

PDR Number: §22

Date sent to MO:



Australian Government

Department of Finance

MINISTERIAL SUBMISSION

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Mr Jagers

Ms Patterson

Mr Webster

Mr Pelecky

Mr Robertson

Mr Sorbello

Minister for Finance**National Reconstruction Fund Corporation (NRFC) – Investment Mandate Finalisation**

Minister's action due by: 1 December 2023. To allow for registration and tabling of the *National Reconstruction Fund Corporation (Investment Mandate) Direction 2023* (Investment Mandate), its accompanying Explanatory Statement and the NRFC Board's Submission in Parliament by 7 December 2023.

Recommendation:

That you:

- i. **note** the NRFC Board's Submission (Attachment A) is supportive of the Investment Mandate without material changes and suggests one change to the Explanatory Statement;

NOTED / PLEASE DISCUSS

- ii. **sign** and date the Investment Mandate (Attachment B) with the Minister for Industry and Science, the Hon Ed Husic MP (Industry Minister) and approve the accompanying Explanatory Statement (Attachment C) that both have minor drafting amendments compared to the version agreed by the acting Prime Minister, the Hon Richard Marles MP, on 25 October 2023;

SIGNED / PLEASE DISCUSS

- iii. **sign** the joint letter (Attachment D) with the Industry Minister, to the NRFC Board Chair, Mr Martijn Wilder AM (the Chair), issuing the final Investment Mandate and Explanatory Statement to the NRFC Board and thanking the NRFC Board for their submission.

SIGNED / PLEASE DISCUSS

/ /

Katy Gallagher

Key Issues:

1. On 25 October 2023, the acting Prime Minister, the Hon Richard Marles MP, agreed to the updated Investment Mandate and Explanatory Statement ^{s22} [REDACTED]). Following this agreement, we wrote to you on 26 October 2023 to initiate the statutory consultation process on the Investment Mandate with the NRFC Board, noting that any material changes to the Investment Mandate from the NRFC Board would require further agreement from the Prime Minister ^{s22} [REDACTED]). No material changes were proposed by the NRFC Board to the Investment Mandate as a result of the statutory consultation process.
2. On 17 November 2023, the Chair provided you and the Industry Minister with a Submission on the draft Investment Mandate (Attachment A), consistent with the requirements set out in section 73 of the *National Reconstruction Fund Corporation Act 2023* (NRFC Act).
3. The NRFC Board's submission is supportive of the Investment Mandate with no material changes, and notes that it represents an appropriate framework to enable the NRFC to deliver its role outlined in the NRFC Act. The NRFC Board considered the approach regarding the rate of return and risk provided the Board flexibility in achieving a portfolio of investments that support the NRFC's mandate while providing a return to Government.
4. A detailed list of minor drafting amendments to the Investment Mandate and Explanatory Statement is at Attachment D. Amendments were agreed with Department of Industry, Science and Resources (DISR) following consultation with the NRFC.

s47C
**Next steps**

7. The Industry Minister is responsible for registering and then tabling the Investment Mandate and Explanatory Statement along with the Board's Submission in Parliament by 7 December 2023. Tabling the NRFC Board's Submission is consistent with NRFC Act requirements. The Investment Mandate will commence the day after registration and its commencement will not be impacted by the tabling date.
8. We understand the Industry Minister's Office has drafted a media release that will announce the registration and tabling of the Investment Mandate. We recommend your Office liaise with the Industry Minister's Office to ensure this is a joint media release.

Financial Implications:

9. N/A.

Background:

10. We previously briefed you on the Investment Mandate and Explanatory Statement for the NRFC §22).

Consultation:

11. DISR was consulted in the preparation of this brief.

Attachments:

Att A – Submission from the NRFC Board

Att B – Investment Mandate

Att C – Explanatory Statement

Att D – Joint Letter to the NRFC Chair

Att E – Overview of Drafting Amendments

Approved for electronic transmission

Dave O'Connor

A/g Assistant Secretary

Commercial Policy and Advice Branch

Commercial Investments Division

§22

Contact Officer:

§22

Job Title/Level:

Director/EL2

Telephone:

§22

PDR Number

§22

National Reconstruction Fund Corporation

The Hon Ed Husic MP
Minister for Industry and Science
PO Box 6022
Parliament House
Canberra ACT 2600

Senator the Hon Katy Gallagher
Minister for Finance
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ministers

Thank you for your correspondence of 27 October 2023 enclosing the draft investment mandate for consideration by the National Reconstruction Fund Corporation Board. The Board welcomes the opportunity to provide its views and has asked that I respond on its behalf. This response is provided as a submission under section 73 of the *National Reconstruction Fund Corporation Act 2023* (NRFC Act).

The Board's view is that the draft investment mandate represents an appropriate framework to enable the Corporation to deliver its role outlined in the NRFC Act. The Board acknowledges this direction, and once given will take all reasonable steps to ensure the Corporation complies with the investment mandate.

The Board has interpreted the draft investment mandate within the scope of section 71 of the NRFC Act which sets out that Ministers may give directions to the Board about the performance of the Corporation's investment functions and powers.

Rate of return and risk

We welcome the approach you have proposed to rate of return and risk. It provides flexibility for the Corporation to establish itself in the short-term and build a portfolio of investments that contribute to transforming Australia's industrial capability over the medium to long-term. We note the direction in the draft investment mandate for the performance against this portfolio benchmark return is to be measured before deducting operating expenses, and we are comfortable with this approach. The Corporation will follow direction set out in the draft investment mandate and apply the Australian Accounting Standards where applicable as set out in the draft explanatory statement.

However, while the draft investment mandate for the performance against this portfolio benchmark return is to be measured before deducting operating expenses, additional text included in the draft explanatory statement referring to expenses not directly related to making investments, creates some uncertainty as to the Government's expectations regarding the costs that should or should not be captured. We suggest this additional text could be removed given the very clear directions provided in the draft investment mandate and as would be accounted for under the Australian Accounting Standards.

The Corporation's broad remit to transform and diversify Australia's industry and economy requires the navigation a complex investment environment, interaction with non-traditional industry ecosystems, and engagement with early-stage, fast-growing private and unlisted companies. Our investments will likely be bespoke and tailored to take advantage of future market opportunities.

More broadly, we welcome subsection 9(3), which allows the Corporation to accept a higher level of risk where investments offer strategic or long-term benefits. We also welcome the discussion in the supporting explanatory statement that the Corporation may experience some losses in the short-term.

Delivering significant, long-term benefits to Australia, requires positive engagement with risk. The flexibility and risk tolerance outlined by the Government in the draft investment mandate supports the achievement of its ambition for the NRF.

Approach to investing

In developing the Corporation's investment strategy to give effect to this mandate, the Board is considering the optimal portfolio balance across loans and equity. There are situations where equity investments may have a greater potential to support transformation at the same or better rate of return compared with debt, although the realisation of those returns may be limited in the short-term.

The financing targets usefully provide an indication of the Government's policy priorities. We will aim to achieve these targets over the medium to long-term noting that the specific timeframe is subject to balancing the risk and return across the portfolio. The NRFC Act and the draft investment mandate require the Corporation have regard to a mix of policy priorities that will need to be balanced, including the need to deliver a return to the taxpayer.

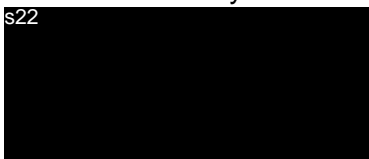
Collaborating with others

We welcome section 14 of the draft investment mandate that will see the Corporation collaborate and cooperate with other government entities. We believe aligning our efforts with peer organisations will help drive transformation more quickly, enabling better overall investment outcomes. Related government financing agencies have different but complementary objectives, which provides for a strong ecosystem of investment where we can all play a role. Any referred investments will be considered in line with the Corporation's legislative framework.

Thank you for the opportunity to provide this submission.

Yours sincerely

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Martijn Wilder AM
Chair, National Reconstruction Fund Corporation
17 November 2023



National Reconstruction Fund Corporation (Investment Mandate) Direction 2023

We, Ed Husic, Minister for Industry and Science, and Katy Gallagher, Minister for Finance, make the following direction.

Dated

Ed Husic
Minister for Industry and Science

Dated

Katy Gallagher
Minister for Finance

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Part 1—Preliminary

1 Name

This instrument is the *National Reconstruction Fund Corporation (Investment Mandate) Direction 2023*.

Note: Neither section 42 nor Part 4 of Chapter 3 of the *Legislation Act 2003* (which deal with the disallowance of legislative instruments and the sunset of legislative instruments) applies in relation to this instrument.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

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

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

3 Authority

This instrument is made under subsection 71(1) of the *National Reconstruction Fund Corporation Act 2023*.

4 Object

The object of this instrument is to ensure that the Corporation performs the Corporation's investment functions and exercises the Corporation's investment powers:

- (a) in a commercial manner to deliver a positive return to the Australian Government over time; and
- (b) so as to invest to support, diversify and transform Australia's industry and economy.

5 Simplified outline of this instrument

The Act established the Corporation to facilitate increased flows of finance into priority areas of the Australian economy. The priority areas are declared in the *National Reconstruction Fund Corporation (Priority Areas) Declaration 2023*.

The Act:

- (a) permits the Ministers, by legislative instrument, to give the Board directions about the performance of the Corporation's investment functions or the exercise of the Corporation's investment powers (or both); and
- (b) requires the Ministers to give at least one such direction.

The directions together constitute the Investment Mandate. This instrument sets out such directions.

The Corporation is bound by the Investment Mandate. The Board must take all reasonable steps to ensure that the Corporation and its subsidiaries comply with the Investment Mandate. The Board can be directed, under subsection 74(3) of the Act, to:

- (a) explain to the Ministers any failure to comply with the Investment Mandate; and
- (b) take specified action to ensure compliance.

The Board's investment policies must also be consistent with the Investment Mandate.

6 Definitions

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

- (a) Account;
- (b) Australia's greenhouse gas emissions reduction targets;
- (c) Board;
- (d) Commonwealth entity;
- (e) Corporation;
- (f) Corporation body;
- (g) Corporation's investment functions;
- (h) Corporation's investment powers;
- (i) Finance Minister;
- (j) financial accommodation;
- (k) Investment Mandate;
- (l) investment of a Corporation body;
- (m) Ministers;
- (n) priority area of the Australian economy;
- (o) uncommitted balance.

In this instrument:

Act means the *National Reconstruction Fund Corporation Act 2023*.

Corporation's investment practices means the performance of the Corporation's investment functions and the exercise of the Corporation's investment powers.

Corporation's portfolio, at a particular time, means all of the investments of all Corporation bodies at that time.

Department of Finance means the Department administered by the Finance Minister.

investment means an investment of a Corporation body.

portfolio benchmark return means the return described in section 8.

Part 2—Directions

7 Introduction

The Corporation will crowd in finance to transform and diversify Australia's industry and economy, and support the development of market-leading enterprises in the priority areas of the Australian economy that deliver high-value, internationally competitive products and services across the value chain. The Corporation will have regard to public policy outcomes when making investment decisions.

8 Portfolio benchmark return

The Corporation must:

- (a) target an average return of between 2 and 3 per cent above the five-year Australian government bond rate (weighted to the size and time of investing) as the benchmark return of the Corporation's portfolio over the medium to long term; and
- (b) measure performance against this benchmark before deducting operating expenses.

Note: The Ministers intend to review the portfolio benchmark return 3 years after this instrument commences.

9 Portfolio risk

- (1) In targeting the portfolio benchmark return, the Corporation must:
 - (a) operate with a commercial approach, including by undertaking appropriate due diligence, credit and investment risk assessment processes; and
 - (b) seek to develop the Corporation's portfolio so that it will be diversified and have, in aggregate, an acceptable but not excessive level of risk.
- (2) The level of risk deemed acceptable by the Corporation may be higher than the risk tolerance of commercial banks and private sector investors, if this higher risk tolerance supports the objects of the Act and this instrument.
- (3) Subject to subsection (1), the Corporation may consider that higher risks than are acceptable for other investments would be appropriate for:
 - (a) investments in emerging technologies and industries; or
 - (b) investments that support Australia's strategic interests; or
 - (c) investments with long-term payback periods.
- (4) The Corporation must periodically review the Corporation's investment and operational practices for the purposes of managing the risk of the Corporation's portfolio over time.

10 Investment considerations

- (1) The Corporation must, through the Corporation's investment practices, have regard to the matters that the Board, when performing its functions, is required to have regard to as set out in subsections 17(3A) and (4) of the Act.
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- (2) The Corporation must also have regard to:
 - (a) the desirability of supporting:
 - (i) sustainability and circular economy principles and solutions; and
 - (ii) regional development; and
 - (b) national security.

11 Corporation must take medium- to long-term outlook

- (1) The Corporation must take a medium- to long-term outlook in relation to the Corporation's investment practices.
- (2) Subsection (1) does not prevent the Corporation from making or realising particular investments over a shorter term when this would be consistent with the Act and this instrument.

Example: Realising investments when there are viable opportunities to do so and when this would be consistent with the Act and this instrument.

12 Corporation must consider impacts of Corporation's investment practices

The Corporation must:

- (a) consider the potential effect of the Corporation's investment practices on:
 - (i) other market participants; and
 - (ii) the efficient operation of the Australian financial market; and
- (b) seek to avoid displacing alternative private and public sector financing in each priority area of the Australian economy, to the extent that this is reasonably practicable.

13 Corporation not to damage Commonwealth's reputation

The Corporation must not, through the Corporation's investment practices, act in a way that is likely to cause damage to the Commonwealth's reputation.

14 Corporation must collaborate and cooperate

- (1) Where it would be practical and appropriate in order to facilitate the Corporation's investment practices, the Corporation must seek to cooperate and collaborate with other Commonwealth entities, and with any State or Territory entities, that are also able to support investments in the priority areas of the Australian economy.
 - (2) Without limitation, for the purposes of subsection (1), Commonwealth entities include but are not limited to the following:
 - (a) the Australian Renewable Energy Agency;
 - (b) the Clean Energy Finance Corporation;
 - (c) the Northern Australia Infrastructure Facility;
 - (d) Export Finance Australia;
 - (e) Housing Australia;
 - (f) the Regional Investment Corporation;
 - (g) the Net Zero Economy Agency.
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- (3) For subsection (1), each of the following is a *State or Territory entity*:
- (a) a State or a Territory;
 - (b) a body corporate established for a public purpose by or under a law of a State or a Territory.
- (4) Where the Net Zero Economy Agency has engaged with the Corporation on opportunities that support the transition to net zero emissions, the Corporation will consider those opportunities.

15 Targeted financing levels

The Corporation must allocate investments so as to target the following funding levels over the medium to long term:

- (a) renewables and low emission technologies—up to \$3 billion;
- (b) medical manufacturing—\$1.5 billion;
- (c) value adding in resources—\$1 billion;
- (d) critical technologies in the national interest—\$1 billion;
- (e) advanced manufacturing—\$1 billion;
- (f) agriculture, forestry, fisheries, food and fibre—\$500 million.

Note: These target areas do not correspond directly with the priority areas of the Australian economy. It might be possible to count a particular investment in a single priority area of the Australian economy towards the target set out in any one of paragraphs (a) to (f), or to the targets set out in more than one of paragraphs (a) to (f).

16 Limits on concessional financial accommodation

The Corporation must not provide financial accommodation on concessional terms unless it is satisfied that:

- (a) this is the most appropriate way of achieving particular public policy outcomes that the Corporation is seeking to achieve; and
- (b) based on a reasonable qualitative assessment, the level of concessionality is commensurate with the anticipated economic benefits and public policy outcomes; and
- (c) the concessionality provided is the minimum that would achieve those benefits and outcomes and allow the investment proposal to proceed.

17 Limits on equity investments

- (1) The Corporation must not acquire an equity interest in an entity if this would result in Corporation bodies and any other Commonwealth entities together either:
 - (a) holding a majority of the equity interests in the entity; or
 - (b) being in a position to control the entity.
 - (2) Subsection (3) applies if:
 - (a) a Corporation body holds one or more equity interests in an entity; and
 - (b) the Corporation body becomes aware that holding those equity interests results in the situation referred to in subsection (1).
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- (3) The Corporation body must:
 - (a) realise sufficient equity interests so that the situation no longer exists; and
 - (b) do so as soon as reasonably practicable in the circumstances after the Corporation body becomes aware of the fact.
 - (4) For this section, **control** has the same meaning as in the definition of “subsidiary” in the *Public Governance, Performance and Accountability Act 2013*.

18 Limits on guarantees

Note: Guarantees pose a particular risk to the Corporation’s balance sheet and, as such, restrictions on their use are appropriate.

The Corporation must:

- (a) not give guarantees unless it is satisfied that this is the most appropriate way of achieving particular public policy outcomes that the Corporation is seeking to achieve; and
- (b) ensure that any guarantee that it does give is appropriately limited and quantifiable; and
- (c) ensure that the total of the Corporation’s liabilities (whether actual or contingent) that are in respect of guarantees does not, at any time, exceed 5 per cent of the amount standing to the credit of the Account.

19 Australian industry participation

- (1) The Corporation must ensure that an Australian Industry Participation (AIP) plan is completed for an investment where required by the Australian Government’s AIP plan policy.
- (2) The Corporation must consult with the Department of Finance about the application of the Australian Government’s Buy Australian Plan.

EXPLANATORY STATEMENT

Issued by authority of the Minister for Industry and Science, and
the Minister for Finance

National Reconstruction Fund Corporation Act 2023

National Reconstruction Fund Corporation (Investment Mandate) Direction 2023

Purpose and Operation

Under the *National Reconstruction Fund Corporation Act 2023* (the NRFC Act), the purpose of the National Reconstruction Fund Corporation (the Corporation) is to facilitate increased flows of finance into priority areas of the Australian economy.¹ It is the Government's intention that the Corporation will perform this role in order to transform and diversify Australian industry, create secure, well-paying jobs, and boost sovereign capability. In performing this role, the types of investment the Corporation may make includes loans, guarantees and equity.

Under the NRFC Act, the Board of the Corporation (the Board) is responsible for deciding the strategies and policies to be followed by the Corporation and ensuring the proper, efficient and effective performance of the Corporation's functions.

The Corporation and its subsidiaries (Corporation bodies), will make individual investment decisions independently of Government. The Minister for Industry and Science and the Minister for Finance may issue one or more directions to the Board, under subsection 71(1) of the NRFC Act, in relation to the exercise of the Corporation's investment powers or the performance of the Corporation's investment functions, or both, and must issue at least one direction. Directions issued in this manner are known collectively as the Corporation's Investment Mandate (Investment Mandate). The purpose of the Investment Mandate is to provide a mechanism for the Commonwealth Government to articulate its broad expectations on the functions of the Corporation and how it invests and engages with risk.

The following statutory pre-conditions have been met in relation to the Investment Mandate:

- The responsible Ministers have had regard to the object of the NRFC Act, and any other matters they considered relevant, in preparing the Investment Mandate.²
- The Investment Mandate is consistent with the NRFC Act and does not directly or indirectly require Corporation bodies to make (or not to make) any particular investment.³

Further details about the *National Reconstruction Fund Corporation (Investment Mandate) Direction 2023* (the Mandate) are outlined in Attachment A.

¹ As prescribed by the National Reconstruction Fund Corporation (Priority Areas) Declaration 2023 (the Declaration).

² See subsection 71(2) of the NRFC Act.

³ See section 72 of the NRFC Act.

Authority

Section 71 of the NRFC Act provides authority for the legislative instrument. Section 74 provides that the Board must take all reasonable steps to ensure that the Corporation bodies comply with the Mandate, including the process in the event the Board becomes aware that the Corporation or a subsidiary has failed to comply.

Consultation

[Pursuant to section 73 of the NRFC Act, the responsible Ministers have consulted the Board during the preparation of the Mandate. The Board's response, which the Ministers subsequently considered, is tabled and publicly available.]

A consultation paper on the design of the Corporation (including the Mandate) was released on 30 November 2022. Submissions were open to 3 February 2023. More than 250 submissions were received from businesses, peak bodies, financiers, unions, specialist investment vehicles (SIVs), all levels of government, and the community.

Virtual consultations were held throughout December 2022 and January 2023. More than 48 virtual consultations were conducted, and the departments engaged with more than 430 organisations and individuals through roundtables and one-on-one meetings. Consultations included engagement with business and peak industry organisations, unions, financiers, other SIVs, indigenous stakeholders, Regional Development Associations and members of the public.

A Reference Group consisting of industry experts was also consulted on the key parameters in the Mandate.

Regulation Impact Statement

It is estimated that the regulatory burden is likely to be minor (OIA 23-04299).

ATTACHMENT A**Details of the *National Reconstruction Corporation (Investment Mandate)*
*Direction 2023*****PART 1 – PRELIMINARY****Section 1 – Name**

This section specifies the name of the instrument as the *National Reconstruction Fund Corporation (Investment Mandate) Direction 2023*.

Section 42 of the *Legislation Act 2003* (the Legislation Act) (which deals with the disallowance of legislative instruments) does not apply to this instrument: refer to section 44 of the Legislation Act and section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. Part 6 of the Legislation Act (which deals with the sunset of legislative instruments) does not apply to this instrument: refer to section 54 of the Legislation Act and section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

It is appropriate for the Mandate to not be subject to disallowance. Making the instrument subject to disallowance would introduce significant operational uncertainty for the Corporation and would be inconsistent with like instruments for other entities, including the Clean Energy Finance Corporation (CEFC) and the Northern Australia Infrastructure Facility (NAIF).

Section 2 – Commencement

Section 2 provides that the provisions set out in the Mandate commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Mandate is made under subsection 71(1) of the NRFC Act.

Section 4 – Object

Section 4 sets out that the object of the instrument is to ensure that the Board performs the Corporation's investment functions and exercises the Corporation's investment powers in a commercial manner to deliver a positive return to the Australian Government over time and so as to invest to support, diversify and transform Australia's industry and economy.

By requiring it to operate in a commercial manner, the Corporation will need to invest responsibly and manage risk such that it is financially self-sufficient and achieves the portfolio benchmark return (see section 8 of the Mandate). As the Corporation will not award grants, the Corporation's investments must be made with an expectation of financial return.

Section 5 – Simplified outline of this instrument

The simplified outline of the Mandate is included to assist readers in understanding the substantive provisions. It is not intended to be comprehensive and readers should rely on the substantive provisions.

Section 6 – Definitions

This section provides definitions of terms used in the instrument. Although these definitions are largely self-explanatory, the following points should be noted in particular:

- “Investment practices” is defined in the Mandate, and used in this Explanatory Statement, to mean the exercise of the Corporation’s investment powers and performance of the Corporation’s investment functions.
- The calculation of the Corporation’s “portfolio benchmark return” is described in section 8 of this Explanatory Statement.
- Further terms used in this Explanatory Statement are explained in footnotes where appropriate.

PART 2 – DIRECTIONS

Section 7 – Introduction

Section 7 provides an introduction to Part 2, setting out the Government’s broad expectations regarding how the Corporation should interpret the directions that follow in this part of the Mandate. Section 7 is not a direction. It sets out that the Corporation is expected to help attract additional private finance and investment in the priority areas⁴ in order to transform and diversify Australian industry, and to improve the competitiveness of Australian businesses across the domestic industry value chain.⁵

In line with its policy intent, the Corporation is expected to have regard to public policy outcomes when considering investments, which means taking into account the Investment Considerations listed in section 10 of the Mandate, subsections 17 (3A) and (4) of the NRFC Act.

Section 8 – Portfolio benchmark return

Section 8 sets out the Corporation’s portfolio benchmark rate of return.

The Corporation must target a cumulative average return of 2-3 per cent above a five-year Australian Government bond rate as the benchmark return of the Corporation’s portfolio over the medium to long term.

⁴ As declared in the Declaration.

⁵ The “industry value chain” takes into account all steps from pre- through to post-production at which value can be added, including research and development (R&D), design, logistics, production, distribution, sales and services.

The Australian Government bond rate is to be calculated from individual reference rates using the five-year Australian Government bond rate⁶ applicable at the time of each investment, and weighting the portfolio for the timing and relative to the quantum of each individual investment.

Performance against the portfolio benchmark return will be measured after deducting credit losses but before deducting the Corporation's operating expenses (those not directly related to making investments) and will be published in the Corporation's annual report. The Corporation will follow the Australian Accounting Standards where applicable in calculating and measuring its return (for example, in particular, AASB 9 *Financial Instruments*).

The portfolio benchmark return target is expected to be earned across the portfolio of investments over the medium- to long-term. Individual investments could be made with expected individual returns above or below (using the concessionality principles set out in Section 16 of the Mandate) the portfolio benchmark return.

Proponents should not expect to be able to access financing from the Corporation at the portfolio benchmark return. The Corporation is required to apply commercial rigour in assessing all investments. The actual return the Corporation seeks for any given investment will be a risk-adjusted return reflecting the individual characteristics of specific projects, the need to cover the operating expenses of the Corporation, and the requirement to target the portfolio benchmark return on a portfolio basis, in addition to the desired public policy outcomes⁷.

The Government is committed to driving the transformation and diversification of Australia's industry and economy over the long term. The Mandate therefore establishes medium- to long-term portfolio performance measures with the intention to conduct a review of the portfolio benchmark return three years after commencement of the Mandate to ensure it is appropriate.

Section 9 – Portfolio risk

Section 9 sets out the Corporation's portfolio risk.

Paragraph 9(1)(a) provides that in targeting the portfolio benchmark return, the Corporation must operate with a commercial approach, this includes but is not limited to undertaking appropriate due diligence and credit and investment risk assessment processes.

Paragraph 9(1)(b) further provides that the Corporation must also seek to develop an overall portfolio that is sufficiently diversified and has an acceptable but not excessive level of risk.

Further to paragraph 9(1)(b), subsection 9(2) provides that the level of risk deemed acceptable by the Corporation may be higher than the risk tolerance of commercial banks and private sector investors, if this higher risk tolerance supports the objects of

⁶ The five-year Australian Government bond rate is the bond rate as published by the Reserve Bank of Australia immediately preceding the date a binding investment agreement is executed. The bond market yield is to be used.

⁷ Refer to section 7 of this Explanatory Statement for an explanation of "public policy outcomes".

the NRFC Act and this instrument. In particular, the Government has directed the Corporation to diversify and transform Australia's industry and economy. This focus may increase the Corporation's exposure to credit risk as transformative activities may have a higher risk profile than established, business-as-usual activities and therefore the overall level of risk in the Corporation's portfolio may increase.

Subsection 9(3) provides the Corporation may take on higher risk (when compared to the risk that it would normally consider acceptable for other investments) for investments in emerging technologies and industries, investments that support Australia's strategic interests (e.g. investments in support of Australia's national security, sovereign capability or supply chain resilience), or projects with longer term payback periods.

When considering the Portfolio risk outline in the Mandate, the Corporation will make a range of investments, including those aimed at transforming Australia's industry and economy. Some of these investments will be in emerging technologies and technically complex projects that carry higher risk than what the market might typically accept. Consequently, in practice this will involve some short-term volatility in the Corporation's returns, including losses or provisions in some projects and the possibility of losses in some years where there is significantly worse asset performance than expected. This includes potential losses in the early years, which in part reflects why the Corporation's portfolio benchmark return is measured over the medium to long term.

In recognition of any volatility in the Corporation's returns, subsection 9(4) sets out the Government's direction that the Corporation will periodically review its investment and operational practices for the purposes of managing the risk of its portfolio over time.

Section 10 – Investment considerations

Section 10 sets out the considerations the Corporation must take into account when carrying out its investment practices.

Subsection 10(1) provides that the Corporation must have regard to the matters set out in subsection 17(3A) of the NRFC Act, namely:

- (a) the desirability of transforming Australia's industry and economy by:
 - (i) growing or improving Australia's industrial capability⁸; or
 - (ii) improving Australian industry's ability to pursue value-adding opportunities⁹; or
 - (iii) supporting a long-term improvement in Australia's economic diversity; and
- (b) the desirability of attracting private sector finance or investments into the priority areas of the Australian economy; and
- (c) Australia's greenhouse gas emissions reduction targets and the desirability of supporting decarbonisation; and

⁸ "Grow" in this context is taken to mean growing both new and existing industrial capabilities.

⁹ "Value-adding opportunities" are taken to mean opportunities to improve competitiveness based on additional value offered to the consumer, rather than low cost alone, across the entire industry value chain from pre- through to post-production (see also footnote 7 in reference to "industry value chain").

- (d) the desirability of creating secure jobs and a skilled and adaptable workforce; and
- (e) the desirability of enhancing Australia's resilience against supply chain vulnerabilities; and
- (f) the desirability of encouraging the commercialisation of Australian innovation and technology.

Subsection 10(1) also refers to subsection 17(4) of the NRFC Act, providing that the Corporation must have regard to the desirability of encouraging and improving economic participation by historically underrepresented groups, including:

- (a) women; and
- (b) First Nations Australians; and
- (c) people with a disability; and
- (d) people of culturally and linguistically diverse backgrounds

Subsection 10(2) further provides that the Corporation must also have regard to the desirability of investments to help support sustainability and circular economy principles and solutions, and regional development. The Corporation must also have regard to national security. These terms are understood as follows:

Circular economy

The intention underlying subparagraph 10(2)(a)(i) is to ensure that, in considering its investment activities, the Corporation seek to strengthen Australia's circular manufacturing capabilities, focusing on:

- Resource efficiency, for example, by supporting projects that design and manufacture products that can be reused, recycled or reprocessed at their end of use and/or those that avoid the creation of waste and pollution.
- Resource circularity, for example, by supporting projects that use recycled content in manufacturing (including from advanced and organic recycling processes).
- Resource productivity, for example, by supporting projects that do more with less virgin materials and energy inputs.
- Resource regeneration, for example, by supporting projects that substitute materials and processes that harm the environment, with regenerative resources.

Regional development

Regional development, as used in subparagraph 10(2)(a)(ii), is intended to refer to activities that have the potential to support the long-term economic development of Australia's regions and reduce economic disparities between regions and cities.

The intention underlying subparagraph 10(2)(a)(ii) is to ensure that, in considering its investment activities, the Corporation has regard to the Government's broader approach to regional investment, which places regions and their people at the centre of decision-making, ensuring investments are locally informed, supported, and draw on a region's unique strengths.

The intention additionally is that Corporation consider the broader social and economic context of a region and the potential impacts of its investments (to inform this, the Corporation should where possible, consider measuring their impacts). This includes considering interactions with other public or private investments or activities in the region when evaluating investment proposals. Where appropriate, the Corporation should seek to consult with relevant State, Territory or Commonwealth government agencies, to ensure its investments complement existing public or private investment activities in the region (see also sections 11 and 13 of the Mandate).

National security

The Corporation's investment activity could provide financing to an entity which produces technologies, products or services that could be used for purposes that are contrary to Australia's national security. For this reason, in considering its investment activities, the Corporation must also have regard to national security, for example by conducting national security assessments as part of its risk management processes. The Corporation may also have regard to positive outcomes on national security from a particular investment.

Section 11 – Corporation must take medium- to long-term outlook

Subsection 11(1) directs the Corporation to take a medium- to long-term outlook in relation to its investment practices. This ensures the Corporation has the flexibility to offer patient capital to meet its policy objectives. This provision should not be interpreted as preventing the Corporation from providing short-term investments, or a series of several short-term investments to deliver long-term outcomes.

Further, to ensure that the Corporation does not unduly displace alternative private sector support where such support is present or emerges, subsection 11(2) preserves the Corporation's ability to take short-term actions to make or realise investments, for example, where the private market is able to take over the financing and where this is consistent with the NRFC Act and the Mandate. For example, in the case of equity investments, the Corporation may seek to realise investments if it is appropriate to do so and where the private sector can take over in a manner that aligns with the Corporation's objectives.

Section 12 – Corporation must consider impacts of Corporation's investment practices

Section 12 provides that investments of the Corporation should not disrupt areas where the market is functioning well. The Corporation nevertheless has the potential to impact on other market participants and the operation of Australian financial markets. The Corporation should always consider this potential impact when making investment decisions.

The Corporation should, as far as is reasonably practicable, avoid competing with private sector investment where such investment is present, or competing with other Commonwealth, State or Territory entities that are also able to, or already do, support investments in the priority areas of the Australian economy as specified in the Declaration. Instead, it is intended that the Corporation complement and attract additional private investment and complement (not duplicate) public sector

investment, including investment through existing Australian Government SIVs such as the CEFC, NAIF, Regional Investment Corporation and Export Finance Australia (EFA). For example, the Corporation should not seek to refinance existing debt held by other SIVs at a lower rate where it is not required.

Section 13 – Corporation not to damage Commonwealth’s reputation

Section 13 provides that the Corporation has a responsibility not to act in a way that is likely to cause damage to the Commonwealth’s reputation.

Section 14 – Corporation must collaborate and cooperate

Section 14 directs the Corporation to cooperate and collaborate with the private sector and other Commonwealth, State or Territory entities that are also able to support investments in the priority areas (for example, but not limited to, the CEFC, NAIF and EFA) to minimise potential overlap or duplication and coordinate co-investment where appropriate, and to consider opportunities (including under subsection 14(4) in relation to the transition to net zero emissions).

The Corporation may invest alongside other SIVs where appropriate, and subsection 14(2) provides a non-exhaustive list of relevant agencies.

Subsection 14(3) defines a State and Territory entity to mean a State or Territory, or a body corporate established for a public purpose by or under a law of a State or Territory.

Section 15 – Targeted financing levels

Section 15 outlines six areas in which the Corporation is required to target certain financing levels over the medium to long term:

- Renewables and low emission technologies: up to \$3 billion
- Medical manufacturing: \$1.5 billion
- Value adding in resources: \$1 billion
- Critical technologies in the national interest: \$1 billion
- Advanced manufacturing: \$1 billion
- Agriculture, forestry, fisheries, food and fibre: \$500 million

This section does not require the Corporation to manage separate sub-funds for each of the identified areas. It is, however, the Government’s expectation that the Corporation report its progress against these target financing levels as part of its regular reporting.

If, over the medium to long term, the Corporation becomes aware that it is falling short of any one of these target financing levels, it should seek to prioritise its investments going forward such that these levels are met within a reasonable and practicable period of time.

The six identified areas in which the Corporation is to target these financing levels do not correspond exactly with the priority areas of the Australian economy specified in

the Declaration. As such, this section notes that investments in a single priority area may be counted towards any other appropriate target or targets set out in this section.

To determine which types of technology qualify as ‘critical’, the Corporation may refer to the Government’s most recent List of Critical Technologies in the National Interest as relevant at the time of investment. Further details are available at: <https://www.industry.gov.au/publications/action-plan-critical-technologies/list-critical-technologies-national-interest>

This section is not intended to override other provisions of the Investment Mandate: in targeting these funding levels, the Corporation still must perform its investment functions and exercise its investment powers in accordance with the NRFC Act.

Section 16 – Limits on concessional financial accommodation

Section 16 sets out directions in relation to the Corporation providing concessional finance.

The Corporation is able to use a wide range of investment tools to facilitate flows of finance into the priority areas of the Australian economy.¹⁰ This includes providing commercial and concessional finance where necessary to deliver on the Corporation’s policy intent. Concessional finance is provided on more favourable terms than the borrower could obtain in the private market. For debt investments, concessions may be provided in many forms, for example, but not limited to, lower than market interest rates, longer loan tenors, subordinated positions, income contingent repayment terms, or additional/longer or more flexible grace periods before the payment of the principal and/or interest is due. For equity investments, concessions may include, but not be limited to, different classes of shares and lower equity internal rate of return.

Section 16 provides that the Corporation must not provide financial accommodation on concessional terms unless it is satisfied that (a) this is the most appropriate way of achieving particular policy outcomes¹¹, (b) based on a reasonable qualitative assessment, the level of concessionality is commensurate with the anticipated economic benefits and public policy outcomes, and (c) the concessionality provided is the minimum that would both achieve those benefits and outcomes and allow the investment proposal to proceed.

Section 17 – Limits on equity investments

Section 17 provides that the Corporation must not, whether individually or alongside other Commonwealth entities, take a controlling equity stake in any entity.

Subsection 17(1) sets out that Corporation bodies must not acquire an equity interest in an entity if it would result in Corporation bodies and any other Commonwealth entities together holding a majority of equity interests in the entity or being in the position to control the entity.

Under subsections 17(2) and (3), where a Corporation body holds an equity interest in an entity and becomes aware that this interest would breach subsection 17(1), it must

¹⁰ As specified in the Declaration.

¹¹ Refer to section 7 of this Explanatory Statement for an explanation of “public policy outcomes”.

take steps to realise sufficient equity interests to rectify the situation as soon as is reasonably practicable after becoming aware of the fact.

Subsection 17(4) provides that “control” in this section has the same meaning as in the definition of “subsidiary” in the *Public Governance, Performance and Accountability Act 2013*, which defines it as having the same meaning “as in the accounting standard that applies for the purpose of deciding whether a company has to prepare consolidated financial statements under the *Corporations Act 2001*”.

Section 18 – Limits on guarantees

Section 18 sets out limits on guarantees provided by the Corporation.

Guarantees include any form of monetary commitment supporting the performance of an obligation. Under the Australian Government reporting framework, guarantees are to be accounted for in accordance with the Australian Accounting Standards.

Guarantees pose a particular risk to the Corporation’s balance sheet and can have unexpected consequences when called. As such, section 18 provides that the Corporation should not give guarantees unless this is the most appropriate way of achieving particular public policy outcomes.¹²

Section 18 further requires the Corporation to ensure that any guarantee that it does give is appropriately limited and quantifiable, and that where guarantees are used the total value of these guarantees does not exceed 5 per cent of the total amount that has been credited to the Corporation’s Special Account¹³.

Section 19 – Australian industry participation

Subsection 19(1) outlines the application of Australian Industry Participation (AIP) Plans to the Corporation’s investment activities. The application of AIP Plans to investments made by the Corporation is aimed at increasing opportunities for capable and competitive Australian and New Zealand small and medium sized enterprises to participate in major projects where government investment is equal to or exceeds \$20 million (GST inclusive).

An AIP Plan details how a project proponent will provide full, fair and reasonable opportunity to Australian industry to participate in a project. This applies to any subcontracting or purchasing opportunities that may be available. AIP Plans do not mandate the use of Australian industry, but rather aim to provide Australian industry with the opportunity to demonstrate their capabilities and capacity¹⁴.

It is anticipated that prior to contract execution with a loan recipient, the Corporation should engage with the Commonwealth AIP team. The Commonwealth AIP team will contact the Corporation if it determines that a full AIP plan would likely increase opportunities for Australian Businesses.

¹² Refer to section 7 of this Explanatory Statement for an explanation of “public policy outcomes”.

¹³ As defined by section 5 of the NRFC Act.

¹⁴ Further information on the application of AIP Plans can be found (as at 1 July 2023) at: <https://www.industry.gov.au/major-projects-and-procurement/australian-industry-participation>

If required, the Corporation may engage with the Commonwealth AIP team to assist in drafting contract terms to include in funding agreements that assist recipients in their AIP obligations.

Subsection 19(2) directs the Corporation to consult with the Department of Finance regarding the application of the Australian Government's Buy Australian Plan. The Buy Australian Plan is intended to improve the way government contracts work and builds domestic industry capability through the Australian Government's purchasing power.

In respect of the Buy Australian Plan, the Corporation will consult with the Department of Finance on relevant investment policies or strategies, rather than specific decisions or issues in relation to particular investments or non-investment matters.



SENATOR THE HON KATY GALLAGHER
Minister for Finance

THE HON ED HUSIC MP
Minister for Industry and Science

Finance ref: s22
Industry ref: s22

Mr Martijn Wilder AM
Chair
National Reconstruction Fund Corporation
secretariat@nrf.gov.au

Dear Mr Wilder

Please find enclosed a copy of the signed *National Reconstruction Fund Corporation (NRFC) Investment Mandate 2023* and accompanying Explanatory Statement, issued under section 71 of the *National Reconstruction Fund Corporation Act 2023*. The signed Investment Mandate has been registered on the Federal Register of Legislation and will be tabled, along with the NRFC Board's submission on the Investment Mandate, in both Houses of Parliament.

We thank the Board for the time taken in contributing to the development of the Investment Mandate.

Yours sincerely

Katy Gallagher
Minister for Finance

Ed Husic
Minister for Industry and Science