

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

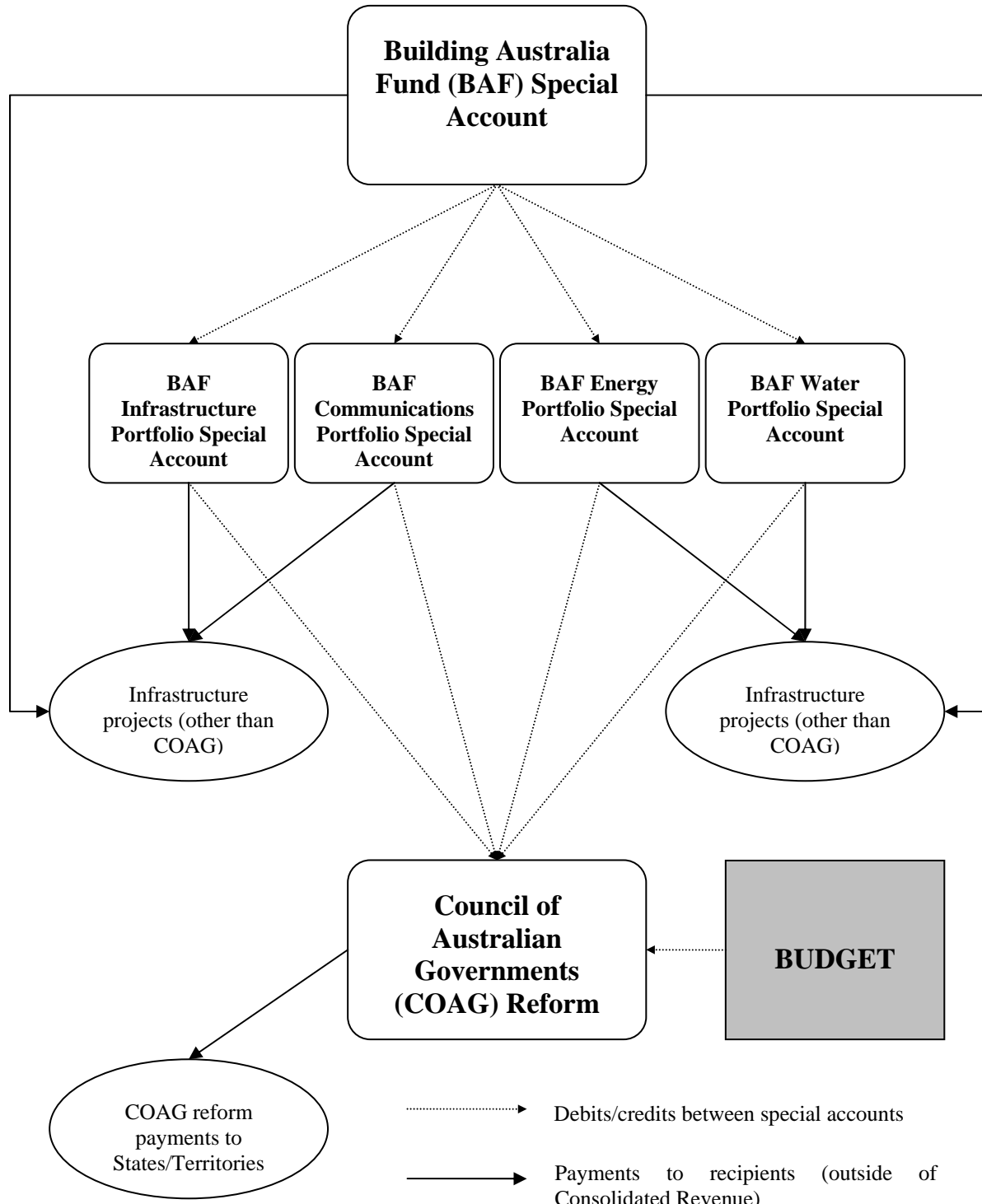
10 Clauses 38, 157, and 232 of the Nation-Building Funds Bill 2008

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.