

DESIGNATED USE PERIOD – CONTINGENT LIABILITY

1. Purpose

The Commonwealth Government right to repayment is documented in the Capital Grants Program Guidelines with references to the *Australian Education Regulation 2013* (The Regulation). Section 64 of *The Regulation* specifies the repayment periods and recoverable amounts on the calculated portion of the grant that will become repayable where, at any time during the Designated Use Period, the school ceases to provide primary/secondary education.

2. Recovering capital funding when a school ceases to provide education

2.1 For subsection 109(4) of the Act, an amount (the **capital funding amount**) of financial assistance, mentioned in paragraph 109(4)(a) of the Act, that is provided for a school is recoverable if:

- 2.1.1 the capital funding amount is included in column 1 of an item of the table in this subsection; and
- 2.1.2 the school ceases to provide any primary education or secondary education in the period mentioned in column 2 of that item.

3. When a capital funding amount may be recovered

Item	Capital Funding Amount	Designated use period
1	\$75,001 to \$500,000	2 years plus one additional year for each \$50,000 of financial assistance that is over \$100,000
2	\$500,001 to \$1.5 million	10 years plus one additional year for every \$100,000 of financial assistance that is over \$500,00
3	Over \$1.5 million	20 years

3.1 If the school ceases to provide primary education or secondary education during the first half of the period specified in column 2 of an item in the table in subsection (1), the amount specified under paragraph 110(1)(a) or (b) of the Act must not exceed the capital funding amount.

- 3.1.1 Paragraphs 110(1)(a) or (b) of the Act allow the Minister to require a State or Territory to repay an amount and reduce the amount that is payable to a State or Territory.
- 3.1.2 Subsections (2) and (3) are prescribed for subsection 110(3) of the Act.

3.2 If the school ceases to provide primary education or secondary education during the second half of the period specified in column 2 of an item of the table in subsection (1), the amount specified under paragraph 110(1)(a) or (b) of the Act must not exceed the amount that remains if, each year in the second half of the period, the capital funding amount were reduced by equal proportions.

Example: Financial assistance of \$2 million is provided to a block grant authority to build a school building for a primary school. If the school ceases to provide primary education during the 10year period after the financial assistance is provided, the entire amount may be recovered by the Commonwealth. For each year following that 10year period, the amount that may be recovered by the Commonwealth reduces by 10%

3.3 In determining a period for the purposes of subsection {2} or (3), round the period to the nearest full year. Examples of the recoverable amount are set out in the table below.

Total Grant Amount	Designated Use Period	Recoverable Portion	Example
\$75,001 to \$500,000	2 years plus one additional year for each \$50,000 over \$100,000 (Rounded to the nearest full year)	Full amount will be recoverable up to half way through the Designated Use Period, and then reduced by equal proportions of the total amount over the remaining period.	Grant amount \$475,000: retain interest for 2 years plus 7.5 years (total rounded up to 10 years). The full amount recoverable up to 5 years then the amount to be recovered would be reduced by 20% of the total amount each year until \$0 is recoverable after the 10 years from the date of the commencement of the Designated Use Period.
\$500,001 to \$1.5 million	10 years plus additional year for every \$100,000 over \$500,000 (Rounded to the nearest full year)	Full amount will be recoverable up to half way through the Designated Use Period, and then reduced by equal proportions of the total amount over the remaining period.	Grant amount \$1m: retain interest for 10 years plus 5 years (total 15 years). Full amount recoverable up to 7.5 years then would reduce by 13.33% of the total amount each year to the end of 15 years.
Over \$1.5 million	20 years	Full amount will be recoverable up to half way through the Designated Use Period then reduced by equal proportions of the total amount over the remaining period.	Grant amount \$2m: retain interest for 20 years. Full amount recoverable over 10 years and then would reduce by 10% of the total amount each year to the end of the 20 years.

4. Right to repayments prior to 2009

The right to repayment arrangements were varied in 2009. The following right to repayment arrangements apply where a grant was approved prior to the issue of the *2009 Administrative Guidelines: Commonwealth Programs for Non-Government Schools*.

The Australian Government retains, for 20 years from the date of completion of a project, a right to repayment from non-government bodies of grants of more than \$75,000 should they, within the 20 years, sell or otherwise dispose of the facilities or cease to use the facilities principally for the approved purpose.

4.1 Calculated Portion of the Grant (i.e. the repayable amount) repayable to the Commonwealth is calculated as follows where a grant was approved prior to the issue of the Administrative Guidelines for 2009:

4.1.1 The Designated Use Period that the facility was used by the BGA Member for the Approved Purpose is:

4.1.1.1 20 years where the Facilities are buildings

4.1.1.2 5 years for computer equipment; and

4.1.1.3 10 years for equipment other than computer equipment

4.1.2 The Calculated Portion of the grant is calculated by applying a reduction of:

4.1.2.1 five per cent where the Facilities are buildings;

4.1.2.2 twenty per cent where the Facilities are computer equipment; and

4.1.2.3 ten per cent where the Facilities are equipment other than computer equipment

to the Grant for each year during the Designated Use Period that the facility was used by the BGA Participant for the Approved Purpose.

4.2 It should be noted that, on or after the date of issue of the revised program guidelines for 2009, the equipment cost component of projects was assumed to be funded under the school contribution component of project funding and does not receive any special consideration with respect to shorter Right of Repayment time periods. Where this may unfairly disadvantage a school e.g. when the equipment cost component exceeds the school contribution, the BGA may seek the Department's approval in writing of a modified Right of Repayment arrangement for the project which takes the shorter effective life of equipment into account.

5. Change of use or disposal of facilities

At any time during the Designated Use Period, where the school wishes to change the use or dispose of facilities funded by the BER or CGP programs, the following must be considered:

Is the future/changed proposed use of the building(s), or part building to be used for the provision of primary/secondary (funded students) education?	Right of Repayment will not be enacted.
Sold to a purchaser with the intention to cease the use of the project for the provision of primary/secondary (funded students) education or to be demolished?	Right of Repayment will be enacted
Sold to a purchaser with the intention to cease the use of the site for the provision of primary/secondary (funded students) education with the project only being leased back to school for the remainder of Designated Use Period?	The BGA to be satisfied that the school was using the existing project on the site, not owned by them, for at least 75% of the time for the remainder of the Designated Use Period. There is the risk that the school will not use the project at all, which would trigger the Right of Repayment.

<p>The Designated Use Period is nearing the end of the specified Right of Repayment and the project has been used proportionally over the life of the project between 60-100 % of the time for the provision of primary/secondary (funded students) education, can the school change the use of project?</p>	<p>The BGA will review the requested change of use and then CONSIDER recommending to the Government that the choice to not recover the funds would be recommended as the project would continue to be used within the school for educational services. The final decision is that of the Government.</p>
<p>Can the contingent liability from a funded project, within its Designated Use Period, be transferred to another building within the school?</p>	<p>This is not a viable option and will not be approved by the Government.</p>
<p>If a school site with funded projects was sold, for market value, to a purchaser and the continued use was for educational purposes for the provision of primary/secondary (funded students) education, will the Right of Repayment be enacted?</p>	<p>The BGA review the details of the sale of the property then CONSIDER recommending to the Government that, provided the property was sold for around market value and that the project continues to be used for educational purposes for the provision of primary/secondary (funded students) education, recommend that the choice to recover the funds not be enacted as the use is still for educational purposes. The final decision is that of the Government.</p>

In the majority of cases, the Right of Repayment will be enacted by the Government. The “choice not to recover” must be recommended to the Government by the BGA which must be satisfied that any change of use/ownership must be for the provision of primary/secondary (funded students) education or have sufficient reasons to support any recommendation not to enact the Right of Repayment.

6. Related Polices/Documents

- [Australian Education Regulation 2013](#)
- [Australian Education Act 2013](#)
- [Capital Grant Program Guidelines](#)
- [Changes to Funded Facilities](#) [May 2022]

Adopted Extracted from the Australian Government Quality Schools CGP Guidelines
Reviewed August 2021
Approved September 2021
Revised May 2022
To be reviewed May 2023