



Australian Government



Northern Australia Infrastructure Facility

Confidentiality Policy

November 2019

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Document Review and Approval

VERSION	OWNER/REVIEWER	REVISION	APPROVAL	APPROVAL DATE	NEXT REVIEW DATE
1.0	NAIF Management	Original	Board	August 2016	August 2017
2.0	NAIF Management	Six month review	Board	January 2017	January 2018
3.0	NAIF Management	Six month review	Board	June 2017	June 2018
4.0	Manager, Governance, Compliance and Risk	Annual review	Board	June 2018	June 2019
5.0	Manager, Risk & Compliance	Annual review	Board	November 2019	September 2020
5.1	Chief Operating Officer	Review	COO	November 2019	September 2020

Document Purpose

The purpose of this document is to provide NAIF Staff with an overview of what is meant by the expression 'confidential information', obligations in relation to confidential information and how such information is protected. This Policy is periodically reviewed and is effective upon approval.

1. Definitions

Executive Management means a person working in the executive leadership team and reporting directly to the CEO.

Investment Decision has the meaning given in the Investment Mandate.

Investment Mandate refers to the Northern Australia Infrastructure Facility Investment Mandate Direction 2018.

Project has the meaning given in the Investment Mandate.

Project Proponent has the meaning given in the Investment Mandate.

Service Level Agreement means the service agreement between NAIF and Export Finance Australia.

Staff refers to persons employed by, or operating under, an employment or similar contract with NAIF including full time or part time employees, consultants, contractors, and Export Finance Australia personnel working on NAIF matters under the Service Level Agreement.

2. Introduction

Handling confidential information is an important aspect of working at NAIF. During the course of day to day work, Staff see, receive, and hear information that is confidential. Staff are obliged to protect NAIF's confidential information.

NAIF treats business information regarding a Project Proponent (Proponent) during all stages of the transaction process as confidential. It will be used and disclosed only as needed to progress a Proponent's enquiry or proposal, and for related purposes, or to the extent that NAIF is required to disclose it (e.g. where disclosure is required by law). This is because the fact of, or extent of, a Proponent's engagement with NAIF is itself something NAIF treats as confidential and the information NAIF holds about a Proponent may directly or indirectly reveal information about the Proponent's engagement with NAIF. The Board has resolved that it is not appropriate to make public statements regarding a Proponent's engagement with NAIF, prior to an Investment Decision being made, except to the extent required to comply with the NAIF's statutory obligations

This Policy sets out:

- what sort of information should be regarded as confidential;
- Staff's obligations and NAIF's restrictions on Staff as to how and to whom that information can be disclosed (including after leaving NAIF); and
- NAIF's Policy on physically protecting that information.

3. What is confidential information

There is no precise definition for confidential information. It is the relationship of confidence rather than the information which creates legal obligations and gives rise to legal protection. Confidential information can include documents, ideas, commercial secrets, personal secrets and state secrets, communicated to the recipient, on the basis that the recipient will maintain confidentiality of that information. It can be communicated verbally, in writing, or electronically.

The NAIF Board has resolved that it considers and will treat as confidential all deliberations relating to Proponents at all stages of NAIF's processes. The NAIF Board has also approved the policy that NAIF will not comment on whether any particular Proponent has or has not approached the NAIF in regard to potential funding for a Project or on NAIF's internal processes. NAIF will, and holds out to Proponents that it will, treat all Proponent information as confidential, subject to complying with its legal obligations. This includes information relating to Proponents provided by Proponents or by third parties, as well as information relating to Proponents created by NAIF or its Staff or advisers.

NAIF and its Staff will therefore treat as confidential any information regarding the Board's internal processes and deliberations relating to Proponents at all stages of NAIF's processes. NAIF and its Staff will also treat as confidential information about Proponents which NAIF receives or creates, including the fact that the Proponent has been in contact with the NAIF.

This policy will apply to all Proponents and will remain in place regardless of any public speculation from sources other than the NAIF, until such time as the Proponent, with NAIF's agreement, expressly authorises NAIF to disclose the information (at which point NAIF is released from its obligation of confidence) or disclosure by NAIF is required by law, such as subsequent to an Investment Decision being made.

4. Staff obligations under this policy

The obligations on Staff to protect information are strict and set down in various pieces of legislation, common law and employment contracts with NAIF.

Other Commonwealth legislation such as the *Public Governance, Performance and Accountability Act (Cth)* ("PGPA Act") (section 28), the *Privacy Act 1998 (Cth)* ("Privacy Act") and the *Crimes Act 1914 (Cth)* ("Crimes Act") also apply to NAIF.

Specific contractual obligations will apply if a confidentiality clause or agreement has been entered into by NAIF, for instance in relation to a particular transaction. Confidentiality agreements entered into by NAIF, will include both reference to information which the relevant Proponent or third party instructs to keep confidential as well as information which NAIF instructs to keep confidential.

Staff also have confidentiality obligations under their employment contract with NAIF. Staff employment contracts with NAIF provide that Staff are obliged to protect NAIF's confidential information even if the Staff member has ceased to be employed by NAIF. Staff must not make use of confidential information in an improper manner. When employment with NAIF ends, Staff must return to NAIF all documents, software and any other material belonging to NAIF, regardless of whether they contain confidential information.

Personal information is recognised as confidential information by the Privacy Act. Under the Privacy Act, NAIF has obligations regarding how to handle personal information about current and former clients and Staff. Staff should not disclose personal information of a former and/or a current Staff member (including contact details) to a third party without the express permission of that Staff member. Staff should consult the CEO if asked for this type of information.

Some Staff may access Government information, including communications to and from Australian Diplomatic Posts, which is highly confidential. Under the Crimes Act, Staff must not disclose information made available to them by or on behalf of a Commonwealth Department to a person to whom access is not authorised.

5. What constitutes disclosure

For the purposes of this Policy, disclosing confidential information to a third party includes:

- distributing confidential information;
- communicating confidential information by verbal or written means including electronic transmissions; and
- permitting access to an original or copy document or electronic record containing confidential information.

Staff must be careful when discussing confidential information. Disclosure could arise from the conversations being overheard. Staff should avoid discussing confidential information in public places e.g. taxis, planes, lifts and reception areas. Staff should interview visitors to NAIF wherever possible in a conference room. If Staff conduct interviews in an office, all documents unrelated to the matter should be removed from sight.

6. When disclosure is permitted

NAIF is permitted to disclose confidential information in certain circumstances, including:

- when disclosure is required by law (including the NAIF Act and the Investment Mandate);
- with the prior consent of the party who disclosed the information to NAIF; or
- where disclosure of the information is expressly permitted in the relevant circumstances under a contract between NAIF and the disclosing party.

The Master Facility Agreement between NAIF, the relevant States and Territory and the Commonwealth government includes a clause permitting disclosure of confidential information in certain specified circumstances only. Disclosure of confidential information is also required in certain circumstances as set out in the NAIF Investment Mandate, such as when a consultation (or consultations) must be conducted, or subsequent to NAIF making an Investment Decision. These permitted or required circumstances do not constitute unlawful disclosure of confidential information.

If unsure whether disclosure is permitted or required, Staff should consult with the NAIF CEO.

7. Staff must protect confidential information

Staff must keep all confidential information properly secure. Documents which are not immediately necessary for work should be placed in file-rooms, filing cabinets, drawers or cupboards appropriate for their safe keeping. All original or particularly sensitive documents should be stored in a lockable file room. Any confidential information taken home for work purposes should be properly protected and secured at all times.

Staff should avoid unnecessarily copying documents and information. Documents and information should be distributed within NAIF only on a need to know basis.

When leaving a personal computer or device unattended, Staff should always use the screen lock.

Staff should make sure they are familiar with all of the requirements of security policies.

8. Confidentiality agreements

Proponents are expected to enter into NAIF's standard confidentiality deed as early as possible in NAIF's assessment process and before any confidential information is shared between NAIF and the Proponent. Where disclosure of confidential information is permitted to a third party under this Confidentiality Policy, Staff should consider requesting the third party to enter into a confidentiality deed. Third parties may include other financiers within a bank group for a Project, as they are not party to existing agreements or contracts, which bind and lawfully restrict NAIF and other government entities, such as the Master Facility Agreement.

Staff may be asked by a client or other third party to enter into a confidentiality agreement. NAIF will consider confidentiality agreements, which NAIF is requested to enter into on a case-by-case basis to ensure the terms align with the requirements of NAIF's Confidentiality Policy. NAIF may write to Proponents to request consent to disclose certain information and where a Proponent provides such consent this may enable NAIF to make certain disclosures of otherwise confidential information.

9. Balancing transparency

NAIF is aware that as a public sector organisation, there is a need to balance confidentiality with transparency to maintain the confidence of relevant stakeholders in NAIF's processes. NAIF has and will continue to look for ways to satisfactorily achieve that balance. This includes, where possible, obtaining the consent of Proponents and other key stakeholders to the publication of otherwise commercially sensitive information and through case studies about NAIF Investment Decisions which incorporate, where appropriate, anticipated outcomes such as public benefit, indigenous engagement and environmental outcomes.

10. Consequences of non-compliance

Breaches of these obligations (even if disclosed or used innocently) may have serious consequences which could result in termination of employment or other engagement with NAIF. Civil and criminal penalties also apply to employees for breach of this obligation. In extreme cases, it could involve imprisonment for up to two years.

11. Training

NAIF provides training to Staff on the application of this policy, including the treatment of confidential information and permitted disclosures.

12. Review and Approval

This Policy will be reviewed annually, or more frequently if required, by or on behalf of the Policy owner to ensure it remains aligned with governing legislation and best practice. The Board approves all material amendments and reviews the Policy at least every two years.

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

13. Seeking assistance

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