



Nation-building Funds Bill 2008

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Nation-building Funds Bill 2008

Date introduced: 13 November 2008

House: House of Representatives

Portfolio: Finance and Deregulation

Commencement: Sections 1 and 2, and anything not covered elsewhere in the table in clause 2, commence on Royal Assent. Sections 3 to 278 commence on 1 January 2009, but if the proposed Nation-building Funds (Consequential Amendments) Act 2008 does not receive Royal Assent before 1 January 2009, these provisions do not commence.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To establish three infrastructure investment funds—the Building Australia Fund, the Education Investment Fund, and the Health and Hospitals Fund—and the arrangements for the operation of these funds.

The Nation-building Funds Bill 2008—the Bill—should be read in conjunction with the Nation-building Funds (Consequential Amendments) Bill 2008.

Background

The Howard Government started the current trend towards establishing Funds by setting up three funds:

- the Future Fund
- the Higher Education Endowment Fund, and
- the Communications Fund.

The Howard Government proposed a Health and Medical Infrastructure Fund but this was not established.

The Rudd Government proposes to establish three Funds:

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- the Building Australia Fund
 - this will be partly funded from the Communications Fund
- the Education Investment Fund
 - this will be partly funded by the Higher Education Endowment Fund, and
- the Health and Hospitals Fund.

Future Fund

The Howard Government established the [Future Fund](#) to finance, from Budget surpluses, the Australian Government's unfunded superannuation liability. The Rudd Government has pledged to continue the Future Fund. In the 2008-09 Budget Speech, the Treasurer, the Hon. Wayne Swan, announced:

The Government will meet its commitments to the Future Fund to pay the superannuation liabilities of Commonwealth Public Servants. The Government will invest \$3.9 billion into the Future Fund to help it reach its target by 2020.¹

At 30 June 2008, the superannuation liability was in the order of \$108 billion.² At 30 September 2008, the Future Fund had assets of \$63.43 billion including Telstra shares held by the government in escrow valued at \$8.22 billion.³

The [Future Fund Act 2006](#) established the Future Fund Board of Guardians which is responsible, among other things, for investing money in the Future Fund and the Higher Education Endowment Fund. The Bill proposes to give to the Future Fund Board of Guardians responsibility for investing money in the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund.

Higher Education Endowment Fund

The Howard Government [announced](#) the [Higher Education Endowment Fund](#) (HEEF) in the 2007-08 Budget Speech:

For the first time ever, the Australian Government will establish an endowment fund — the Higher Education Endowment Fund (HEEF) — as a perpetual fund to generate earnings for capital works and research facilities in our institutions of higher learning. The initial investment of \$5 billion out of this year's Budget surplus will broadly double all the existing financial investments and endowments currently held in the

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1. Budget Speech 2008-09, p. 12, at <http://www.budget.gov.au/2008-09/content/speech/download/speech.pdf>. Accessed 17 November 2008.
 2. Budget Paper No. 1 2008-09, p. 9–4 at http://www.budget.gov.au/2008-09/content/bp1/downloads/bp1_bst7.pdf. Accessed 18 November 2008.
 3. Future Fund, at <http://www.futurefund.gov.au/>. Accessed 17 November 2008.

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total university sector. The capital will not be spent. It will be invested. And, what is more, we will add further capital from future Budget outcomes to this perpetual fund. Individuals who wish to contribute to this visionary initiative will be able to make tax deductible gifts to be managed along with the Government endowment. The Endowment will be managed by the Guardians of the Future Fund. The earnings generated by this investment will be dedicated to building first class institutes of learning — first class by world standards — and put our Institutes of Higher Learning on a secure footing for ever.⁴

The [Higher Education Endowment Fund Act 2007](#) established the HEEF.⁵

At 30 September 2008, the HEEF had assets valued at \$6.37 billion.⁶

Communications Fund

The Communications Fund was established in 2005 by the [Telecommunications Legislation Amendment \(Future Proofing and Other Measures\) Act 2005](#). This Fund's purpose was:

... to provide an income stream to fund the Commonwealth Government's response to any recommendations proposed by the Regional Telecommunications Independent Review Committee to the Government in a report of a review of the adequacy of telecommunications services in regional, rural and remote parts of Australia.⁷

This Act was part of a suite of legislation that accompanied the 2005 Telstra sale legislation. This Act also established the [Regional Telecommunications Independent Review Committee](#) (the RTIRC). The two initiatives are related insofar as the original intention of the Communications Fund was to produce a notional income stream which would be used to fund the government's response to recommendations of the RTIRC. It was estimated that the Communications Fund would generate income in the order of \$400 million every three years.

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4. Budget Speech 2007-08, pp. 2-3, at <http://www.budget.gov.au/2007-08/speech/download/Speech.pdf>. Accessed 17 November 2008.
 5. For background to the HEEF, see Coral Dow and Bronwen Jagers, 'Higher Education Endowment Fund Bill', *Bills Digest*, no. 38, 2007-08, Parliamentary Library, Canberra, 2007, at <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd038.pdf>. Accessed 24 November 2008.
 6. Future Fund, op. cit.
 7. Explanatory Memorandum, Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005, p. 2, at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r2438_ems_f4e024e3-bf41-46d2-89e6-055a51bd1796/upload_pdf/73857.pdf;fileType=application%2Fpdf. Accessed 17 November 2008.

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Health and Medical Infrastructure Fund

The Coalition Government announced the Health and Medical Infrastructure Fund of \$2.5 billion on 21 August 2007.⁸ The proceeds of the proposed sale of Medibank Private, when realised, would also be added to the Fund. It was proposed that the Fund be used to purchase new capital and medical facilities such as surgical theatres and high-tech medical equipment.⁹ When the announcement was made, the AMA expressed concern that this might lead to a ‘bidding war’ around the country.¹⁰ The Rudd Government has not taken up this proposal and, instead, proposes to establish the Health and Hospitals Fund.

Basis of policy commitment

The Rudd Government [announced](#) that it would establish three Funds—the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund—in the 2008-09 Budget speech.

Building Australia Fund

The Labor Party’s [national platform](#) for the 2007 election stated:

Labor’s Building *Australia Fund* will provide an ongoing revenue stream to finance, or leverage finance, for key infrastructure of national significance.¹¹

The following is the extract from the Budget Speech relevant to the Building Australia Fund:

The Building Australia Fund will finance critical national transport and communications infrastructure, including roads, rail, ports and broadband, that is not being provided by the private sector or the States. The Building Australia Fund will receive an initial allocation of around \$20 billion. So that investment can begin immediately, tonight I announce that the Government will allocate \$75 million in 2007-08 for immediate feasibility studies on high-priority transport projects across

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8. Hon. Peter Costello (Treasurer) and Hon. Tony Abbott (Minister for Health), joint press conference, 21 August 2007, at <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=transcripts/2007/123.htm&pageID=004&min=phc&Year=&DocType=2>. Accessed 24 November 2008.
 9. *ibid.*
 10. Lindy Kerin, ‘Doctors welcome new health infrastructure’ *PM*, 21 August 2007, at <http://www.abc.net.au/pm/content/2007/s2011238.htm>. Accessed 24 November 2008.
 11. Australian Labor Party, *National Platform and Constitution 2007*, p. 14, at http://www.alp.org.au/download/now/2007_national_platform.pdf. Accessed 17 November 2008.

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Australia. This will begin the necessary planning work for key projects in advance of further deliberations by Infrastructure Australia.¹²

With respect to funding of the Building Australia Fund:

Subject to final budget outcomes, the Government will commit funds to the BAF from the 2007-08 and 2008-09 Budget surpluses. With the inclusion of communications priorities within the scope of the BAF, the Government will close the Communications Fund and transfer its assets (currently valued at around \$2.4 billion) to the BAF. The BAF will also receive \$2.7 billion from the Telstra 3 sale process.

The BAF will meet the Government's commitment to invest in a National Broadband Network, with disbursements dependent on the final outcome of the recently commenced Request for Proposals process and the Government's consideration of the Glasson Review. On current projections, the initial Government contributions to the BAF from the above sources will be in the order of \$20 billion.¹³

The Explanatory Memorandum states that the Building Australia Fund will receive \$7.5 billion from the 2007-08 Budget surplus and the legislation provides for this.¹⁴

Under the government's proposed arrangements, [Infrastructure Australia](#) will be responsible for recommending projects for funding from the Building Australia Fund.

Education Investment Fund

The [Education Investment Fund](#) (EIF) was the major initiative in the Rudd Government's 2008-09 higher education budget. The government announced that the EIF will incorporate the existing Higher Education Endowment Fund (HEEF) and extend disbursements to the vocational education and training sector.¹⁵ With respect to funding of the EIF, the government announced that:

Subject to final budget outcomes, the Government will make an initial contribution to the fund of around \$11 billion, comprising around \$6.2 billion that is currently invested in the HEEF, and a further contribution of around \$5 billion from the 2007-08 and 2008-09 Budget surpluses.¹⁶

12. Budget Speech 2008-09, op. cit., p. 11.

13. Budget Paper No. 1 2008-09, op. cit., p. 7-6,

14. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 9.

15. Budget Paper No. 2: Budget Measures 2008-09, Commonwealth of Australia, Canberra, 2008, p. 184; Hon. J. Gillard (Minister for Education), *\$11 billion Education Investment Fund to transform higher education and vocational education training*, media release, Parliament House, Canberra, 13 May 2008.

16. Budget Paper No. 1 2008-09, op. cit., p.7-6.

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The Explanatory Memorandum states that the EIF will receive \$2.5 billion from the 2007-08 Budget surplus.¹⁷

In the 2008-09 Budget, the government announced there would be no allocations from the EIF until 2009-10 but instead provided \$500 million in grants in the 2007-2008 financial year, under the Budget measure 'Building Better Universities', to improve university infrastructure.¹⁸ Since the Budget the government has announced an accelerated \$304 million funding round from the HEEF for new research facilities or capital expenditure in universities as part of the Prime Minister's announcement to fast track the government's nation-building agenda. Fifty-five expressions of interest were received by the HEEF advisory board and 14 projects totalling \$700 million were invited to submit final applications.¹⁹ The provisions relating to fast tracking are in the related Nation-building Funds (Consequential Amendments) Bill 2008.

Like the HEEF, the EIF's purpose is to fund capital and research infrastructure. However, unlike the HEEF, the EIF will be able to make disbursements from the Fund's capital as well as the earnings, there will be no cap on annual allocations, and payments will be extended to include vocational education and training providers.

Health and Hospitals Fund

With respect to the Health and Hospitals Fund (HHF), the Treasurer stated:

Mr Speaker, the Health and Hospitals Fund will finance health infrastructure. Key priorities include spending on hospitals, medical technology equipment, and medical research facilities and projects. The Fund will receive an initial allocation of \$10 billion.²⁰

The \$10 billion was to come from Budget surpluses:

Subject to final budget outcomes, the Government will make an initial contribution of around \$10 billion from the 2007-08 and 2008-09 Budget surpluses.²¹

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17. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 5.
 18. Budget Paper No. 2: Budget Measures 2008-09, op. cit. p. 149; and J. Gillard, *Budget: Education Revolution 2008-09*, Commonwealth of Australia, Canberra, 2008, p. 47.
 19. Hon. J. Gillard (Minister for Education) and Hon. K. Carr (Minister for Innovation, Industry, Science and Research), *Strengthening University Infrastructure through Fast-tracked Investment*, media release, 22 October 2008, at <http://mediacentre.dewr.gov.au/mediacentre/Gillard/Releases/StrengtheningUniversityInfrastructureThroughFasttrackedInvestment.htm>. Accessed 24 November 2008.
 20. Budget Speech 2008-09, op. cit.
 21. Budget Paper No. 1 2008-09, op. cit.

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The Explanatory Memorandum states that the HHF will receive \$5 billion from the 2007-08 Budget surplus.²² Whereas the Treasurer's speech specified some spending priorities, the Explanatory Memorandum refers only to 'capital expenditure' and acquisition of assets.²³

Committee consideration

On 23 October 2008, the government introduced the [COAG Reform Fund Bill 2008](#) to establish the COAG Reform Fund as a Special Account in order to provide financial assistance grants to the states and territories. On 23 October 2008, the Senate referred the COAG Reform Fund Bill 2008 to the Standing Committee on Economics for inquiry and report by 10 November 2008. The reporting date was subsequently extended to 1 December 2008 to allow for concurrent reporting with the Nation-building Funds Bill 2008 and the Nation-building Funds (Consequential Amendments) Bill 2008, which were introduced in the House of Representatives on 13 November 2008. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/economics_ctte/coag_08/index.htm.

On 26 November 2008, the Senate Scrutiny of Bills Committee commented on the Nation-building Funds Bill 2008 and the Nation-building Funds Bill 2008 (Consequential Amendments) Bill 2008. Details of the inquiry are at <http://www.aph.gov.au/Senate/Committee/scrutiny/alerts/2008/d13.pdf>.

Position of significant interest groups/press commentary

Building Australia Fund

[Infrastructure Partnerships Australia](#) is the peak private sector infrastructure body. Infrastructure Partnerships [welcomed](#) the announcement of the three Funds in the 2008-09 Budget.

[Industry Super Network](#) representative, Mr David Whitely, reportedly said that the superannuation industry will not be fronting the cash for the government's nation building plans unless the deals stack up. Mr Whitely noted that industry super funds had been investing in infrastructure for well over 10 years.

National Farmers' Federation:

The National Farmers' Federation (NFF) has welcomed the establishment of Infrastructure Australia to audit, and make recommendations on, "nationally significant" infrastructure development. The NFF believes that this is an important

22. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 5.

23. *ibid.*, pp. 114–5.

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step forward in building the capacity of the Australian economy and ensuring that we can enhance our competitiveness within the global trading environment.

The NFF notes that Infrastructure Australia will focus on issues including water, energy, transport and communications. Each of these infrastructure issues is of vital importance to the agriculture sector and its supply chain, which collectively comprises over 12% of Australia's Gross Domestic Product.²⁴

Australian Local Government Association:

ALGA also welcomed the decision of the Australian Government to ensure that the membership of the Advisory Council of Infrastructure Australia included at least one member with knowledge of, and experience in, local government. ALGA sees this as an important acknowledgment that the local and regional dimensions of national infrastructure investment proposals should be actively and thoroughly considered.²⁵

Urban Development Institute of Australia:

UDIA NSW welcomes the Commonwealth Government initiatives with regard to infrastructure and the emerging role of Infrastructure Australia in providing the framework for informing decision making. The consultative process being undertaken as part of the infrastructure audit initiative will be fundamental to a comprehensive analysis of needs and priorities to guide public investment and the opportunity to comment is appreciated.²⁶

Minerals Council of Australia:

MCA has long held that Government should promote infrastructure spending over further tax cuts. Yet, few of these problems can be solved in a single round of funding allocations by Infrastructure Australia, or even a single Budget. There is a need for greater Government funding of social infrastructure. In other areas, related to physical export infrastructure, **many solutions to these capacity constraints will not require additional spending, rather they require better Federal State co-operation, the elimination of duplicative and contradictory regulatory processes, institutional and intellectual capacity building, and more appropriate competition policy**

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24. National Farmers' Federation, *Infrastructure Australia Submission*, October 2008, p. 3 at http://www.infrastructureaustralia.gov.au/public_submissions/published/files/523_nationalfarmersfederation_SUB.pdf. Accessed 24 November 2008.
 25. Australian Local Government Association, *Submission to Infrastructure Australia*, October 2008 at http://www.infrastructureaustralia.gov.au/public_submissions/published/files/460_australialocalgovernmentassociation_SUB.pdf. Accessed 24 November 2008.
 26. Urban Development Institute of Australia, *Submission to Infrastructure Australia*, October 2008, p. 2, at http://www.infrastructureaustralia.gov.au/public_submissions/published/files/358_urbandevelopmentinstituteofaustralia_SUB.pdf. Accessed 24 November 2008.

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settings. With the right policy and regulatory settings most infrastructure issues can be resolved commercially.²⁷

Rod Sims, Port Jackson Partners Limited:

First, Infrastructure Australia should create a permanent project pipeline with two strict tests for entry. Projects in the pipeline must have a completed pre-feasibility study outlining not only the benefits and costs but also the project timetable and how various issues will be addressed; and there must be a statement of context that describes how the project fits within a wider infrastructure plan.

Infrastructure Australia could recommend projects for funding only from within the pipeline. So recommended projects could be finished on time and on budget and they would be appropriate to a wider need. This would take Infrastructure Australia down a new path. Rather than a one-off selection of projects from those submitted, Infrastructure Australia would instead focus only on well -prioritised and planned projects.

The second recommendation is that Infrastructure Australia should favour projects that will meet explicit state target service levels. This would encourage states to set target traffic congestion levels for our cities, seek sustainable water supplies and ensure freight-travel journey times are within acceptable limits. It will also mean that projects would be funded only if they help meet transparent goals.

Third, projects should receive a positive weighting if they are undertaken within a sound policy environment. Infrastructure Australia should avoid funding projects that would not, for example, be necessary with appropriate infrastructure prices. Infrastructure prices are often inappropriate and they can skew our spending to the wrong projects.

Fourth, there are many areas where Infrastructure Australia can advise on improved practices. One is to reduce the enormous bid costs for projects. There are examples of bidders spending more than \$30 million each on bids, which ties up key skills and works against sound outcomes. The solutions include standardising project documentation as much as possible, and adjusting the probity pendulum, which has swung so far that it can limit communication between the bidders and the client government on how best to achieve the desired outcomes.

The response to the current crisis can either allow Infrastructure Australia to address many of our longstanding infrastructure problems, or it can make those problems worse. In the coming months we will see which path we follow. If we choose wisely

27. Minerals Council of Australia, *Submission to Infrastructure Australia*, November 2008, p. iii at http://www.minerals.org.au/data/assets/pdf_file/0005/32387/MCA_IA_sub_FINAL.pdf. Accessed 24 novmeber 2008.

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there will be important benefits to national productivity. If we do not, the hopes for Infrastructure Australia will be significantly damaged.²⁸

Business Council of Australia:

The changing investment climate makes the need for efficient investments in infrastructure even more important, says Business Council of Australia Chief Executive Katie Lahey ... The submission says Infrastructure Australia will play a central role in ensuring efficient infrastructure investment, both by advising on key infrastructure reform issues and by bringing independence and rigour to the analysis of reforms.

“The economic slowdown should not prevent rigorous assessment of infrastructure proposals.”

“Compared to other spending in the stimulus package announced this week, infrastructure spending will take longer to impact on the economy,” Ms Lahey said.

“Spending money fast should not be the government’s main infrastructure priority. Infrastructure proposals should receive tough scrutiny, to make sure that they are efficient and that Australia gets the most economic growth for its infrastructure dollar.”²⁹

Nigel Wilson, energy writer for *The Australian*:

Energy Supply Association of Australia executive director Brad Page said it was not clear whether the new organisation, promised by Labor during the election campaign, would take over the role of the Ministerial Council on Energy which, representing both state and federal governments, was already overseeing electricity and gas industry reform. “Is Infrastructure Australia just another institution that will become involved in the reform process, or is it going to set the pace?” Mr Page asked.³⁰

Adele Ferguson, article, *Weekend Australian*:

The main problem is the excessive timing. A year to create a list suggests this is not a real plan, according to King. "By that time, the Government will have lost valuable

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28. Rod Sims, ‘Infrastructure: let’s do it properly’, *Australian Financial Review*, 28 October 2008, p. 71 at http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/C8YR6/upload_binary/c8yr60.pdf;fileType%3Dapplication%2Fpdf. Accessed 24 November 2008.
 29. Business Council of Australia, *Infrastructure efficiency now even more important*, media release, 20 October 2008, at <http://www.bca.com.au/Content/101497.aspx>. Accessed 24 November 2008.
 30. Nigel Wilson, ‘Query in project body’s role’, *The Australian*, 22 January 2008, p. 2 at <http://www.esaa.com.au/images/stories/Articles/20080122theaustralian.pdf>. Accessed 24 November 2008

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time and be in its second year. Also there is a significant skills shortage to physically deliver the projects with engineers, investment banks, builders either overseas in Europe or Dubai or in the mines in WA or Queensland," he says.³¹

Education Investment Fund

The main concern of higher education stakeholders is insufficient funds. Although the Bill will allow disbursements from both capital and earnings, universities claim that they have a backlog of \$4.5 billion in building maintenance and refurbishment and need \$8 billion to 'demolish unusable buildings and construct new ones'.³² The current funding round from the HEEF reinforces their position with projects estimated at \$700 million competing for \$304 million in disbursements from the HEEF.

The Group of Eight, a coalition of research-intensive Australian universities, has called on the government to commit \$8.5 billion of the EIF capital to support capital renewal in the higher education sector, release \$800 million a year for ten years to the sector from the EIF, allocate higher education EIF funds according to a formula based 50 per cent on student load and 50 per cent on research income, and establish an independent process to assess and assure the condition of Australian university infrastructure.³³

Extending funding to the vocational education and training sector and research institutions will put further pressure on the available funds. Universities Australia, the peak lobby group for the higher education sector, seeks a guarantee that universities would not receive less than they would have under the HEEF.³⁴

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31. Adele Ferguson, 'Super ideal to provide funds for infrastructure', *The Australian*, 26 January 2008, p. 38 at http://parlinfoweb.parl.net/parlinfo/Repository1/Media/npaper_2/F9IP60.pdf. Accessed 24 November 2008.
 32. A. Trounson, 'Upgrade sought in campus facilities', *Australian*, 29 October 2008; J. Mather, 'Lobby group presses for share of surplus' *Australian Financial Review*, 27 October 2008.
 33. Group of Eight, '[Time to renew Australia's ailing university infrastructure](#)' media release, 4 November 2008. See also: [Group of Eight Infrastructure Condition Survey 2007](#), Canberra, Group of Eight, November 2008. The report shows Australia's universities face significant challenges if they are to renew the large proportion of building and support infrastructure built during the post World War II period of expansion into the 1980s.
 34. A. Symonds, 'New fund sparks concern', *Australian Financial Review*, 29 September 2008; J Ross, 'The pie doubles but competition sours the cream', *Campus Review*, 27 May 2008, at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F5PMQ6%22>. Accessed 21 November 2008.

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Universities are also reported to question the submission-based funding process as being too slow and favour the EIF funds being distributed according to a formula process.³⁵

TAFE Directors Australia's (TDA) Budget submission recommended extending HEEF funding to vocational education and welcomed the announcement in the Budget. TDA Chief Executive, Martin Riordan, said the Fund would create improved capability for TAFE Institutes to develop technologies, improve infrastructure, and improve industry co-investment for increased online and enterprise training needs. Furthermore, TDA welcomed the Minister's assurances that 'the Commonwealth would make a special effort to negotiate with states and territories, to ensure the Fund would be additional to current infrastructure support from STAs (State Training Authorities)'.³⁶

Position of the Coalition

On the EIF, the Coalition is opposed to expending the capital, seeks assurances that universities will receive the same amounts as under the HEEF, and wants eligibility criteria to be clearer, especially as they relate to the position of medical research institutes.³⁷ Treasury spokesperson, the Hon. Julie Bishop, is reported as claiming the extension of funding to the states for vocational education and training 'opens the way for bailing out failed state Labor governments'.³⁸ Shadow Parliamentary Secretary for Education, Senator Brett Mason, has criticised the EIF as an 'all purpose slush fund' which Labor would use 'to make big, headline-grabbing promises without any concern for good economic management and funding sustainability'.³⁹

Health and Hospitals Fund

Although the legislation has not yet passed, the government has already announced that the Chair of the proposed Health and Hospital Fund Advisory Board will be Mr Bill Ferris AC.⁴⁰ This appointment was welcomed by the Australian Healthcare and Hospitals

35. A. Trounson, 'Division emerges over EIF funding', *The Australian*, 12 November 2008.

36. TAFE Directors Australia, 'Education revolution – \$11b Fund welcome for TAFE', [media release](#), 14 May 2008; '[\\$11 billion win for TAFE - TDA lobby success with Education Investment Fund](#)', Special Bulletin, Budget 2008. See also: [TDA submission to Budget 2008](#).

37. A. Symonds, 'New fund sparks concern', *Australian Financial Review*, 29 September 2008.

38. L. Taylor, 'Coalition threatens block on Labor's 'slush funds'', *Australian*, 25 September 2008.

39. J. Ross, 'Senate flashes red on EIF, amber on VSU', *Campus Review*, 30 September 2008.

40. Hon. Nicola Roxon (Minister for Health and Ageing), *Chair of Health and Hospitals Fund Advisory board*, media release, 18 November 2008, at [http://www.health.gov.au/internet/ministers/publishing.nsf/Content/98376B124EA1E589CA257505000BFAA8/\\$File/nr158.pdf](http://www.health.gov.au/internet/ministers/publishing.nsf/Content/98376B124EA1E589CA257505000BFAA8/$File/nr158.pdf). Accessed 24 November 2008.

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Association.⁴¹ Other stakeholders have been largely silent about the Bill and the appointment of Mr Ferris.

The Minister for Health and Ageing, the Hon. Nicola Roxon, has stated that the Health and Hospitals Fund (HHF) can not be used by state and territory governments to ‘top-up’ health budgets.⁴² The legislation provides that grants to a state or territory are to be set out in a written agreement between the Commonwealth and the state or territory. State and territory governments will be able to apply for funding but consideration will be given to prior performance, the amount of proposed expenditure (by the state or territory government) and whether the expenditure should be part of their budget.⁴³ Despite this, the NSW government has indicated that their Budget decisions will be influenced by outcomes of applications made to the HHF.⁴⁴

Although there is flexibility in the legislation for the types of investment in infrastructure projects that can be funded through the HHF, the Explanatory Memorandum notes that the Commonwealth’s intent is to direct funding towards capital expenditure, consistent with the objective of nation-building.⁴⁵ This suggests that the investment in ‘bricks and mortar’ such as the construction of hospitals or health-related facilities such as cancer treatment centres, may be given priority at the expense of less capital-intensive infrastructure projects (such as the development of research capabilities or equipment).

The legislation (clause 247) describes how the HHF evaluation criteria will be developed. As with the other Funds, the Minister must consult the ‘responsible Ministers’ and ensure that the criteria are in force at all times. The criteria will become a legislative instrument and subject to disallowance.⁴⁶ This adds a level of parliamentary scrutiny and transparency to the decision making of the HHF Board.

The establishment of the HHF must be also considered in the context of the Australian Health Care Agreements (AHCA) that are currently being negotiated between the Commonwealth and the state and territory governments and the proposed National Health

41. Australian Healthcare and Hospitals Association, ‘Health infrastructure chief welcomed’ media release, 19 November 2008.

42. Siobhain Ryan, ‘Roxon blocks state raids on health fund’, *The Australian*, 19 November 2008 at [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/WV4S6/upload_binary/wv4s61.pdf;fileType=application%2Fpdf#search=%22media/pressclp/wv4s6\)%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/WV4S6/upload_binary/wv4s61.pdf;fileType=application%2Fpdf#search=%22media/pressclp/wv4s6)%22). Accessed 24 November 2008.

43. *ibid.*

44. *ibid.*

45. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 114.

46. Under the *Legislative Instruments Act 2003*, all legislative instruments are subject to disallowance unless otherwise stated.

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Partnerships that are yet to be finalised. The AHCA's are largely for the funding of public hospitals in each of the state and territories. Media reports have suggested that the Federal government is expected to offer \$70 billion dollars over five years.⁴⁷ Previous AHCA's have included a provision that could be used to fund capital investment but it appears that the HHF will become the major source of funds for capital investment.⁴⁸

Financial implications

The Bill empowers the government to deposit money into the three proposed Funds from Budget surpluses—as is now the case with the Future Fund—and to make payments from the three Funds (via Special Accounts). The Bill also allows initial transfers of \$7.5 billion to the Building Australia Fund, \$2.5 billion to the EIF, and \$5 billion to the HHF. Further, the Bill provides for limits—general drawing rights—on the total that can be paid from the three Funds annually.

Establishing the three Funds, by itself, does not affect the Budget outcome because the creation of the Funds involves changing the composition of assets so that only the asset side of the balance sheet is affected.

Main provisions

The Bill comprises five chapters with separate chapters devoted to the Building Australia Fund, the EIF and the HHF (chapters 2, 3 and 4 respectively). The provisions establish similar structural and governance arrangements for all three Funds. The following therefore covers only the provisions relating to the Building Australia Fund, which are taken to be illustrative of the EIF and HHF Funds.

Further, the Building Australia Fund provisions are identical except in so far as one set relates to transport, another set to communications etc. The provisions relating to transport are taken to be representative of communications, energy, water etc. The only differences—and they are relatively minor—relate to broadband.

Chapter 1—Preliminary

Clause 3 contains a simplified outline of the Bill. In particular, it identifies the areas for investment from each of the three Funds. For example, the Building Australia Fund will fund payments for transport, communications, national broadband networks, energy and water. The EIF has five areas while the HHF has only one.

47. Sue Dunlevy, '\$30 billion boost for hospitals if they admit the ugly truth', *Daily Telegraph*, 21 November 2008, at <http://www.news.com.au/dailytelegraph/story/0,22049,24683239-5005941,00.html>. Accessed 24 November 2008.

48. Refer, for example, to paragraph 17 (page 6) of the AHCA between Western Australia and the Commonwealth. This could be used in relation to the funding of capital works.

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Clause 4 contains definitions. The Bill defines ‘Agency’ to mean the Future Fund Management Agency. The *Future Fund Act 2006* established the [Future Fund Management Agency](#). The Agency is responsible for developing investment strategies for the Future Fund and the HEEF for the purpose of making recommendations to the Future Fund Board of Guardians, and also for administration.

Clause 4 contains multiple definitions of Special Accounts.⁴⁹ The three Funds will operate through Special Accounts. A Special Account is, in essence, an account in a ledger in which all transactions—receipts and payments—related to a particular activity are recorded. The way in which the Special Accounts will operate is as follows, using the example of water.

To fund water projects, money will be transferred from the Building Australia Fund investments and credited to the Building Australia Fund Special Account. (Funding for all water projects as well as transport, communications, broadband, and energy projects will pass through the Building Australia Fund Special Account). Money for water projects is then transferred from the Building Australia Fund Special Account and credited to the Building Australia Fund Water Portfolio Special Account. Payments for projects will then be made from (debited to) the Building Australia Fund Water Portfolio Special Account.

There is a Special Account for each of the three Funds: there is also a Health and Hospitals Fund Special Account and an Education Investment Fund Special Account. Further, there are Special Accounts for each area of investment, for example, research, and vocational education and training.

The above process means that, at any one time, it is likely that there will be funds in both the Building Australia Fund Special Account and the Building Australia Fund investments. Consequently, the definition of ‘balance of the Building Australian Fund’ in **clause 4** encompasses both.

All three Funds are required to invest in financial assets. **Clause 5** defines financial assets. To do this, **clause 5** draws on the accounting system known as Government Finance Statistics (GFS). This is a specialised system of accounts designed specifically for government. **Clause 5** defines financial assets as:

- (a) an asset that, in accordance with GFS Australia, is treated as a financial asset for the purposes of the GFS system in Australia; or
- (b) an asset specified in regulations made for the purposes of this paragraph;

49. For example, in the case of the Building Australia Fund, **clause 13** establishes the Building Australia Fund Special Account, **clause 61** the BAF Infrastructure Portfolio Special Account, **section 68** the BAF Communications Portfolio Special Account etc.

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but does not include a reference to an asset that, under the regulations, is taken to be a non-financial asset for the purposes of this Act.

Chapter 2—Building Australia Fund

Part 2.2—Building Australia Fund

Division 2—Establishment of the Building Australia Fund etc.

Clause 12 establishes the Building Australia Fund. **Subclause 12(1)** provides that Building Australia Fund is established by this section. **Subclause 12(2)** provides that the Building Australia Fund consists of the Building Australia Fund Special Account **paragraph 12(2)(a)** and the investments of the Building Australia Fund **paragraph 12(2)(b)**.

Subclause 13(1) establishes the Building Australia Fund Special Account.

Division 3—Credits of amounts to the Building Australia Fund

Clause 14 deals with initial credits to the Building Australia Fund. **Paragraph 14(1)(a)** empowers Ministers to credit, by determination, amounts to the Building Australia Fund Special Account. **Subclause 14(4)** provides that a determination is irrevocable. **Subclause 14(5)** provides that a determination is a legislative instrument, but that section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply.

As noted, the Explanatory Memorandum states that the Building Australia Fund will receive \$7.5 billion from the 2007-08 Budget surplus. **Subclauses 14(2)** and **14(3)** provide for this transfer.

Clause 15 deals with subsequent credits to the Building Australia Fund. **Subclause 15(1)** provides that the responsible Ministers may determine that an amount is to be credited to the Building Australia Fund. **Subclause 15(2)** provides that, in making a determination, the Ministers must have regard to the object of Chapter 2. **Subclause 15(3)** provides that a determination is a legislative instrument, but that section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply.

As noted, the Building Australia Fund will be partly funded by transferring the amount in the Communications Fund and part of the proceeds from the sale of Telstra. **Clause 16** provides for the transfer of the full amount from the Communications Fund Special Account as soon as practicable. **Subclause 17(1)** provides that the responsible Ministers may determine that an amount equal to the balance of the Telstra Sale Special Account as at a specified time is to be credited to the Building Australia Fund Special Account. The Ministers must make a determination before 30 June 2009 [**subclause 17(2)**]. **Subclause 17(3)** provides that a determination is a legislative instrument, but section 42

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(disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

Division 4—Debit of amounts from the Building Australia Fund

Clause 18 enumerates the purposes for which payments from the Building Australia Fund Special Account can be made. They fall into two categories: funding of transport, energy etc. infrastructure **paragraphs 18(1)(a) to 18(1)(e)**, and paying various costs/expenses **paragraphs 18(1)(f) to 18(1)(l)**. The wording used in **paragraphs 18(1)(a) to 18(1)(e)** is ‘making payments in relation to the creation of development of [transport, energy etc] infrastructure’. **Clauses 21 to 25** elaborate on this wording (see below).

Subclause 18(3) provides that a payment under paragraphs **18(1)(a), (b), (c), (d) or (e)** may be made by way of a grant of financial assistance **paragraph 18(3)(a)** or otherwise than by way of a grant of financial assistance **paragraph 18(3)(b)**.

As to the purpose of **paragraph 18(3)(b)**, the Explanatory Memorandum states:

This provides flexibility in relation to payments from the BAF.

Other payments (i.e. payments that are not grants) include payments for the acquisition, in the name of the Commonwealth, of financial assets (such as shares, debentures and trust units) in a company involved in the creation or development of relevant infrastructure. Other payments could also include public-private partnership payments.

The Commonwealth would also have the flexibility to make a payment (other than by a grant of financial assistance) to a State or Territory under an ordinary contractual obligation.⁵⁰

It seems that **paragraph 18(3)(b)** would allow the Commonwealth to take an equity position in, say, a company that owns a port.

Clause 21 reinforces this interpretation. **Clause 21** extends the meaning of the words ‘making payments in relation to the creation of development of transport infrastructure’ used in **paragraph 18(1)(a)**. **Clause 21** defines this term to mean a payment for the acquisition of shares in a company **subclause 21(a)**; the acquisition of debentures of a company **subclause 21(b)**; the acquisition of units in a unit trust **subclause 21(c)**; the acquisition of a financial asset in a business entity **subclause 21(d)**; a payment in relation to a matter incidental or ancillary to a matter set out in paragraph (a), (b), (c) or (d) **subclause 21(e)**. See also the provisions of **clause 121** (below).

50. Explanatory Memorandum, Nation-building Funds Bill 2008, pp. 17–18.

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The wording in **clauses 22, 24 and 25** is identical to that of **clause 21** except that whereas **clause 21** relates to transport, clauses **22, 24 and 25** relate to communications, energy, and water respectively.

Clause 23 relates to an ‘eligible broadband network matter’. The purpose of **clause 23** is to give the government as much flexibility as possible to allow it to create a national broadband network. With respect to a national broadband network, **clause 23** has virtually the same provisions with respect to shares, debentures etc. that **clauses 21, 22, 24 and 25** have. **Clause 23** adds three additional subclauses: the creation or development of a national broadband network **subclause 23(e)**, the supply of a broadband carriage service over a national broadband network **subclause 23(f)**, and the acquisition of assets for use in connection with the creation or development of a national broadband network **subclause 23(g)**. The Explanatory Memorandum notes:

The definition of eligible national broadband network matter is not intended to prescribe a particular form of funding or investment, rather it is intended to provide flexibility in how the Government may ultimately invest in the [national broadband network]. This might include a combination of forms of investment covered by clause 23. While the Government has indicated that its preference is for an equity investment, it has also indicated that it will consider other options with a view to achieving the optimal outcome.⁵¹

Division 5—Inter-fund transfers

Division 5 allows transfers from the Building Australia Fund to the Future Fund (**clause 27**), the EIF (**clause 28**), and the HHF (**clause 29**). The Explanatory Memorandum explains that the purpose of these provisions is to cover situations where one Fund pays entirely for an expense that is also partly attributable to other Funds.⁵²

Part 2.3—Investment of the Building Australia Fund

As noted, responsibility for investing the Building Australia Fund will rest with the Future Fund Board (of Guardians). **Subclause 32(1)** provides that the Future Fund Board may invest amounts held in the Building Australia Fund Special Account in any financial assets.

As noted, the Building Australia Fund is to be partly financed by transferring funds from the Communications Fund. **Clause 33 Building Australia Fund to inherit investments of the Communications Fund** has the effect of making a financial asset in the Communications Fund an investment in the Building Australia Fund. It is worth noting that:

51. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 20.

52. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 23.

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As these financial assets will not be part of the BAF, the Future Fund Board will not be involved in the acquisition or management of these assets.

Rather:

It is intended that the Communications Minister will manage the Commonwealth's ownership obligations as well as exposures and risks associated with the assets, on behalf of the Commonwealth.⁵³

Clause 34 deals with the management of investments of the Building Australia Fund. **Subclause 34(1)** provides that income from investments must be credited to the Building Australia Fund Special Account. Likewise, a return of capital must also be credited to the Building Australia Fund Special Account **subclause 34(2)**. **Subclause 34(3)** allows the Future Fund Board to realise an investment, with the proceeds to be credited to the Building Australia Fund Special Account **subclause 34(4)**. **Subclause 34(5)** allows the Future Fund Board to reinvest a maturing asset.

Given that the Future Fund Board is responsible for investment in the Building Australia Fund as well as the Future Fund, it is not surprising that the provisions in the Bill dealing with investment of the Building Australia Fund—**clauses 34 to 48**—are virtually identical to those in the [Future Fund Act 2006](#) with appropriate changes. The counterparts to **clauses 34 to 48** are sections 17 to 32 of the *Future Fund Act 2006*. The Explanatory Memorandum describes these clauses adequately.⁵⁴

Part 2.4—Payments

Division 2—Direct payments

As noted, payments for transport, communications, a national broadband network, energy and water infrastructure will be made from the Building Australia Fund. Many of the provisions in Division 2 are repetitive in that they relate first to transport then to communications etc. In what follows, the clauses relating to transport are taken to be representative of the clauses relating to communications etc.

A feature of the Bill is that payments must not be paid for transport etc unless Infrastructure Australia has first assessed the proposed project and has confirmed that it meets evaluation criteria. Further, the Finance Minister must not pay for the project without the recommendation of the Infrastructure Minister. **Clause 52** effects these requirements.

Subclause 52(1) provides that the Finance Minister must not authorise a payment [for transport infrastructure] unless the Infrastructure Minister has recommended the

53. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 21.

54. Explanatory Memorandum, Nation-building Funds Bill 2008, pp. 24–32.

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authorisation of the payment. **Subclause 52(2)** provides that the Infrastructure Minister must not make a recommendation to the Finance Minister unless Infrastructure Australia has advised the project satisfies the Building Australia Fund evaluation criteria. **Subclause 52(3)** provides that in deciding whether to make a recommendation to the Finance Minister, the Infrastructure Minister must have regard to the advice from Infrastructure Australia **paragraph 52(3)(a)** and such other matters (if any) as the Infrastructure Minister considers relevant **paragraph 52(3)(b)**. In short, the Infrastructure Minister cannot make a recommendation unless the advice from Infrastructure Australia is that the project meets the Building Australia Fund evaluation criteria.

The Bill envisages grants to a state or territory but also to a person other than a state or territory. **Clauses 53 to 56** deal with grants to a state or territory and **clauses 57 to 60** with a person other than a state or territory.

Clause 53 deals with a grant to a state or territory for transport infrastructure. **Subclause 53(2)** provides that terms and conditions under which financial assistance is granted must be set out in a written agreement between the Commonwealth and the state or territory, while **subclause 53(3)** empowers the Infrastructure Minister to enter into an agreement on the Commonwealth's behalf.

Clause 57 deals with a grant to a person other than a state or territory for transport infrastructure. **Subclause 57(1)** states that this section applies if the purpose is to make a payment to a person other than a state or territory **paragraph 57(1)(a)**, the payment is a grant of financial assistance **paragraph 57(1)(b)**, and the payment is for a purpose mentioned in **paragraph 18(1)(a)** that is, for the creation or development of transport infrastructure **paragraph 57(1)(c)**. As with a grant to a state or territory, the terms and conditions under which financial assistance is granted to a person must be set out in a written agreement between the Commonwealth and a person **subclause 57(2)** while **subclause 57(3)** empowers the Infrastructure Minister to enter into an agreement on the Commonwealth's behalf.

Division 3—Channelling of payments through the BAF Infrastructure Portfolio Special Account

As noted, payments will be made from the Building Australia Fund investments into the Building Australia Fund Special Account. Payments will then be made from the Building Australia Fund Special Account to another Special Account, for example, the Communications Portfolio Special Account in the case of communications projects.

Clause 61 establishes the Building Australia Fund Infrastructure Portfolio Special Account.

Like the recommendations about direct payments for grants under **clause 52**, **clause 64 Recommendations about payments** empowers the Infrastructure Minister to recommend payment for transport infrastructure but only after receiving confirmation from Infrastructure Australia that the infrastructure satisfies the Building Australia Fund

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evaluation criteria **subclause 64(2)**. In deciding whether to fund the infrastructure, the Infrastructure Minister must have regard to the advice from Infrastructure Australia **paragraph 64(3)(a)** and such other matters (if any) as the Infrastructure Minister considers relevant **paragraph 64(3)(b)**.

Clauses 65, 66 and 67 are mechanical provisions dealing with payment procedures, which the Explanatory Memorandum explains adequately.

Divisions 4, 5 and 6 deal respectively with communications, energy and water. In all three cases, communications between the relevant Minister with Infrastructure Australia is to be made through the Infrastructure Minister. See, for example, **subclauses 118(4) and 118(5)** which require that all communications between the Energy Minister and Infrastructure Australia are to be made through the Infrastructure Minister.

Division 7—Channelling of State/Territory grants payments through the COAG Reform Fund

Subdivision A—Channelling of transport infrastructure grants

A separate bill—the [COAG Reform Fund Bill 2008](#)—seeks to establish the COAG Reform Fund as a Special Account to provide financial assistance grants to the states and territories. **Division 7** establishes the framework for these transfers. Most of the provisions in **Division 7** of the Nation-building Funds Bill 2008 repeat those in **Divisions 2, 3, 4, 5 and 6** in the Nation-building Funds Bill 2008 except that **Division 7** relates to the COAG Reform Fund.

Division 8—Total payments for a financial year

The Minister for Finance and Deregulation, in his second reading speech, stated:

Consistent with the Government's economic security strategy to strengthen the Australian economy in the face of the global financial crisis, the Bill permits me, as Finance Minister, to determine a drawing rights limit for spending from the Funds covering the period up to 30 June 2009. This will allow work in key infrastructure areas to commence before 1 July 2009. To apply rigor and transparency to spending from the Funds prior to the 2009-10 financial year, the determination will be made in writing and tabled in the Parliament.

Clause 109 General drawing rights limit in relation to a financial year covers two situations: the financial year ending on 30 June 2009, and another financial year. In the former case, the general drawing rights limit will be via a declaration, in writing, by the Finance Minister **paragraph 109(1)(a)** while in the second case, the mechanism will be via an Appropriation Act **paragraph 109(1)(b)**.

Subclause 109(2) provides that the total amount covered by the drawing rights—from the Special Accounts in **paragraphs 2(a) to 2(l)**—must not exceed the general drawing rights

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limit for the financial year. The Special Accounts in **paragraphs 2(a) to 2(l)** are for communications, water etc.

Subclause 109(3) provides that the Finance Minister's declaration is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.

Clause 111 provides, in effect, that if the Finance Minister has not issued a declaration or there is no Appropriation Act dealing with drawing rights, then no drawing rights are to be issued. Responsibility for decisions across all portfolios falls on the Finance Minister.

The government is keen to accelerate infrastructure investment to counter the slowdown in the economy. **Clause 112 Total payments to depend primarily on the macroeconomic circumstances** seeks to enshrine, in legislation, the principle that the total amount spent on infrastructure from the various Funds should be determined primarily by macroeconomic conditions.

Clause 113 provides that the Finance Minister may require the Future Fund Board to prepare reports dealing with the Board's performance. **Subclause 113(4)** provides that the Finance Minister may choose to publish these reports.

Part 2.5 Reporting obligations etc.

Clause 113 empowers the Finance Minister to require the Future Fund Board to provide reports and information.

Subclause 113(4) provides that the Finance Minister may publish the Board's report.

Subclauses 113(5) and 113(6) provides that the Board's reports and documents are not legislative instruments.

Clause 115 Finance Minister may give reports to other Ministers etc. allows the Finance Minister to give reports etc to the Treasurer and the Building Australia Fund portfolio Ministers.

Part 2.6—Miscellaneous

The [Infrastructure Australia Act 2008](#) established [Infrastructure Australia](#). Section 5 of the Infrastructure Australia Act contains Infrastructure Australia's functions. They include advising governments on Australia's future infrastructure needs and related infrastructure issues. **Clause 116** imposes another function on Infrastructure Australia, namely, to advise the Infrastructure Minister about matters that the Infrastructure Minister refers to it **paragraph 116(1)(a)** and that relate to the making of payments in relation to transport infrastructure **paragraph 116(1)(b)**. **Subclause 116(2)** provides that in giving advice to the Infrastructure Minister, Infrastructure Australia must apply the Building Australia Fund evaluation criteria.

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However, the Building Australia evaluation criteria have not yet been established. **Subclause 120(1)** empowers the Infrastructure Minister to formulate Building Australia Fund evaluation criteria, which Infrastructure Australia is to apply when giving advice to the Infrastructure Minister in relation to transport infrastructure. The criteria will be a legislative instrument. The criteria will be disallowable by Parliament.⁵⁵

According to the Explanatory Memorandum, the purpose of **subclause 120(2)** is to acknowledge that there may be certain differences in the criteria applied by Infrastructure Australia in giving advice relating to transport, communications etc. infrastructure.⁵⁶

As noted, **clause 21** permits investment in shares etc, for the purpose of creating or developing infrastructure. **Clause 121** relates to these investments. The Explanatory Memorandum notes that section 39 of the *Financial Management and Accountability Act 1997* authorises the Finance Minister to invest only in a limited range of investments such as government bonds and bank deposits.⁵⁷ Further, investment in the Building Australia Fund is restricted to financial assets. Investment in shares etc. would, therefore, be contrary to the *Financial Management and Accountability Act 1997* and the requirement that the Building Australia Fund invest only in financial assets. Accordingly:

... **subclauses 121(2) and (3)** provide that Part 2.3 of the Bill (which relates to investments of the BAF managed by the Future Fund Board) and section 39 of the FMA Act do not apply to these assets.⁵⁸

The provisions relating to fast tracking are in the related Nation-building Funds (Consequential Amendments) Bill 2008.

Concluding comments

As noted, the Howard Government started the current trend towards establishing Funds. The Future Fund and the Higher Education Endowment Fund were convenient places to ‘park’ Budget surpluses while being seen to provide community benefits. However, unlike the Howard Government’s Higher Education Endowment Fund and proposed Health and Medical Infrastructure Fund, the Bill introduces a new element into three proposed Funds by establishing advisory bodies to vet infrastructure projects. The Bill thus has the potential to ensure that scarce resources are devoted to projects yielding positive net social benefits. The merit of having projects assessed by the advisory bodies—Infrastructure Australia, the Education Investment Fund Advisory Board, and the Health and Hospitals

55. Under the *Legislative Instruments Act 2003*, all legislative instruments are disallowable unless otherwise stated.

56. Explanatory Memorandum, Nation-building Funds Bill 2008, p. 64.

57. Explanatory Memorandum, National-building Funds Bill 2008, p. 65.

58. *ibid.*

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Advisory Board—is that proposals yielding few or no social benefits will, hopefully, be weeded out.

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. Infrastructure Australia, for example, is tasked with recommending transport and other projects to the Infrastructure Minister. But Infrastructure Australia is not resourced to undertake independent benefit-cost analyses of projects by itself and so will have to rely on information or advice provided by others. The \$75 million the government has allocated for feasibility studies of urban congestion and planning should ease this problem. Whether the projects which the government hopes to fast track will have been subject to rigorous independent cost-benefit analysis is unknown.

Ministers can approve projects only if the advisory bodies have certified that the projects have met the evaluation criteria. While this should eliminate projects of little or no value, Ministers have discretion as to whether to fund a project. This leaves scope for the funding of a project which, while yielding positive net social benefits, may be less worthy than other projects. The need to spread funds across all the states and territories by itself almost guarantees that funds are unlikely to be allocated purely on the basis of which projects offer the greatest net social benefits.

[Professor Henry Ergas](#), pointing to the poor record of OECD countries, has expressed concern about the risk that poor quality projects pose to taxpayers:

Throughout the Organisation for Economic Co-operation and Development area, the salient feature of large-scale infrastructure programs has been how many poor quality projects, whose costs greatly exceeded their benefits, have been implemented ...

That inefficiency is ... aggravated by the frenzies of rent-seeking that important infrastructure projects unleash.

With individual projects involving multibillion-dollar outlays, the gains from being selected to operate a project are huge. The sheer magnitude of those gains encourages every form of manipulation and deception. It is therefore unsurprising that the track record of big infrastructure programs is dismal.

For example, although road construction is a relatively standardised activity, a study of a large number of road projects found that costs were routinely underestimated, with the average gap between estimate and actual expenditure being in the order of 15 per cent. Forecast error on big rail projects was even greater, with an average underestimate of costs in the order of 40 per cent, while demand was overestimated by an average of 105 per cent, so that actual use was typically less than half that initially estimated.

It is therefore unsurprising that 40 per cent of the large projects examined in one recent study were found to have performed very badly, with fewer than half the projects surveyed ultimately meeting most of their stated objectives ...

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The trend to undertaking significant infrastructure projects through public-private partnerships has made that political economy only worse. By taking outlays off balance sheet, PPPs reduce the visibility of the costs forced on taxpayers and consumers, making it more difficult for those costs to be controlled. That most of those costs are shifted into the future further reduces their visibility, as do the opaque risk-sharing and cost-recovery arrangements built into many PPP contracts ...

Stringent safeguards are therefore needed if the Building Australia Fund is not merely to add to this farrago of waste, inefficiency and favouritism. Those safeguards need to include rigorous cost-benefit testing of all projects; full disclosure of the data, assumptions and models used in that testing, along with the results; complete transparency of any PPP contracts, along with estimates of their costs to the public; annual audit of outcomes compared with initial estimates; and stringent probity requirements around project selection and implementation.⁵⁹

Set against the criteria in the final paragraph of the quote, the Bill falls short.

Reporting and accountability requirements in the Bill are limited. While the legislation provides that the Finance Minister may require the Future Fund Board to prepare reports dealing with the Board's performance and allows the Finance Minister to publish these reports there are, for example, no requirements for ministers to report to parliament which projects the ministers have approved or the reasons for decisions. Given that substantial sums of taxpayers' money are at stake, justification to parliament of ministers' decisions would seem to be a minimum requirement. Nor does the Bill require ministers to keep parliament informed on movements in the Funds. Finally, the Bill does not provide for any *ex post* accountability to answer the question: were the approved projects a good use of taxpayers' money?

One aspect that may be controversial is that the Bill:

... allows spending proposals from the BAF, EIF and HHF to include the acquisition, in the name of the Commonwealth, of financial assets (such as shares, debentures and unit trusts) in a company involved in the creation or development of relevant infrastructure.⁶⁰

The desirability of the Commonwealth having, for example, equity stakes in projects is debatable.

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59. Henry Ergas, 'Building fund a miracle cure that wastes taxpayers dollars', *Australian*, 8 October 2008, at [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/2DRR6/upload_binary/2drr60.pdf;fileType=application%2Fpdf#search=%22media/pressclp/2drr6\)%22Accessed](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/2DRR6/upload_binary/2drr60.pdf;fileType=application%2Fpdf#search=%22media/pressclp/2drr6)%22Accessed) 20 November 2008.
60. Explanatory Memorandum, Nation-building Fund Bill 2008, p. 7.

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The prospect of reduced Budget surpluses or even deficits puts a cloud over future Budget funding of all four Funds. In the case of the Building Australia Fund, for example, the government has referred to funding of \$20 billion. But the government has not identified the time period to which this refers nor detailed how this amount will be funded. To date, we know of a total of about \$12.6 billion consisting of \$2.4 billion from the Communications Fund, \$2.7 billion from the sale of Telstra, and \$7.5 billion from the 2007-08 Budget surplus. Further, the figure of \$20 billion could be regarded as tentative since the government could seek to spend more than \$20 billion to provide fiscal stimulus to the economy by funding investment in transport etc. in the event of a prolonged or deep economic downturn.

As noted, the government is keen to accelerate infrastructure investment to counter the slowdown in the economy.⁶¹ A long-standing problem with increasing infrastructure spending as a counter-cyclical measure to stimulate the economy is the lags in getting projects up and running. By the time it takes to select projects, evaluate them, put them out to tender, select contractors and draw up contracts, the reason for the spending may have passed. To assist fast tracking, Infrastructure Australia is to advise the government in December 2008 on projects that might be funded. However, the time frame for Infrastructure Australia to report is very tight given that submissions were due on 15 October 2008. [Submissions](#) were to be evidence-based and no more than 15 pages.

The states and territories are likely to welcome the three Funds, first because it will be the Commonwealth—and not the states—funding projects and secondly, because the states will see scope to shift costs on the Commonwealth. In other words, expenditure from the Funds may, to some extent, substitute for state and territory investment rather than add to overall investment. Further, some states are likely to see the Commonwealth's funding of infrastructure as a way of bailing them out of their—partly self-imposed—Budget difficulties.

Accounting standards treat interest, dividends etc from investments as income. Income is included in Budget aggregates, that is, is included in revenue in the operating statement. Consequently, the income from the Future Fund is included in Budget aggregates. The income from the three proposed Funds will also be included in Budget aggregates:

All earnings and expenditure from the Funds will impact on the budget aggregates.⁶²

However, when it comes to reporting the underlying cash balance, it seems that the treatment of the income from the three proposed Funds may differ from that of the Future

61. Hon. Kevin Rudd (Prime Minister) and Hon. Wayne Swan, *Macroeconomic conditions*, joint press release, 14 October 2008, at http://www.pm.gov.au/media/Release/2008/media_release_0543.cfm. Accessed 19 November 2008.

62. Explanatory Memorandum, Nation-building Funds Bill 2008. op. cit., p. 8.

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Fund.⁶³ The income from the Future Fund is not included in the underlying cash balance.⁶⁴ This treatment is debatable. The rationale seems to be that the Future Fund's earnings are 'quarantined' and cannot be spent for purposes other than reducing the superannuation liability. However, it seems that the income from the three proposed Funds will be included in the underlying cash balance.

63. In short, the underlying cash balance excludes from actual cash transactions, items that might be considered abnormal or highly unusual (for example, proceeds from the sale of Sydney airport). The underlying cash balance can thus give a better idea of Budgetary trends than actual cash outcomes.

64. See Table 1 in Budget Paper No. 1 2008-09, p. 10–8.

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