Australians, administration of the Commonwealth First Nations affairs portfolio was transferred from the Indigenous Affairs Group within the Department of Prime Minister and Cabinet to a new agency established in accordance with Sections 61 and 64 of the Australian Constitution – the National Indigenous Australians Agency (NIAA).

The NIAA has accountability to both the Prime Minister and the Minister for Indigenous Australians and interacts across the Commonwealth machinery of government to ensure First Nations interests are considered in government policy that affects First Nations people.

The NIAA has more than 1,200 staff based in 39 offices across Australia, including a presence in 12 remote communities.<sup>8</sup> In both 2022-23 and 2023-24, the NIAA's budget has been in the vicinity of \$2.6 billion.<sup>9</sup>

With the Closing the Gap framework being a significant focus of NIAA, its broader purpose, vision and core focus areas are summarised below in Table 1.

Table 1 - Summary of NIAA Strategic Documentation

| Element          | Description  |
|------------------|--|
| Purpose          | The purpose of NIAA is to assist the Australian Government achieve its objectives in improving the lives of First Nations Australians by leading the development of the Commonwealth's approach, focusing on place, working in partnership, and effectively delivering programs through the Indigenous Advancement Strategy.   |
| Vision           | NIAA is a reliable and trusted partner contributing to improving the lives of First Nations Australians.   |
| Responsibilities | The Responsibilities given to the NIAA under the Executive Order are: <ul style="list-style-type: none"> <li>▪ To lead and coordinate Commonwealth policy development, program design and implementation and service delivery for First Nations peoples;</li> <li>▪ To provide advice to the Prime Minister and the Minister for Indigenous Australians on whole-of-government priorities for First Nations peoples;</li> <li>▪ To lead and coordinate the development and implementation of Australia's Closing the Gap targets in partnership with First Nations Australians; and</li> <li>▪ To lead Commonwealth activities to promote reconciliation.</li> </ul> |
| Focus Areas      | The NIAA has the following focus areas: <ul style="list-style-type: none"> <li>▪ Closing the Gap</li> <li>▪ Community Safety</li> <li>▪ Uluru Statement from the Heart</li> <li>▪ Consultations</li> <li>▪ Culture</li> <li>▪ Early Childhood Development</li> <li>▪ Economic Development<sup>10</sup></li> <li>▪ Education</li> <li>▪ Employment</li> <li>▪ Empowered Communities</li> <li>▪ Environment</li> <li>▪ Evaluations and Evidence</li> <li>▪ Grants and Funding</li> <li>▪ Land and Housing</li> <li>▪ Referendum on an Aboriginal and Torres Strait Islander Voice</li> </ul>   |

## Office of the Registrar of Indigenous Corporations

The Office of the Registrar of Indigenous Corporations (ORIC) is an independent Commonwealth Statutory Office operating within NIAA. ORIC's role is to give effect to the functions of the Registrar of Indigenous Corporations, an office established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act 2006) with statutory powers to administer the CATSI

<sup>8</sup> NIAA (2022). *Our Business*. NIAA Stretch Reconciliation Action Plan 2022-2025.

<sup>9</sup> Parliament of Australia. (2023). Indigenous Affairs Budget Resources.

<sup>10</sup> NIAA's Indigenous Advancement Strategy includes an Economic Development program that funds some national initiatives, such as Indigenous Business and Employment Hubs and community grants for business development.



Act 2006 and the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (Cth) (CATSI Regulations 2017).

In addition to providing for the powers and functions of ORIC, the CATSI Act 2006 provides for the incorporation and regulation of a legally distinct category of legislated body corporates known as Aboriginal and Torres Strait Islander Corporations (ATSI Corporations).

In effect, the CATSI Act 2006 provides body corporates registered with ORIC under that Act as ATSI Corporations with a special purpose regulatory framework that is specifically designed to make it easier for First Nations interests to establish and manage corporations for not-for-profit purposes. The CATSI Act 2006 achieves this by reflecting key aspects of the *Corporations Act 2001* (Cth) and provisions that are similar to the incorporated association legislation of the states and territories,<sup>11</sup> but also provides flexibility that reflects the cultural nuances and unique governance circumstances that many First Nations organisations face.

These unique challenges typically manifest from a need to bring together:

- A decision-making framework that is influenced by unique First Nations cultural norms and practices;
- Often limited capacity that is the result of a background of socio-economic disadvantage; and
- A governance structure that is appropriate for the delivery of services (often essential services) by First Nations organisations in what are often regional, remote or very remote areas.<sup>12</sup>

While most First Nations organisations could adopt other forms of incorporation under various Commonwealth, state or territory legislation, the jurisdiction of the CATSI Act 2006 provides a national framework more suited to these circumstances.

In addition to this flexible approach to regulation, through its support and training programs, ORIC assists ATSI Corporations with improving their compliance and reporting functions. When ORIC was established reporting compliance was achieved by around 50 percent of ATSI Corporations, peaking at 97 percent in 2013-14,<sup>13</sup> and is currently at approximately 70 percent.<sup>14</sup>

The following Table 2 summarises the functions of ORIC and its aim in exercising those functions as prescribed by the CATSI Act 2006.

*Table 2 – Key Provisions of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) that Prescribe the Activities of the Office of the Registrar of Indigenous Corporations.*

| Section                             | Implication  |
|-------------------------------------|--|
| <b>Functions of ORIC:</b><br>s658-1 | ORIC's functions are to (a) administer the CATSI Act 2006, (b) maintain registers it believes are appropriate to effectively administer the CATSI Act 2006; (c) make available to the public information about the registration of ATSI Corporations and the administration of the CATSI Act 2006; (d) provide advice to persons regarding registration of a specific body corporate under the CATSI Act 2006, rules governing the internal management of such corporations and the operation of the corporation; (e) to conduct public education programs on the operation of the CATSI Act 2006 and governance of ATSI Corporations; (f) assist with the resolution of disputes within registered ATSI Corporation, between such corporations or between such corporations and other entities; (g) assist with complaints involving a registered ATSI Corporation; (h) conduct research in relation to matters affecting ATSI Corporations; (i) develop policy proposals about ATSI Corporations; and (j) other functions that might be conferred on ORIC by the Commonwealth. |
| <b>Powers of ORIC:</b> s658-10      | ORIC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.   |
| <b>Aims of ORIC:</b> s658-5         | In performing its functions and exercising its powers, ORIC must aim (a) to facilitate and improve effectiveness, efficiency, sustainability and accountability of ATSI Corporations; (b) provide certainty for members, officers and employees of an ATSI Corporation in their dealings with the corporation and with each other, and for third parties in their dealings with ATSI Corporations; (c) to have regard to First Nations tradition and circumstances; (d) administer functions effectively and with a minimum of procedural requirements; and (e) ensure that information is available as soon as practicable for access by the public.  |

<sup>11</sup> *Associations Incorporation Act 1991* (ACT), *Associations Incorporation Act 1984* (NSW), *Associations Act 2003* (NT), *Associations Incorporation Act 1981* (QLD), *Associations*

<sup>12</sup> Office of the Registrar of Indigenous Corporations (2017), 'Why We Regulate' in *ORIC Regulatory Approach*

<sup>13</sup> Office of the Registrar of Indigenous Corporations (2018), *Yearbook 2016-17*, Australian Government, Canberra

<sup>14</sup> Office of the Registrar of Indigenous Corporations (2021), *Yearbook 2020-21*, Australian Government, Canberra

While ORIC has enforcement powers, they are limited and generally only utilised to address serious contraventions of the CATSI Act 2006. The proposed amendments to the CATSI 2006 Act discussed above include extending ORIC's investigative and enforcement powers for the purpose of identifying and rectifying instances of less significant non-compliance with the CATSI 2006 Act by ATSI Corporations before they escalate to more significant non-compliance issues.

### **Office of the Registrar of Indigenous Corporations Strategic Framework**

While Section 658-1(j) provides scope for ORIC to perform any function conferred on it by the Commonwealth Government (that is related to its general statutory remit), its sphere of regulation and advisory and training support services is very much confined to matters of governance and moreover, governance of ATSI Corporations specifically. Indeed, ORIC's current Policy Statement on the provision of information, advice and public comment,<sup>15</sup> expressly states that ORIC will not provide ATSI Corporations or aspiring ATSI Corporations with advice on the following matters:

- Advice that amounts to legal advice;
- Information or advice that would constrain the Registrar's decision-making power;
- Advice relating to legislation or laws other than the CATSI Act 2006 or related legislation;
- Advice of a commercial or financial nature;
- Advice on employment decisions; and
- Advice, information or opinions of a political or personal nature.

This specifically defined role is also reflected in ORIC's strategic framework, which is summarised in Table 3 below.<sup>16</sup>

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<sup>15</sup> Office of the Registrar of Indigenous Corporations (2018), Policy Statement 01: Providing Information, Advice and Public Comment, Australian Government, Canberra

<sup>16</sup> Office of the Registrar of Indigenous Corporations (2021), *Corporate Plan, 2021-2024*, Australian Government, Canberra

Table 3 – Office of the Registrar of Indigenous Corporations Corporate Plan

| Element              | Description  |
|----------------------|--|
| Vision               | ORIC's vision is well-governed, self-determining Aboriginal and Torres Strait Islander corporations empowered to improve social, economic and cultural and health outcomes in their communities.   |
| Outcomes             | <p>If ORIC are successful in their work, Aboriginal and Torres Strait Islander corporations will:</p> <ul style="list-style-type: none"> <li>• Be appropriately transparent and accountable</li> <li>• Make good decisions using proper processes</li> <li>• Be deterred from potential wrongdoing</li> <li>• Have good standards and models of governance</li> </ul> <p>In pursuit of these outcomes, ORIC will direct efforts to capacity-building, to uncovering and sharing examples of great First Nations governance and to preventing poor governance or breaches of the law. Focusing on prevention and building knowledge has the potential to lead to greater sector self-regulation – a point where Aboriginal and Torres Strait Islander corporations are testing themselves against agreed standards and sharing their better practice with their peers.</p> <p>The effect of ORIC's strategic approach is that special administration, investigation and prosecution are a last resort.</p>  |
| Values               | <p><i>Independence</i> – ORIC is independent.</p> <p><i>Integrity</i> – ORIC behaves ethically and honestly and upholds confidentiality. ORIC focuses on results, working productively and constantly building its expertise. ORIC are committed to delivering high-quality products and services that help First Nations people build self-determination and achieve results.</p> <p><i>Respect</i> – ORIC acknowledges First Nations people as the first Australians and respects their cultures, traditions, views and ways of life. ORIC is continually developing its understanding about First Nations people.</p> <p><i>Accountability</i> – ORIC takes responsibility for the decisions it makes.</p> <p><i>Innovation</i> – ORIC values what works, are receptive to fresh ideas and constantly looks to improve efficiency and effectiveness.</p>  |
| How we work          | <p>In the new corporate plan, ORIC commits to a 'new way of working' whereby ORIC can identify examples of great governance, provide timely support and prevent more severe regulatory action through building stronger relationships with Aboriginal and Torres Strait Islander corporations. ORIC will develop a more 'empathetic' approach with corporations that will include:</p> <ul style="list-style-type: none"> <li>• Develop and implementing a case management system and approach</li> <li>• Create and maintain a set of risk factors for Aboriginal and Torres Strait Islander corporations, and use it to identify corporations in greatest need</li> <li>• Evaluate and continually improve their engagement with corporations</li> </ul>   |
| Strategic priorities | <p>ORIC's strategic priorities for the period 2021 to 2024 are as follows:</p> <ul style="list-style-type: none"> <li>▪ <i>Native Title</i> – at present, organisations that hold or manage Native Title determinations are required to register under the CATSI Act. However, ORIC lacks the power to regulate RNTBC's beyond the provisions of the CATSI Act. Through enhanced power to regulate, ORIC intends to strengthen governance of RNTBCs to help support all native title holders, provide a framework for disputes, sustain culture, language and culture, clarify the process by which RNTBC's make native title decisions and encourage RNTBCs to self-regulate.</li> <li>▪ <i>Prevention</i> – ORIC responds to early issues within corporations and between corporations and their members. ORIC will analyse and assess risk and assist corporations before more significant action is required. Preventative activities include calling meetings of interested parties, calling meetings of members, dispute management, training, capacity-building services, informal support and guidance through publications.</li> <li>▪ <i>Investigations</i> – ORIC will be more strategic and targeted in investing their limited resources into investigations. For matters that cannot be resolved through preventative efforts, we will establish clear criteria to use to determine whether to pursue an investigation.</li> <li>▪ <i>Governance Knowledge</i> – ORIC will support members and officers of corporations to meet minimum standards of governance and strive for best practice. ORIC will do this by identifying and amplifying good governance models and techniques, deepen knowledge and strengthen capability among the corporations, deepen knowledge and capability among ORIC staff and contribute to the broader knowledge of what good First Nations governance is and the various ways it is practiced.</li> </ul> |

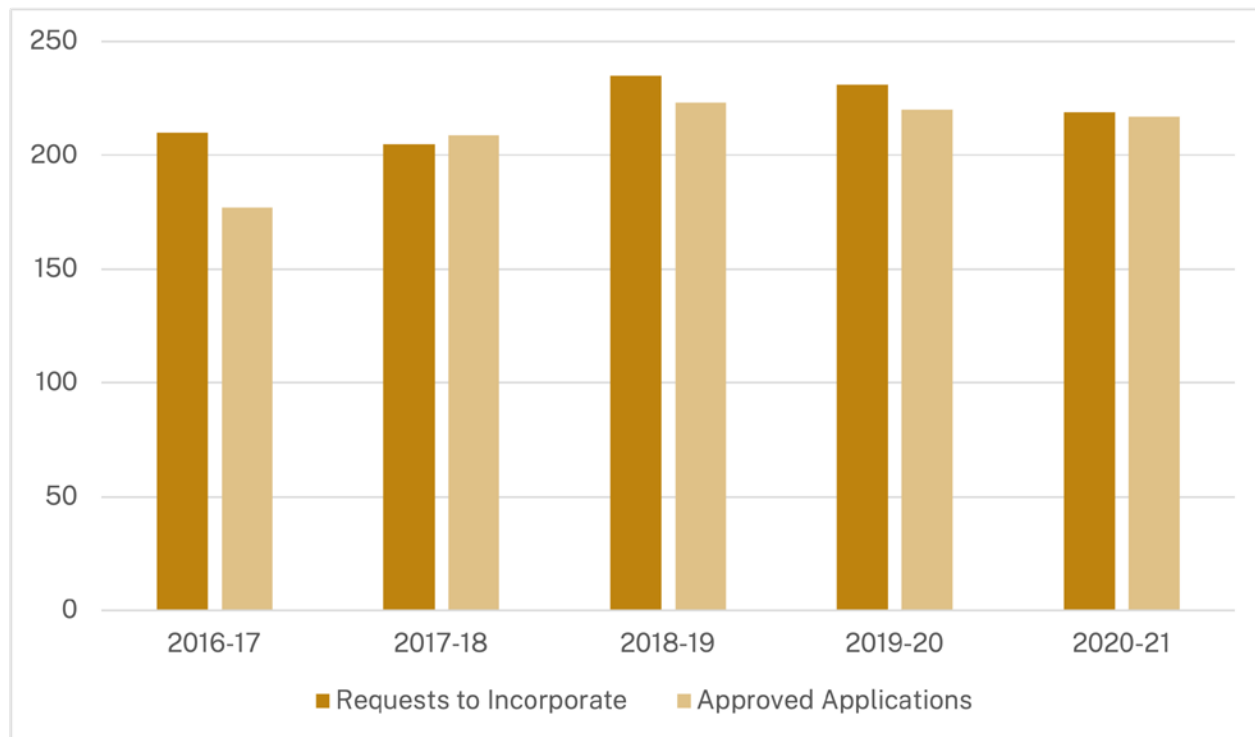
## The landscape of Aboriginal and Torres Strait Islander Corporations

When the CATSI 2006 Act came into effect in July 2007, approximately 2,550 First Nations corporate bodies formerly registered under the *Aboriginal Councils and Associations Act 1976* (Cth) automatically transferred to the jurisdiction of the CATSI 2006 Act.

In 2020-21, there were a total of 3,352 corporations operating under the CATSI 2006 ACT, including 226 that are Registered Native Title Body Corporates (RNTBCs).<sup>17</sup> These corporations employed 12,981 FTEs, a 17 percent increase from the previous year. Only 30 RNTBCs are included in this top 500 list, with the health and community services sector representing 202 of the top 500 corporations.<sup>18</sup>

Over the period, 2016-17 to 2020-21, the number of requests received by ORIC from entities across Australia wishing to form an ATSI corporation fluctuated year to year. This is illustrated in Figure 1 below.

Figure 1 - Trend in Requests and Approvals for Incorporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006



<sup>17</sup> Office of the Registrar of Indigenous Corporations (2021), Yearbook 2020-21, Australian Government, Canberra

<sup>18</sup> Office of the Registrar of Indigenous Corporations (2016), The Top 500 Aboriginal and Torres Strait Islander Corporations, 2016-2016, Australian Government, Canberra

## Indigenous Land and Sea Corporation

Initially established in accordance with the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995* (Cth), the Indigenous Land Corporation (ILC) represented a legislated response from the Australian Government to the Mabo High Court Decision. Its principal policy purpose was to provide a mechanism for land to be acquired by First Nations interests that are unlikely to directly benefit from the *Native Title Act 1993* (Cth).

Since 2005, the ILC operated as a statutory authority, established in accordance with Part 4A of the ATSI 2005 Act, and charged with the specific responsibility for assisting First Nations interests to acquire land and manage land that is held by First Nations interests through the transfer of estates held by the ILC and making of loans and grants to First Nations interests for these purposes.

In late 2018, the following legislation was passed through the Commonwealth Parliament:

- *Aboriginal and Torres Strait Islander Land and Sea Fund Act 2018* (Cth);
- *Aboriginal and Torres Strait Islander Land and Sea Future Fund (Consequential Amendments) Act 2018* (Cth); and
- *Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Act 2018* (Cth).

In 2019, these legislative changes resulted in the ILC being renamed the Indigenous Land and Sea Corporation (ILSC), and its remit broadened to include interests in the fresh and sea water estate. Under this amended legislative framework, the ILSC continues to operate under its central role of ensuring the 'Indigenous Estate' grows as a source of both economic prosperity and cultural renewal. The 'Indigenous Estate' is a concept that goes beyond the tangible aspects of land estate, to also include intangible assets such as First Nations ecological knowledge and intellectual property associated with the land.

Further, these legislative changes replaced the Land Account established under s192X of the ATSI Act with the Aboriginal and Torres Strait Islander Land and Sea Future Fund, comprising broader investment parameters and management by a new agency (Future Fund Management Agency) and a 'Board of Guardians'. This removes restrictions on the investment of Land Account funds that result from the previous jurisdiction of the *Public Governance, Performance and Accountability Act 2013* (Cth).

The current key provisions of Part 4A of the ATSI 2005 Act that prescribe the structure and activities of the ILSC are summarised in the following Table 4.

Table 4 - Key Provisions of the Aboriginal and Torres Strait Islander Act 2005 (Cth) that Prescribe the Structure and Activities of Indigenous Land Corporation

| Section                                  | Implications   |
|--|--|
| <b>Structure of ILSC:</b> s191A(2)       | The ILSC is a body corporate that may acquire, hold and dispose of real and personal property and may sue or be sued. The <i>Public Sector Governance and Accountability Act 2013</i> (Cth) applies to the ILSC.   |
| <b>Purpose of ILSC:</b> s191B            | ILSC is established to (a) assist First Nations persons to acquire land and water-related rights; and (b) assist First Nations persons to manage First Nations –held land and First Nations waters so as to provide economic, environmental, social or cultural benefits for First Nations persons.  |
| <b>Functions of ILSC:</b> s191C, D, E, S | <p>ILSC has land and water-related rights acquisition and land and water-related rights management functions.</p> <p><i>The ILSC's land acquisition functions</i> are (a) to grant interests<sup>19</sup> in land, and water-related rights<sup>20</sup>, to Aboriginal or Torres Strait Islander corporations<sup>21</sup>; (b) to acquire by agreement interests in land, and water-related rights, for the purpose of making grants (c) to make grants of money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land and water-related rights; and (d) to guarantee loans made to Aboriginal or Torres Strait Islander corporations for the purpose of the acquisition of interests in land and water-related rights.</p> <p>Grants and guarantees are subject to a range of terms and conditions outlined in the Act.</p> <p><i>The ILSC's land management functions</i> are to (a) to carry on, or arrange for the carrying on of, management activities<sup>22</sup> in relation to First Nations-held land<sup>23</sup> under agreements with the holders of the land<sup>24</sup>; (b) to carry on, or arrange for the carrying on of, management activities in relation to land held by the First Nations Land and Sea Corporation; (c) to carry on other management activities in relation to First Nations-held land; (ca) to carry on, or arrange for the carrying on of, management activities in relation to First Nations waters; (cb) to carry on, or arrange for the carrying on of, management activities in relation to water, or waters, in relation to which the Indigenous Land and Sea Corporation holds water-related rights; (d) to make grants of money for the carrying on of management activities in relation to First Nations-held land and First Nations waters; (e) to make loans of money (whether secured or unsecured) for the purpose of carrying on management activities in relation to First Nations-held land and First Nations waters; (f) to guarantee loans made for the purpose of carrying on management activities in relation to First Nations-held land and First Nations waters.</p> |

19 For the purposes of this Act, an 'interest in land' is defined as a legal or equitable estate or interest in the land or a right, power or privilege over, or in connection with, the land.

20 For the purposes of this Act, a 'water-related right' means any legal or equitable right or interest in, or in relation to, water or waters (including the internal waters of Australia) within the outer limits of the exclusive economic zone of Australia.

21 For the purposes of this Act, an 'Aboriginal and Torres Strait Islander corporation' is defined as a corporation registered under the Corporations ATSI Act 2006 or other body corporate where either all members of the body corporate are Aboriginal or Torres Strait Islander or a controlling interest in the body corporate is Aboriginal or Torres Strait Islander.

22 For the purposes of this Act, 'management activities' are defined as activities that consist of or relate to the managed use, care or improvement of land including (a) carrying on a business that involves the use, care or improvement of land, water or waters; (b) providing management, clerical, financial administration, technical or professional services, advisory or similar services in connection with an business that involves the use, care or improvement of land; (c) providing environment management services (commercial or non-commercial) in relation to the use, care or improvement of land, water or waters; (d) providing training (on a commercial or non-commercial basis) in skills and knowledge relevant to carrying on a business that involves the use, care or improvement of the land, water or waters or the managed use, care or improvement of the land, water or waters; or (e) disseminating information (on a commercial or non-commercial basis) about land management practices water management practices and environmental management practices relating to land, water or waters.

23 For the purposes of this Act, 'Indigenous-held land' is defined as land in which an Indigenous person or Aboriginal and Torres Strait Islander corporation holds an interest in that land except under a tenancy in common or partnership arrangement where the Indigenous interest is less than 50 percent, or the interest is held as mortgagee.

24 For the purposes of this Act, 'Holders of land' is defined as an Indigenous person or body corporation with an interest in land.

| Section   | Implications  |
|---|---|
| <b>ILSC Performance of its Functions:</b> s191F           | <p>Whenever ILSC performs its functions on a commercial basis, it must do so in accordance with sound business principles.</p> <p>In performing its functions, the ILCS must give priority to (a) ensuring that as far as practicable, First Nations persons derive social or cultural benefits as a result of performance of the functions; (b) ensuring the ILSC has access to the skills and resources required to perform its functions; (c) maximise the employment of First Nations persons; and (c) maximising the use of goods and services provided by businesses owned or controlled (whether directly or indirectly) by First Nations persons.</p> <p>When performance of the ILSC function involves dealing with cultural material that is sacred or significant to a group of First Nations persons, ILSC must ensure that material or information is not disclosed if disclosure would be contrary to the views or sensitivities of those First Nations persons.</p>  |
| <b>Powers of the ILSC:</b> s191H                          | <p>ILSC has powers to do all things necessary or convenient in connection to the performance of its functions, including (a) entering into contracts and agreements; (b) investing monies of the ILSC; (c) appointing agents and attorneys or acting as agent or attorney; (d) to form and participate in the formation of companies; (e) subscribe for and purchase securities of a company; (f) enter into partnerships; (g) participate in joint ventures and arrangements for the sharing of profits; (h) accept gifts, grants, bequests and devises made to its; (i) act as trustee of money and other property vested in it on trust; and (j) to charge for the provision of services.</p> <p>The ILSC may dispose of interests or rights to a person or body.</p>  |
| <b>Relationship to IBA:</b> s191EA                        | <p>ILSC may make payments to Indigenous Business Australia (IBA) to assist IBA to carry out its functions</p>   |
| <b>Ministerial Powers:</b> s191L                          | <p>With the exception of powers expressly provided by under the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth), the Minister is not empowered to direct the ILSC in relation to any of its activities.</p>   |
| <b>Governance of ILSC:</b> s191N, s191G, 191V, 192K, 192S | <p>The ILSC must prepare and from time-to-time revise, a National Indigenous Land Strategy which has a three to five year horizon and must cover (a) the acquisition of interests in land and water-related rights for the purpose of making grants of those interests to Aboriginal and Torres Strait Islander corporations; (b) management issues relating to First Nations-held land and First Nations waters; and (c) environmental issues relating to First Nations-held land and First Nations waters.</p> <p>The ILSC must also prepare and from time-to-time revise strategies to be known as Regional Indigenous Land Strategies with horizons of three to five years, with the boundaries of regions to be determined by the ILSC Board. The contents of each Regional Indigenous Land Strategy are the same as for the National Indigenous Land Strategy, but with a regional focus.</p> <p>For the purpose of the performance of ILSC functions, the ILSC must have regard to these National Indigenous Land Strategy and each of the Regional Indigenous Land Strategies.</p> <p>ILSC may make arrangements with a subsidiary of the ILSC with respect to the performance of one or more of the ILSC functions.</p> <p>The Board of the ILSC is to be comprised of a chairperson, deputy chairperson and five other persons. The chairperson and at least four other ILSC Board members must be First Nations and all ILSC Board Members must have experience in land, water or environmental management, business and financial management or First Nations community life, with at least two ILSC Board members having business or financial management experience.</p> <p>The ILSC board must review the National Indigenous Land Strategy regularly and a current copy must be provided to the Minister for presentation to Parliament and must provide Regional Indigenous Land Strategies to the Minister on request.</p> <p>The Board of the ILSC appoints a CEO to manage the ILSC on a day-to-day basis and to manage the ILSC in accordance with policies and direction provided by the ILSC Board. The CEO may engage staff as necessary for performance of the ILSC's functions.</p> |
| <b>Finances of the ILSC:</b> s192J, s193J, 193L. 193P     | <p>The ILSC is currently funded from a specific purpose 'Aboriginal and Torres Strait Islander Land and Sea Future Fund' under the ATSI 2005 Act, which receives a legislated appropriation of A\$45 million per annum. This specified appropriation is fundamental to the purpose of the ILSC and is intended as compensation for First Nations people who are unlikely to benefit from the NTA 1993.</p> <p>Money held by the ILSC must be applied only to (a) payments or discharge of the costs, expenses and other obligation incurred in the performance of its function or exercise of its powers; and (b) remuneration of directors or staff.</p> <p>The ILSC may borrow money, subject to limitations imposed by the ATSI 2005 Act.</p> <p>The ILSC is not subject to taxation under a law of the Commonwealth, or a state or territory government, including stamp duty on land transfers.</p>  |

## Indigenous Land and Sea Corporations' Strategic Framework

In addition to the provisions of the Part 4B of the ATSI 2005 Act, the ILSC's strategic context is determined by its corporate plan,<sup>25</sup> developed in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth), as well as its National Indigenous Land Strategy developed in accordance with the ATSI 2005 Act.

The ILSC's strategic framework as articulated by these key documents is summarised in Table 5.

Table 5 – Indigenous Land and Sea Corporation Strategic Framework

| Element                  | Description  |
|--------------------------|--|
| Purpose                  | To assist First Nations peoples to acquire and manage land and water to generate economic, environmental, social and cultural benefits.  |
| Vision                   | For First Nations Australians to enjoy the rightful entitlements, opportunities and benefits that the return of Country and its management brings.   |
| Outcomes                 | <p>The ILSC has four overarching outcomes it aims to achieve, which are underpinned by its Theory of Change and Program Logic. These four outcomes are:</p> <ol style="list-style-type: none"> <li>1. First Nations people are growing the value and productivity of Country</li> <li>2. First Nations people are owning and managing Country sustainably</li> <li>3. First Nations people are preserving and protecting culture through reconnection with Country</li> <li>4. First Nations people are driving and influencing policy and opportunity for Country</li> </ol>  |
| Focus Areas              | <p><i>Conservation and healthy country</i> – This incorporates cultural and environmental protection; climate change adaptation and mitigation, including renewable energy and participation in the carbon economy; the development of enterprises based on the delivery of ecosystem services, including the use of First Nations landscape management techniques.</p> <p><i>Agribusiness</i> – A longstanding focus of the ILSC, the focus has shifted from primarily pastoral businesses to more diverse agribusiness sectors and those in southern Australia. Fishing and aquaculture industries are also a new focus of the ILSC.</p> <p><i>Urban investment</i> – This focus area intends to bring greater geographical balance to the ILSC's investments. It will engage in acquisitions in major cities and regional centres and provide management support for existing First Nations urban assets, with a focus on timely divestment.</p> <p><i>Niche Indigenous products</i> – Linked to conservation and healthy country and agribusiness, this focus area invests and builds capacity in emerging niche First Nations products and 'bush food' industries that are both land, water and sea based.</p> <p><i>Tourism</i> – supporting the development and growth of First Nations tourism ventures through direct assistance, development of joint ventures and through knowledge sharing.</p> <p><i>Water-based activities</i> – the ILSC has taken a dual approach to water which includes working to develop an understanding of salt and freshwater access and use while also investing in water-based projects that has potential for delivering economic, environmental, social or cultural benefits.</p> |
| Value for Money Criteria | <p>In the ILSC's new Performance Framework, they have implemented a Value for Money evaluation approach. This is considered through four overarching criteria:</p> <ul style="list-style-type: none"> <li>• <i>Economy</i> – carefully selecting projects and using existing funding soundly.</li> <li>• <i>Effectiveness</i> – activities are leading to intended outcomes, growing cultural, social, environmental and economic capital.</li> <li>• <i>Efficiency</i> – activities are based on trusted relationships, are adaptable, and delivered on time and on budget. They represent a balanced portfolio of investment.</li> <li>• <i>Equity</i> – across all programs and projects, the ILSC is inclusive of all First Nations Australians including across geographic regions and groups of higher disadvantage that cannot otherwise implement change.</li> </ul>   |

<sup>25</sup> Indigenous Land and Sea Corporation (2021), *Indigenous Land Corporation Group Corporate Plan 2023-34: Strategy to 2027*



The main land acquisition and land management functions are undertaken through the ILSC's principal program, Our Country Our Future. The program's purpose, eligibility criteria, and assessment criteria are summarised in Table 6 below.

Table 6 – Summary of Our Country Our Future operating criteria

| Element              | Description   |
|----------------------|---|
| Program Description  | <p><i>Our Country Our Future</i> is the ILSC's national funding program, operating across urban, regional and remote Australia. Through the program, the ILSC can support those proposing projects by:</p> <ol style="list-style-type: none"> <li>1. <i>Investing in projects</i>: funding for purchasing, managing and/or developing land or water-related interests.</li> <li>2. <i>Providing advice and capability support</i>: supporting landowners with information, knowledge, training and systems to develop and deliver projects.</li> <li>3. <i>Connecting people</i>: facilitate, advocate, and negotiate to develop partnerships, markets and other opportunities.</li> </ol> <p><i>Our Country Our Future</i> has five broad focus areas in alignment with the ILSC's overarching strategic plan. These are; <i>Conservation/Healthy Country, Urban Investment, Tourism, Niche Indigenous Products and Agribusiness</i>.</p> <p>The program endeavours to achieve the same outcomes listed in the ILSC's Corporate Plan and summarised in Table 5, above.</p> |
| Eligibility Criteria | <p>Eligibility criteria for the program include:</p> <ul style="list-style-type: none"> <li>• The project involves management and/or acquisition of land and/or water-related interests.</li> <li>• For acquisition projects: The proponent is an incorporated entity and First Nations controlled.</li> <li>• For management projects: The proponent is either a First Nations person who is the holder of the land/water-related asset, an incorporated entity or is interested in investing in First Nations-held land or waters and the project has the support of the First Nations land/water holders and have provided their consent for its use.</li> <li>• First Nations people will enjoy access, opportunities and benefits from land or water as a result of the projects.</li> <li>• The project is compliance with the proponent's incorporating legislation and any agreements with the ILSC.</li> </ul>   |
| Assessment Criteria  | <p><i>Opportunities and outcomes</i> – will the project address an identified need or opportunity and what outcomes will be delivered as a result?</p> <p><i>Project viability</i> – will the project have sufficient funds to implement proposed activities and therefore deliver on proposed outcomes stated in the application?</p> <p><i>Financial health</i> – does the project proponent demonstrate ability to maintain sound financial performance and position over the long-term to ensure project outcomes are sustained?</p> <p><i>Capability</i> – does the project proponent effectively demonstrate the ability to manage, implement, monitor and report back on the project?</p>  |

Recent performance targets for the ILSC are summarised in Table 7<sup>26</sup> below.

Table 7 – Indigenous Land and Sea Corporation Key Performance Targets

|  | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
|--|---------|---------|---------|---------|
| <b>Property Portfolio</b>  |         |         |         |         |
| Properties acquired  | 4       | 5       | 7       | 8       |
| Properties granted   | 6       | 8       | 8       | 8       |
| Number of active land acquisition and land management projects   | 105     | 110     | 100     | 90      |
| <b>Workforce and Enterprise</b>  |         |         |         |         |
| Number of First Nations staff directly employed across the ILSC Group  | 525     | 550     | 450     | 450     |
| Number of First Nations employment outcomes enabled by land acquisition and land management projects active in financial year  | 525     | 550     | 250     | 250     |
| Number of First Nations trainees hosted or employed across the ILSC Group  | 120     | 140     | 150     | 150     |
| Number of First Nations training completions enabled by land acquisition and land management projects active in financial year | 1,050   | 1,100   | 800     | 800     |
| Number of First Nations enterprises assisted by ILSC Group projects  | 63      | 66      | 70      | 60      |
| <b>Protection of First Nations Culture, Heritage and the Environment</b>   |         |         |         |         |
| Proportion of active ILSC Group projects that maintained or protected First Nations culture, heritage and/or the environment   | 50%     | 50%     | 50%     | 50%     |

The ILSC National Indigenous Land Strategy as mandated under the ATSI 2005 Act sets out how the ILSC will perform its land acquisition and land management functions over a time horizon of five years. It presents the ILSC's priority focus areas, program delivery mechanisms and renewed commitment to building enduring stakeholder relationships as a framework for realising the opportunities presented by different regions of the First Nations estate.

The ILSC National Indigenous Land Strategy,<sup>27</sup> sets out a set of regions which the ILSC uses to determine its regional strategy. These regions are defined by similar climatic, environment and economic development profiles as a more effective basis for managing ILSC land acquisition and land management projects (see Table 8). The boundaries of these regions are illustrated in Figure 2 below. The ILSC has developed Regional Indigenous Land and Sea Strategies (RILSS) for each of these four regions.

<sup>26</sup> Indigenous Land Corporation (2018), *Indigenous Land Corporation Group Corporate Plan 2018-19: Strategy to 2022*

<sup>27</sup> Indigenous Land Corporation (2018), *National Indigenous Land and Sea Strategy: 2023-28*

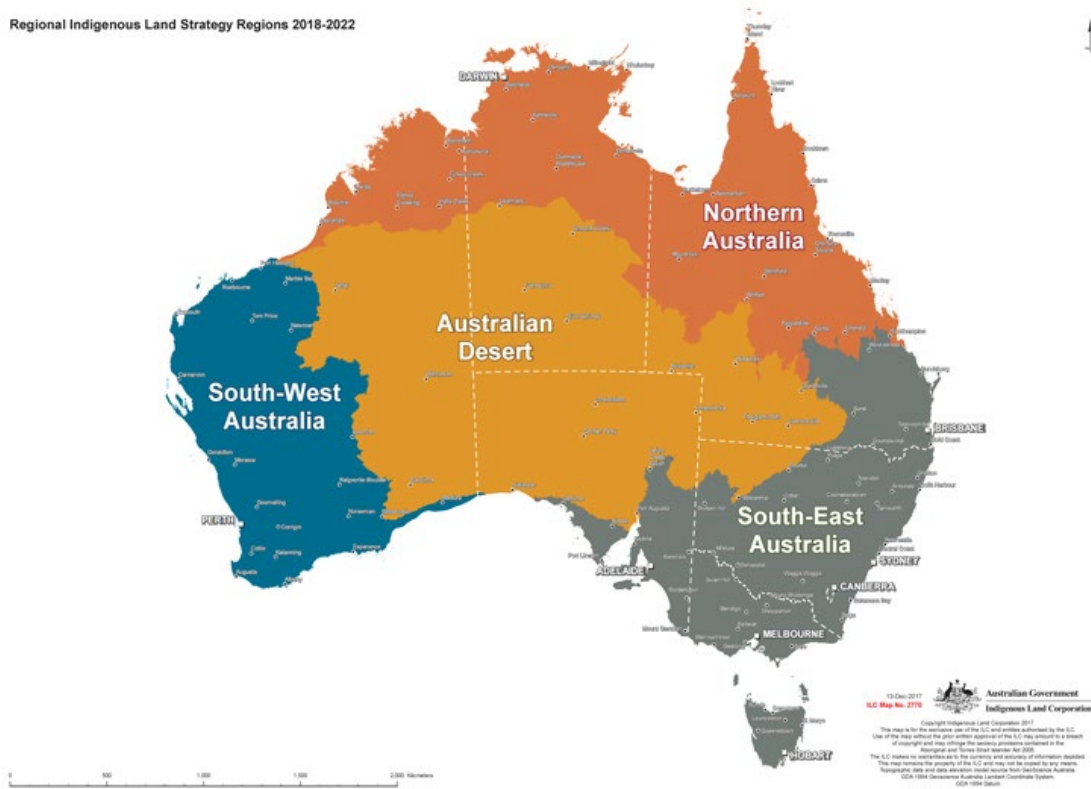


Figure 2 – Indigenous Land Corporation – Regional Indigenous Land Strategy Regions

Table 8 – ILSC Projects by Region, 2021-22

|                      | Active Projects | New Active Management | Granted Properties | Total Projects |
|----------------------|-----------------|-----------------------|--------------------|----------------|
| Northern Australia   | 44              | 9                     | 2                  | 55             |
| Australian Desert    | 11              | 2                     | 0                  | 13             |
| South-West Australia | 19              | 7                     | 1                  | 27             |
| South-East Australia | 26              | 10                    | 10                 | 46             |

## Indigenous Business Australia

Indigenous Business Australia (IBA) was established in 2001, adopting the investment functions undertaken by the former Aboriginal and Torres Strait Islander Commercial Development Corporation which operated in accordance with the former *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth).

Following the repeal of the ATSI 1989 Act, IBA inherited the business support programs administered by the Aboriginal and Torres Strait Islander Commission, as well the Indigenous Home Ownership program. Today, IBA is an independent Commonwealth statutory authority operating under Part 4 of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) (ATSI 2005 Act). IBA is a 'quasi-commercial', predominately self-funded organisation, resourcing its operations from a combination of revenues from home and business lending functions and returns from investment portfolios, as well as some appropriation from the Commonwealth to support home and business lending operations.

Over the past five years to 2021-22, IBA invested or financed approximately \$1.4 billion across its various areas of activity. In 2021-22 IBA generated total revenue of \$370.8 million, including:

- \$185.2 million in interest earnings from loans, rentals and income from subsidiaries
- \$27.5 million in grant receipts
- \$79.1 million in Commonwealth capital injections (including \$56 million associated with the new Regional Construction Lending Program, a \$150 million program over three years)
- \$9.5 million in appropriations

## Indigenous Business Australia's Statutory Remit

The key provisions of Part 4 of the ATSI 2005 Act that prescribe the structure and activities of IBA are summarised in the following Table 9.

Table 9 – Key Provisions of the Aboriginal and Torres Strait Islander Act 2005 (Cth) that Prescribe the Structure and Activities of Indigenous Business Australia

| Section   | Implications   |
|---|--|
| <b>Structure of IBA :</b> s145(2)                       | IBA is a body corporate that may acquire, hold and dispose of real and personal property, and may sue or be sued. <i>The Public Governance and Accountability Act 2013</i> (Cth) applies to IBA, which includes the requirement under Section 35 of that Act to maintain a corporate plan.   |
| <b>Purpose of IBA:</b> s146                             | IBA is established to (a) assist and enhance First Nations self-management and economic self-sufficiency; and (b) to advance the commercial and economic interests of First Nations people by accumulating and using a substantial capital asset base for the benefit of First Nations peoples.  |
| <b>Functions of IBA:</b> s147                           | The functions of IBA are to (a) engage in commercial activities (which includes but is not limited to functions authorised by or delegated to IBA by the Minister); (b) to promote and encourage First Nations self-management and economic self-sufficiency; and (c) other functions conferred by the ATSI 2005 Act.  |
| <b>Performance of IBA Functions:</b> s148 <sup>28</sup> | In performing its functions, IBA must act in accordance with sound business principles.<br>In performing its functions IBA must have regard to the desirability of (a) encouraging and facilitating First Nations participation in commercial projects and enterprise; (b) securing, as far as practicable, First Nations participation in the ownership and control of companies engaged in activities that are likely to have a significant impact on First Nations interests; (c) promoting the development of industries and other commercial and economic activities that are likely to have a beneficial impact on First Nations interests; and (d) making specialist commercial expertise available to First Nations people engaged in commercial activities.   |
| <b>Ministerial Direction:</b> s150 and 151              | The Minister may request IBA to vary its corporate plan maintained in accordance with Section 35 of <i>The Public Governance and Accountability Act 2013</i> (Cth).<br>IBA must perform its functions and exercise its powers in accordance with any directions given by the Minister.   |
| <b>Powers of IBA:</b> s152 and 153                      | IBA has the power to do all things necessary for or in connection with the performance of its functions including (a) enter into contracts; (b) make grants for purposes associated with business or housing loans; (c) invest money of IBA; (d) appoint agents and attorneys, and act as an agent for other persons; (e) form and participate in the formation of companies; (f) subscribe for and purchase securities of companies; (g) enter into partnerships; (h) participate in joint ventures and arrangements for the sharing of profits; (i) accept gifts, grants, bequests and devises made to it; (j) act as trustee or money and other property vested in it on trust; and (k) charge for the provisions of services by it.<br>In making a housing or business loan, providing a grant or giving guarantee to a loan, IBA must be satisfied that in doing so, it will further the social, economic or cultural development of First Nations persons.<br>IBA may determine the terms and conditions of loans that it makes. |
| <b>Governance of IBA:</b> s155, s156 and s157, s190     | The Board of IBA must consist of a Chair, Deputy Chair and 7 other members, with the Chair and at least 4 other IBA directors to be First Nations. Each IBA director is to be a person that has experience in industry, commerce, or finance; or First Nations community life or enterprise;<br>Subject to direction by the Minister, the Board of IBA is responsible for ensuring the proper and efficient performance of the functions of IBA and to determine the policy of IBA with respect to any matter.<br>The Board may delegate functions and powers to the IBA CEO, who in turn may sub-delegate to IBA members of staff.  |
| <b>Financing of IBA:</b> s179, s181, s183, s185, s188   | The capital of IBA consists of (a) amounts paid under Section 208 of the ATSI 2005 Act; income derived from investments and any amount appropriated from time to time by Parliament. This money may be used (a) in payment or discharge of the costs, expenses and other obligations incurred by IBA in the performance of its functions and exercise of its powers; (b) payment of remuneration and allowances of board members and staff; or (c) any other payments it is authorised to make.<br>IBA may, only for the purposes of meeting temporary operating deficits, borrow on overdraft from a bank and may provide security over its assets for this purpose.<br>IBA is not subject to Commonwealth, State or Territory taxation.  |
| <b>IBA Housing Function:</b> s181A                      | Separate to the monies discussed above is the New Housing Fund, which is monies held in separate account in accordance with s67 of the ATIS 2005 Act and which have been appropriated to IBA for the purposes of repayment of housing loans made by IBA or its predecessor organisations. This money may only be applied to (a) making housing loans to individuals or bodies; (b) making loans to individuals or bodies for the purpose of providing housing for First Nations persons; or making grants to allow First Nations persons to obtain loans from commercial lenders.  |

<sup>28</sup> Section 148 does not apply to business loans, housing loans, grants made in relations to loans or guarantees in relation to loans made by IBA.

## Indigenous Business Australia's Strategic Framework

IBA's strategic framework is detailed in its annual corporate plan, which is maintained in accordance with Section 35 of the *Public Governance and Accountability Act 2013* (Cth) and Section 145 of the ATSI 2005 Act, as well as its Information Memorandum,<sup>29</sup> and is summarised in Table 10 below.

Table 10 - Indigenous Business Australia Strategic Framework, 2023-24

| Element          | Description  |
|------------------|--|
| Vision           | A nation in which First Nations people are economically independent and an integral part of the economy.   |
| Purpose          | IBA's purpose is determined by the ATSI Act, whereby it operates to: <ul style="list-style-type: none"> <li>• Assist and enhance First Nations self-management and economic self-sufficiency.</li> <li>• Advance the commercial and economic interests of First Nations persons by accumulating and using a substantial capital asset for the benefit of First Nations people.</li> </ul>  |
| Impact Statement | IBA walks with First Nations people to provide culturally responsible financial pathways to economic inclusion and prosperity. IBA's impact statement is supported by IBA's updated 2023 Impact Framework.   |
| Strategic Goals  | IBA's Four Strategic Goals are: <p><i>Choice</i> – providing choice and access to money, knowledge and networks. This is where First Nations people have the skills and freedom to choose how and when to access capital, knowledge and networks.</p> <p><i>Inclusions</i> – focus on financial and economic inclusion. This is when First Nations people can engage with and get the most out of economic opportunities.</p> <p><i>Excellence</i> – Champion intergenerational wealth and ownership. This is where First Nations people have greater ownership and control of their financial and economic interest to build wealth and prosperity over time.</p> <p><i>Prosperity</i> – Value partnerships and service excellence. This is when First Nations people are supported by IBA through excellent service, improved coordination and efficiency and cross-sector partnerships.</p>   |
| Key activities   | IBA has four key activity areas: <p><i>Housing</i> – including providing capacity and skills workshops, home loans, shared equity, lower deposits and longer loan terms, etc. to support First Nations people to purchase their homes.</p> <p><i>Business</i> – including providing capacity and skills workshops, access to resources, referrals, business support and industry experts, business loans and start-up finance, equipment finance and performance bonds as well as natural disaster and state of emergency support. This area endeavours to support the establishment and growth of First Nations businesses.</p> <p><i>Investments</i> - including providing capacity and skills workshops, access to governance, strategic planning, due diligence and business and industry experts and management of assets and funds to generate money back to communities.</p> <p><i>Partnerships</i> – IBA engages in partnerships to co-design and deliver workshops and capacity building, provide social enterprise grants for First Nations women, and partners with the financial services sector and government agencies to further IBA's purpose and goals.</p> |

<sup>29</sup> Indigenous Business Australia (2018), *IBA Information Memorandum*

Compared to its predecessor organisation, the Aboriginal and Torres Strait Islander Development Corporation, IBA is a much larger organisation (approximately 200 FTEs) with a much broader remit. In terms of both staff and financial resources the vast majority of the larger IBA is a function of the Housing Solutions division that it operates in accordance with Section 181(A) of the ATSI 2005 Act.

As at 30 June 2023, IBA's asset base was valued at \$2.0 billion, which has been created from a total gross capital base of \$70 million provided by the Commonwealth Government over its first decade of operation.<sup>30</sup>

## Housing Solutions

In accordance with its function prescribed by Section 181 of the ATSI 2005 Act, providing home financing solutions for First Nations people is a major component of IBA's activities. Indeed in 2021-22, IBA's home lending book represented approximately 96% percent of its total loan book.<sup>31</sup>

The IBA Housing Solutions Program is designed to address the fundamental underlying challenges that aspiring First Nations homeowners face when trying to finance a home purchase - relatively low levels of personal savings, absence of or commercially un-bankable credit history and a general personal financial profile that does not meet credit assessment criteria of commercial lenders.

An internal study undertaken by IBA in 2018,<sup>32</sup> suggests that to date, the program has created \$2.0 billion in additional equity for First Nations home owners. Further, a recent independent evaluation of the IBA Housing Solutions Program,<sup>33</sup> identified that over its life the program has delivered:

- \$895 million in social and economic benefits for First Nations home owners, including improved employment, education, health, safety, self-esteem and community engagement;
- \$483 million in economic activity from housing construction;
- 1,247 additional full-time-equivalent jobs; and
- Government savings of \$36 million in rental assistance and \$7 million in avoided homelessness.

In 2021-22 IBA's Housing Solutions Program's home lending portfolio was comprised of 4,617 home loans, with a total value of \$1.153 billion. In 2021-22, IBA issued a total of 416 new home financing solutions, of which 95.4 percent were made to First Nations first home buyers.<sup>34</sup> In the same year, 732 IBA housing loan customers transitioned their financing to mainstream lenders, more than an average year for IBA.<sup>35</sup>

Throughout the COVID-19 pandemic and subsequent cost of living crisis, IBA has supported 527 existing customers in financial hardship in 2021-22.<sup>36</sup>

## Business Solutions

IBA Business Solutions provides both finance and business support services to First Nations business owners and entrepreneurs across Australia. Financing products provided by IBA Business Solutions include financial support through loans, leasing or equity provided directly by IBA. Business support services provided by IBA Business Solutions include access to training and workshops delivered by IBA and third parties, consultants and other specialist third-party advisors or IBA advisors, collectively offering a range of skills, knowledge and other resources required to acquire or establish a business and grow that business. It also includes advising clients and potential clients as to the likely viability of business concepts.

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<sup>30</sup> Indigenous Business Australia (2018), *IBA Information Memorandum*

<sup>31</sup> Indigenous Business Australia (2018), *Annual Report 2021-22*

<sup>32</sup> Urbis

<sup>33</sup> Deloitte Access Economics

<sup>34</sup> Indigenous Business Australia (2018), *Annual Report 2021-22*

<sup>35</sup> Indigenous Business Australia (2018), *Annual Report 2021-22*

<sup>36</sup> Indigenous Business Australia (2018), *Annual Report 2021-22*

The Business Solutions program is delivered and funded through an agreement with the NIAA.

Over the five years to 2021-22, IBA Business Solutions has provided over \$280 million in business loans and over 1,000 instances of tailored business support packages to First Nations business owners or aspiring business owners across Australia.<sup>37</sup>

In 2021-22, IBA Business Solutions:

- Entered into a total of 250 individual business finance arrangements, totalling \$17.70 million, with 70 percent of business loan customers being located in outer-regional, remote or very remote areas; and
- Delivered a range of business skills workshops that were attended by a total of 702 persons.

In 2021-22, IBA supported business loan customers had a four-year survivability rate of 85 percent for businesses with 0-4 employees, 88 percent for those with 5-19 employees and 100 percent for those with 20-199 employees.<sup>38</sup>

## Investment and Asset Management

By partnering and directly co-investing with First Nations organisations and businesses, IBA's Investment and Asset Management Division seeks to assist those organisations and businesses to increase their commercial capacity, grow their wealth and establish an inter-generational asset base, ultimately reducing their dependence on government assistance.

The IBA Investment and Asset Management Division currently has a total of 63 co-investors who have collectively invested \$211.9 million in co-investment arrangements with IBA and who in 2021-22 received an average return of 5.9 percent over the previous five years. The majority of IBA co-investors are Prescribed Bodies Corporate and First Nations community organisations that are unable to access institutional investment markets.

IBA's Investment and Asset Management portfolio includes a commercial property trust (the Indigenous Real Estate Investment Trust), a diversified investment fund (the Indigenous Prosperity Fund) and a portfolio of direct investments with First Nations organisations.<sup>39</sup>

Through the Investment and Asset Management Division, the IBA's investment activities employed 607 people, with 25.3 percent of them being First Nations people.

## Prescribed Bodies Corporate

In accordance with Division 6 of the *Native Title Act 1993* (Cth) (NT Act 1993) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (PBC Regulations 1999), when the Federal Court makes a determination of Native Title under the NT Act 1993, the associated Native Title rights and interests must be held in a special purpose vehicle known as a Prescribed Body Corporate (PBC) either on trust for, or as agent of, the common law holders of those rights and interests.

In accordance with the NT Act 1993 and NT Regulations 1999, a PBC must be an ATSI Corporation registered under the CATSI Act 2006, and therefore subject to the jurisdiction of the Office of the Registrar of Indigenous Corporations (ORIC). Once registered with the Native Title Tribunal, the PBC becomes the first point of contact for government, industry and any other entity wishing to undertake activities on land that is the subject of a Native Title determination, unless the specific PBC has appointed a NTRBC to represent it.

The powers and functions of a PBC as prescribed by the NT Act 1993 and PBC Regulation 1999 broadly reflect those of a trustee or agent at common law, with the PBC owing a fiduciary duty to the common law native title holders. In order to leverage value from Native Title interests and rights held by a PBC for the community, the PBC board and its members may, at their discretion, decide to broaden the PBC's activities beyond the management of Native Title interests and rights. This may include activities such as cultural projects, training and employment programs and economic development.

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<sup>37</sup> Indigenous Business Australia (2018), *Annual Report 2021-22*

<sup>38</sup> Indigenous Business Australia (2018), *Annual Report 2021-22*

<sup>39</sup> Indigenous Business Australia (2018), *IBA Information Memorandum*



There are currently approximately 260 PBCs in Australia, with approximately 75 percent of those located in Northern Australia. A majority of PBCs – approximately 70 percent of them – are considered to be small by the Office of the Registrar of Indigenous Corporations. This is defined as PBCs that have annual income of less than \$100,000, native title assets of less than \$100,000 and/or have 5 or fewer members of staff. Of the remaining PBCs, approximately 25 percent are classified as medium, and the remaining approximately 5 percent are large.<sup>40</sup>

Because different Native Title groups have different aspirations for their Native Title lands, and those Native Title lands have varying degrees of economic value, there is naturally variability across the functions and activities of individual PBCs. However, PBCs all have common statutory functions established the *Native Title Act 1993* (Cth) and *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (summarised in Table 11 below), in addition to the requirements of the CATSI Act outlined in Section 5.1.3.

*Table 11 – Key obligations and responsibilities of PBCs and RNTBCs under the Native Title Act 1993 (Cth) and Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth)*

| <b>Responsibility</b>                | <b>Description</b>   |
|--------------------------------------|--|
| Point of Contact                     | PBCs are the first point of contact for government and other parties who wish to undertake activities on native title lands. They act as the intersection between traditional owners and the non-First Nations legal systems.  |
| Managing Native Title Agreements     | PBCs are responsible for exercising, negotiating, implementing and monitoring native title agreements. They are also responsible for bringing future native title applications relevant to their members to the Federal Court.   |
| Consultation with Traditional Owners | Under the NT Act 1993, PBCs are required to consult with and obtain consent from traditional owners with regard to any decisions that surrender or affect native title rights and interests. Under the PBC Regulations, PBCs are required to produce evidence that the consultation and consent has been given with regards to native title decisions.   |
| Managing future act activities       | <p>Future acts are intended activities to be done by parties other than the claimants or native title holders that will impact native title rights and interests. Under the NT Act, there is a 'hierarchy' of future acts depending on their scale and expected impact on native title lands. Future acts can range from research to mining activities. Many future acts will have 'procedural rights' attached to them, which vary in the requirements of external parties and the PBCs. These rights can include:</p> <ul style="list-style-type: none"> <li>• The right to be notified and to be given an opportunity to comment on the future act</li> <li>• The same procedural rights to the holder of a non-exclusive agricultural or non-exclusive pastoral lease would be entitled</li> <li>• The same procedural rights as would be forwarded to someone with freehold title</li> <li>• Additionally to the same procedural rights as the holder of ordinary title, the right to be consulted, the right to object to the doing of the future act and the right to have the objected referred to, and heard by, and independent person or body</li> <li>• The right to negotiate</li> </ul> <p>The future act does not apply to land or waters where native title has been extinguished.</p> |
| Indigenous Land Use Agreements       | PBCs undertake negotiations between governments, companies and the PBC about future developments on native title lands on behalf of the native title holders.  |
| Compensation                         | PBCs are responsible for negotiating compensation on behalf of their members. Once this compensation is agreed, they are then generally responsible for managing and distributing these funds.   |

## Native Title Representative Body Corporates

Native Title Representative Body Corporates (NTRBCs) are recognised in accordance with Part 11 of the *Native Title Act 1993* (Cth) (NT Act 1993) for the primary purpose of prosecuting, and in many cases continuing to represent, Native Title rights interests within a prescribed geographical area of Australia. NTRBCs have, and continue to be, instrumental in giving effect to Native Title determinations across Australia.

<sup>40</sup> Nativetitle.org.au (2023). *PBC National Snapshot*.

In addition to the functions prescribed by the NT Act 1993, a NTRBC may have additional functions conferred on it by the laws of the state or territory in which its prescribed geographical area is located. It may also undertake a wide range of additional functions that its members and board instruct it to perform, which are typically functions that revolve around supporting land-care, social, cultural and economic development of Native Title lands or other First Nations lands within the specific NTRB's geographical area, or supporting the operations of Prescribed Body Corporates that hold determined Native Title rights and interests on trust or as agent for successful claimants within their geographic area that require such support.

The statutory functions of NTRBC as prescribed by the NT Act 1993 are summarised in Table 12 below.

*Table 12 - Key Provisions of the Native Title Act 1993 (Cth) that Prescribe the Structure and Activities of a Native Title Representative Body Corporate*

| <b>Section</b>                                | <b>Implications</b>  |
|---|--|
| Facilitation and assistance functions: s203BB | The facilitation and assistance functions of a NTRBC are (a) to research and prepare Native Title applications and to facilitate research into, preparation of making of Native Title applications; and (b) to assist registered Native Title Body corporates, Native Title holders and persons who may hold Native Title (including representing them or facilitating their representation) in consultations, mediations, negotiations and proceedings relating to Native Title applications, future acts, Indigenous Land Use Agreements (ILUAs) or other agreements or matters in relation to Native Title or the NT Act 1993.<br><br>A NTRBC cannot perform the facilitation and assistance function, or represent a Native Title interests unless it is requested to do so by the rightful holder of those interests and may only do so if the relevant land or water is wholly or partly within its designated geographical area. In performing a facilitation and assistance function for a Native Title interest, the NTRBC must consult with that interest and be transparent with that interest. |
| Certification functions: s203BE               | The certification functions of a NTRBC are (a) to certify applications for determinations of Native Title relating to areas of land or waters wholly or partly within the area for which the NTRBC is representative; and (b) certify applications for registration of ILUAs relating to areas of land or waters wholly or partly within the area for which the NTRBC is the representative body.  |
| Dispute resolution functions: s203BF          | The dispute resolution functions of a NTRBC are (a) to assist in promoting agreement between its constituents about the making of Native Title applications, conduct of consultations, mediations, negotiations or proceedings about Native Title applications, future acts, ILUAs, rights of access or any other matter under the NT Act 1993.  |
| Notification functions: s203BG                | The notification functions of a NTRBC are (a) to ensure that as far as reasonably practicable notices relating to land or water in the region they represent given to the NTRBC are provided to Native Title holders, claimants and other persons who may have Native Title interests relevant to the notice.  |
| Agreement making function: s203BH             | The agreement making functions of a NTRBC pertains to ILUAs. In performing this function, the NTRBC must as far as practicable consult with interests that may hold Native Title.  |
| Internal review functions: s203BI             | The internal review functions of a NTRBC are to provide a process for registered native title bodies corporate, native title holders and persons who may hold native title to seek review by the NTRBC of its decisions and actions, made or taken in the performance of its functions or the exercise of its powers that affect them and to publicise that process appropriately.   |
| Other functions: 203BJ                        | Other functions of the NTRBC are (a) as far as reasonably practicable, enter into arrangements with other representative bodies so that the representative body can exercise its facilitation and assistance function; (b) as far as is reasonably practicable, identify persons who may hold Native Title in the area for which the body is the representative body; (c) as far as is reasonably practicable, take such action as the body considers appropriate to promote understanding among First Nations people living in the area about matters associated with the NT Act 1993; (d) as far as is reasonably practicable inform First Nations people living in the area of who RNTBCs, Native Title holders and people who may hold Native Title are; (e) consult with First Nations communities whenever it thinks those communities might be affected by Native Title matters; and (f) as far as is reasonably practicable, cooperate with other representative bodies in promoting functions.  |
| Powers of a NTRBC: s203NK                     | A NTRBC has the power to do all things necessary or convenient to be done for or in connection with the performance of these functions.  |
| Financing of NTRBC                            | A NTRBC may apply to the Secretary of the Department of Indigenous Affairs for funding and may charge for some services.   |

Part 12A of the Native Title Act allows established state or territory bodies that have a similar function to the NTRBC established under section Part 11 to adopt the functions of a Part 11 NTRBC. For example, NTRBC's in the Northern Territory, namely the Northern Land Council and Central Land Council existed prior to native title, initially as First Nations land rights advocacy

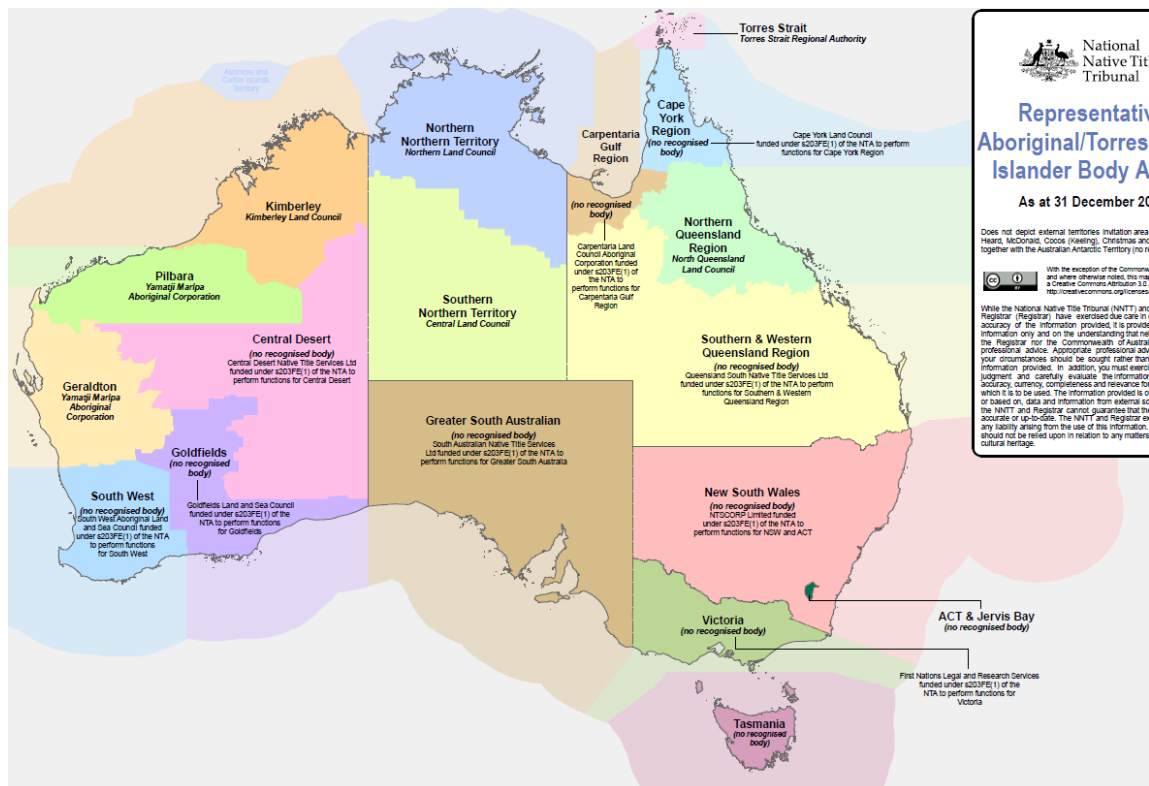
organisations and then as instruments under the ALRNT Act 1976.

In the Northern Territory Native Title is impacted by the very large footprint of lands granted under the ALRNT Act 1976, which cover 51 percent of the entire Northern Territory, compared to determined Native Title which covers only 23 percent. One consequence of this is that 97 percent of Native Title lands in the Northern Territory is Non-exclusive, with the majority of Native Title lands also the subject of various forms of First Nations tenure (which are much stronger forms of tenure than Native Title, including large areas of inalienable fee simple title) granted under the ALRNT Act 1976. Indeed only 1 percent of the Northern Territory is the subject of Exclusive Native Title.

Another unique aspect of Native Title in the Northern Territory is that the two NTRBCs in the Northern Territory, Northern Land Council and Central Land Council, also have wide ranging functions under Section 23 of the ALRNT Act 1976. These functions include those that are similar to the functions prescribed by the NT Act 1993, as well as much broader functions that are akin to those of local governments including advocating for and providing administrative functions for First Nations people and communities within in their geographic boundary. Section 23 of the ALRNT 1976 affords the statutory land councils wide ranging powers in this regard and Section 23AA allows individual land councils to determine their own priorities and resource allocations to best suit the needs of their constituents. For most Land Councils, these priorities have included a range of economic development and enterprise creation initiatives, typically associated with land assets. Similar circumstances apply to the Torres Strait Regional Authority which sources similar powers and functions from the ATSI 2005 Act.

Further complicating governance of the First Nations estate in the Northern Territory is the fact that while there are only two NTRBCs operating in the Northern Territory, there are four Land Councils performing functions under the ALRNT Act 1976. The Central Land Council has the same geographical boundaries for the purposes of both Acts. The Northern Land Council has the same boundaries, with the exception that for the purposes of the ALRNT Act 1976, the area of the Tiwi Islands and Groote Eylandt reside with the Tiwi Land Council and Anindilyakwa Land Council respectively.

As illustrated in Figure 3 below, there are 12 NTRBC's that intersect with Northern Australia.



## Northern Territory Aboriginal Investment Corporation

In Australia, royalties charged on the commercialisation of *in situ* natural resources differ from other forms of government impost in that they are a price paid for the right to commercialise a resource legally owned by the state, rather than a form of general taxation. In the case of non-renewable natural resources such as minerals and hydrocarbon resources, this price includes a premium that reflects the fact that, unlike other resources such as forestry, they can only be commercialised once.

This legal position arises from the historical development of Australian common and Constitutional law. Due to the operation of the British common law doctrine of *terra nullius*, upon proclamation of the colonies of Australia (now States) ownership of all land, including mineral rights, vested in the Crown. Accordingly, following the appointment of colonial (now State) governments, mineral rights vested in the Crown in the right of the new colony. Pursuant to British common law, restated over time in new colonial and State legislation, the States reserved all rights to minerals for themselves and retained these rights when making grants of land tenure, requiring payment in return for licence to extract those resources. In agreeing to federate under the new Commonwealth, States reserved these powers to themselves, and hence under the Australian Constitution the Commonwealth government has no powers or jurisdiction over mineral rights or land tenure.

The exceptions to this are the Northern Territory and Australian Capital Territory – by virtue of being Territories of the Commonwealth and not States in their own right, ownership of mineral resources in these jurisdictions vests in the Commonwealth. However, with the exception of royalties pertaining to certain historical uranium mines, the Commonwealth Government has delegated the power to impose and collect royalties to the Northern Territory Government since the early 1980s.<sup>41</sup> In 2022-23, the Northern Territory Government collected mining and petroleum royalties of \$384 million.<sup>42</sup>

Another unique aspect of the royalty regime in the Northern Territory is its recognition of the right of First Nations land holders to receive mineral and petroleum royalties from production operations on their lands. In 1953 an ordinance from the Commonwealth Minister for Territories permitted mining on Aboriginal Reserves in the Northern Territory, conditional upon royalties being payable into an Aborigines Benefits Trust Fund to ensure that the benefits from mining undertaken on Aboriginal Reserves were shared with the Traditional Owners.

Proclamation of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) resulted in Aboriginal land rights extending to extensive areas of the Northern Territory. As a result, the Aboriginal Benefits Trust Fund Account was replaced by the Aboriginal Benefits Trust Account established under Part VI of the ALRA. In recognition of the precedent established by the 1953 ordinance and rights conveyed under the ALRA the Commonwealth Government has since made an annual payment to the Aboriginal Benefits Account for an amount that is equivalent to the royalty receipts of the Northern Territory Government and Commonwealth Government from operations located on all Aboriginal Lands in the Northern Territory, known as a Mining Royalty Equivalent (MRE) Payment.

Under the *Income Tax Assessment Act 1936* (Cth), payments made from MRE credited to the Aboriginal Benefits Account are subject to mining withholding tax at a rate specified in the *Income Tax (Mining Withholding Tax) Act 1979* (Cth). In accordance with the *Taxation Laws Amendment Act (No.3) 1994* (Cth), the current rate of tax applied to payments of mining withholding tax is 4 percent.

When the *Aboriginal Land Rights (Northern Territory) 1976 Act* was first proclaimed, payments could only be made to Land Councils to support administration of their regulatory responsibilities, royalty associations and grants to benefit First Nations people in the Northern Territory on a 40:30:30 basis. Over successive legislative reforms, including most recently in 1999, the fund – now known as the Aboriginal Benefits Account (ABA) – has seen its operational basis changed significantly. The beneficiaries of the Aboriginal Benefits Account have been broadened, specific allocations to spending categories have been removed, and broad discretion as to how funds are expended across the categories rests with the Minister.

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<sup>41</sup> *Mineral Royalty Act 1982* (NT), *Petroleum Act 1984* (NT)

<sup>42</sup> Northern Territory Government (2023). *2023-23 BP2 Budget Strategy and Outlook*

Funds in the Aboriginal Benefits Account may be expended as follows:

- **Payments to Land Councils for Administration Support** - In accordance with Section 64(1) payments are made from the Aboriginal Benefits Account to the four Land Councils established under the Act – Northern, Central, Tiwi and Anindilyakwa Land Council - to meet administrative expenditure associated with their statutory responsibilities in accordance with proposed estimates of expenditure that are pre-approved by the Minister.
- **Payments to Land Councils for Distribution to Royalty Associations** - Section 63(3) provides for Royalty Associations, a specific class of institution established to receive payments from the Aboriginal Benefits Account to compensate or provide recompense to specific First Nations groups for mining on their specific traditional lands. In accordance with Section 64(3) additional payments are made to the Land Councils for distribution to Royalty Associations. These payments are directly linked to the amount of MRE monies received in respect of mining operations in the areas concerned, with Royalty Associations receiving at total equivalent to 30 percent of each year's MRE payments.
- **Beneficial Payments** - In accordance with Section 64(4) payment of grants may be made for the benefit of First Nations people living in the Northern Territory on the advice of the Aboriginal Benefits Account Advisory Committee and at the Minister's discretion. The Aboriginal Benefits Account Advisory Committee is comprised of representatives of the four Northern Territory Land Councils.
- **Office of Township Leasing** - A Township Lease is a long-term lease over a Township or Aboriginal Land granted by the Northern Territory Aboriginal Land Trust to the Executive Director of Township Leasing who then manages the Township or Aboriginal Land on behalf of the traditional owners, allowing the traditional owners to undertake economic activity in the town or on the land. In accordance with Section 64(4A) payments are made to the Office of Township Leasing for acquiring and administering township leases approved under Section 19A and leases approved under Section 20CA of the Act.
- **Administrative Payments** - In accordance with Section 64(6) payments may be made to meet expenses associated with administering the Aboriginal Benefits Account.

Amendments to the Aboriginal Land Rights (Northern Territory) Act 1976 that were passed by the Australian Parliament in late 2021 establish the Northern Territory Aboriginal Investment Corporation (NTAIC), a body that will receive an initial grant from the ABA totally \$180 million, with a subsequent grant of \$500 million once a Strategic Investment Plan is developed and tabled in Parliament. Governed by a largely First Nations board, the NTAIC will make investment decisions to support First Nations economies and important social and cultural priorities across the Northern Territory.

## Supply Nation

In 2008, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs held an inquiry into First Nations Economic Development, resulting in a report titled Open for Business. One of the recommendations of this report was that an Australian Indigenous Minority Council (AIMSC) be established. Based largely on a similar initiative implemented by the Nixon administration in the United States in the 1960s, Supply Nation's predecessor organisation, the Australian Indigenous Minority Supplier Council, was established as a three-year pilot program. Following a successful pilot, the AIMSC was rebranded as Supply Nation in 2013 and in 2015, the Federal Government launched its Indigenous procurement policy, with Supply Nation mandated as the first port of call for Federal Government procurement teams to search for First Nations businesses to fulfil procurement targets.

Today Supply Nation has approximately 4,500 verified First Nations businesses on its database, Indigenous Business Direct, that are either registered (at least 50 percent First Nations owned) or certified (at least 51 percent First Nations owned and therefore First Nations controlled). In addition to the database of suppliers, Supply Nation has approximately 750 paying government and corporate members who use the service to identify potential First Nations suppliers of goods and services in order to meet procurement targets.<sup>43</sup>

Supply Nation offers a range of benefits to its First Nations business members including access to online and in-person resources and training, connections and networking opportunities with professionals from the corporate membership base, discounted access to Supply Nation's events and tradeshows, and ability to participate in marketing campaigns.

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<sup>43</sup> Supply Nation (2023)

Supply Nation also conducts research and analysis into the overall First Nations business sector and Indigenous Procurement Policy and its effect on the sector as a whole.

## Other relevant Australian economic development institutions

In addition to the aforementioned institutional framework that has functionality specific to the First Nations economy, First Nations can also access government programs that target the development of the mainstream economy and which in many cases have specific goals and targets pertaining to supporting First Nations businesses. The following subsections summarises the main non-First Nations specific economic development institutions that are relevant to the First Nations economy.

### Regional Development Australia

Regional Development Australia (RDA) is a Commonwealth Government program administered by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. It is comprised of a network of 52 regional and metropolitan based 'RDA Committees', which are in fact incorporated bodies, that are comprised of membership that is representative of local government, business and community leaders and supported by a small executive.

While RDA is a Commonwealth program and pursuant to a funding agreement,<sup>44</sup> between the Commonwealth and each RDA Committee, resourced primarily by the Commonwealth, some RDA Committees receive additional resources from state/territory or local governments.

All RDA Committees must be not-for-profit entities incorporated under the relevant state or territory's incorporated associations legislation, with the exception of those in Victoria, which are administered through the Victorian Department of Regional Development. Where an RDA Committee is incorporated, there are specific replaceable rules that must be included in its constitution for it to be eligible for Commonwealth funding. These specific rules effectively constitutionalise its purpose as an RDA Committee, binding the committee to act in accordance with that purpose.

In Western Australia a network of significantly better resourced Western Australian Government statutory authorities, known as Development Commissions, cover the same regional areas as the RDA network across the State.

In accordance with the program's charter, all RDA Committees are required to work collaboratively with fellow RDA Committees, all levels of government and the private sector. The program's charter defines the purpose of RDA Committees as to:

- Collaborate with relevant stakeholders to identify economic opportunities and leverage private and public sector investment in the Regions;
- Connect regional businesses, councils and industry sectors with international trade partners, financial markets and potential investors;
- Promote and disseminate information on Australian Government policies and grant programs to state and local governments, industry, business and community sectors;
- Support community stakeholders to develop project proposals to access funding;
- Develop and maintain positive working relationships with the local government bodies in their regions;
- Facilitate public and private sector decentralisation;
- Assist in the delivery of Australian Government programs, where relevant and where requested by the Minister;
- Engage with regional entrepreneurs and emerging business leaders to explore new opportunities to grow local jobs in their regions;
- Provide information on their region's activities and competitive advantages to all levels of government, industry, business and community sectors; and
- Provide evidence-based advice to the Australian Government on critical regional development issues positively and

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<sup>44</sup> Department of Infrastructure, Regional Development and Cities (2018), *RDA Funding Agreement Template*, Commonwealth Government, Canberra

negatively affecting their region.

In accordance with their funding agreements with the Commonwealth, each RDA is responsible for delivering the outcomes summarised in Table 13 below. RDA Committees may also set locally relevant Key Performance Indicators in their Annual Business Plans and report against those in their Annual Reports.

Table 13 – Key Outcomes for RDA Committee as Prescribed by the Commonwealth Funding Agreement

| Outcome                                | Description   |
|--|---|
| Regional Plan                          | Each RDA Committee must prepare through consultation and analysis, an evidence-based three to five year plan that focuses on economic development of its Region and this plan must take into consideration any relevant Commonwealth, state, territory or local government plans. |
| Critical Issues                        | Each RDA Committee must advise the Commonwealth on issues affecting its Region.   |
| Priority Activities                    | Each RDA must advise the Commonwealth on priority activities that will drive regional economic development, on future economic opportunities and on its Region's comparative advantages, based on consultation and engagement with community leaders.                             |
| Project Proposals                      | Each RDA must provide assistance to local community stakeholders in order for them to develop project proposals and refer stakeholders to appropriate public and/or private funding sources, including the A\$1.0 billion National Stronger Regions Fund.                         |
| Promote Australian Government Programs | Each RDA must use best efforts to increase awareness of Australian Government programs in its region.   |

## Northern Australia Infrastructure Facility

NAIF is established and operates in accordance with the *Northern Australia Infrastructure Facility Act 2016* (Cth) (NAIF Act 2016). Other legislation such as the *Public Governance, Performance and Accountability Act 2013* (Cth) also applies to the NAIF. It is a corporate Commonwealth entity that provides financial assistance to Western Australian, Queensland and Northern Territory governments, and more recently other entities, for the development of economic infrastructure in Northern Australia.

In accordance with s41 of the NAIF Act 2016, the NAIF is able to source funds (via the Consolidated Revenue Account) that are derived directly from specific Commonwealth borrowings for the purposes of its grants of financial assistance. Under this arrangement the NAIF has the ability to offer loan tenors of up to the longest Commonwealth borrowing, which is currently 32 years. Section 7(b) of the NAIF Investment Mandate requires that any return covers at least the NAIF's administrative costs and the Commonwealth's cost of borrowing.

In 2021, the *Northern Australia Infrastructure Facility Amendment (Extension and Other Measures) Act 2021* was passed. This extended NAIF a further five years to June 2026 and issued a new investment mandate. Key reforms to the NAIF under this amendment included:

- Expanded definition of infrastructure and focus on financing development, rather than just construction.
- Expanded geography to include the Shire of Ngaanyatjarraku in Western Australia.
- A broader definition of public benefit.
- Expanded debt tools, including the ability to provide letters of credit, guarantees and lend in foreign currency.
- Expanded to provide equity stakes, subject to a cap of \$50 million per investment and being a non-controlling stake.
- NAIF was enabled to provide financing directly to proponents rather than via the States or Northern Territory, under certain circumstances.

In 2023 the *Northern Australia Infrastructure Facility Amendment (Miscellaneous Measures) Bill 2023* was passed. This amendment provided NAIF with an additional \$2 billion allocation, taking the total allocation to \$7 billion. Further, the Indian Ocean Territories communities of Christmas Island and the Cocos (Keeling) Islands were included in NAIF's geographical remit.

The key provisions of the NAIF Act 2016, and subsequent amendments are summarised in Table 14 below.

Table 14 - Key Provisions of the Northern Australia Infrastructure Facility Act 2016 (Cth)

| Section  | Implications  |
|--|---|
| <b>Structure of NAIF:</b><br>s6                            | NAIF is a body corporate that may acquire, hold and dispose of real and personal property, and may sue or be sued.  |
| <b>Object of NAIF:</b> s3                                  | The object of NAIF is to provide grants of financial assistance to the State and Territories and to other entities for the development of Northern Australia Economic Infrastructure.   |
| <b>Functions of NAIF:</b><br>s7(1), (1A), (1B), (1C), (1D) | <p>The functions of NAIF are (a) to grant financial assistance to States and Territories for the development of Northern Australia economic infrastructure; (b) to determine terms and conditions for grants of financial assistance; (c) as agreed between the NAIF and the States and Territories, to provide incidental assistance to the States and Territories in relation to financial arrangements related to the terms and conditions of the grants of financial assistance.</p> <p>Further NAIF is (a) 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 Australian economic infrastructure.</p> <p>The Facility may provide financial assistance in the form of equity investments under subsection (1A) by making investments itself, 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.</p> <p>The Facility may only acquire a derivative for the purposes of (a) protecting the value of the financial assistance provided by the Facility, (b) protecting the return on financial assistance provided by the Facility, (c) achieving indirect exposure to financial assets 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. Acquisition of derivatives does not apply in relation to guarantees given by the Facility in the ordinary course of providing financial assistance.</p>   |
| <b>Powers of the NAIF:</b> s7(2)                           | The NAIF has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.  |
| <b>Duration of NAIF:</b><br>s8                             | The NAIF may not provide any new grants of financial assistance after 30 June 2026. Grants of financial assistance provided prior to this date may extend beyond this date and terms and conditions of those grants modified past that date.  |
| <b>Ministerial Direction of NAIF:</b><br>s9, s10, s11      | <p>The responsible Ministers must provide direction to the NAIF in the form of a legislative instrument known as the Investment Mandate, and NAIF must take all reasonable steps to comply with the Investment Mandate.</p> <p>The Investment Mandate must not direct or have the effect of directing NAIF to provide financial assistance to a particular project or a particular project proponent, but may include directions in relation to the following: (a) objectives the NAIF is to pursue in providing financial assistance; (b) strategies and policies to be followed for the effective performance of the NAIF'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; (da) matters relating to the provision of financial assistance in the forms of equity investment, 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; and (g) any other matters the responsible Ministers deems appropriate.</p> <p>When NAIF intends to provide financial assistance, written notification in the form of a (Proposal Notice) must be provided to the responsible Ministers.</p> <p>On receipt of the Proposal Notice, the responsible Ministers have 21 days information on each financial assistance the NAIF proposes to provide so that the Minister can consider. The Minister is able to extend that consideration period up to 60 days by written notification to the NAIF. During this time, the Minister may instruct NAIF not to provide a financial assistance if that financial assistance would (a) be inconsistent with the objectives and policies of the Commonwealth Government; (b) have adverse implications for Australia's national or domestic security; and (c) have an adverse impact on Australia's international reputation or foreign relations.</p> <p>The consideration period does not constitute the responsible Ministers 'approving' the financial assistance. The responsible Ministers, through the consideration period, only has the ability to indicate that financial assistance should not be provided, if the responsible Ministers are satisfied that the project is inconsistent with the objectives and policies of the Commonwealth Government, has adverse implications for Australia's national or domestic security or adverse impact on Australia's international reputation or foreign relations.</p> |



| Section  | Implications  |
|--|---|
| <b>Governance of NAIF:</b> s13, s14, s15, s28, s38, s42, s43 | <p>The NAIF Board is to consist of the Chair and between 4 and 6 other members.</p> <p>The functions of the NAIF Board are (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the NAIF; (b) to ensure the proper, efficient and effective performance of the NAIF's functions; and (c) any other functions conferred on the NAIF Board by the NAIF Act.</p> <p>Appointments to the NAIF Board are made by the responsible Minister.</p> <p>Each member of the NAIF Board must have experience or expertise in at least one of banking and finance; private equity or investment by way of lending or provision of credit; economics; infrastructure planning and financing; engineering; government funding programs or bodies; financial accounting or auditing; or law.</p> <p>The NAIF Board has the power to all things necessary or convenient to be done for or in connection with the performance of its functions.</p> <p>The NAIF Board must appoint a CEO of the NAIF who is responsible for the day-to-day administration of the NAIF. In performing its functions, the CEO must act in accordance with policies determined by the Board. The NAIF may employ staff it considers necessary for the performance of its functions.</p> <p>The NAIF may make arrangements for the services of officers or employees of the Commonwealth, a State or a Territory Government; an authority of the Commonwealth or a State or Territory or any other organisation or body.</p> <p>The NAIF must prepare and provide to the Minister an annual report pursuant to the requirements of s46 of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).</p> <p>The Minister must give effect to a review of this Act as soon as possible within three years from the commencement of the Act.</p> |
| <b>Finances of the NAIF:</b> s40, s41                        | <p>The NAIF may charge a fee in relation to anything done in performing its functions, and such fees must not be such as to amount to taxation.</p> <p>The Commonwealth Consolidated Revenue Fund is appropriated to the extent of A\$7.0 billion for the purposes of providing grants of financial assistance to the States and Territories and other entities for the construction of Northern Australia economic infrastructure.</p>   |
| <b>Review of NAIF Act:</b> s43                               | <p>The responsible Minister must instigate a review of the operations of the NAIF Act as soon as possible after the period 30 June 2024 from when the NAIF Act commenced. Without limiting the matters to be covered by this review, the review must consider whether the time limit of 30 June 2026 for the NAIF should be extended and the appropriate governance arrangements for the NAIF after that date.</p>  |

## Northern Australia Infrastructure Facility Investment Strategy Framework

The primary determinant of the NAIF's strategic framework is the Investment Mandate as issued by the Minister from time-to-time in accordance with s9 of the NAIF Act 2016 and subsequent amendment Acts. The key elements of this framework are summarised in Table 15 below.

Table 15 - Northern Australia Infrastructure Facility Investment Mandate

| Element  | Description  |
|--|--|
| Mandatory investment criteria (schedule 1)   | <ul style="list-style-type: none"> <li>• Schedule 1 of the current NAIF Investment Mandate imposes the following mandatory criteria that a project must meet to be eligible for NAIF financial assistance:</li> <li>• <i>The project involves development or enhancement of Northern Australia economic infrastructure</i> – the project must, in whole or part, involve the development or enhancement of physical structures, assets or facilities that underpin, facilitate or are associated with (a) transport or flow of people, goods, services or information; (b) the establishment or enhancement of business activity in a region; (c) an increase in economic activity in a region, including efficiency in developing or connecting markets; or (d) an increase in population. For purposes of clarity, the project must bring new capacity online or represent material modernisation which enhances or improves existing capacity. The NAIF cannot be used to refinance existing debt without creating new capacity. Examples of the types of projects that may be eligible are outlined in the Explanatory Statement to the Investment Mandate and include, but are not limited to ports, airports, rail, road, water, energy and communications infrastructure; social infrastructure such as health facilities, education facilities, research facilities, training and related accommodation facilities; processing facilities such as abattoirs and agricultural facilities; and transshipment vessels.</li> <li>• <i>The project will be of public benefit</i> – the project must produce benefits to the broader economy and community beyond those able to be captured by the project proponent. The quantifiable value of the public benefit must exceed the value of any concessions offered.</li> <li>• <i>The project must be located in or have significant benefit for Northern Australia</i> – projects must either be within the boundaries of Northern Australia, or provided the project produces significant benefits for Northern Australia, or if partly or wholly outside of these boundaries, must produce significant benefit for Northern Australia (e.g. a project enhancing north-south connectivity).</li> <li>• <i>The NAIF loan must be able to be repaid or refinanced</i> – the project proponent must present comprehensive financial modelling to demonstrate the ability of the project to repay the debt in full and on time, or refinance, based on sound assumptions. A relevant substitute for this criterion should be used for assessing projects which request Alternative Financing Mechanisms, as determined by the Facility.</li> <li>• <i>Indigenous engagement strategy</i> – the project must provide a strategy which sets out objectives for First Nations participation, procurement and employment that reflect First Nations population in the region of the proposed project.</li> <li>• <i>The equity or equity-like investment will generate a return to Government</i> – The Project Proponent must present comprehensive financial modelling to demonstrate the ability of the Project to contribute positively to the target portfolio return in the medium term. Based on its own assessments and modelling of the Project Proponent, the Facilities must be satisfied that there will be opportunities or mechanisms for the Facility to exit or monetise the equity investment within the medium term.</li> </ul> |
| Other factors to be considered by the NAIF in making investment decisions to offer or not offer financial assistance: Investment Mandate s7, s9, s16, s13, s14 | <p>The Investment Mandate also provides that in making an investment decision, the Board of NAIF must:</p> <ul style="list-style-type: none"> <li>• Be satisfied that any return from financial assistance will cover at least the Commonwealth's cost of borrowing and the NAIF's administrative costs;</li> <li>• Have regard to the extent of any concession that is offered (see below for further detail);</li> <li>• Have regard to the potential effect of the project on other infrastructure;</li> <li>• Have regard to the potential effect of the financing mechanism on the Australian infrastructure financing market;</li> <li>• Have regard to the potential of the investment to encourage private sector participation in financing a project;</li> <li>• Consider a preference for a diversified portfolio including with respect to industrial and geographic spread across the States and Territories that comprise Northern Australia;</li> <li>• Consider a preference for projects that address an infrastructure need identified through a Commonwealth, State or Territory assessment process, pipeline or priority list;</li> <li>• The NAIF Board may make an Investment Decision, conditional upon the project obtaining all relevant regulatory, environmental and Native Title approvals and arrangements as required by the relevant jurisdiction. However, funding must not flow to the project until all relevant approvals are in place;</li> <li>• Consult with the State or Territory jurisdiction(s) in which a proposed project is located and if the jurisdiction provides written notification that a project should not be funded by NAIF, NAIF must not make an investment decision in relation to that project;</li> <li>• Where a NAIF financial assistance decision is greater than \$100 million, consult with Infrastructure Australia.</li> </ul>  |

| Element                            | Description  |
|------------------------------------|--|
| Mechanisms of financial assistance | <p>The current Investment Mandate states that loans are to be the default financing mechanisms for investment proposals.</p> <p>In determining any concession to be granted, the NAIF Board must have regard to (a) the extent and mix of all concessions necessary for the investment proposal to proceed; and (b) the extent of the project's public benefit.</p> <p>Concessions must be limited to the minimum the NAIF deems as necessary for an investment proposal to proceed and may include (but not limited to) (a) longer loan tenor than offered by commercial lenders, but not exceeding the longest term of Commonwealth borrowings; (b) lower interest rates than offered by commercial lenders, which cannot be lower than the rate at which the Commonwealth borrows; (c) extended periods of capitalisation of interest beyond construction completion; (d) deferral of loan repayments or other types of tailored loan repayment schedules; (e) lower or different fee structures than those offered by commercial lenders; or (f) ranking lower than commercial lenders for cash-flow purposes.</p> <p>Since the 2021 NAIF amendments, the Facility has been able to offer Alternative Financing Mechanisms as an alternative, or in addition, to a loan. This is where (a) it may be more appropriate for a specific Project Proposal; or (b) is necessary to encourage private sector participation in financing a project. Where the Facility considers an Alternative Financing Mechanism preferable to a loan, it must include in the proposal notice required under s11 (2) of the Act, (a) why the Alternative Financing Mechanism is preferable; (b) the estimated commercial value of any concessions; (c) the alignment between the Alternative Financing Mechanism and the Risk Appetite Statement; (d) any impact on the Facility's appropriation; and (e) the proposed exit strategy for the Financing Mechanism.</p> <p>With regard to guarantees, at no time may the total potential liability under outstanding guarantees exceed the amount of the uncommitted balance of the Facility's appropriation.</p> <p>In offering an Alternative Financing Mechanism in the form of an equity or equity-like investment, the Facility must: (a) target a portfolio return for the Facility's equity or equity-like investments before Facility operating expenses, over the medium to long term, being at least the five-year Australian Government bond rate plus a premium of 3 per cent per annum; (b) not make an Investment Decision that would result in the Facility allocating more than \$500 million to equity or equity-like investments; (c) not make an Investment Decision allocating less than \$5 million or more than \$50 million in equity or equity-like investment to a particular Project; (d) not make an Investment Decision that would result in the Commonwealth directly taking a majority or controlling equity or equity-like interest in a particular Project; (e) not make an Investment Decision on concessional terms; and (f) apply all Mandatory Criteria in Schedule 1 of the Investment Mandate except for Mandatory Criteria 4.</p> |
| Direct Funding                     | <p>The Facility will primarily seek to provide financial assistance through grants of financial assistance to a State or Territory. However, the Facility may, at any point prior to contractual close of a Financing Mechanism, decide to provide financial assistance via a particular Financing Mechanism directly to other entities in accordance with section 7(1A) of the Act.</p> <p>The Facility must obtain advice from relevant Commonwealth Government agencies prior to making a decision under subsection (2) of the Act. Once the Facility has made a decision under subsection (2), it must notify the Minister for Northern Australia in writing within five business days.</p>  |
| Investment Risk: s12               | <p>The NAIF Board must satisfy itself that (a) NAIF is not the sole holder of financial risk in each project; (b) there is reasonable allocation of risk for each project between NAIF and other sources of finance for the project; (c) it can appropriately manage NAIF's risk exposure to each project; and (d) its due diligence also identifies total exposure of the Commonwealth Government to a project so as to prevent the Commonwealth Government overall having the majority financial risk in a project.</p> <p>The NAIF Board must, in consultation with the Minister and relevant Northern Australian jurisdictions develop a Risk Appetite Statement that gives preference to geographic and industry diversification and which may have a high risk tolerance in relation to factors that are unique to investing in Northern Australia economic infrastructure such as (but not limited to) distance, remoteness and climate. The Risk Appetite Statement is reviewed annually.</p>  |

## Role of the Western Australian, Northern Territory and Queensland Governments

The NAIF Act is designed for NAIF to work in partnership with the Northern Australian jurisdictional governments of Western Australia, Northern Territory and Queensland. Financial assistance from the Commonwealth, on terms and conditions approved by the NAIF Board, is offered to the relevant jurisdictions to on-lend to the project proponent.

The involvement of the State and Territory governments helps to maximise the gains from infrastructure investment in Northern Australia given the state and territory governments have knowledge of projects in their regions and the likely benefits those projects will generate. Each jurisdiction is consulted on the projects in their region which are under consideration by NAIF and have a right of veto should they not wish to support the provision of financial assistance to a particular project.

The Master Facility Agreement (MFA) is the document which guides the relationship between the Commonwealth, NAIF and the governments of Western Australia, Northern Territory and Queensland.

## Northern Australia Infrastructure Facility Activities

By virtue of its legislative mandate, all of NAIF's investments are in projects that are located in Northern Australia or provide significant benefit for Northern Australia.

As at 30 June 2022, the total value of current NAIF loan commitments via investment decisions or conditional approvals exceeded \$3.5 billion. This is forecast to create \$27 billion in public benefit from the development of these projects.<sup>45</sup> Details of all investment decisions made as at 30 June 2022 are summarised in Appendix 2.

NAIF's pipeline continues to be strong with 76 projects in the pipeline spread across Western Australia, Queensland and the Northern Territory and each of the NAIF's core sectors. These represent a potential total loan value of \$8.4 billion.<sup>46</sup> Figure 4 below represents the pipeline across the States and Territory, and Figure 5 across the different sectors.

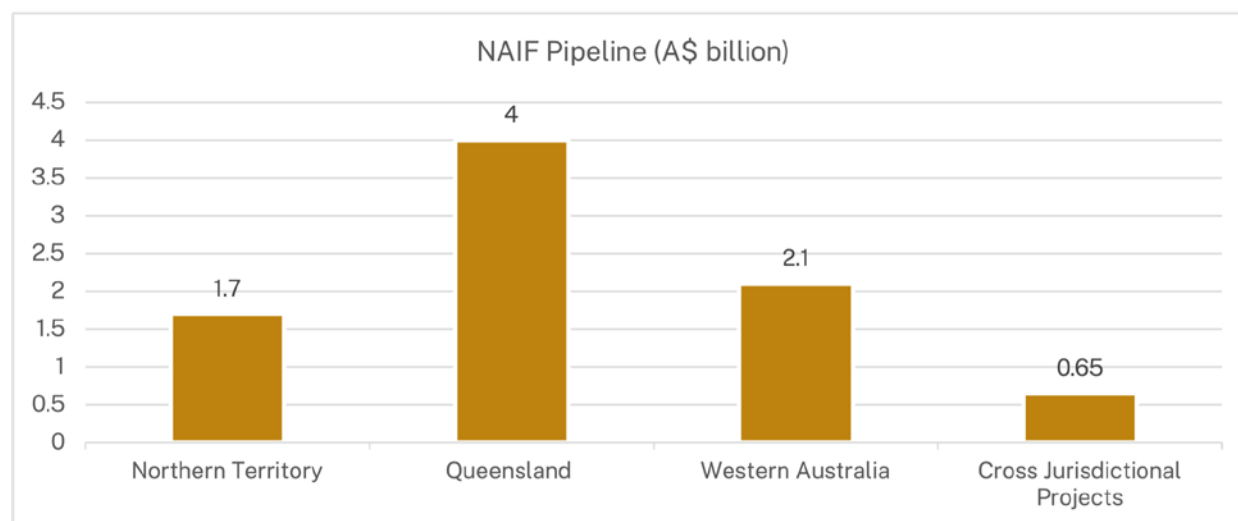


Figure 4 – NAIF Pipeline by States and Territory, 2021-22

<sup>45</sup> Northern Australia Infrastructure Facility (2022), Annual Report 2021-22

<sup>46</sup> Northern Australia Infrastructure Facility (2022), Annual Report 2021-22

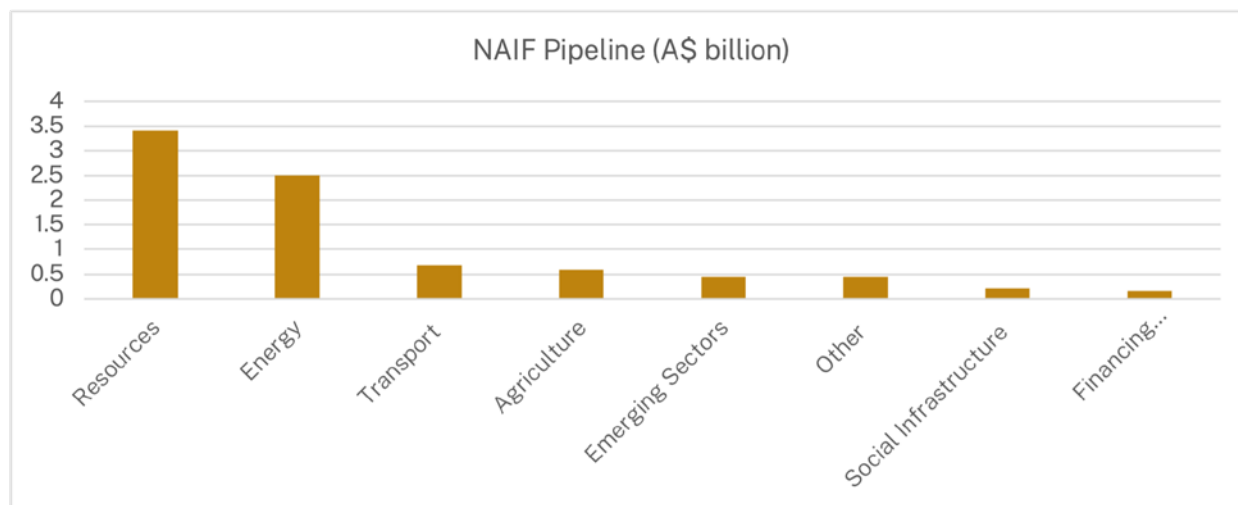


Figure 5 – NAIF Pipeline by Industry, 2021-22

## Commonwealth Department of Industry, Science and Resources

The Commonwealth Department of Industry, Science and Resources' purpose is to build a future for all Australians by enabling a productive, resilient and sustainable economy, enriched by science and technology.<sup>47</sup> The Department provides targeted investment and develops policy and regulation associated with its key areas of work, which include:

- Key activity 1.1: growing innovative and competitive businesses, industries and regions
- Key activity 1.2: investing in science and technology
- Key activity 1.3: supporting a strong resources sector

The Department reports to three responsible Ministers, who currently are:

- The Hon Madeleine King MP, Minister for Resources and Minister for Northern Australia,
- The Hon Ed Husic MP, Minister for Industry and Science, and
- Senator the Hon Tim Ayres, Assistant Minister for Manufacturing and Assistant Minister for Trade.

In 2022-23, the Department provided \$922.4 million in grant payments to 2,970 businesses through its programs and funds and on behalf of other agencies. The Department also has an Aboriginal and Torres Strait Islander Business Support Roadmap which outlines its vision and actions to support and grow Indigenous businesses including the provision of grants.

The Department is responsible for supporting the development of a range of policies, strategies and programs that support Australia's energy transition, innovation and research and development by Australian small and medium-sized enterprises, Australian manufacturing, the Australian space industry and gender diversity within the science, technology, engineering and mathematics (STEM) workforce.

<sup>47</sup> Department of Industry, Science and Resources (2023). *Annual report 2022-23*.

Key programs and funds implemented by the Department of Industry, Science and Resources are described below in Table 16.

Table 16 - Department of Industry, Science and Resources Key Programs and Funds

| Program   | Description  |
|---|--|
| The National Reconstruction Fund (NRF)              | <p>Launched in October 2022, the NRF represents a significant investment by government into seven priority areas that will diversify and transform Australia's industry, moving it down the supply chain to be more productive, capitalise on opportunities in the net zero economy and address Australian supply chain vulnerabilities. The Government has currently committed \$15 billion that is to be invested via loans, equity investments and guarantees.</p> <p>The seven priority areas are renewables and low-emission technologies, medical science, transport, value-add in agriculture, forestry and fisheries, value-add in resources, defence capability and enabling capabilities.</p> <p>Across these seven areas, the Government has identified \$8 billion of the NRF's \$15 billion to be specifically invested in the following areas:</p> <ul style="list-style-type: none"> <li>• up to \$3 billion for renewables and low emissions technologies</li> <li>• \$1.5 billion for medical manufacturing</li> <li>• \$1 billion for value-adding in resources</li> <li>• \$1 billion for critical technologies</li> <li>• \$1 billion for advanced manufacturing</li> <li>• \$500 million for value-adding in agriculture, forestry, fisheries, food and fibre</li> </ul>            |
| Industry Growth Program                             | <p>The Industry Growth Program aims to advance Australia's industrial capability by supporting small and medium-sized enterprises to commercialise their ideas and grow their businesses. This is a new initiative announced in the 2023-24 Budget. It is due to be launched in late 2023.</p> <p>Through funding of \$392.4 million, this program will provide advice and matched grant funding for SME's and start-ups to commercialise. It is anticipated that the program will include the following features:</p> <ul style="list-style-type: none"> <li>• directly contracted experienced advisers to guide SMEs and start-ups on commercialisation and early-stage business growth</li> <li>• an additional source of industry advice, leveraging sector expertise from not-for-profit industry bodies</li> <li>• a new independent committee to give recommendations on projects to receive grant funding</li> <li>• an Executive Director to manage and oversee program advisers, and share expertise</li> <li>• a Centre of Expertise to build real-world commercialisation capability within our department and broader Australian Public Service.</li> </ul> <p>Projects and businesses that are in the same priority areas of the NRF will be eligible for the Industry Growth Program.</p> |
| Research & Development Tax Incentive                | <p>The Department administers the R&amp;D Tax Incentive. This is designed to encourage Australian businesses to undertake research and development. In 2022-23, over \$15 billion was invested by more than 12,000 businesses across Australia and claimed on the R&amp;D tax incentive<sup>48</sup>.</p>  |
| Business Research and Innovation Initiatives (BRII) | <p>The Australian Government seeks innovative solutions from Australian businesses (SMEs) with regard to particular topics of interest and government challenges. The Australian Government then funds these initiatives—up to \$100,000 for the best solutions to the challenge. They then have 3 months to test the technical and commercial feasibility of their solution. Those that can successfully demonstrate feasibility apply for a proof-of-concept grant, which provides up to \$1 million to produce a prototype of the solution.</p> <p>Topics include national environmental challenges, public policy or service delivery challenges.</p> <p>The Business Research and Innovation Initiative (BRII) is a challenge-based innovation program. It provides funding for start-ups and SMEs to undertake research and development (R&amp;D) on new-to-market technologies.</p> <p>The program:</p> <ul style="list-style-type: none"> <li>• builds the innovative capacity of start-ups, SMEs and government agencies</li> <li>• improves capability to access national and international markets</li> <li>• helps SMEs be more confident and aware when working with government</li> <li>• increases government agencies' sourcing of innovative solutions.</li> </ul>                      |

<sup>48</sup> Department of Industry, Science and Resources (2023). Annual report 2022-23.

|   |   |
|---|---|
| <p>Cooperative Research Centres (CRC) Grants and Project Grants</p> | <p>The Cooperative Research Centres program was established in 1990 to fund industry-led research collaborations between industry, researchers and end users.</p> <p>There are two elements of the program:</p> <ul style="list-style-type: none"> <li>• CRC Grants: supporting medium to long-term industry-led collaborations, up to 10 years</li> <li>• CRC Project Grants: supporting short term, industry-led collaborative research, up to 3 years</li> </ul> <p>As of January 2023, there were 24 CRC Centres funded through the Grants program and 24 Projects funded through Round 14 of the Project Grants program.</p>   |
| <p>Critical Minerals Development Program (CMDP)</p>                 | <p>Critical Minerals Development Program grants support early and mid-stage critical minerals projects. The current round will provide up to \$50 million over 3 years for competitive grants to support early and mid-stage critical minerals projects.</p> <p>The Critical Minerals Development Program will:</p> <ul style="list-style-type: none"> <li>• help grow Australia’s Critical Minerals industry</li> <li>• support Australia’s transition to net zero emissions</li> <li>• support economic development and jobs in regional communities.</li> </ul> <p>Businesses and state or territory governments can apply for a co-funded grant of up to \$30 million.</p> <p>Grants can be used for feasibility studies, engineering design work, and building pilot or demonstration facilities amongst other activities.</p> |
| <p>Venture Capital Support Programs</p>                             | <p>Under the <i>Venture Capital Act 2002</i>, the Department is responsible for supporting the Australian venture capital market. In 2022-23, it supported industry to invest A\$1.56 billion into 500 Australian businesses<sup>49</sup>.</p> <p>The Department offers a range of services and programs to venture fund managers and businesses seeking venture capital. These include:</p> <ul style="list-style-type: none"> <li>• tax incentives and tax benefits for fund managers</li> <li>• Pooled Development Funds</li> <li>• Biomedical Translation Fund</li> </ul>   |

## Canadian First Nations Economic Development Institutional Framework

### Lead government agencies

Prior to the 2017 a single agency of the Canadian Government, the Department of Indigenous and Northern Affairs Canada was the principal Federal Government agency responsible for most Indigenous policies and programs related to education, social services, child and family services and housing and infrastructure, with First Nations and Inuit health services being the purview of Health Canada. In 2017 and in response to the 1997 Royal Commission on Aboriginal People, Prime Minister Justin Trudeau split the Department of Indigenous and Northern Affairs Canada to create separate departments for Indigenous services - Indigenous Services Canada (ISC) -and for the relationship between the Crown and Indigenous peoples - Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

The following sections provide a brief overview of the key responsibilities and functions of CIRNAC and ISC.

<sup>49</sup> Department of Industry, Science and Resources (2023). *Annual report 2022-23*.

## Indigenous Services Canada

Indigenous Services Canada (ISC) works collaboratively with partners to provide and improve access to high quality, timely and culturally safe services. It brings together First Nations and Inuit health services into the same department as education, essential social services, child and family services programs, lands and economic development and housing and infrastructure programs. Through the *Department of Indigenous Services Act, 2019* the Department is mandated to:

- Ensure that First Nations, Inuit and Métis individuals have access to services for which those individuals are eligible.
- Take into account socio-economic gaps that persist between First Nations individuals and other Canadians with respect to a range of matters as well as social factors having an impact on health and well-being.
- Recognize and promote First Nations ways of knowing, being and doing.
- Collaborate and cooperate with First Nations Peoples and with the provinces and territories.
- Implement the gradual transfer of services to First Nations organizations.



Table 17, below outlines the ISC's core service areas and associated departmental results.

Table 17 - Indigenous Services Canada's Core Service Areas and Departmental Results

| Service areas                      | Description  | Departmental Results  |
|------------------------------------|--|---|
| 1. Health                          | The Health Service Area brings together health programs that support mental, cultural and physical well-being including Public Health Promotion and Disease Prevention, Home and Long-Term Care, Primary Health Care, Health Systems Support, Supplementary Health Benefits, Jordan's Principle and the Inuit Child First Initiative.  | <ol style="list-style-type: none"> <li>1. First Nations peoples are physically well</li> <li>2. First Nations peoples are mentally well</li> <li>3. First Nations people have access to quality federally funded health services</li> </ol> |
| 2. Children and Families           | The Children and Families Service Area brings together programming related to community safety, family violence prevention, and programming for children, youth and families. It includes social programming such as income assistance, urban programming, and First Nations, Inuit, and Métis jurisdiction over Child and Family Services, supports better outcomes in the best interests of the child, and the integration of future safety and prevention programming (e.g. Pathways Initiative and co-development of policing legislation).  | <ol style="list-style-type: none"> <li>1. First Nations people are culturally safe and socially well</li> </ol>   |
| 3. Education                       | The Education Service Area brings together education programming at ISC including regional education agreements. It distinguishes between Elementary and Secondary Education and Post-Secondary Education to allow for distinct outcomes to be reported by First Nations identity and residence on or off-reserve.   | <ol style="list-style-type: none"> <li>1. First Nations students are progressing in their education</li> </ol>  |
| 4. Infrastructure and Environments | <p>The Infrastructure and Environments Service Area brings together all infrastructure, land, and environmental management programming to reflect the interlinkages between land, environment and natural resource management, resilient infrastructure, climate change related adaptation and mitigation, and emergency management and preparedness. These supports help enable First Nation communities to effectively manage their own reserve lands, to realize community socio-economic objectives at the pace and level of control of their choosing, and strengthen land governance over reserve lands and natural resources.</p> <p>This also includes a focus on:</p> <ul style="list-style-type: none"> <li>• Housing</li> <li>• Education facilities</li> <li>• Health facilities</li> <li>• Other community infrastructure and activities</li> <li>• Water and wastewater</li> </ul> | <ol style="list-style-type: none"> <li>1. First Nations communities have sustainable land management and infrastructure</li> </ol>  |
| 5. Economic Development            | The Economic Development Service Area recognizes that governance is enabled not only by programs, but also by supporting First Nations institutions.   | <ol style="list-style-type: none"> <li>1. First Nations communities are progressing in their business and economic growth</li> </ol>  |
| 6. Governance                      | The Governance Service Area brings together governance capacity programming to provide a more comprehensive view of various governance capacity programs to allow for better coordination. It recognises that governance is enabled not only by programs, but also by supporting First Nations institutions, such as through the Transformational Approach to Indigenous Data and the co-development work of the New Fiscal Relationship.  | <ol style="list-style-type: none"> <li>1. First Nations communities have governance capacity and support for self-determination</li> </ol>  |

## Crown-Indigenous Relations and Northern Affairs Canada

CIRNAC is responsible for renewing nation-to-nation, Inuit-Grown, government-to-government relationships between Canada and First Nations, Inuit and Métis people. It works to modernise the Government of Canada structures to enable First Nations people to build capacity and support their vision for self-determination and lead the Government of Canada's work in the North:

CIRNAC is '*committed to advancing reconciliation and supporting Indigenous People's rights to self-determination, and addressing historical wrongs and systemic racism.*'<sup>50</sup>

CIRNAC's overarching responsibilities cover:

- First Nations peoples and communities
- Treaties and agreements
- Northern affairs and the new Arctic and Northern Policy Framework
- Recognition of First Nations rights and self-determination discussions
- New permanent bilateral mechanisms
- Delivering on Truth and Reconciliation commission calls to action
- Indian Residential Schools
- Reconciliation
- National Inquiry into Missing and Murdered Indigenous Women and Girls

Table 18 outlines CIRNAC's core areas of responsibility and the actions outlined in the 2023-24 Corporate Plan for the Department.

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<sup>50</sup> Crown-Indigenous Relations and Northern Affairs Canada: 2023-24 Departmental Plan

Table 18 – CIRNAC Core Responsibilities and Focus Areas, Strategic Departmental Results<sup>51</sup>

| Core Responsibility           | Description   | Departmental Results   |
|-------------------------------|---|--|
| 1. Crown-Indigenous Relations | <p>Aims to support First Nations organisations, individuals, communities and governments in advancing reconciliation and self-determination through strengthening Crown-Indigenous relationships based on respect, cooperation, partnership, the affirmation and implementation of First Nations rights.</p> <p>In 2023-24, CIRNAC is focused on:</p> <ul style="list-style-type: none"> <li>• Specific claims</li> <li>• Additions to reserves</li> <li>• Investigations at former residential schools</li> <li>• Truth and Reconciliation Commission Calls to Action</li> </ul>   | <ol style="list-style-type: none"> <li>1. Past injustices are recognised and resolved</li> <li>2. Indigenous peoples advance their institutional structures and governance</li> <li>3. Indigenous peoples determine their political, social and cultural development</li> <li>4. Indigenous people strengthen their socio-economic conditions and wellbeing</li> </ol> |
| 2. Northern Affairs           | <p>This core responsibility aims to support Canada's Arctic and northern organisations, individuals, communities and governments in the pursuit of a strong, inclusive, vibrant, prosperous and self-sufficient North, the vision of Canada's Arctic and Northern Policy Framework. This includes federal coordination, science leadership, natural resource and environmental management, effective delivery of federal programming, and territorial relations.</p> <p>In 2023-24, CIRNAC is focused on:</p> <ul style="list-style-type: none"> <li>• Community well-being in the North and Arctic</li> <li>• Status of Nunavut's devolution</li> <li>• Reports produced by the Arctic Council that include Canadian content</li> <li>• Food sovereignty, food expenditures and capacity to purchase nutritious foods</li> </ul> | <ol style="list-style-type: none"> <li>1. Northerners and Indigenous Peoples advance their political, economic and social governance development</li> <li>2. Northern and Indigenous communities are resilient to changing environmental conditions</li> <li>3. Northern lands, waters and natural resources are sustainably managed</li> </ol>                        |

## Canadian First Nations Fiscal Management Act

### First Nations Fiscal Management Act, the Indian Act and Self-Governing Agreements

Within the jurisdiction of Canada, First Nations governments and communities operate under the *Indian Act* until they elect to engage in negotiations with federal and provincial governments to form a Self-Governing Agreement (SGA), allowing them to become 'self-governing'. When a First Nation is self-governing it must operate within the constraints of the Canadian Constitution and their laws must be harmonious with the federal and provincial governments. First Nations with SGAs sign Fiscal Financing Agreements (FFA) as part of the SGAs that give them authority over taxation and expenditure on their traditional lands.

First Nations without SGAs operate under the *Indian Act*. The *Indian Act* still gives First Nations the authority to pass by-laws related to the taxation of land. However, to strengthen and expand their authority without an SGA, the First Nation can choose to participate in the First Nations Fiscal Management Act (FMA). In order to participate in the FMA, a First Nation must submit a Band Council Resolution to the Minister of Crown-Indigenous Relations requesting to be added to the schedule of the FNFMA.<sup>52</sup>

Participating in the First FNFMA gives First Nation governments authority outside of the *Indian Act* over:

- **Financial administration laws** – providing greater scope in financial management that allows them to strengthen their real property tax systems and financial management systems more generally;

<sup>51</sup> Crown-Indigenous Relations and Northern Affairs Canada: 2023-24 Departmental Plan

<sup>52</sup> <https://www.aadnc-aandc.gc.ca/eng/1393512745390/1498849002682>

- **Local revenues** – allowing First Nations to raise local revenues through a greater scope of revenue raising tools, employing strong standards of accountability and providing access to capital markets that are available to other governments; and
- **Financing infrastructure and economic development** – providing the ability to leverage own-source income through loans and public sector-style bond issuance.<sup>53,54</sup>

In transitioning from the *Indian Act* to the FMA, any by-laws that the First Nation has instated in accordance with the *Indian Act* (section 83, paragraphs (1)(a)(b)(c)(g)),<sup>55</sup> will be transitioned into laws of the First Nation under the FMA, as long as they are consistent with the respective FMA, FMB, FNFA and FTC’s legislation.<sup>56</sup> However, even when subscribed to the FMA, the First Nation will continue to operate within the *Indian Act* on all other matters aside from taxation and fiscal management. This includes legislation on the formation of Bands, healthcare and education on Reserves, etc.

The First Nations Fiscal Management Act (FMA) is a First Nations led initiative to give First Nation’s Governments authority outside of the *Indian Act*.<sup>57</sup> It is designed to help First Nations to develop the capacity and secure capital required to bring to life the 7<sup>th</sup> Generation Strategy (i.e. support sustainable economic and social development)<sup>58</sup>, allowing First Nation’s Governments to exercise fiscal jurisdiction within Canada, including:

- Being eligible to borrow at similar rates and terms to other governments in Canada; and
- Using different revenue streams like taxation, government transfers and economic development as security for borrowing.

To achieve this, the FMA creates three First Nation led organisations that support First Nation governments:

- First Nations Financial Management Board (FMB)
- First Nations Finance Authority (FNFA)
- First Nations Tax Commission (FNTC)

To date approximately 348 First Nations are scheduled to, or participate in some way in the FMA. Of these:

- 147 collect tax under the FMA;<sup>59</sup>
- 195 have financial performance certified by the First Nation’s FMB;<sup>60</sup> and
- 153 have qualified as Borrowing Members for purposes of the FNFA.<sup>61</sup>

## Financial Management Board

The Financial Management Board’s (FMB) primary role is to help develop and maintain good governance and financial practices in First Nation’s governments. The FMB is run as a not-for-profit organisation by First Nation’s people for First Nation’s people. It operates at no cost to First Nations, only provides certification and other services when asked and is independent of the Canadian Federal Government.

The FMB has three primary objectives:<sup>62</sup>

- To develop and maintain certified standards and assist First Nations to implement and uphold them to achieve FMS certification;
- To assist with capacity development in First Nation’s Governments and communities; and

53 <https://fnfmb.com/en/about-fmb/about-first-nations-fiscal-management-act-fma>

54 <https://www.aadnc-aandc.gc.ca/eng/1393512745390/1498849002682>

55 <https://lois-laws.justice.gc.ca/eng/acts/l-5/page-12.html#h-332720>

56 <https://lois-laws.justice.gc.ca/eng/acts/F-11.67/page-15.html#h-226099>

57 <https://fnfmb.com/en/about-fmb/about-first-nations-fiscal-management-act-fma>

58 <https://fnfmb.com/en>

59 First Nations Tax Commission (2023). *2022-2023 Annual Report*.

60 Financial Management Board (2022). *2021-2022 Annual Report*.

61 FNFA (2023). *FNFA Annual Report 2023*.

62 FMB (2019). *Successes of the First Nations Fiscal Management Act*. PowerPoint Presentation dated October 7<sup>th</sup>.

- To facilitate the borrowing of money through the First Nations Finance Authority.

The FMB provides the following services to First Nations:

- Advice, policy research and review services relating to fiscal arrangements between First Nations and other governments; and
- Co-management and third-party management services in relation to borrowing from the FNFA or collecting local revenues through the First Nations Tax Commission.

Its role to develop and maintain standards includes providing an independent validation and certification system for First Nation Government's governance and financial management. These standards, listed below, are aligned with international best practices in addition to First Nations culture and traditions.

FMB standards and certification include:

- **Financial Administration Laws (FALs)** – an official document that contains policies and provisions that support sound financial management. A FAL template is provided to the First Nation, and then adapted to the unique aspects of the community;
- **Financial Performance (FP) certification** - a system to understand how well a First Nation uses its resources. It demonstrates financial health and is used to determine eligibility to borrow from the FNFA. It is based on a set of six financial health ratios with five years of audited annual reports; and
- **Financial Management System (FMS) Certification** - this certification is the ultimate goal. It demonstrates to First Nation's councils, community members, lenders and business partners that the good practices set out in the FAL are being implemented and followed successfully. To date, 24 First Nations have achieved this certification

The benefits of a First Nation achieving the FMS certification include:

- Demonstration of a strong financial administration and management skillset
- Comfort for First Nations membership, investors and lenders
- Access to debt financing at competitive rates and terms, including good standing with the FNFA
- General demonstration of accountability and transparency

The FMB's role as a capacity builder includes helping to strengthen First Nations communities and establish better relationships with financial institutions, businesses and other governments in Canada. The FMB supports First Nations in the four key areas of governance, finance, human resources and information management across a range of service areas.

The FMB has the authority to investigate, manage and resolve any problems related to non-compliance of taxation laws and risk or actual default of debt service payment(s) to the FNFA.<sup>63</sup>

The FMB provide a range of services that are designed to continually improve, and advance its core functions. These are summarised in the following Table 19.

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<sup>63</sup> <https://fnfmb.com/en/faq/first-nations-finance-authority-fnfa>

Table 19 – FMB Services

| Program                       | Description  |
|-------------------------------|--|
| Indigenous Shared Services    | <p>First Nations have identified that it is difficult to attract and retain staff, particularly skilled financial management staff, due to the remoteness and small size of many communities.</p> <p>The FMB set up Indigenous Services in 2020 to address the issue of attracting and retaining skilled employees in First Nations Governments. The Indigenous Services is a Not-For-Profit solution where First nations will be able to share the staff and infrastructure needed to undertake key tasks such a financial account management and investment analysis.</p>  |
| Default Management Prevention | <p>As part of the FMB's capacity building programs, it has piloted the Default Management Prevention Pilot Project (DMPPP).<sup>64</sup> This is intended to help the First Nation communities that are in full or partially under third-party management due to poor fiscal management or risk of default.</p> <p>The DMPPP includes the following elements:</p> <ul style="list-style-type: none"> <li>▪ <b>Community Engagement</b> - ensuring clear communication of the vision for the new approach, benefits of the approach and by-in of the full First Nation government and community.</li> <li>▪ <b>Capacity Gap Assessment and Plan Development</b> –assessment of the capacity of leadership and staff against the FMB standards, forming the basis of the Capacity Development Plan.</li> <li>▪ <b>Capacity Development Implementation</b> - working with the First Nation government to implement the plan and organise external training resources and programs. The FMB also assists the First Nation in any outsourcing of finance and accounting processes they need/desire.</li> </ul> <p>The DMPP has a number of flow-on benefits to First Nations communities, including providing better financial to access the low-cost loans the FNFA offers.</p> <p>Five First Nations communities, including Lake St. Martin, Roseau River and Little Saskatchewan, were involved in the pilot project and all were de-escalated as a result of participation in the project. An additional 20 First Nations groups have since joined Phase 2 the program, which began in 2020-21.</p> |
| 10 Year Grants                | <p>10-Year Grants are designed to support First Nations to build stronger communities over the long term and were developed by Indigenous Services Canada (ISC) and the Assembly of First Nations (AFN). The intent is that a 10-year grant will provide the predictability and flexibility the First Nation needs to plan and capacity build over the longer term, facilitating transition to the FMA regime.</p> <p>The amount of funding provided by the 10-Year Grant program is determined based upon existing funding levels. If all money is not utilised, the First Nation is entitled to retain unspent funds.</p> <p>To be eligible for the grant, the First Nation must have either a Financial Administration Law (FAL) or Financial Administration Bylaw (FAB) in place. The FMB can assist the First Nation to put these in place. The First Nation must also pass a Financial Performance (FP) certification based on the past 5 years of audited financial statements<sup>65</sup>.</p>  |

## First Nations Finance Authority

Established in 1992, the First Nations Finance Authority (FNFA) is a First Nations run, not-for-profit organisation without share capital organisation operating under the *First Nations Fiscal Management Act, 2005*. The FNFA is governed solely by the First Nations communities that join as Borrowing Members.<sup>66</sup> In 2023, the *Act* was amended to expand the FNFA's potential membership base beyond those First Nations still under the *Indian Act*. This enables federally funded not-for-profits authorities providing services to communities and Tribal Councils to now apply for membership.<sup>67</sup> It enables the FNFA to fund a greater breadth of community priorities and services and expand the loan portfolio.

<sup>64</sup> FMB (2019). Successes of the First Nations Fiscal Management Act. PowerPoint Presentation dated October 7th.

<sup>65</sup> <https://fnfmb.com/en/10-year-grant/eligibility-criteria>; <https://www.sac-isc.gc.ca/eng/1527080791657/1527080813525>

<sup>66</sup> <https://fnfa.ca/en/fnfa/>

<sup>67</sup> FNFA (2023). *FNFA Annual Report 2023*.

It both loans to First Nations governments and invests surpluses on behalf of those First Nations. Since its creation it has provided access to more than CAD \$1.83 billion of capital, created over 19,443 jobs and stimulated local economies by approximated CAD \$3.99 billion.<sup>68</sup>

The FNFA plays two critical roles to First Nations communities – firstly it provides First Nations governments with investment options and capital planning advice, and secondly, it provides access to both short-term and long-term loans with preferable terms. It operates with a goal to provide loans to First Nations with terms similar to those that other governments in Canada can access.<sup>69</sup> Both of these roles are outlined in Table 20 below.

Table 20 – FNFA Primary Roles

| Program    | Description  |
|------------|--|
| Financing  | <p>The short-term loans provide flexibility as rates are lower than commercial lending rates and only require interest payments during the construction stages of the project. Once construction is complete, the Borrowing Member will substitute the short-term loan for a long-term loan that suits their budget. Long-term loans have a maximum term of 30-years. It is possible for First Nations to lock-in the interest rate on their loan for budget certainty.<sup>70</sup> There is no borrowing limit for a First Nation group.</p> <p>The FNFA has the authority to raise capital to finance community and economic infrastructure, social and economic development and to deliver local services. The FNFA will provide loans against most stable, ongoing revenue streams supported by either Other Revenue or Property Tax revenues.<sup>71,72</sup> The FNFA will also provide loans against capital projects including infrastructure, social and economic development, land purchases, independent power projects, community housing and rolling stock/heavy equipment.</p> <p>The FNFA has the authority to refinance existing debt, which allows First Nations to reduce their debt-servicing payments, redirecting savings towards new developments.<sup>73</sup></p> <p>Borrowing Members enjoy a number of advantages:<sup>74</sup></p> <ul style="list-style-type: none"> <li>• Access to low rate (below bank prime) loans with repayment terms up to 30 years</li> <li>• First Nations choose the repayment terms that work best for their budgets</li> <li>• FNFA loans do not require collateral</li> <li>• FNFA loans can be used to refinance existing debt</li> <li>• FNFA's interest rates and terms parallel those available to provincial and local governments</li> </ul> |
| Investment | <p>The FNFA invests short-term cash surpluses on behalf of Borrowing Members. By pooling these short-term cash surpluses, local and regional governments can gain access to the same high-returns, low-commission rates that senior Canadian governments enjoy.</p> <p>The FNFA do this by partnering with the Municipal Finance Authority of British Columbia to allow First Nations governments to participate in their CAD \$2.2billion investment funds. These funds are managed by independent, third-party professional investors in low-risk, mainstream instruments.</p> <p>Benefits to First Nations include:</p> <ul style="list-style-type: none"> <li>• Competitive returns</li> <li>• Free redemption, subscriptions and transfers across funds</li> <li>• Flexible, unlimited, penalty free, quick access to funds</li> <li>• No minimum balance, deposit or redeem amounts</li> <li>• Simple and quick bank account type transactions</li> <li>• Multiple accounts with detailed monthly reporting</li> </ul>   |

68 FNFA (2023). *FNFA Annual Report 2023*.

69 <https://fnfa.ca/en/fnfa/>

70 <https://fnfa.ca/en/financing/eligible-projects/>

71 <https://fnfa.ca/en/financing/eligible-projects/>

72 <https://fnfa.ca/oldfiles/en/pdf/Eligible%20Projects.pdf>

73 <https://fnfa.ca/en/financing/eligible-projects/>

74 <https://fnfa.ca/en/fnfa/>

The FNFA receives borrowing requests from First Nations that have sent requests to be Borrowing Members.<sup>75</sup> The FNFA then requests and authorises the sale of securities sufficient to meet the requests of the borrowing members, subject to market and economic conditions. The Board of Directors of the FNFA determines the terms and conditions of these securities to best suit the interests of the Borrowing Members. The securities are then underwritten and go to market at the appropriate time. It is expected that most FNFA issues are bought primarily by institutional investors in Canada. Once the issue of securities is completed, the Borrowing Members receive their loans.

The FNFA uses sinking funds to assist Borrowing Members to repay the debt. They keep the principal and interest repayments constant over the course of the term of the loan. The interest payments collected from Borrowing Members are paid directly to bond holders.

A Debt Reserve Fund is used to assure that sufficient funds are available to meet the principal interest or sinking fund payments due to its obligations. Each Borrowing Member receiving a loan from a debenture issue is required to contribute 5 percent of the total amount borrowed to the Debt Reserve Fund. This part of the borrowing process is critical to the FNFA achieving an investment-grade credit rating, resulting in lower interest rates for Borrowing Members. This amount is invested on behalf of the Borrowing Member and returned to them at maturity.

In the case of default, the FNFA protects both the First Nation group and the bond holders against loan repayment default.<sup>76</sup>

## First Nations Tax Commission

In Canada, 42 percent of First Nations have property tax powers and are using these revenues to provide local services and infrastructure to respond to community needs.<sup>77</sup> The First Nations Tax Commission (FNTC) plays a critical role in creating national standards, procedures and policies which govern how the FNTC reviews and approves First Nation taxation laws and how they approach dispute prevention and resolution. They provide a number of services including creation of laws, by-laws and regulations, education, dispute management, communications, policy development and corporate services.

From a capacity building perspective, a partnership between the FNTC, the Tolu Centre of Indigenous Economics and Thompson Rivers University endeavours to bolster First Nations economies through transferring knowledge and best practices of First Nations Communities through university courses, workshops and certificate programs.<sup>78</sup> This program provides capacity building in areas of taxation administration, applied economics and land management specifically targeted around First Nations economies in Canada. They have also published a number of resources and textbooks on the aforementioned subjects.

## Canadian Indigenous Financing Institutions

Indigenous Financial Institutions (IFIs) in Canada, perform a crucial role in providing loans where mainstream financial institutions cannot. The IFIs have become experts in assessing risk-return associated with financing First Nations ventures and managing that risk, a capability that is derived from being connected at the grassroots level with First Nations entrepreneurs and communities.

There are 3 types of AFIs in Canada:

- **Aboriginal Capital Corporations** - a revolving loan fund that also provides some technical and advisory services to First Nation businesses and are capitalised by the Federal Government.
- **Aboriginal Community Futures Institutions** - provide loans and technical advice as well as strategic planning and community initiatives and are capitalised. by the Federal Regional Development agencies (RDAs).
- **Aboriginal Development Lenders** - provide debt, equity capital and business support services and are capitalised by the provincial governments and/or the private sector.<sup>79</sup>

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<sup>75</sup> <https://fnfa.ca/en/financing/fnfa-borrowing-process/>

<sup>76</sup> <https://fnfmb.com/en/faq/first-nations-finance-authority-fnfa>

<sup>77</sup> First Nations Tax Commission (2023). *2022-2023 Annual Report*.

<sup>78</sup> <https://www.tulo.ca/>

<sup>79</sup> OECD (2019), Linking Indigenous Communities with Regional Development, OECD Rural Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/3203c082-en>.



Even though IFIs take on more risk than their conventional counterparts, their annual loan losses averaged only 2.1 percent in 2019-20.<sup>80</sup> The Enhanced Access (EA) program,<sup>81</sup> is one of the five programs supported by the Native Aboriginal Capital Corporation Association (see below). It includes the EA loan fund which endeavours to help IFIs access additional loan capital for viable, qualified Indigenous businesses outside of the areas previously serviced by IFIs. The programs help to alleviate the cost incurred when servicing remote clients, provides repayable interest free loans as well as non-repayable loans and operational support, assisting AFIs to expand outside of their traditional geographical area at little additional cost to them. The majority of loans provided through this program are to start-ups, to help existing businesses expand or to modernise equipment.

Over the past 30 years, Canada has built a large network of 58 IFIs.<sup>82</sup> These were started by the Canadian Federal Government with a capital injection of CAD \$240million with a mandate to provide access to capital where traditional financial institutions have failed to do so. The IFIs are owned by the communities in which they operate and are under the control of First Nations boards.

From when the program was established until 2019, IFIs provided 42,000 loans to First Nation business owners with a total value of CAD \$2.3 billion. The IFIs have served as the main source of assisted market capital for privately held First Nations businesses in need of micro-credit and pre-market loans in Canada.<sup>83</sup>

IFIs provide a range of services to the First Nations businesses and First Nation's governments that they support. This includes:

- Development lending
- Business financing
- Business support services
- Non-repayable contributions
- Financial and management consulting
- Business start-up and aftercare services<sup>84</sup>

The IFIs are supported by two national bodies:

**Canadian Council of Aboriginal Business (CCAB)** - established to represent the AFIs, these promote the interests of the Canadian First Nation businesses, establish networks, provide expert advice, and conduct research into the First Nation business sector.

**Native Aboriginal Capital Corporations Association (NACCA)** - operates as the umbrella for the 50 AFIs across Canada. It advocates on behalf of the AFIs. It launched the Indigenous Growth Fund Initiative, which was designed to leverage government funding to attract higher levels of private and institutional funding to AFIs.

## Aotearoa/New Zealand First Nations Economic Development Institutional Framework

### Te Puni Kokiri (Ministry of Māori Development)

As a government agency, Te Puni Kokiri traces its history back to The Protectorate Departments (1840-1846). There have been several iterations of this government department, with its current form established in 1992 by the amalgamation of the Ministry of Māori Affairs and the Iwi Transition Agency.

Te Puni Kokiri's statutory responsibilities are to promote Māori achievement in health, training and employment, education and economic development and to monitor the adequacy of the Government's services to Māori people. It works in collaboration with all

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80 NACCA (n.d.). *Indigenous Financial Institutions*.

81 <https://nacca.ca/membership-value-for-afis/>

82 NACCA (n.d.). *Indigenous Financial Institutions*.

83 Collin, D., Rice, M.L. (2019). Evening the Odds: Giving Indigenous Ventures Access to the Full Financial Toolkit. PDF. Published by The Macdonald-Laurier Institute.

84 <https://nacca.ca/aboriginal-financial-institutions/>

other Government departments to achieve this, but specifically with those outlined in the following section on specific Foundational Projects, as well as service and fund delivery in health, education and housing. Te Puni Kōkiri’s strategy is outlined in Table 21 below.

Table 21 – Te Puni Kōkiri’s Strategy

| Component                                  | Description   |
|--|---|
| Vision                                     | The overarching long-term vision of Te Puni Kōkiri is to better enable Thriving Whānau – a vision underpinned by the idea that when whānau are thriving, so do their communities, hapū, iwi and all of Aotearoa.  |
| Purpose                                    | Drawing strength from our past to build an Aotearoa/New Zealand where whānau can all stand, thrive, and belong.   |
| Role                                       | Te Puni Kōkiri is government’s principal policy advisor on Māori wellbeing and development.   |
| Values                                     | <p><i>Te Wero</i> – We pursue excellence. We strive for excellence and we get results. We act with courage when required, take calculated risks and are results focused.</p> <p><i>Manaakitanga</i> - We value people and relationships. We act with integrity and treat others with respect. We are caring, humble and tolerant. We are co-operative and inclusive.</p> <p><i>He Toa Takitini</i> - We work collectively. We lead by example, work as a team and maximise collective strengths to achieve our goals.</p> <p><i>Ture Tangata</i> - We are creative and innovative. We test ideas and generate new knowledge. We learn from others and confidently apply new information and knowledge to get results.</p>   |
| Legislation that Te Puni Kōkiri administer | <p>Te Puni Kōkiri is responsible for undertaking the following tasks related to a range of legislation.</p> <ul style="list-style-type: none"> <li>• Formulating and, where necessary, amending the policy for the legislation;</li> <li>• Dealing with enquiries regarding the application of the legislation; and</li> <li>• Coordinating any obligations of the Minister under the legislation.</li> </ul> <p>As at October 2023, Te Puni Kōkiri was responsible for 30 pieces of primary legislation related to Māori people ranging from languages acts, reserved lands acts, housing acts, and community development acts.</p> <p>In addition, Te Puni Kōkiri was responsible for 29 pieces of secondary legislation, many of these various Māori board trust orders.</p> |

## Māori-Crown Economic Growth Partnership

Te Puni Kōkiri works in partnership with a range of other Government Agencies to support Māori economic self-determination. These government agencies, and the programs that they deliver are outlined in the sub-sections below. They are all underpinned by the Ministry for Business, Innovation and Employment’s He Kai Kei Aku Ringa – or vision for the Māori-Crown Economic Growth Partnership.

## Ministry for Business, Innovation & Employment

The Ministry of Business, Innovation, and Employment (MBIE) and Te Puni Kōkiri are responsible for leading He Kai Kei Aku Ringa 2023. He Kai Kei Aku Ringa has been both the name and the vision for the Māori-Crown Economic Growth Partnership since its launch in 2013, and subsequent review in 2023.<sup>85</sup> The whakatauki,<sup>86</sup> ‘He Kai Kei Aku Ringa,’ literally means to ‘provide the food you need from your own hands,’ representing the resilience, self-empowerment and economic self-determination of Māori People.

The Strategy’s focus is to drive a shift to ‘whānau-centric’ development.<sup>87</sup> Historically, and reflecting the limited colonial understanding of Indigenous groupings, most Crown-Māori interactions occurred at the level of either an iwi or on an individual basis. For many Māori, whānau have much greater relevance to daily life, controlling socio-cultural interactions, owning enterprises,

<sup>85</sup> Ministry of Business, Innovation and Employment (2023). *He Kai Kei Aku Ringa: Strategy and Action Plan*.

<sup>86</sup> proverbs, representing the wisdom guiding Maori Culture

<sup>87</sup> For most purposes Aotearoa/New Zealand Indigenous groupings can be divided into iwi, or a tribe/clan, which will consist of several whānau, bloodlines/descent/

corporations and trusts, and participating in the workforce. The Strategy notes that engaging with and understanding the needs and situation of a whānau as a whole, including the interactions between multiple members across generations, is key to encouraging and fostering Māori economic participation and development.

Table 22 below outlines the vision, objectives and foundational projects as part of this strategy.

Importantly, the He Kai Kei Aku Ringa builds on the principles of He Ara Waiora - the framework that Treasury use to understand holistic Māori wellbeing that is linked to Aotearoa/New Zealand's 'Our Living Standards Framework'.<sup>88</sup>

The Ministry of Foreign Affairs and Trade (MFAT), New Zealand Trade and Enterprises (NZTE), Ministry of Primary Industries and Treasury, alongside MBIE and Te Puni Kokiri are responsible for implementation of the foundational projects.<sup>89</sup>

Table 22 – Summary of He Kai Kei Aku Ringa

| Component  | Description  |
|------------|--|
| Vision     | <ul style="list-style-type: none"> <li>• Māori experience transformational change in economic prosperity</li> <li>• Māori experience transformational change in wellbeing</li> <li>• Aotearoa/New Zealand experiences transformational change in national economic prosperity</li> </ul>   |
| Objectives | <ul style="list-style-type: none"> <li>• <i>Te Taiao</i>: A low emissions, circular and climate resilient Māori economy as a prerequisite for Māori wellbeing.</li> <li>• <i>Mana Tuku Iho</i>: Māori identity in the economy enables Māori success.</li> <li>• <i>Mana Tauutuutu</i>: Supporting economic prosperity as a key enabler of community and whānau sustainability.</li> <li>• <i>Mana Āheinga</i>: Māori are enabled to chart their own course for the future.</li> <li>• <i>Mana Whanake</i>: Building foundations for the future.</li> </ul> |

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extended family groupings. Historically, whānau within an iwi would compete, sometimes violently, for territory or resources, but if threatened from outside the iwi all whānau would unite and cooperate to protect the iwi.

<sup>88</sup> The Treasury (2023). *He Ara Waiora*.

<sup>89</sup> Ministry of Business, Innovation and Employment (2023). *He Kai Kei Aku Ringa: Strategy and Action Plan*.

|                                     |   |
|-------------------------------------|---|
| Foundational Projects <sup>90</sup> | <p><i>Te Taiao</i></p> <ul style="list-style-type: none"> <li>• Developing an equitable transition strategy: actions to support Māori to manage the impacts and seize the opportunities from the transition of the Aotearoa/New Zealand Economy to a low emissions economy. MBIE is responsible agency.</li> <li>• Māori Circular Business: enabling Māori business to leverage new market opportunities by adopting circular business models and meeting environmental requirements. MBIE is responsible agency.</li> </ul> <p><i>Mana Tuku Iho</i></p> <ul style="list-style-type: none"> <li>• Aotearoa ki te Ao: Māori trade opportunities: MFAT and NZTE developing a strategic direction to advance Māori trade.</li> <li>• Progressive procurement: in partnership with Te Puni Kokiri, increasing supplier diversity in government procurement and promoting change in processes and behaviours to achieve more equitable outcomes for Māori.</li> </ul> <p><i>Mana Tauutuutu</i></p> <ul style="list-style-type: none"> <li>• Regional Strategic Partnership Fund (RSPF): NZ\$40 million allocated to support Māori land productivity. Delivered by MBIE.</li> <li>• Industry Transformation Projects (ITP): Eight ITPs, some of which are supported by the Enabling Māori Framework. Implemented by MBIE.</li> </ul> <p><i>Mana Āheinga:</i></p> <ul style="list-style-type: none"> <li>• Māori Access to Capital: Treasury is developing options for ministers on Māori's entities and individual to access capital from government and the financial sector.</li> <li>• Māori High Value Investment Vehicles: investigating scaling up existing or developing new Māori investment vehicles, implemented by MBIE in partnership with NZTE.</li> </ul> <p><i>Mana Whanake:</i></p> <ul style="list-style-type: none"> <li>• Te Mahere Whai Mahi Māori -Maori Employment Action Plan: includes actions on skills, inclusive workplaces and future-focused providers and enterprises.</li> <li>• Rautaki mot e Taurikura/Māori Primary Sector Strategy: Partnering with Māori, investing in new products and building capability. Implemented by MPI.</li> </ul> |
|-------------------------------------|---|

Further, MBIE provides secretariat support for the Māori Economic Development Advisory Board (MEDAB).<sup>91</sup> The MEDAB was established as part of He Kai Kei Aku Ringa to provide ongoing stewardship, monitoring and evaluation of He Kai Kei Aku Ringa and how it is implemented across government. MEDAB is currently made up of 7 Māori members and reports to the Minister for Māori Development and the Minister for Economic Development.

## Māori Incorporations and Trusts

In Aotearoa/New Zealand, Māori-Crown relationships are underpinned by the Treaty of Waitangi 1840. This granted Māori property rights and tribal autonomy, as well as the right to British citizenship in exchange for accepting British sovereignty.<sup>92</sup> In the subsequent decades, significant land was confiscated from Māori people or converted to individual titles and 'sold' to European settlers.

Aotearoa/New Zealand has undergone a process since the establishment of the Waitangi Tribunal's establishment in 1975, to undertake investigations into claims by iwi into of breaches of the Treaty of Waitangi. This compensation is paid, usually in the form of lump sum monetary compensation, limited transfers of common law or Torren system land interests and elements of culturally redress (e.g. dual naming, Māori consultation on environmental management).

In Aotearoa/New Zealand, under the *Te Ture Whenua Māori Act (1993)*, land titles are divided into six types:

- General land: e.g. Freehold title
- Crown land: Government-owned land
- Crown land reserved for Māori: Government owned land that is set aside for the use and benefit of Māori people
- Māori freehold land: land where ownership has been determined by the Māori Land Court to be owned by Māori people

<sup>90</sup> Ministry of Business, Innovation and Employment (2023). *He Kai Kei Aku Ringa: 2023 Action Plan*.

<sup>91</sup> Ministry of Business, Innovation and Employment (2023). *Maori Economic Development Advisory Board*

<sup>92</sup> Barnett, R. et al (2022), *Marramarra murru First Nations Economic Development Symposium: Symposium Working Paper*, First Nations Portfolio, Australian National University

- under freehold order
- General land owned by Māori: Land other than freehold title, that is owned by more than five people and the majority consider themselves to be Māori. Usually land once owned by Māori, but where owners choose to convert it out of the Māori land system, but is still beneficially held by majority Māori ownership.
- Māori customary land: land never converted or never seized by the New Zealand Government. This is only a very small portion of overall land in Aotearoa/New Zealand.

The ownership of Māori freehold land and General land owned by Māori by Māori people is generally treated like a shareholding. These individual shares are either held by individuals or in Māori trusts or Māori incorporations. The shares can be gifted, sold to another Māori person or corporations or, if originally individually held, transferred into a trust or incorporation.

In many cases in Aotearoa/New Zealand, the Māori Incorporations, Māori Land Trusts and iwi corporations are primary vehicles for Māori economic self-determination as they hold significant portions of Māori wealth in Aotearoa/New Zealand. As of 2020, 3.83 million hectares was under Māori collective ownership in a range of management structures that were established under the *Te Ture Whenua Māori Act 1993*<sup>93</sup>.

The following sections describe Māori Trusts, Incorporations and iwi corporations.

## Māori Trusts

Under the *Te Ture Whenua Maori Act 1993*, the Māori Land Court has the exclusive jurisdiction to establish five types of Māori trusts. All of the Māori trust structures operate as not-for-profit organisations operated under a Trust Deed by Māori trustees, who recognise First Nations traditions, priorities and relationships. In many cases, Māori trusts are responsible for maintaining strong local economies and Māori communities.

Under *Te Ture Whenua Māori Act 1993*, there are significant restrictions on transferring ownership of the land, whether by succession on the death of an owner or through the selling or gifting of the land. The Act favours ownership of Māori land staying with the owners' whānau,<sup>94</sup> hapū,<sup>95</sup> and descendants.

The five types of trust structures are described in Table 23 below.

Table 23 – Māori Trust Structures

| Trust                                 | Description   |
|---------------------------------------|---|
| Ahu whenua trusts (Māori Land Trusts) | <ul style="list-style-type: none"> <li>• Established to facilitate the use and administration of land, most commonly when the land is currently or intended to be used for commercial or other purposes</li> <li>• Generally, these trusts manage large parcels of land</li> <li>• The trust deeds articulate that decisions must be in the interest of the 'owners' of the land, who are the beneficiaries of the trust. Record of these owners are kept on official record.</li> <li>• The most common form of Maori Trust, with 46 percent (1.78 million hectares) of all collectively owned Māori land held in one of these trusts</li> </ul> |
| Whenua topu trusts                    | <ul style="list-style-type: none"> <li>• Iwi<sup>96</sup>-based or hapū based, allowing for management of land in the interest of certain iwi or hapū.</li> <li>• Do not provide shares to beneficiaries</li> <li>• Land management trust, managing whole blocks of land commonly used for receiving Crown land as part of a settlement</li> <li>• 3.3 thousand hectares is held in Whenua topu trusts</li> </ul>   |

<sup>93</sup> Westpac (2021). *The Maori Economy: obstacles and opportunities*.

<sup>94</sup> Broadly translates to extended family group. Generally encompasses three or four generations.

<sup>95</sup> Broadly translates to 'clan'. Each Māori person will belong or have links to many hapū. There are many hapū linked to each iwi.

<sup>96</sup> Iwi broadly translates to 'tribe' and represents the major structure of Māori society.

|                 |  |
|-----------------|--|
| Whanau trusts   | <ul style="list-style-type: none"> <li>Established to hold shareholdings in land, when the land is for the collective benefit of the community. The trust is treated as the owner of the land.</li> <li>Prevents the dilution of shares and need for succession planning</li> <li>Beneficiaries are called tīpuna/tūpuna (ancestors) and their descendants are listed in the trust order.</li> </ul> |
| Kaitiaki trusts | <ul style="list-style-type: none"> <li>Trust established to manage an interest in Maori land or another Maori entity when the person is a minor or has a disability or long-term impairment.</li> </ul>  |
| Putea trusts    | <ul style="list-style-type: none"> <li>A trust structure to enable landowners with smaller and uneconomical interests in land to pool their resources together</li> <li>The least common trust structure</li> </ul>  |

In addition to trusts managed in these structures, 542.3 thousand hectares is Māori land with no governance, which is caused by disputes in ownerships and use of land.

## Māori Incorporations

A Māori incorporation is a similar structure to a company; however, its primary purpose is to facilitate and promote the use and administration of Māori freehold land on behalf of the Māori owners.<sup>97</sup> Māori Incorporations are, by their nature and structure, the most commercial of all the Māori land management structures. They are designed to manage whole blocks of land for commercial purposes. Māori incorporations are common and hold a total of 40 percent of all collectively owned Māori land as of 2020.<sup>98</sup>

Māori incorporations are established by Māori land owners by completing an application process to the Māori Land Court and are governed by a constitution. They operate similarly to Ahu Whenua Trusts once established, as they operate to promote the use of Māori owned land. Whānau, pūtea and kaitiaki trusts can operate under the umbrella of a Māori incorporation.

Māori incorporations can hold one or more blocks of Māori freehold land as long as at least one of the blocks has more than two owners. They can acquire any type of land once constituted, not just Māori freehold.

Māori incorporations can undertake almost all commercial activities in the same way as other Aotearoa/New Zealand corporations, except for the sale of the incorporations land, which can only be undertaken under very strict rules and conditions to ensure that the land remains in the hands of the Māori owners, their whānau and hapū. Usually, Māori incorporations can mortgage Māori land unless the Māori Land Court has passed a resolution that the land cannot be mortgaged.

## Iwi Corporations

In Aotearoa/New Zealand, the iwi represent the various tribes of Māori people. There are more than 200 recognised iwi across Aotearoa/New Zealand. Iwi are the entities that receive compensation, usually in the form of monetary compensation, through the investigations undertaken by the Waitangi Tribunal. These iwi then establish corporate and trust structures to hold and manage these assets for the benefit of their members.

As of 2022, iwi are estimated to hold around NZ\$11.7 billion in assets across a range of asset types including property, fishing, financial assets, forestry and agricultural assets.<sup>99</sup>

Within Aotearoa/New Zealand, there is a wide range in the size of these iwi, with the top 10 largest iwi holding 69 percent of all post-settlement iwi assets.<sup>100</sup>

The top ten iwi generally have similar corporate structures, with an overarching trust that makes decisions about distributions to iwi members and the non-financial objectives of the iwi. A separate commercial entity manages the commercial assets and makes investment decisions based on a commercial mandate. As most of the compensation is paid in cash, iwi adopt varying investment approaches to manage the wealth and create economic opportunities for their iwi members.

<sup>97</sup> Maori Land Court (n.d.) *Māori Incorporations*.

<sup>98</sup> Westpac (2021). *The Maori Economy: obstacles and opportunities*.

<sup>99</sup> TDB. (2022). *Iwi investment report 2022*.

<sup>100</sup> TDB. (2022). *Iwi investment report 2022*.

Table 24 below list the top 10 iwi in 2022, their location, amount of original redress through the Waitangi Tribunal, total estimated assets and the top asset classes that each invest in.

Table 24 - Top ten iwi, 2022

| Iwi                 | Location      | Amount of Redress (NZ\$) and Date | Total Assets in 2022 (NZ\$) | Top Asset Classes                    |
|---------------------|---------------|-----------------------------------|-----------------------------|--------------------------------------|
| Ngāi Tahu           | South Island  | NZ\$471 million, 1997             | \$2,280 million             | Property, Primary Industries         |
| Ngāpuhi             | Northland     | Under negotiation                 | \$86 million                | Fishing, Financial Assets            |
| Ngāti Awa           | Bay of Plenty | \$42 million, 2005                | \$174 million               | Primary Industries, Property         |
| Ngāti Pāhauwera     | Hawke's Bay   | \$20 million, 2010                | \$113 million               | Forestry, Farming                    |
| Ngāti Porou         | East Cape     | \$90 million, 2011                | \$280 million               | Financial Assets, Fishing            |
| Ngāti Toa           | Porirua       | \$71 million, 2014                | \$811 million               | Property                             |
| Ngāti Whātua ōrākei | Ōrākei        | \$18 million, 2011                | \$1,660 million             | Property                             |
| Raukawa             | South Waikato | \$50 million, 2012                | \$228 million               | Property, Financial Assets, Forestry |
| Tūhoe               | Te Urewera    | \$169 million, 2012               | \$441 million               | Financial Assets, Forestry           |
| Waikato-Tainui      | Waikato       | \$463 million, 1995               | \$1,978 million             | Property, Financial Assets           |

# Appendix 1 – Details of Northern Australian Infrastructure Fund Investments

Investment decisions made as at 30 June 2022 are summarised in 25,<sup>101,102</sup> below.

Table 25 - Current Northern Australia Infrastructure Facility Loan Portfolio

| Project                                 | Infrastructure Type  | Location            | NAIF Financial Assistance  | Key Terms of NAIF Finance  | Total Project Investment |
|---|--|---------------------|--|--|--------------------------|
| Onslow Marine Support Base              | Marine supply base upgrade   | Onslow, WA          | Loan of up to A\$16.8 million  | 10 year tenor, subordinated, secured<br><br>Potential interest capitalisation, interest only during construction<br><br>Upfront facility fee | A\$120 million           |
| Lake Well Sulphate of Potash            | SOP project infrastructure   | Wiluna, WA          | Loan of up to A\$140 million   | n.a.   | A\$208 million           |
| Chichester Solar Gas Hybrid             | New solar photovoltaic generation facility at FMG Chichester Hub along with 60km transmission line   | East Pilbara, WA    | Loan of up to A\$90 million  | Concessional terms -longer tenor and concessional rate   | A\$188 million           |
| Pilbara Minerals Pilgangoora Operations | Expansion of operations, crushing and ore sorting facility   | Pilbara, WA         | Loan of A\$125 million   | n.a.   | A\$404 million           |
| Coburn Heavy Mineral Sands Project      | Development of mining operations and processing facilities   | Gascoyne Region, WA | Loan of up to A\$150 million   | n.a.   | A\$320 million           |
| Hastings Yangibana Rare Earths          | Mine site and hydrometallurgical plant   | Gascoyne Region, WA | Loan of up to A\$140 million   | n.a.   | A\$1 billion             |
| Mardie Salt and Potash Project          | Construction of large ponds and crystallisers, two process plans and new port facility for exporting | Pilbara Region, WA  | Loan of up to A\$490 million   | n.a.   | A\$1.3 billion           |
| Perdaman Urea Project                   | Urea plant   | Pilbara Region, WA  | Loan of up to A\$220 million   | n.a.   | A\$4.2 billion           |
| Expansion of Port of Dampier            | Multi-user wharf   | Pilbara Region, WA  | Loan of up to A\$160 million   | n.a.   |                          |
| Burrup Seawater Pipeline Extension      | Expansion of the Burrup seawater supply and brine disposal scheme                                    | Pilbara Region, WA  | Loan of up to A\$95 million  | n.a.   |                          |
| Kalium Lakes Sulphate of Potash         | Gas pipeline, power station, connecting road, communication facilities and accommodation village     | Beyondie, WA        | Loan of up to A\$74 million (plus additional A\$10 million facility) | n.a.   | A\$323 million           |
| Thunderbird Mineral Sands Project       | Mineral sands mine and infrastructure  | West Kimberley, WA  | Loan of up to A\$160 million   | n.a.   | A\$498 million           |
| Kimberley Cotton Gin                    | Two stand gin module and ancillary infrastructure  | Kununurra, WA       | Loan of up to A\$32 million  | n.a.   | A\$59.9 million          |

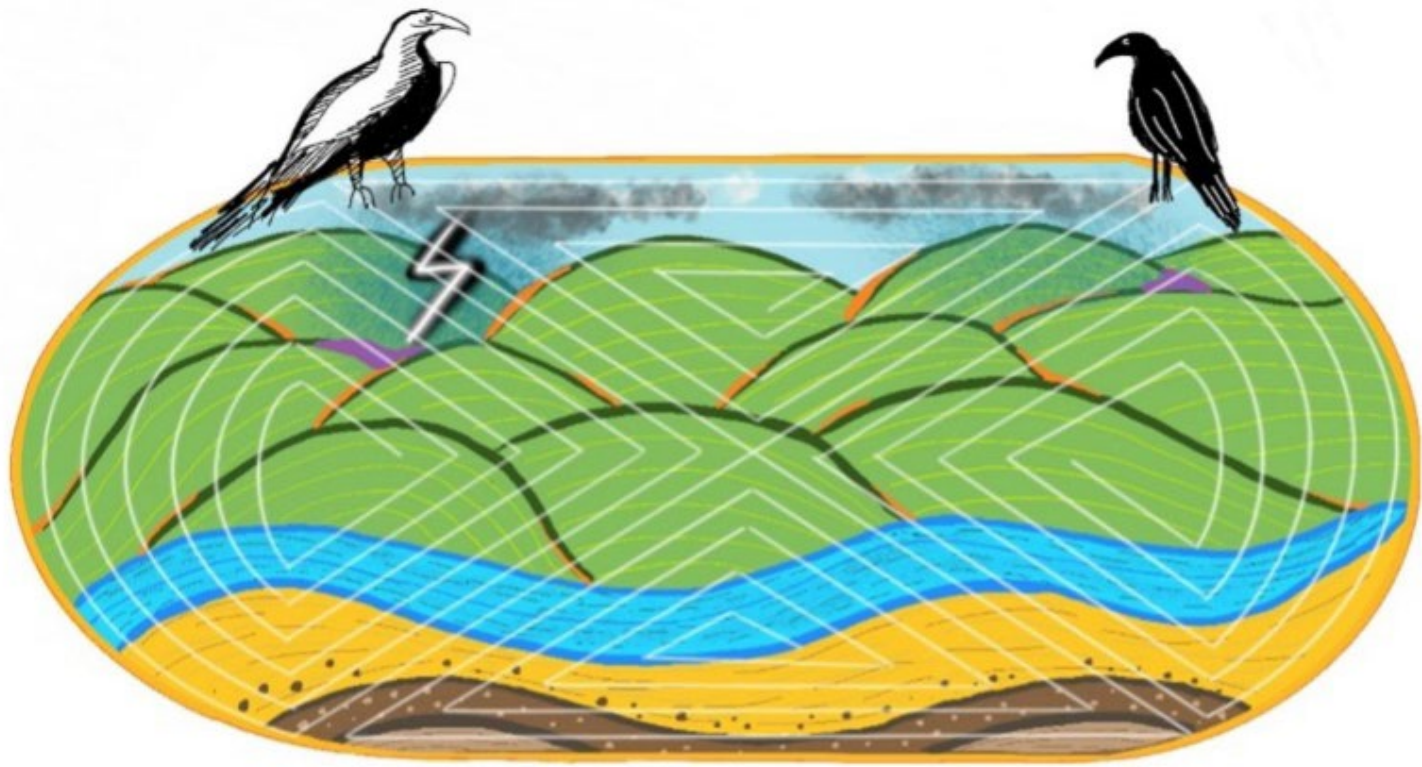
<sup>101</sup> Northern Australia Infrastructure Facility (2022), Annual Report 2021-22

<sup>102</sup> <https://naif.gov.au>



| Project   | Infrastructure Type  | Location                                    | NAIF Financial Assistance      | Key Terms of NAIF Finance   | Total Project Investment  |
|---|--|---|--------------------------------|---|---------------------------|
| Pippingarra Road Upgrade                              | Upgrading of Pippingarra Road  | Port Hedland, WA                            | Loan up to A\$19.5 million     | n.a.  | A\$25.0 million           |
| Sheffield Resources Thunderbird Mineral Sands Project | Construction of LNG power station and reticulation, site accommodation village, processing facility and local road upgrade   | West Kimberley, WA                          | Loan up to A\$95 million       | n.a.  | A\$562.0 million          |
| Darwin Shiplift                                       | Construction of new shiplift and associated marine infrastructure  | Darwin, NT                                  | Loan of up to A\$300 million   | Longer tenor and flexibility in drawdown and repayment structure  | A\$515 million            |
| Humpty Doo Barramundi                                 | Aquaculture farm infrastructure  | Humpty Doo, NT                              | Loan up to A\$31.4 million     | 12.25 year tenor<br>Senior, subordinated, secured<br>Upfront facility fee   | A\$14.4 million (stage 1) |
| Northern Territory Airports                           | Construction of freight and cold storage export facility at Darwin Airport; solar energy farms at Darwin, Tennant Creek and Alice Springs Airport; runway, taxiway and apron resurfacing and lighting at Alice Springs Airport | Darwin, Tennant Creek and Alice Springs, NT | Loan up to A\$150 million      | n.a.  | A\$300 million            |
| Charles Darwin University                             | Development of the Education and Community Precinct in Darwin CBD revitalisation   | Darwin, NT                                  | Loan of up to A\$151.5 million | n.a.  | A\$250 million            |
| Hudson Creek Power Station and Batchelor Solar Farm   | Solar farm and power station   | Darwin Region, NT                           | Loan of up to A\$37 million    | n.a.  | A\$74 million             |
| NT Local Jobs Fund                                    | Loans to businesses delivering smaller infrastructure projects in the Northern Territory   | NT  | Loan of up to A\$50 million    | n.a.  | A\$66.7 million           |
| Voyages Indigenous Tourism                            | Connellan Airport Upgrade (Airport runway, taxiway and apron upgrade; runway lighting; and contractor accommodation)   | Yulara, NT                                  | Loan up to \$27.5 million      | 20 year tenor, senior, secured<br><br>Interest capitalised, interest only, concessional interest rate<br>Upfront facility fee | A\$27.5 million           |
| James Cook University                                 | Construction of Technology Innovation Complex  | Townsville, QLD                             | Loan up to A\$98.0 million     | 25 year tenor, unsecured<br><br>Interest capitalised, potential interest only, concessional rate<br>Upfront facility fee      | A\$174.0 million          |
| Bauxite Hills Mine North                              | Construction of new floating terminal  | Cape York, QLD                              | Loan of A\$47.5 million        | n.a.  | A\$47.5 million           |
| Mater Hospital Car Park                               | Six level car park as part of Pimlico Campus   | Townsville, QLD                             | Loan up to A\$19.8 million     | n.a.  | A\$19.8 million           |
| Townsville Airport Redevelopment                      | Expansion of airport terminal  | Townsville, QLD                             | Loan up to A\$50.0 million     | n.a.  | A\$50 million             |

| <b>Project</b>   | <b>Infrastructure Type</b>   | <b>Location</b>   | <b>NAIF Financial Assistance</b> | <b>Key Terms of NAIF Finance</b> | <b>Total Project Investment</b> |
|--|--|---|----------------------------------|----------------------------------|---------------------------------|
| North Queensland Cowboys Community, Training and High-Performance Centre | Construction of multi-user social infrastructure   | Townsville, QLD   | Loan up to A\$20.0 million       | n.a.                             | A\$35 million                   |
| Kidston Pumped Storage Hydro   | Transmission lines, dam construction, two turbines, upgrade to local airstrip and control building                               | Kidston, QLD  | Loan up to A\$610.0 million      | Concessional interest rate       | A\$777.0 million                |
| Signature On-farm Beef Processing Facility                               | Beef processing facility and on-site accommodation   | Clermont, QLD   | Loan up to A\$24.0 million       | n.a.                             | A\$37 million                   |
| Heritage Minerals Mount Morgan   | Revitalisation of the Mount Morgan site for reprocessing tailings and rehabilitation   | Mount Morgan, QLD   | Loan up to A\$66 million         | n.a.                             | A\$157 million                  |
| Olive Downs South Project  | Roads, water, rail, power and coal handling infrastructure   | Bowen Basin, QLD  | Loan up to A\$167.5.0 million    | n.a.                             | A\$877 million                  |
| CQ University  | New construction, upgrades and refurbishments across campuses. Including new and upgraded digital platforms for remote learning. | Townsville, Mackay, Rockhampton, Emerald, Cairns, Gladstone, Charters Towers, Broome and Karratha | Loan up to A\$76.0 million       | n.a.                             | A\$76 million                   |
| Aircraft Maintenance and Repair Facility                                 | Aircraft and maintenance facility for Alliance   | Rockhampton, QLD  | Loan up to A\$21.0 million       | n.a.                             | A\$55 million                   |



## Yukeembruk Yibaay-maliyan mayiny (The Crow and Eagle-hawk People)

Crow and Eagle-hawk men lived at opposite ends of the Brindabella (Goondawarra) mountain range. Between the two camps lived two sisters, who were under the protection of Yibaay-Maliyan because they were related to him. Yukeembruk wished to marry the sisters, but they were forbidden to him by kinship laws. Upset by Yibaay-maliyan's refusal to approve marriage, Yukeembruk decided to kill his enemy's son. While Yibaay-maliyan was out hunting he tricked the boy to eat and drink until his belly was full, then he speared him. Yibaay-maliyan returned from hunting early as he knew something was wrong. While hunting he missed two wallabies, which had never happened before. Yukeembruk tried to make Yibaay-maliyan believe that many men came to camp, killed the boy and wounded Yukeembruk himself in the leg. The two men dug a burial site, but Yibaay-maliyan who had not been deceived by the story, tricked Yukeembruk into testing the size of the grave, placed his boy's body on top of him and buried the murderer alive. Yukeembruk dug his way out like a wombat but was transformed into a Crow. Yibaay-maliyan's camp was struck by lightning and he was transformed into an Eagle.

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