



Express law fast track information for clients

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Nation-building funds legislation passed by Parliament

The package of legislation that will establish a number of 'nation-building' funds to finance major infrastructure projects has passed the Parliament and will commence on 1 January 2009.

The nation-building funds package consists of the following Bills, which passed unamended:

- the [Nation-building Funds Bill 2008](#)
- the [Nation-building Funds \(Consequential Amendments\) Bill 2008](#)
- the [COAG Reform Fund Bill 2008](#).

Establishing the funds

The Nation-building Funds Bill 2008 is the main Bill and will establish the following funds:

- the **Building Australia Fund** (or BAF), which will fund payments in relation to the creation or development of transport, communications, energy and water infrastructure, or as well as the creation and development of a national broadband network
- the **Education Investment Fund** (or EIF), which will fund payments in relation to the creation or development of higher education, research, vocational education and training and other eligible education infrastructure
- the **Health and Hospitals Fund** (or HHF), which will fund payments in relation to the creation or development of health infrastructure.

The funds will initially be credited with the following amounts:

- the BAF will receive \$7.5 billion from the 2007-08 budget surplus as well as the remaining proceeds of the Telstra 3 sale and the balance of the Communications Fund (which is to be closed)
- the EIF will receive \$2.5 billion from the 2007-08 budget surplus and the balance of the Higher Education Endowment Fund (which is to be closed)
- the HHF will receive \$5 billion from the 2007-08 budget surplus.

The legislation provides for advisory processes to be followed before a payment from a fund can be approved:

- in relation to the BAF, advice must have been provided by Infrastructure Australia to the effect that the payment satisfies the 'BAF evaluation criteria'

- in relation to the EIF, advice must have been provided by the EIF Advisory Board to the effect that the payment satisfies the ‘EIF evaluation criteria’
- in relation to the HHF, advice must have been provided by the HHF Advisory Board to the effect that the payment satisfies the ‘HHF evaluation criteria’.

The various evaluation criteria are required to be formulated by the relevant portfolio Ministers and they will be subject to parliamentary disallowance.

Each of the nation-building funds will be established as a ‘special account’ which will operate to set aside an amount within the Consolidated Revenue Fund to be expended for its specific purposes. The Nation-building Funds Bill provides for payments from each of the main fund accounts to be channelled through portfolio special accounts in line with portfolio responsibilities for supervising the delivery of infrastructure projects. Grant payments to the States and Territories may be further channelled through the COAG Reform Fund (see below).

Payments from the funds in relation to an infrastructure project will be authorised by the Finance Minister on the basis of recommendations made the relevant portfolio Minister.

In each financial year, a ‘general drawing rights limit’ will be applied to limit the total amount that may be expended from a fund in that year. General drawing rights limits will operate to control the rate of spending of the amounts that have already been committed for the purposes of the funds. Ordinarily, these limits will be determined as part of the annual budget process and be included in annual Appropriation Acts, so that there is parliamentary supervision of the rate of the expenditure from the funds. For the financial year ended 30 June 2009, in order to fast-track projects as part of the government’s response to the global financial crisis, the general drawing rights limit will be determined by the Finance Minister and tabled in the Parliament.

Implementing interim advisory arrangements

The Nation-building Funds (Consequential Amendments) Bill 2008 provides for consequential amendments of other laws and transitional arrangements. In particular, there are provisions which recognise the interim advisory arrangements that have been implemented to fast-track the approval of projects in anticipation of the passage of the legislation.

Disbursement of funds to States and Territories

The COAG Reform Fund Bill 2008, the final bill in the legislative package, will provide a vehicle by which payments from the budget, the BAF, the EIF and the HHF may be disbursed to the States and Territories.

AGS has been assisting the Department of Finance and Deregulation with the development and passage of the legislation.

For further information please contact:

Mark Molloy
Senior General Counsel
T 02 6253 7421 F 02 6253 7317
mark.molloy@ags.gov.au

Guy Aitken
Special Counsel
T 02 6253 7084 F 02 6253 7304

guy.aitken@ags.gov.au

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