

The Senate

Standing Committee on Economics

Nation-building Funds Bill 2008 [Provisions]

Nation-building Funds (Consequential
Amendments) Bill 2008 [Provisions]

COAG Reform Fund Bill 2008 [Provisions]

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Senate Standing Committee on Economics

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Chapter 1

Introduction

Background to the bills

1.1 The Treasurer described the 2008-09 Budget as heralding 'a new era of strategic investment in Australia's future challenges and opportunities.'¹ A key component was the announcement of three 'nation-building funds':

- the Building Australia Fund (BAF);
- the Education Investment Fund (EIF); and
- the Health and Hospitals Fund (HHF).

1.2 The purpose of these nation-building funds would be to provide significant investment in critical areas of infrastructure such as transport, communications, energy, water, education, research, and health, with a longer-term goal of strengthening the productive potential of the economy.

1.3 Simultaneously, the government announced that it would be working with the states and territories to modernise Australia's federal relations, including reforming the framework for federal financial relations. A central element would be the provision of new incentives known as National Partnership payments designed to drive reform. Three types of payments were proposed: project – to support the delivery of specified outputs or projects; facilitation – to facilitate reforms; and reward – to reward those jurisdictions which deliver on national reforms.²

1.4 A fourth fund, the COAG Reform Fund would be established to channel payments from the nation-building funds, as well as annual appropriations, to the states and territories via National Partnership payments.

1.5 When the policy of creating the nation-building funds was first developed, the global economy was growing strongly, and revenue from high commodity prices was delivering large budget surpluses. Inflation was rising and threatening to become entrenched above the medium-term inflation target. In these conditions, it was sensible to run a tighter fiscal policy and save the surpluses in funds which could be used to meet future needs. The previous government had started along this path by establishing the Future Fund and the Higher Education Endowment Fund. The 2008-09 Budget initiative went further by providing for future infrastructure needs.

1 The Hon. Wayne Swan MP, Treasurer, *House Hansard*, 13 May 2008, p. 2601.

2 Budget Paper No 3, Part 2: The COAG Reform Agenda. Also, see COAG Meeting, 20 December 2007: http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm.

1.6 The new nation-building funds programme also had a counter-cyclical element. The funds were intended for a 'rainy day'. Since then there has been a deluge. The stresses in the United States financial market, which had started to emerge a year earlier, became acute in September 2008, with the US government effectively nationalising its largest mortgage institutions and one of the world's largest insurance companies while two of its largest investment banks filed for bankruptcy. These events have had ramifications around the world, with equity prices falling, credit and liquidity tightening, and real output declining in many countries. As global commodity prices are particularly important for Australia, their decline has led to Australian equity prices and the exchange rate dropping considerably.

1.7 This has made it necessary to bring forward spending from the nation-building funds as part of a policy package to support domestic economic activity.³ Accordingly, it has become a matter of urgency to pass the legislation and so the committee has only had a short time in which to conduct its inquiry.

Conduct of the inquiry

1.8 On 15 October 2008, the Senate referred, upon introduction in the House of Representatives, the provisions of three bills establishing the four funds to the Senate Standing Committee on Economics for inquiry and report. The committee was asked to report by 10 November 2008.

1.9 The COAG Reform Fund Bill 2008 was introduced in the House of Representatives on 23 October. However, by the reporting date the other two bills, the Nation-Building Funds Bill 2008 and the Nation-Building Funds (Consequential Amendments) Bill 2008, had not been introduced. Accordingly, the Senate agreed to extend the reporting date for all three bills to 1 December. The latter two bills were introduced in the House of Representatives on 13 November 2008.

1.10 The committee advertised the inquiry in *The Australian* on 19 November 2008 and on the committee's website from 13 November 2008. It also wrote to a number of government agencies and organisations alerting them to the inquiry and calling for submissions to be lodged by 20 November 2008. The committee received five submissions, listed in Appendix 1 and available online at http://www.aph.gov.au/Senate/committee/economics_ctte/coag_08/submissions/sublist.htm.

1.11 At a public hearing in Canberra on 25 November, the committee heard from the witnesses listed in Appendix 2. The committee thanks those who made submissions and provided evidence during the public hearing at short notice.

1.12 The next chapter outlines the key provisions of the bills. Chapter 3 examines key issues arising from them. Chapter 4 provides conclusions and recommendations.

3 As the Minister for Finance and Deregulation put it, 'investment in critical infrastructure can help secure economic activity in the short term and extend growth potential in the medium to long term': Hon. Lindsay Tanner MP, *House Hansard*, 13 November 2008, p. 1.

Chapter 2

Purposes and key provisions

2.1 This chapter outlines the purposes and key provisions of the Nation-Building Funds Bill 2008 and the COAG Reform Fund Bill 2008.

The Nation-Building Funds Bill 2008

2.2 The primary purpose of the Nation-Building Funds Bill 2008 is to establish three new financial assets funds consisting of cash and investments. Each of these nation-building funds has a specific purpose:

- the Building Australia Fund (BAF) to enhance the Commonwealth's ability to make payments in relation to transport, communications, energy, and water infrastructure, and eligible national broadband network matters;
- the Education Investment Fund (EIF) to enhance the Commonwealth's ability to make payments in relation to the creation or development of higher education, research, vocational education and training, and eligible education infrastructure, and to make transitional Higher Education Endowment Fund payments; and
- the Health and Hospitals Fund (HHF) to enhance the Commonwealth's ability to make payments in relation to the creation or development of health infrastructure.¹

2.3 The nation-building funds are established as 'Special Accounts' within the meaning of section 21 of the *Financial Management and Accountability Act 1997*.² A Special Account is an appropriation mechanism which sets money aside within the Consolidated Revenue Fund to be expended for a specific purpose.

2.4 The Minister for Finance and Deregulation stated:

These new Funds build Australia's infrastructure needs for the future and will assist in addressing Australia's immediate challenges in response to the global financial crisis, as well as its longer term challenges over the next decade and beyond.³

1 Clauses 9, 12, 128, 131, 211 and 214 of the Nation-Building Funds Bill 2008. Also, see *Explanatory Memorandum, Nation-Building Funds Bill 2008*, pp 5-7; and *Budget Paper No. 2, Budget Measures 2008-09, Part 2: Expense Measures*, pp 183-5.

2 Clauses 13, 132, and 215 of the Nation-Building Funds Bill 2008

3 The Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, *House Hansard*, 13 November 2008, p. 1.

Credits of amounts to the nation-building funds

2.5 The Nation-Building Funds Bill 2008 provides for the government to make a specific contribution to each nation-building fund by 30 June 2009: \$7½ billion (BAF); \$2½billion (EIF); and \$5 billion (HHF).⁴ The *Explanatory Memorandum* advises that the 2007-08 Budget surplus (\$17 billion) will be the source of these funds.

2.6 Additional amounts will be credited to the BAF and EIF as the Nation-Building Funds (Consequential Amendments) Bill 2008:

- amends the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Telstra Corporation Act 1991*, closing the Communications Fund. Its balance of approximately \$2 billion will be transferred to the BAF, together with a portion of the Telstra Sale Special Account;⁵ and
- repeals the *Higher Education Endowment Fund Act 2007*, closing the Higher Education Endowment Fund. Its balance of approximately \$6½ billion will be transferred to the EIF.⁶

2.7 Combining these four sources, the government anticipated that by 30 June 2009 the nation-building funds' assets would total \$26½ billion: \$12½ billion in the BAF, \$9 billion in the EIF, and \$5 billion in the HHF.⁷

2.8 Subsequent credits to the nation-building funds will be made from future surpluses through determinations by the responsible ministers.

Debits of amounts from the nation-building funds

2.9 The Nation-Building Funds Bill 2008 provides for amounts to be debited from a Special Account for its specific purposes (see paragraph 2.2 above), purposes relating to transitional arrangements (such as payments from the Communications Fund and Higher Education Endowment Fund prior to their closure), and purposes not related exclusively to any one nation-building fund (such as common administrative fees and charges).⁸

4 Clauses 14, 133, and 216 of the Nation-Building Funds Bill 2008

5 Schedule 2 items 48-56 of the Nation-Building Funds (Consequential Amendments) Bill 2008, and clauses 16, 17, and 33 of the Nation-Building Funds Bill 2008

6 Schedule 1 item 1 of the Nation-Building Funds (Consequential Amendments) Bill 2008, and clauses 135 and 152 of the Nation-Building Funds Bill 2008

7 The Hon. Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, 'Fast-tracking the Nation-Building Agenda', Joint Media Statement, 14 October 2008, AA152/2008 Joint

8 Clauses 18-20, 136-138, and 218-219 of the Nation-Building Funds Bill 2008. Note that the HHF does not have any purposes relating to transitional arrangements.

Investment of the nation-building funds' assets

2.10 The investment framework established for the Future Fund under the *Future Fund Act 2006* will be used for the nation-building funds. The functions of the Future Fund Board of Guardians will be expanded accordingly.⁹

2.11 As an independent body corporate, the Future Fund Board of Guardians decides how to invest assets under its control, subject to an investment mandate, a legislative instrument required to be tabled in the Parliament.¹⁰ As a direction from the responsible ministers, the mandate is not disallowable under section 44 of the *Legislative Instruments Act 2003*.

2.12 Under the investment mandate, the responsible ministers set a target rate of return (5½ per cent above inflation over the medium-term, in the case of the Future Fund). The mandate may impose other policies such as liquidity ratios.¹¹ The types of financial assets in which the funds can be invested are specified in an extrinsic document, the *Australian System of Government Finance Statistics*.

Payments from the nation-building funds

2.13 Payments from the nation-building funds are to be made from each fund's Special Account either direct or after channelling through Portfolio Special Accounts.¹² The relationship between the accounts related to the BAF is shown in Diagram 1.

2.14 The frameworks for the EIF and HHF are identical, except that the EIF will have only two Portfolio Special Accounts (the EIF Education Portfolio Special Account and the EIF Research Portfolio Special Account), and the HHF will have only one (the HHF Health Portfolio Special Account).¹³

2.15 The two methods of payment – direct and via channelling - are described in detail below.

9 Schedule 2 item 24 of the Nation-Building Funds (Consequential Amendments) Bill 2008

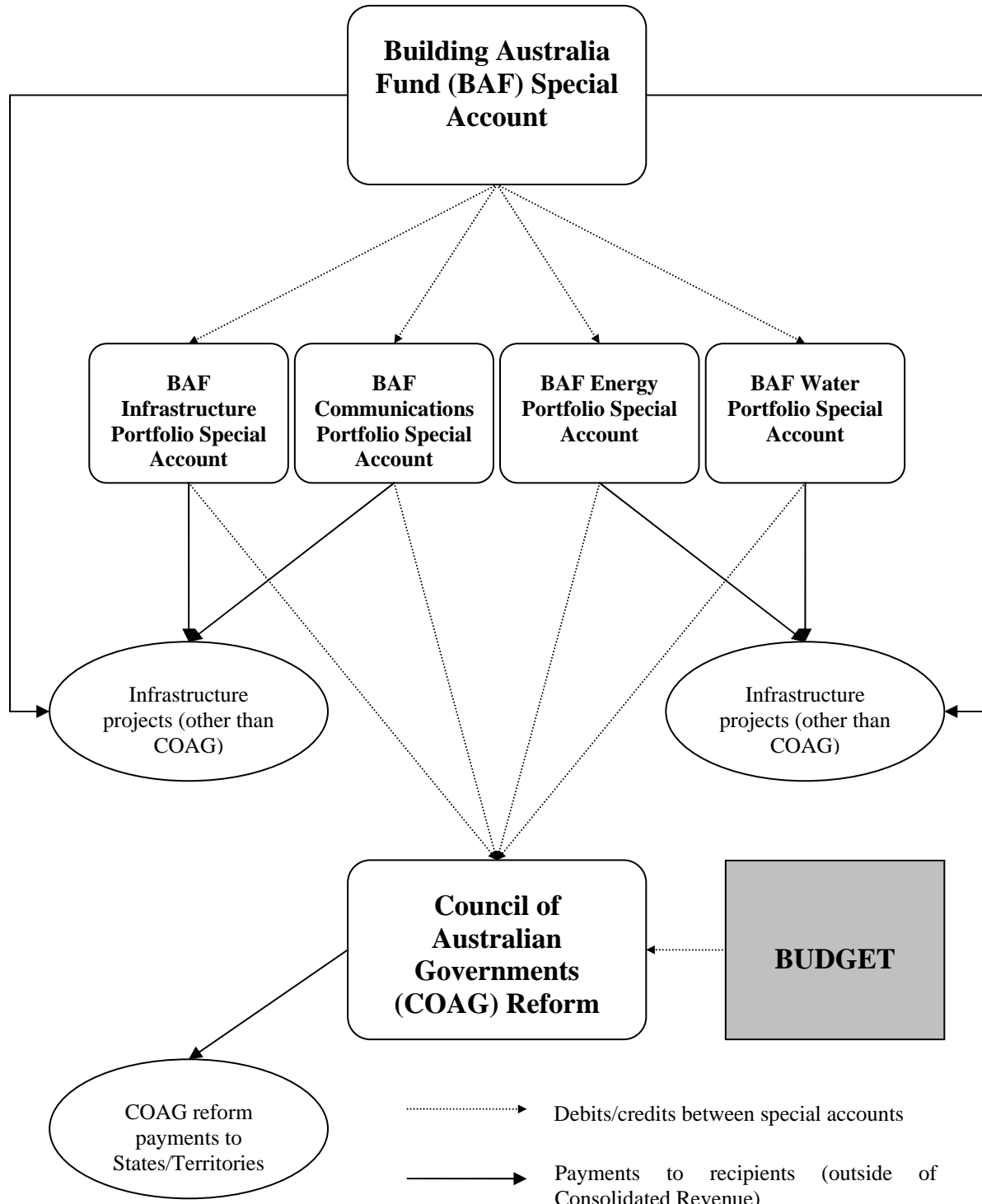
10 Clauses 38, 157, and 232 of the Nation-Building Funds Bill 2008

11 The Australian National Audit Office noted that specification of liquidity requirements is an important issue normally addressed in investment mandates: Australian National Audit Office, *Submission 2*, p. 3.

12 Each Portfolio Special Account is a 'Special Account' within the meaning of section 21 of the *Financial Management and Accountability Act 1997*.

13 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, pp 89 and 126, respectively. Also, see clauses 61, 68, 75 & 82 (BAF), 181 & 188 (EIF), and 255 (HHF) of the Nation-Building Funds Bill 2008

Diagram 1 – Payments from the Building Australia Fund



Source: Explanatory Memorandum, Nation-Building Funds Bill 2008, p. 33.

Direct payments

2.16 The bill proposes that the Finance Minister authorise payments from the nation-building funds, but only if the relevant portfolio minister has recommended the authorisation of a payment.¹⁴ The portfolio minister can only make a recommendation if Infrastructure Australia, the EIF Advisory Board, or the HHF Advisory Board, as appropriate, has confirmed that the proposed payment satisfies relevant evaluation criteria.¹⁵

In this context, the Government has...made a commitment that all projects financed from the [nation-building funds] will need to satisfy rigorous evaluation criteria assessed by independent bodies.¹⁶

2.17 The Finance Minister must also have regard to macroeconomic circumstances when debiting amounts from each nation-building fund's Special Account.¹⁷

2.18 A payment made direct from a Special Account to a state, territory or person is a grant of financial assistance, and will be subject to terms and conditions set out in a written agreement between the Commonwealth and the grant recipient.¹⁸

Channelling of payments through a Portfolio Special Account

2.19 The channelling of funds from a Special Account to a Portfolio Special Account is subject to a few additional provisions. The relevant portfolio minister is responsible for ensuring that the channelled funds are debited from a Portfolio Special Account for the purposes of making payment as soon as practical after the amount is credited. Otherwise, the channelled funds are re-credited to the Special Account.

[This] reflects the Government's intention that the [nation-building fund] Portfolio Special Account is established for the purposes of ensuring clear accountability and reporting of disbursements from the [fund] rest with the relevant portfolio Minister and his or her department.¹⁹

2.20 Payments from a Portfolio Special Account can be made to a state, territory or person as a grant of financial assistance, and subject to a written agreement between

14 Clauses 51, 176, and 251 of the Nation-Building Funds Bill 2008

15 Clauses 52, 177, and 252 of the Nation-Building Funds Bill 2008

16 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, p. 35.

17 Clauses 112, 202, and 270 of the Nation-Building Funds Bill 2008

18 Clauses 53-60 (BAF), 178-180 (EIF), and 253-254 (HHF) of the Nation-Building Funds Bill 2008

19 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, p. 40. Also, see clauses 65, 72, 79 & 86 (BAF), 185 & 192 (EIF), and 259 (HHF) of the Nation-Building Funds Bill 2008

the Commonwealth and the grant recipient.²⁰ Alternately, they can be channelled to the COAG Reform Fund Special Account.²¹

2.21 The *Explanatory Memorandum* notes that all the Finance Minister's authorisations are administrative in character and therefore not legislative instruments.²² It should also be noted that the Nation-Building Funds Bill 2008 allows for payments from a Special Account or a Portfolio Special Account 'otherwise than by way of a grant of financial assistance.'²³ These payments include payments for the acquisition of financial assets (such as shares, debentures, units in a unit trust) in a company or business entity involved in the creation or development of relevant infrastructure.²⁴ The *Explanatory Memorandum* states that these provisions are:

...intended to provide flexibility in how the Government invests in the creation or development of transport infrastructure.²⁵

Total payments for a financial year

2.22 The Nation-Building Funds Bill 2008 provides for the Budget to declare a specified amount as a drawing rights limit for that financial year:

This is intended to provide the Parliament with a mechanism by which it may oversight the rate at which the amounts are being expended for investment in infrastructure.²⁶

2.23 Exceptionally, the Finance Minister will declare the drawing rights limit for 2008-09 as the government will not be able to finalise proposals to be funded in this initial period until after the Parliament rises for 2008.²⁷ The declaration will be tabled in the Parliament as a legislative instrument. However, it will not be disallowable as the government considers the declaration a one-off instrument necessary to fast-track the nation-building agenda in response to the global financial crisis.²⁸

20 Clauses 66-67, 73-74, 80-81 & 87-88 (BAF), 186-187 & 193 (EIF), and 260-261 (HHF) of the Nation-Building Funds Bill 2008. Note that these grants of financial assistance are not uniformly available to states, territories or persons.

21 The establishment of the COAG Reform Fund Special Account is described in subsequent paragraphs.

22 For example, see sub-clauses 51(8), 176(8) and 251(3) of the Nation-Building Funds Bill 2008

23 For example, subclause 18(3) and 256(2) of the Nation-Building Funds Bill 2008

24 For example, clauses 21 & 22, and 24 & 25 of the Nation-Building Funds Bill 2008

25 For example, *Explanatory Memorandum, Nation-Building Funds Bill 2008*, p. 19.

26 The Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, *House Hansard*, 13 November 2008, p. 2. Also, see clauses 109 & 111, 199 & 201, and 267 & 269 of the Nation-Building Funds Bill 2008

27 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, pp 60, 105 and 137

28 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, pp 60, 105 and 137

Independent advisory bodies

2.24 The *Explanatory Memorandum* states that allocations from the nation-building funds will be 'subject to rigorous evaluation by independent advisory bodies': the EIF Advisory Board; the HHF Advisory Board; and Infrastructure Australia.²⁹

2.25 The general function of the EIF and HHF Advisory Boards is to advise the Ministers for Education, Research and Health about matters referred by them relating to their portfolio areas.³⁰

2.26 In the provision of advice, the advisory bodies are required to apply the relevant evaluation criteria, which are to be formulated in consultation with the responsible ministers.

The intention of the requirement for consultation with the responsible ministers is to ensure that there is a common and rigorous approach in the evaluation criteria framework across the [nation-building funds] that is consistent with the nation-building objectives of the Funds and in line with the Government's overarching principles that projects financed from the Funds should:

- address national infrastructure priorities;
- demonstrate high benefits and effective use of resources;
- efficiently address infrastructure needs; and
- demonstrate they achieve established standards in implementation and management.³¹

Interim Advisory Boards

2.27 An Interim EIF Advisory Board and an Interim HHF Advisory Board were established in the Nation-Building Funds (Consequential Amendments) Bill 2008.³²

29 Clauses 170 and 245 of the Nation-Building Funds Bill 2008

30 An ancillary function of the EIF Advisory Board is to advise the Ministers for Education and Research about matters referred before 1 July 2009 relating to the making of transitional Higher Education Endowment Fund payments; Clause 170 of the Nation-Building Funds Bill 2008.

31 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, p. 64. Also, see clauses 120, 171-2, and 247 of the Nation-Building Funds Bill 2008 – provisions regarding the BAF, EIF and HHF evaluation criteria.

32 *Explanatory Memorandum, Nation Building Funds (Consequential Amendments) Bill 2008*, p. 10. Also, see Schedule 3 Items 9 to 16 of the Nation Building Funds (Consequential Amendments) Bill 2008. The interim advisory boards are to report to the government in December 2008.

Infrastructure Australia

2.28 On 9 April 2008, the *Infrastructure Australia Act 2008* came into effect, establishing an independent statutory council, Infrastructure Australia. Its primary function is to provide advice to several bodies: the Minister for Infrastructure; Commonwealth, state, territory and local governments; investors in infrastructure; and owners of infrastructure on matters relating to infrastructure.³³ Infrastructure Australia's additional functions include:

- conducting audits to determine the adequacy, capacity and condition of nationally significant infrastructure, taking into account forecast growth;
- developing lists (to be known as Infrastructure Priority Lists) that prioritise Australia's infrastructure needs;
- reviewing and providing advice on proposals to facilitate the harmonisation of policies, and laws, relating to development of, and investment in, infrastructure; and
- evaluating proposals for investment in, or enhancements to, nationally significant infrastructure.³⁴

2.29 'Nationally significant infrastructure' is defined to include transport, energy, communications and water infrastructure in which investment will materially improve national productivity. These are the four portfolio areas encompassed by the BAF, and its allocations will be determined using the Infrastructure Priority Lists.

2.30 Projects for the Infrastructure Priority Lists will be selected in accordance with guidelines announced by the government in early October 2008. The guidelines describe an evidence-based approach for the selection of infrastructure projects, and the five criteria against which all proposals will be assessed: ability to lift national productivity; strengthen Australia's international competitiveness; develop cities and regions; reduce greenhouse gas emissions; and improve the quality of life of Australians.³⁵

2.31 The Prime Minister has stated that Infrastructure Australia will apply a 'tough, clear-eyed assessment of the intrinsic value of each project',³⁶ and emphasises the national aspect and importance of the projects under consideration by Infrastructure Australia.

33 Subsection 5(1) of the *Infrastructure Australia Act 2008*

34 Paragraphs 5(2)(a)-(d) of the *Infrastructure Australia Act 2008*

35 The Hon. Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, 'Bringing Transparency to Nation Building', Joint Media Statement, 7 October 2008, AA150/2008 Joint

36 The Hon. Kevin Rudd, Prime Minister, 'Nation-Building for Australia's Future', *Address to Australian Davos Connection Infrastructure Summit*, Brisbane, 7 October 2008. Also, see Emma Rodgers, 'Tough, clear-eyed nation-building rules on way', *ABC News*, 7 October 2008

2.32 Infrastructure Australia was due to present its National Infrastructure Audit and Infrastructure Priority Lists in March 2009. However, the 'fast-tracking' of the nation-building agenda advanced the schedule, and the Audit and Lists will now be presented to COAG before the end of 2008.³⁷

COAG Reform Fund Bill 2008

2.33 The COAG Reform Fund Bill 2008 establishes the COAG Reform Fund as a Special Account within the meaning of the *Financial Management and Accountability Act 1997*. The purpose of this Special Account is to make grants of financial assistance to the states and territories.³⁸ However, its role as a vehicle for channelling payments from the Commonwealth is more fully described in the Nation-Building Funds Bill 2008 and its *Explanatory Memorandum*.

2.34 Grants of financial assistance will be subject to terms and conditions as set out in a written agreement between the Commonwealth and the state or territory concerned: a National Partnership agreement.³⁹ These will not include written agreements made under the Nation-Building Funds Bill 2008.⁴⁰

2.35 National Partnership agreements are expected to include such matters as payment amounts and performance benchmarks. In the case of National Partnership reward payments, as distinct from project and facilitation payments, achievement of the benchmarks will be independently assessed by the COAG Reform Council.⁴¹

2.36 The COAG Reform Fund Special Account may receive contributions direct from the Budget, the nation-building funds, and/or special appropriations in the form of National Partnership payments.⁴²

37 *Explanatory Memorandum, Nation Building Funds (Consequential Amendments) Bill 2008*, p. 10. Also, see COAG, 2 October 2008. See: http://www.coag.gov.au/coag_meeting_outcomes/2008-10-02/index.cfm

38 Clauses 5 and 6 of the COAG Reform Fund Bill 2008

39 Sub-clause 7(2) of the COAG Reform Fund Bill 2008

40 The Hon. Mr Wayne Swan MP, Treasurer, *House Hansard*, 23 October 2008, p. 3; and *Explanatory Memorandum, COAG Reform Fund Bill 2008*, p. 6.

41 Sub-clause 7(2) of the COAG Reform Fund Bill 2008; the Hon. Mr Wayne Swan MP, Treasurer, *House Hansard*, 23 October 2008, p. 3; and *Explanatory Memorandum, COAG Reform Fund Bill 2008*, p. 6.

42 *Explanatory Memorandum, COAG Reform Fund Bill 2008*, p. 6.

Chapter 3

Analysis of the bills

3.1 This chapter discuss the key issues raised in submissions and by witnesses in relation to:

- contributions to the nation-building funds;
- specific investment and payment provisions;
- role and independence of the advisory bodies;
- transparency; and
- reporting and accountability.

3.2 In general, there was broad support for the initial principle of the bills, and for the subsequent 'fast-tracking' of the expenditure.¹

Contributions to the nation-building funds

3.3 One of the earliest issues to arise was the extent of contributions to the nation-building funds. In the 2008-09 Budget, the government was expecting substantial ongoing budget surpluses, of the order of \$20 billion. The advent of the global financial crisis, and the concomitant decline in commodity prices and hence company tax and other revenues, has cut these projections to around \$5 billion (Table 1).

Table 1 – Budget surpluses: 2006-07 to 2011-12 (\$ billion)

	Actual	Estimates		Projections		
	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
2008-09 Budget	17.2	16.8	21.7	19.7	19.0	18.9
Mid Year Economic & Fiscal Outlook			5.4	3.6	2.6	6.7

Sources: *2008-09 Budget*: Budget Overview: Appendix A; and *Mid Year Fiscal and Economic Outlook 2008-09*: Overview.

3.4 Obviously, the smaller projected budget surpluses reduce the scope for future contributions to the proposed nation-building funds. It will mean it would take longer

1 For example, see Universities Australia, *Submission 4*, p. 1.

for the funds to be built up to the levels aspired for in the 2008-09 Budget: namely, \$20 billion in the BAF; \$11 billion in the EIF; and \$10 billion in the HHF.² Given the deterioration in the global economic outlook since the MYEFO forecasts were compiled, the projected surpluses – and the expected returns on the assets in the funds – may now be lower. On the other hand, more decisive responses by overseas countries to their economic difficulties may see the longer term projected surpluses improve.

3.5 This uncertainty about the potential for further contributions to the funds concerned some submitters. Without guaranteed funding, the Association of Australian Medical Research Institutes, representing 37 independent medical research institutes, queried the long-term viability of the HHF.³ Infrastructure Partnerships Australia, a peak national body, similarly commented:

We hope that [the nation-building funds] prove to be long-term investment vehicles, not ones which will fall away after the initial endowment from the 2007-08 Budget surplus. While a fund's investment operations must be responsive and relevant to the prevailing conditions, they must also provide certainty to the infrastructure development market and be ongoing and properly funded into the future.⁴

3.6 ABN Amro strongly supported the expansion of 'public private partnerships' (PPPs), which may be a way of achieving more investment from a smaller government contribution.⁵ A 2007 report undertaken by the University of Melbourne and the Allen Consulting Group claimed these collaborative ventures have a number of benefits for Australia taxpayers, such as:

- demonstrated superior cost efficiency;
- economically and statistically significant cost advantage;
- less time over-run on a value-weighted basis;
- timeliness of completion not adversely by project size; and
- greater transparency due to availability of public data.⁶

3.7 However, to achieve these potential benefits it is necessary to ensure that PPPs are properly structured and overseen. To this end, Infrastructure Australia published a report on *National PPP Guidelines* in October 2008.⁷

2 *Budget Paper No. 2*, Budget Measures 2008-09, Part 2: Expense Measures, pp 184-5.

3 Association of Australian Medical Research Institutes, *Submission 5*, p. 3.

4 Infrastructure Partnerships Australia, *Submission 3*, p. 6.

5 ABN Amro, *Submission 1*, p. 1.

6 Allen Consulting Group and University of Melbourne, 'Performance of PPPs and Traditional Procurement in Australia', 30 November 2007, p. 32.

7 It is available at http://www.infrastructureaustralia.gov.au/files/Overview_3_10_1008.pdf.

3.8 Some commentators have suggested that even the \$41 billion originally envisaged in the Budget as the combined assets of the funds would have little overall impact on Australia's infrastructure needs. There are estimates that around ten times this amount will be needed for public infrastructure over the next decade.⁸ However, there was never any suggestion that the funds should be the *only* source of spending on infrastructure. The intention was to supplement current spending plans, not to replace all spending by the state governments.

3.9 Universities Australia welcomed the additional funding, but submitted that the initial EIF contribution of \$9 billion will cover only urgent infrastructure needs, and that a doubling of the endowment by June 2014 would be a more appropriate funding benchmark.⁹ They also wanted to ensure the funding from the EIF would be truly *additional*:

An explicit mechanism to ensure absence of reduced effort by states and territories as a condition of any EIF funding to TAFE is needed, and could be embedded in the legislation by way of amendment.¹⁰

Specific investment and payment provisions

3.10 As discussed in Chapter 2, the Future Fund Board of Guardians is responsible for investment of the financial assets of the nation-building funds, subject to certain limitations. The Australian National Audit Office told the committee that the definition of 'financial asset' was broad,¹¹ giving rise to considerations not addressed in the Nation-Building Funds Bill 2008.

3.11 A comparison was drawn with the Communications Fund, whose similarly broad definition of 'financial asset' was found to be too significant a departure from the categories of conservative investments authorised by the *Financial Management and Accountability Act 1997*. The *Telecommunications (Consumer Protection and Service Standards) Act 1999* was subsequently amended to return the Communications Fund to investments in low-risk, highly liquid, fixed interest asset portfolios:

This approach closely aligns with the approach adopted for entities investing under the FMA Act and is also more consistent with the policy that that Fund be perpetual in nature.¹²

8 Annabel Hepworth and Emma Connors, 'Push to reform infrastructure rules', *Australian Financial Review*, 13 August 2008. A useful list of the nation's big infrastructure objectives, including their projected costs and completion dates can be found in David Uren, Matthew Franklin et al, 'Surplus faces \$10bn threat', *The Australian*, 2 October 2008.

9 Universities Australia, *Submission 4*, p. 2.

10 Universities Australia, *Submission 4*, p. 2.

11 The definition is detailed in the submission from Australian National Audit Office: *Submission 2*, pp 2-3.

12 Australian National Audit Office, *Submission 2*, p. 2.

3.12 While the Nation-Building Funds Bill 2008 proposes a broad definition of 'financial asset', it also proposes a conservative approach to the use of financial derivatives. Unlike the Communications Fund, the bill prohibits the acquisition of financial derivatives for the purposes of speculation or leverage.¹³ The Australian National Audit Office supported this approach, suggesting that it balances the risk posed by the breadth of 'financial assets'.

3.13 'Financial assets' acquired by the Commonwealth from payments other than grants of assistance are not assets of a nation-building fund. Therefore the provisions of the Nation-Building Funds Bill 2008 and the *Financial Management and Accountability Act 1997* do not apply. In particular, section 39 of that Act which requires the Finance Minister to invest public money in only a limited range of investments. This raises similar risk issues to those described in preceding paragraphs.

3.14 The Australian National Audit Office identified a further issue with such 'financial assets': the relevant portfolio minister will manage the Commonwealth's ownership obligations as well as issues of exposure and risk. However, individual portfolio departments sometimes have difficulty managing risk without 'adequate central agency coordination and a way of sharing knowledge and expertise.'¹⁴ It was suggested that the Nation-Building Funds Bill 2008 should further address applicable governance and investment-management parameters.

3.15 The Australian National Audit Office also noted that the breadth of 'financial assets' permissible under the Nation-Building Funds Bill 2008 places 'added emphasis on the Investment Mandate'. A broader range of instruments adds more risk than the conservative investments allowed under the *Financial Management and Accountability Act 1997*, while allowing for the possibility of higher returns:

There is a balance to be struck there...It is important to know that the expectations of that are set out very clearly in the investment mandate because, if the desire is for a very capital-secure highly liquid investment, that is where the investment managers should take you and, consequently, you might have a lower return. But the investment mandate that is developed for each of these funds will be a critically important document.¹⁵

3.16 The Australian National Audit Office supported the complex legislative framework, including for the making of payments from the nation-building funds. An officer of the department told the committee that this framework:

...involves ensuring that there [are] appropriate governance arrangements around the decision making and the recommendation from expenditure from the funds, as well as allowing a level of transparency through the financial statements of the various portfolio agencies of the expenditure that

13 Subclauses 42(1), 161(1) and 236(1) of the Nation-Building Funds Bill 2008

14 Australian National Audit Office, *Submission 2*, p. 7.

15 Mr Brian Boyd and Mr Warren Cochrane, ANAO, *Proof Committee Hansard*, Canberra, 25 November 2008, p. 5.

goes through each of those funds and into each of the areas of expenditure. The structure was developed to ensure that there was that level of accountability, governance and transparency and that is why it is a structure with many elements.¹⁶

3.17 The Australian National Audit Office agreed that there were potential benefits in terms of 'separately identifying the amounts being disbursed for different portfolio responsibilities, and the balance of remaining funds.' However, the Office expressed concerns regarding payments from the 12 Special Accounts, including:

- the lack of clarity regarding the criteria to be applied in determining the appropriate Special Account from which particular payments should be drawn; and
- the need for careful management to ensure:
 - each Special Account is administered in accordance with the legislation;
 - transactions made through each Special Account are accurately recorded; and
 - a consistent approach is adopted in making payments of a similar nature.¹⁷

3.18 As of March 2007, there is greater disclosure of the existence of Special Accounts, for example, through a list of accounts in the Budget Papers together with each account, its opening and closing balances, and receipts and payments being reported in the Consolidated Financial Statements.¹⁸

3.19 Some submissions queried whether specific terms are adequately defined. Universities Australia questioned whether 'development' in relation to the EIF encompasses restoration or refurbishment.¹⁹ The Association of Australian Medical Research Institutes similarly asked whether 'research institution' in relation to the EIF includes independent medical research institutes.²⁰

3.20 In the past, the Future Fund and the Higher Education Endowment Fund may have been seen as convenient places to 'park' budget surpluses.²¹ Some observers

16 Ms Katherine Campbell, Department of Finance and Deregulation, *Proof Committee Hansard*, 25 November 2008, p. 16.

17 Australian National Audit Office, *Submission 2*, p. 4.

18 Australian National Audit Office, *Submission 2*, p. 4. Also, see Senate Standing Committee on Finance and Public Administration, *Transparency and accountability of Commonwealth public funding and expenditure*, March 2007

19 Universities Australia, *Submission 4*, p. 2.

20 Association of Australian Medical Research Institutes, *Submission 5*, p. 2.

21 Richard Webb, Coral Dow and Rebecca de Boer, 'Nation-building Funds Bill 2008, *Bills Digest*, No. 67, 28 November 2008, p. 24.

might suggest that the nation-building funds and the COAG Reform Fund will be used for similar purposes. The provisions of the bills suggest that this is not the case, and the transparency of the Special Accounts enable scrutiny of the manner in which funds are credited to and debited from each nation-building fund.

3.21 In relation to the COAG Reform Fund, Treasury explained that it will be used for short-term purposes only:

We certainly do not...anticipate that the COAG Reform Fund would have large ongoing balances or monies to be invested, et cetera, for long periods of time. We anticipate a process where the funding will come into the COAG Reform Fund from the BAF, et cetera, or indeed direct from the budget, and then would flow.²²

Role and independence of the advisory bodies

3.22 The roles of the independent advisory bodies, the EIF Advisory Board, the HHF Advisory Board, and Infrastructure Australia, are described in Chapter 2. Submissions did not comment on how the relevant ministers treat the independent advice, nor did they reflect on the relevant ministers' discretion as to whether a particular proposal is recommended. One submission advocated an expanded role for the independent advisory bodies, wanting them to be more pro-active in 'providing responsible strategic advice toward identifying, anticipating, planning and providing for future infrastructure needs.'²³

3.23 There was more focus on the independence of the advisory bodies, including the development and application of the evaluation criteria. It was noted that the proposed legislation allows for ministers to formulate the BAF, EIF and HHF evaluation criteria.

3.24 As noted in the Bills Digest:

Much will depend on the criteria the bodies use to assess projects, how the bodies interpret the criteria, and how well placed the bodies are to make assessments.²⁴

3.25 The Association of Australian Medical Research Institutes indicated that there are potential applicants who could apply for funding from more than one nation-building fund. It cited the example of independent medical research institutes, which are involved in both education and health research. The Institute suggested that the evaluation criteria should recognise this possibility.²⁵

22 Mr Michael Willcock, Treasury, *Proof Committee Hansard*, 25 November 2008, pp 12-13.

23 Infrastructure Partnerships Australia, *Submission 3*, p. 4.

24 Richard Webb, Coral Dow and Rebecca de Boer, 'Nation-building Funds Bill 2008, *Bills Digest*, No. 67, 28 November 2008, p. 24.

25 Association of Australian Medical Research Institutes, *Submission 5*, p. 2.

3.26 The Association of Australian Medical Research Institutes suggested also that the evaluation criteria should be transparent, and clearly articulated. In relation to the HHF, the Institute described its ideal requirements for the criteria by way of example:

- reference/relevance to Australia's national health priorities;
- potential for impact on health care delivery;
- contribution to improvement of Australians' health and consequent increase in workplace productivity; and
- significance and novelty.²⁶

3.27 The committee asked the Department of Finance and Deregulation whether the proposed framework effectively allows for independence in project evaluation and selection. A representative responded:

...the disallowable nature of the instrument that will detail the evaluation criteria does provide a level of transparency to the parliament on how the projects will be assessed, and the independent bodies who will provide advice, and ministers having regard to that advice, is quite a strong governance model within the current legislation.²⁷

3.28 Infrastructure Partnerships Australia supported this view, unequivocally stating:

...The BAF/Infrastructure Australia, EIF and HHF advisory boards will bring independence and rigour to the project funding and analysis and evaluation by providing arms-length advice and direction to the responsible Minister.²⁸

3.29 However, there were some reservations in relation to Infrastructure Australia, whose task is:

...to have others perform an appraisal role, and obviously in some cases it might be project proponents performing their own appraisal. In that case, Infrastructure Australia's role is more to provide some scrutiny over such an appraisal and to put that through a prioritisation process. From our perspective, that is somewhat different from an independent body appraising individual project proposals from the beginning. We think that raises some challenges.²⁹

26 Association of Australian Medical Research Institutes, *Submission 5*, p. 2.

27 Ms Katherine Campbell, DFR, *Proof Committee Hansard*, 25 November 2008, p. 20.

28 Infrastructure Partnerships Australia, *Submission 3*, p. 4.

29 Mr Brian Boyd, ANAO, *Proof Committee Hansard*, 25 November 2008, p. 6.

Transparency

3.30 One the most important issues raised in submissions and evidence was the level of transparency provided in the Nation-Building Funds Bill, with commentary ranging from specific provisions to general issues.

3.31 The Australian National Audit Office, for example, cited the definition of 'financial assets', which they submitted was not as clearly stated in the bill as in some other legislation. This may make it more difficult for Parliament to determine whether the nation-building funds' assets have been invested in authorised investments.³⁰

3.32 Other submissions focussed on the publication of the evaluation criteria, the requirement for ministerial consideration of the independent advisory boards' advice,³¹ and most especially, the method by which projects are evaluated and selected for funding.

3.33 Infrastructure Partnerships Australia submitted that the nation-building funds must have the greatest transparency possible, subject to commercial-in-confidence, privacy, and intellectual property considerations:

It is of fundamental importance that the investment decisions and priorities of the respective Funds are transparent. If the nation-building funds were to be allocated and invested for reasons outside policy, we believe that support and appetite for much-needed Federal infrastructure investment and policy leadership would be imperilled.³²

3.34 Likewise, the Association of Australian Medical Research Institutes agreed that the 'funding distribution mechanisms' should be transparent, competitive and support the best proposals'. It advocated the creation and implementation of a contestable application process open to all stakeholders, with external expert panels reviewing applications.³³

3.35 In relation to the COAG Reform Fund Bill 2008, Infrastructure Partnerships Australia hoped that the National Partnership agreements would provide 'more scrutable processes than current arrangements', adding:

Rigorous monitoring of the use of NPP grants will be required to ensure that the funding levels and reform incentive payments are properly applied to achieve national policy objectives. Further detail will be required to ensure that the States can approach the determination of reward payment levels and allocations with certainty.³⁴

30 Australian National Audit Office, *Submission 2*, p. 2.

31 For example, Universities Australia, *Submission 4*, p. 1.

32 Infrastructure Partnerships Australia, *Submission 3*, p. 7.

33 Association of Australian Medical Research Institutes, *Submission 5*, p. 2.

34 Infrastructure Partnerships Australia, *Submission 3*, p. 6.

3.36 At the public hearing, the committee explored certain matters not detailed in the COAG Reform Fund Bill 2008, including determination of the National Partnership payments.

3.37 Treasury advised that the quantum of the National Performance payments would be determined by the government, having regard to government priorities and budget circumstances. The Commonwealth would then discuss the project at hand with the state or territory concerned and reach agreement on the nature of the reform and the performance benchmarks to be achieved to qualify for a National Partnership reward payment. The COAG Reform Council will then act as an independent arbiter, reporting to COAG on the satisfaction of each state and territory's performance benchmarks:

The actual payment...is still something that...is to be determined or decided by Commonwealth ministers, but it is with the advice of this independent assessor which obviously is a way of ensuring that the Commonwealth acts with input from an independent agent that is able to provide them with advice on compliance.³⁵

3.38 Treasury added that it would be in the Commonwealth, states and territories' best interests to publish the National Partnership agreements, and there is nothing to suggest that these will be kept secret.

Reporting and accountability

3.39 The legislative framework proposed by the Nation-Building Funds Bill 2008 and the COAG Reform Fund Bill 2008 emphasises transparency and accountability. However, as indicated in preceding paragraphs, there are areas in which the operations of the nation-building funds might be made more transparent, assisting Parliament to determine compliance with the legislative processes, standards, and responsibilities.

3.40 In particular, it is arguable that there is insufficient provision in the bills for directly informing Parliament of some important matters:

- there is no requirement for ministers to report to Parliament which projects have been approved, to supply reasons for decisions, or to report movements in the funds; and
- some legislative instruments are exempt from disallowance (such as authorisations of payments, including for acquisitions of financial assets).

3.41 However, it is not unusual for reasons for decisions to not be published, the Minister's payment authorisations are primarily administrative, and a range of accountability mechanisms do exist outside of the bills.

35 Mr Michael Willcock, Treasury, *Proof Committee Hansard*, 25 November 2008, p. 10.

3.42 The *Future Fund Act 2006* requires the Future Fund Board of Guardians to report annually on its operations, and the performance of the investments under the Board's management. The Nation-Building Funds (Consequential Amendments) Bill 2008 extends this annual reporting requirement to the nation-building funds.

3.43 Under the *Financial Management and Accountability Act 1997*, the Australian National Audit Office can examine the annual accounts of the nation-building funds: an audit is planned in the near future. The ANAO reminded the committee that under the *Auditor-General Act 1997* it also has performance audit powers, enabling it to examine how the nation-building funds are spent and the grants made from each fund.³⁶

The Audit Office operates in a world that is largely post the event but, through reporting to parliament on the results of the audit, we give accountability and transparency to those decisions...during the financial [audit] process, we make sure that all the funds that are going out are being duly authorised and duly accounted for and, from a performance audit process, we tend to look at whether those funds have gone out against the predetermined objectives and criteria that have been set up for each of the programmes or, in this case, the funds.³⁷

3.44 The committee queried whether there was potential for the Australian National Audit Office to be involved earlier in the process. A representative agreed that the Parliament could legislatively provide for such a role, but this would not be in accordance with the practice of most western nations.³⁸

3.45 The annual Budget process is a further example of existing accountability mechanisms where the declaration of annual drawing rights and fiscal appropriations enables the Parliament to scrutinise expenditure from the nation-building funds.

3.46 Infrastructure Partnerships Australia would welcome further detail in regulations:

...on what practical mechanisms, processes and checks and balances are required to be applied for each Fund to ensure responsible, consistent and transparent decision-making and funding allocation to the most critical, needed and worthwhile projects across transport, communications, energy, water, education and health sectors.³⁹

3.47 The committee prefers such important reporting and accountability mechanisms to be incorporated within the bills, but appreciates that the nation-building agenda is an ongoing construct and that not all its details have yet

36 Mr Warren Cochrane, ANAO, *Proof Committee Hansard*, 25 November 2008, p. 3.

37 Mr Warren Cochrane, ANAO, *Proof Committee Hansard*, 25 November 2008, p. 3.

38 Mr Warren Cochrane, ANAO, *Proof Committee Hansard*, 25 November 2008, p. 4.

39 Infrastructure Partnerships Australia, *Submission 3*, p. 7.

been formulated. The evaluation criteria, for example, are not contained within the Nation-Building Funds Bill 2008 because:

...they are being developed over time in consultation with the boards that are being established to provide advice on them.⁴⁰

40 Ms Katherine Campbell, Department of Finance and Deregulation, *Proof Committee Hansard*, 25 November 2008, p. 19.

Chapter 4

Conclusions and recommendations

4.1 The committee sees merit in the previous government's establishment of the Future Fund and the Higher Education Endowment Fund. The Nation-Building Funds Bill 2008, the Nation-Building Funds (Consequential Amendments) Bill 2008 and the COAG Reform Fund Bill 2008 extend these principles to the future provision of infrastructure spending. In the light of future experience with the nation-building funds, there may be a need to fine-tune their operations. But the arrangements in the bills already offer a high degree of transparency, and there are other measures in the bills which should ensure the funds are spent on the most worthwhile national projects rather than on 'pork-barrelling'.

4.2 Recent economic developments make it desirable to accelerate spending on infrastructure projects. The committee therefore understands why the Government wants the bills passed promptly.

Recommendation 1

4.3 **The committee recommends that the Senate pass the bills as a matter of urgency.**

Senator Annette Hurley

Chair

Coalition Senators' Minority Report

The Nation-Building Funds Bill 2008 and the Nation-Building Funds (Consequential Amendments) Bill

The Nation-Building Funds Bill 2008 and the Nation-Building Funds (Consequential Amendments) Bill 2008 purport to establish the Building Australia Fund, the Education Investment Fund, and the Health and Hospitals Fund. It is intended that at their inception on 1 January 2009, the three funds will have a total of \$26.3 billion, rising to \$41 billion by 1 July 2009, as announced in the May 2008 Budget.

Responsibility for the management of the investment of these funds lies with the Future Fund Board and the Future Fund Management Agency, which operate under the *Future Funds Act*. The Board is required to make its investment policies public and published on the internet, with all payments from the funds requiring authorisation by the Finance Minister.

The funds' initial value of \$26.3 billion on 1 January will consist in the main part of funds from the 2007-08 Budget surplus left to the new Labor Government after the 2007 elections. Funds from the last Coalition budget will provide \$7.5 billion, \$2.5 billion and \$5 billion to the Building Australia Fund, the Education Investment Fund, and the Health and Hospitals Fund respectively. The remaining \$5.1 billion for the Building Australia Fund will consist of \$2.7 billion from the proceeds of the T3 sale and \$2.4 billion from the closure of the Communications Fund established by the Coalition in 2007. The Education Investment Fund will see its remaining \$6.2 billion of funds come from the closure of the Higher Education Endowment Fund which was also established by the Coalition.

Full funding

While the initial funding pool of \$26.3 billion has been secured through the previous Coalition Government's budget surplus and funds, the full \$41 billion in funds announced in the 2008-09 Budget will require a further \$14.7 billion. Coalition Senators hold concerns about the Government's ability to source these funds given the current economic downturn and the Government's decision to spend most of the anticipated surplus. With the option of a budget deficit being discussed heavily in the media, Coalition Senators feel it would be a great disappointment for the Rudd Government to drag Australians back into debt after the previous Coalition Government worked so hard to not only pay off the \$96 billion in debt left to it by the previous Labor Government but to also leave a healthy surplus which is permitting the current government to create the funds such as those discussed in this report.

The Coalition Senators also question the integrity of the numbers associated with the funds by reason that these figures were booked in the MYEFO statement which does not include the substantial changes that have occurred with the national and global economy. We note that between the release of the MYEFO statement and where we currently sit, the stock market has since decreased by a significant amount, and during the committee hearings there was a complete paucity in information to ascertain what the balance of those funds are now. The investment process that secures these funds was also unable to be ascertained, and this should be of some concern in regard to the capacity of these funds to fulfil their objectives.

Funding adequacy

During the second reading speeches in the lower house from ALP members, the argument put forward is that the funds established by these bills will serve as a panacea for Australia's needs in the areas of infrastructure, education and resultant skills provision, and health. While Coalition Senators agree that investment in all three areas is laudable, a more realistic view on what these moneys can achieve should be taken, particularly in light of previous Coalition spending in these areas.

To begin with, the \$12.6 billion in the Labor Government's Building Australia Fund is less than a third of the \$38 billion in infrastructure investment the Coalition Government made in Auslink 1 and Auslink 2 alone. Infrastructure investment was taken very seriously by the Coalition Government during its term in government when it took infrastructure spending from 2.9 per cent of GDP when it started to 5.4 per cent at the last election.

As Mark Butler, the Member for Adelaide, noted in his second reading speech on these bills:

...iron ore and coal exports will require the equivalent of eight new 50 million tonne ports by 2015 at an estimated cost of \$16 billion.¹

If members of the Government are aware that \$16 billion is needed in ports for just the iron ore and coal export industries alone, then Coalition Senators feel that any Government claims that a \$12.6 billion infrastructure fund will solve Australia's capacity restraints should be viewed with suspicion. In addition, current demand for immediate national infrastructure funding will be around ten times the amount being offered in the funds, further highlighting the inadequacies of the Labor Government's policies in addressing our real nation-building needs.

1 Mark Butler MP, *House Hansard*, 25 November 2008, p. 53; quoting Don Argus.

'Whole of life' costs

One of the concerns held by Coalition Senators is that the real costs of the projects established through these funds are not being taken into consideration. Once the initial construction phases of projects have been completed ongoing costs must be addressed such as ongoing maintenance, replacement, and service costs. By not sourcing the money needed for ongoing costs from the funds, the Government will be able to announce more projects than would otherwise be the case. While this will mean more photo opportunities for the Government, it is misleading to the public by simply transferring the real costs of these projects to a time in the future and possibly to another government.

As stated in the bill's *Explanatory Memorandum*:

...where specific projects have an ongoing cost component, it is intended that such funding would be sourced through other means. This could include direct funding from the budget (outside the BAF), or funding by the States or Territories in relation to proposals that are brought forward as part of the COAG reform agenda.²

Examples of how such a short sighted approach to public policy carries on-going consequences can be found in Labor's 'Computers in Schools' policy. This policy, like the bills covered in this report, does not take into account the 'whole of life' costs which occur after the initial capital investment. What this means is that while the Government was able to announce an apparently beneficial policy, the exclusion of installation, maintenance and training costs meant that rather than benefiting, many schools were burdened with additional and recurrent costs at two to three times the initial cost of the computer. With such a dubious history of inadequate policy development, the claim that spending by these funds will be preceded by rigorous cost benefit analysis provides no assurance of the final benefits to the public.

State infrastructure spending

Just as the announced increase in the First Home Owners Grant saw many first home buyers wait for the extra funds before their purchase, so have these funds seen State infrastructure spending be put on hold. The possibility of transferring the costs of infrastructure development to the Federal Government has created an incentive for State Governments to cancel State funded infrastructure plans and instead bid for federal funds.

One such example of this comes from the Rees Government's recent mini-budget for NSW. The State Government had previously highlighted four 'priority projects' for infrastructure investment which, in the week prior to releasing the mini-budget, were to be completely funded by the State Government. However, the mini-budget states that the four projects had been submitted to Infrastructure Australia and that they 'will

2 *Explanatory Memorandum, Nation-Building Funds Bill 2008*, p. 17.

only proceed before 2012 if they are substantially funded by the Commonwealth'. Coalition Senators are of the view that cost shifting of projects from States to the Commonwealth is counterproductive in light of the country's infrastructure needs and will only serve to further reduce the impact of an already deficient funding pool.

Funding decision transparency

Coalition Senators note that, as they stand, the bills allow for funding decisions to be made without disclosure of the basis for the decisions to the public. The reasoning for this, as claimed by the Finance Department, is that such a move would constitute a breach of commercial confidentiality. Despite this reasoning, such disclosure is standard practice in other countries, e.g. USA and the Scandinavian countries, where not only is the information made public but, in the case of Senate and House Congressional Committees in the USA, companies are required to discuss their bids publicly.

Given the Rudd Government's record on policy decisions and the immediate and ongoing importance of these decisions to the Australian public, transparency regarding how decisions arrived at becomes essential, and Coalition Senators would like to see full disclosure on the Government's final decisions on which projects are chosen and rejected including all data, assumptions and models used.

Slush funds

While the potential coinciding of funding announcements with the next federal election has been met with scepticism from the public and the media, Coalition Senators note that along with inadequate transparency, the funds run a real risk of becoming 'slush funds' which deliver political outcomes rather than public goods. Investment in the areas of infrastructure, education, and health, carry long term consequences for Australia and media claims that Minister Albanese pulled the original legislation 'because it gave him insufficient ministerial discretion over how the money would be allocated'³ only serve to fuel concerns that these funds will be used for political advantage in spite of the country's actual needs.

The bills and the accompanying explanatory memorandum are lacking in specificity in the definitions of where the funds can be spent and although the generic headings seem suitable, there is little to stop these funds from being spent by any means seen fit by the minister including projects of dubious intent and questionable outcomes as to the prudent infrastructure requirements of our nation.

Coalition Senators would like to see the Government address the previously mentioned transparency issues to help allay these concerns and protect against any temptation that may exist for the current Government to abuse the budget surplus that had accumulated during the Coalition's term in government.

3 Katherine Murphy, 'Cabinet rift hits nation's building program', *The Age*, 31 October 2008, p. 1.

The long term nature of infrastructure projects

The Rudd Government's claim these funds will act as a further stimulus in support of the already announced stimulus package shows a politically driven interpretation of the needs of Australians and the Australian economy. During the Supplementary Budget Estimates some concerning aspects of the decisions behind the Government's stimulus package came to light. When asked who decided on the final amount of \$10.4 billion, Minister Conroy stated:

...ultimately the size of the stimulus package was a decision for government.⁴

When Senator Brandis raised concerns about the depth of analysis that was used to develop the stimulus package, the Minister's response was unconcerned:

Senator BRANDIS—Dr Gruen, Senator Joyce seems to have exposed the fact that half of the nation's surplus was spent without any modelling. Would it shock you to learn, if you are not already aware of it, that the Finance estimates were told yesterday afternoon that the costings for the expenditure of half of the nation's surplus were arrived at in the course of a few hours, between Saturday afternoon, 11 October and Monday morning, 13 October, by five public servants?

Senator Conroy—What an excellent job they did.⁵

The Rudd Government's track record for economical decision making has proven disappointing and claims that infrastructure projects will bolster the stimulus package further show lack of forethought. The nature of infrastructure projects means that they take many years to plan and complete making them inappropriate vehicles to deliver the short and medium term stimulus that the economy really needs. It is difficult to reconcile the Government's claims that these funds are long-term in nature yet appropriate for short-term stimulus. As stated by the Prime Minister in his speech to the Local Governments' Meeting:

Infrastructure takes time to build, infrastructure takes time to plan, infrastructure takes time to design and all that hinges on first-class planning.⁶

Public spending squeezing out the market

Any time government policy requires spending there is a consequential competition between government funds and private funds for the limited resources that exist in the market. Any decision by government to spend large amounts of large scale projects should take into consideration the capacity constraints that already exist in the market

4 Senator the Hon Stephen Conroy, *Estimates Hansard*, 22 October 2008, p. E39, quoting David Gruen.

5 *Estimates Hansard*, 22 October 2008, p. E40.

6 Hon. Kevin Rudd MP, speech to Local Governments Meeting, Canberra, 18 November 2008.

if any such spending is to avoid creating inflation as private business is squeezed out by public funds. The Government is very aware of levels of capital expenditure in Australia with the Prime Minister commenting last month on an ABS report that showed planned increases in capital expenditure by Australian businesses in 2008-09. The Australian Bureau of Statistics has released the *Private New Capital Expenditure and Expected Expenditure* report for the September quarter 2008 which showed private capital expenditure rose 2.9 per cent in the September quarter compared to the June quarter, and expectations of expenditure for 2008-09 are 1.6 per cent higher than in the July/August survey estimate.

With market conditions as they are, Coalition Senators are of the view that the Government spending that will come from these funds be preceded by careful consideration of their potentially negative impact on private investment.

Communications Fund

Coalition Senators also note that one of the consequences of these funds is the abolishment of the Communications Fund which the Coalition had set up to ensure that the communication needs of rural and regional Australians would not be forgotten. It is with regret that this fund has been taken away from those who are so often forgotten by Labor, and little consolation can be taken from the Government's ad hoc development of a national broadband network. Coalition Senators strongly argue that despite the Government's overwhelmingly metropolitan focus to date, rural and regional Australia forms an important part of this country and that the needs of people who do live outside of our cities should not be forgotten.

Conclusion

During its 12 years in government, the Coalition's record of strong investment in infrastructure, education, and health stands as a testimony to our dedication to the long-term well being of Australia. Accordingly, the Coalition supports these bills and their intended outcomes however there is a need to address the concerns raised in this minority report and consequently the Coalition will be seeking appropriate amendments in the Senate.

Senator Alan Eggleston

David Bushby

Barnaby Joyce

Deputy Chair

Australian Greens Dissenting Report

The Australian Greens are broadly supportive of the Nation Building Funds Bill and the COAG Reform Fund Bill, but believe that the issues of transparency and accountability identified in the Committee's report should be addressed, and that the roles and mandates of the independent advisory bodies established should be clarified before the Bill is adopted.

It is not appropriate that the Advisory Board's advice to the Minister is not transparent. While disallowable, the Evaluation Criteria against which the Advisory Boards and the Minister will assess projects are not clear and will be difficult to amend.

There has been an unreasonably short time frame provided by the government for review of these lengthy and complex Bills. The extremely short time allowed for comment and input to the Committee's Inquiry resulted in unrepresentative input from only five organisations, with no independent experts or NGOs able to comment in the time provided. While the global economic crisis has prompted the call for swift passage of the Bill, the global economic crisis will not be fixed with policy on the run. Given the sums involved, it is worth taking a little more time than has been allowed to reach a consensus about how these funds will be managed and invested, particularly given the expressed concerns of the Australian National Audit Office.

The overarching principles of the Nation Building Funds are very general and vague and importantly, do not address the urgent and fundamental priorities of reducing emissions, adapting to climate change impacts and preparing for peak-oil.

The overarching principles and the criteria by which projects are approved must address national infrastructure priorities; demonstrate high benefits and effective use of resources; address climate change mitigation and adaptation; prepare for the global oil production peak and subsequent decline in oil production; efficiently address infrastructure needs; and demonstrate achievement of established standards in implementation and management.

In order to provide expert advice related to this mandate, two members of Infrastructure Australia should be people with specific expertise and experience in climate change mitigation and adaptation and the global oil production peak and expected decline in oil production.

The Minister is required to have regard to the advice provided by the various Advisory Boards, however, the Ministers have not yet developed evaluation criteria which Infrastructure Australia and other advisory bodies have to apply when giving this advice. While the details may require further refinement, the principles and scope of this evaluation criteria should be included in the legislation.

The Advisory Board's advice to the Minister is not transparent. These Advisory Boards will be making decisions and providing advice about what is in the national interest. To enhance transparency, the Australian Greens believe the advice provided by the Boards should be tabled by the relevant Minister within 3 sitting days.

The Australian Greens would like to see the establishment of a Parliamentary Joint Committee on Nation Building to consider advice that is referred by the various Advisory Boards to the Minister. This Committee would report to both Houses of the Parliament on any matter appertaining to or connected with that advice to which, in the opinion of the committee, the attention of the Parliament should be directed, and which would examine each annual report on Infrastructure Australia and report to the Parliament on any matter appearing in, or arising out of, any such annual report.

Senator Scott Ludlam

Australian Greens

APPENDIX 1

Submissions Received

Submission Number	Submitter
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1	ABN AMRO Group Australia/NZ
2	Australia National Audit Office (ANAO)
3	Infrastructure Partnerships Australia (IPA)
4	Universities Australia
5	Association of Australian Medical Research Institutes (AAMRI)

Additional Information Received

- Received on 28 November 2008 from Department of Finance and Deregulation. Answers to Questions taken on Notice on Tuesday, 25 November 2008.

APPENDIX 2

Public Hearings and Witnesses

CANBERRA, TUESDAY, 25 NOVEMBER 2008

- BENNETT, Mr Shane, Acting Branch Manager,
Future Funds, Department of Finance and Deregulation
- BOYD, Mr Brian, Executive Director,
Performance Audit Services Group, Australian National Audit Office
- CAMPBELL, Ms Kathryn, General Manager,
Financial Management Group, Department of Finance and Deregulation
- COCHRANE, Mr Warren, Group Executive Director,
Assurance Audit Services Group, Australian National Audit Office
- GREEN, Mr Micah Andrew, Analyst,
Budget Policy Division, Department of the Treasury
- GREENSLADE, Mr Alan, Division Manager,
Funds and Superannuation Division, Department of Finance and Deregulation
- PURVIS-SMITH, Ms Marisa, Manager,
State Finances Unit, Department of the Treasury
- TUNNY, Mr Gene Patrick, Manager,
Government Investment, Risk and Debt Policy Unit, Budget Policy Division,
Department of the Treasury
- WHITE, Mr Peter, Group Executive Director,
Performance Audit Services Group, Australian National Audit Office
- WILLCOCK, Mr Michael, General Manager,
Commonwealth-State Relations Division, Department of the Treasury

