



# **Anti-Money Laundering and Counter-Terrorism Financing (Modification—Northern Australia Infrastructure Facility) Declaration 2022 (No. 1)**

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I, Kathryn Miller, make the following instrument as a delegate of the AUSTRAC CEO.

Dated 2 May 2022

Kathryn Miller  
National Manager, Legal and Enforcement  
AUSTRAC

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## 1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Modification—Northern Australia Infrastructure Facility) Declaration 2022 (No. 1)*.

## 2 Commencement

This instrument commences on the day after it is signed.

## 3 Cessation

This instrument ceases to have effect on 2 May 2027.

## 4 Authority

This instrument is made under paragraph 248(1)(b) of the Act.

## 5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 6 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) AML/CTF Rules;
- (b) customer;
- (c) designated business group;
- (d) designated service;
- (e) person;
- (f) personal information;
- (g) reporting entity.

In this instrument:

*Act* means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

*MFA* means a Master Facility Agreement which has the Commonwealth of Australia, the NAIF and one or more relevant State or Territory entities as parties.

*NAIF* means the Northern Australia Infrastructure Facility established under the NAIF Act.

*NAIF Act* means the *Northern Australia Infrastructure Act 2016*.

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***Project Proponent*** has the same meaning as in the *Northern Australia Infrastructure Facility Investment Mandate Direction 2021*.

***Relevant State or Territory entity*** means:

- (a) the State of Western Australia;
- (b) the State of Queensland;
- (c) the Northern Territory;
- (d) an entity wholly-owned by the State of Western Australia, the State of Queensland or the Northern Territory;
- (e) a treasury corporation or a ministerial body corporate established by the State of Western Australia, the State of Queensland or the Northern Territory.

## **7 Application**

This instrument applies to:

- (a) The NAIF; and
- (b) Relevant State or Territory Entities

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## Schedule 1—Modification

### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

#### 1 Items 6 and 7 of Table 1, subsection 6(2)

Repeal the Items, substitute:

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<b>Table 1—Financial services</b>		
<b>Item</b>	<b>Provision of a designated service</b>	<b>Customer of the designated service</b>
6	making a loan, where the loan is made in the course of carrying on a loans business and the loan is not of a type described in item 6A of this table.	the borrower
6A	making a loan, where the loan is made in the course of carrying on a loans business by the NAIF in the following circumstances: (a) the NAIF provides a loan to a relevant State or Territory entity under a MFA; and ; (b) the loan in paragraph (a) is on-lent, at the request of the NAIF, by the relevant State or Territory entity, to a Project Proponent under a separate finance contract, made in accordance with the terms of the MFA, that has the following characteristics: (i) the parties to the finance contract are, or include, the relevant State or Territory entity as lender, and the Project Proponent as borrower; and (ii) the relevant State or Territory entity makes a loan to the Project Proponent; and (c) the loan described in paragraph (a): (i) is made under, and in accordance with, the NAIF Act, the <i>Northern Australia Infrastructure Facility Investment Mandate Direction 2021</i> (as amended) or any future directions in force from time to time issued under subsection 9(1) of the NAIF Act; and (ii) may, at the direction of the relevant State or Territory entity, be: (A) paid directly by the NAIF to; or (B) repaid directly to the NAIF by; the Project Proponent.  To avoid doubt, any on-lending activity by the relevant State or Territory entity in accordance with paragraph (b) does not constitute the provision of a	the Project Proponent

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**Table 1—Financial services**

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<b>Item</b>	<b>Provision of a designated service</b>	<b>Customer of the designated service</b>
	designated service by the relevant State or Territory entity to the Project Proponent.	
7	in the capacity of: (a) lender for a loan; or (b) assignee (whether immediate or otherwise) of the lender for a loan;  allowing the borrower to conduct a transaction in relation to the loan, where the loan was made in the course of carrying on a loans business and the loan was not of a type described in item 7A of this table.	the borrower
7A	the NAIF, in the capacity of lender for a loan, allowing the Project Proponent to conduct a transaction in relation to the loan, where the loan was made: (a) in the course of carrying on a loans business; and (b) in the circumstances specified in item 6A of this table.  To avoid doubt, any activity by the relevant State or Territory entity which allows or facilitates the Project Proponent to conduct a transaction in relation to the loan does not constitute the provision of a designated service by the relevant State or Territory entity to the Project Proponent.	The Project Proponent

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## 2 Items 48 and 49 of Table 1, subsection 6(2)

Repeal the Items, substitute:

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**Table 1—Financial services**

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<b>Item</b>	<b>Provision of a designated service</b>	<b>Customer of the designated service</b>
48	guaranteeing a loan, where the guarantee is given in the course of carrying on a business of guaranteeing loans and the guarantee is not of a type described in item 48A of this table.	both: (a) the lender; and (b) the borrower
48A	guaranteeing a loan, where the guarantee is given: (a) by the NAIF to a relevant State or Northern Territory entity; and (b) subsequently, and at the request of NAIF, by the relevant State or Territory entity to a third party lender; in the course of carrying on a business of guaranteeing loans in the following circumstances:	both: (a) the third party lender; and (b) the Project Proponent

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**Table 1—Financial services**

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<b>Item</b>	<b>Provision of a designated service</b>	<b>Customer of the designated service</b>
	<p>(c) the loan which is being guaranteed is made by the third party lender to the Project Proponent; and</p> <p>(d) the guarantee in paragraph (a) is given under, and in accordance with, the NAIF Act, the <i>Northern Australia Infrastructure Facility Investment Mandate Direction 2021</i> (as amended) and any future directions in force from time to time issued pursuant to subsection 9(1) of the NAIF Act; and</p> <p>(e) the guarantee described in paragraph (b) is a State Guarantee as defined in, and given in accordance with:</p> <p>(i) a MFA which has the Commonwealth of Australia, the NAIF and the relevant State or Territory entity as parties; and</p> <p>(ii) separate guarantee agreement made in accordance with the terms of the MFA, which has, or includes, the relevant State or Territory entity as guarantor and the Project Proponent's third party lender as the beneficiary of the guarantee.</p> <p>To avoid doubt, the provision of the guarantee by the relevant State or Territory entity in accordance with paragraphs (b) and (e) does not constitute the provision of a designated service by the relevant State or Territory entity to either the third party lender or the Project Proponent.</p>	
49	in the capacity of guarantor of a loan, making a payment to the lender, where the guarantee was given in the course of carrying on a business of guaranteeing loans and the guarantee is not of a type described in item 49A.	both: (a) the lender; and (b) the borrower
49A	<p>the NAIF, in the capacity of guarantor of a loan made by a third party lender to a Project Proponent, making a payment to the third party lender either:</p> <p>(a) through a relevant State or Territory entity; or</p> <p>(b) directly, at the direction of the relevant State or Territory entity;</p> <p>where the guarantee was given:</p> <p>(c) in the course of carrying on a business of guaranteeing loans; and</p> <p>(d) in the circumstances specified in modified item 48A of table 1 in section 6 of the Act.</p> <p>To avoid doubt, the making of a payment by the relevant State or Territory entity to the third party</p>	both: (a) the third party lender; and (b) the Project Proponent

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**Table 1—Financial services**

<b>Item</b>	<b>Provision of a designated service</b>	<b>Customer of the designated service</b>
	lender in accordance with paragraph (b) does not constitute the provision of a designated service by the relevant State or Territory entity to either the third party lender or the Project Proponent.	

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**Important Notice to the person named in this instrument**

1. Under sections 136 and 137 of the Act, it is an offence to provide false or misleading information or documents. If any of the information submitted by the applicant or its representatives is found to be false or misleading, the exemption may be revoked and action initiated against the applicant.
2. The person granted the modification may request the AUSTRAC CEO to revoke or vary it at any time.
3. Any request to vary or extend this modification must be submitted to the AUSTRAC CEO or an approved delegate no later than 90 days before the date the change is requested to commence.