Australian Government

Department of Health and Aged Care

Ministerial Submission – Standard
MS23-000482
Version (1)
Date sent to MO: 24 April 2023

To: Minister Butler

Subject: Designated Use Period Framework for Capital Works Grants

Critical date: 5 May 2023 – the Framework is part of departmental improvements to grants management, including establishing an infrastructure centre of excellence.

Recommendations:

1. **Approve** the departmental *Designated Use Period Framework for Capital Works Grants* at Attachment A. — 1. **Approved/Not approved/Please discuss**

2. **Agree** for suitable departmental delegates to retrospectively apply the Designated Use Period Framework to the GP Super Clinics Program at an individual clinic level. — 2. **Agreed/Not agreed/Please discuss**

3. **Agree** for the department to retrospectively apply the Designated Use Period Framework to other capital works grants, noting the department will seek your approval in relation to any associated sensitivities or risks for specific grants or programs. — 3. **Agreed/Not agreed/Please discuss**

4. **Sign** the letter at Attachment B to the Prime Minister, copied to the Minister for Finance and Minister for Infrastructure, Transport, Regional Development and Local Government, advising of the department's approach to designated use periods for capital works grants. — 4. **Signed/Not signed/Please discuss**

Signature ....

Date: 05 / 05 / 2023

Comments:

Contact Officer:	*Mary Wood*	*First Assistant Secretary, Health Systems Strategy Division*	Ph: s22 [redacted] Mobile: s22 [redacted]
Clearance Officer:	*Blair Exell*	*Deputy Secretary, Health Strategy, First Nations and Sport Group*	Ph: s22 [redacted] Mobile: s22 [redacted]

Issues:

1. The Department of Health and Aged Care (the department) currently administers over 600 capital works grants, and frequently but not systematically includes designated use periods (DUPs) as a risk management tool. Of the 600 grants, it is estimated over 300 projects have a

DUP, and over 100 projects have a security encumbrance registered with relevant authorities, which differ across jurisdictions.

2. DUPs can be a useful tool to ensure funded infrastructure projects are used for the purpose intended by government for a defined period of time. They may include securities (such as a mortgage) to safeguard the Commonwealth's investment should something unexpected occur, such as the grantee becoming insolvent, or to preclude an attempt to sell the property during the DUP without Commonwealth consent.

3. There is no departmental or Australian Government requirement to include a DUP, or guidance on the use of DUPs in capital works grants. It is instead a decision made by the relevant policy area. In the absence of guidance, DUPs have been inconsistently applied in the Department, with the length of DUPs varying from one to thirty years.

4. A proposed new *Designated Use Period Framework – Capital Works Grants* (Framework, refer Attachment A) has been developed by the Department as a reform to improve the administration of capital works grants. The Framework is designed to promote consistent decision making and support departmental officers to administer capital works grants in a way that is proportionate to the level of Commonwealth investment and risk.

   The Framework has been:
   - Designed to guide and support decision making, and is to be used in conjunction with relevant departmental guidance and frameworks, including the Risk and Assurance Framework.
   - Developed using a risk-based approach, underpinned by the *Commonwealth Grants Rules and Guidelines (2017)* (CGRGs) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
     - This includes ensuring the DUP is proportionate to the level of investment and ensuring value for money through the realisation of policy intent.
   - Tailored to the specific needs of the Department, including the grantees and types of grants awarded in this portfolio (such as service delivery)

5. In developing the Framework, it became clear there are risks in including or continuing DUPs that are not proportionate to the grant. It is therefore appropriate for departmental delegates to cease some existing DUPs or removing a security prior to the original DUP end date, such as where the policy objective has already been achieved, or the costs (legal and administrative) of continuing to monitor or enforce the DUP outweigh the benefits.

   A long-term DUP may prevent the evolution of health services with changing community needs. For example during COVID, respiratory clinics had to be stood up at short notice to divert people with suspected COVID-19 from hospitals and primary care. A clinic with an active DUP from a previous Commonwealth grant may have been unable to participate, due to the time it takes to vary a funding agreement to add or amend services.

   In addition, with few exceptions, neither the department or grantee receive funds to administer grants during the DUP, and the regulatory burden is high.
   - All grantees are required to report on their DUP annually, which places an administrative and resourcing burden without a corresponding or commensurate benefit.
   - There are legal costs associated with establishing and ending DUPs with securities are high. For example, on average. It costs a minimum of $6,500 per project on average for the Commonwealth to remove a security, which must take place at the end of the DUP

irrespective of whether the end date is brought forward or not (for example securities held over a property will not dissolve automatically when a DUP ends). The cost varies depending on the jurisdiction, the registered securities on the title and required processes.

- There are legal costs to the grantee and department to administer the DUP, such as legal advice and registration fees to vary leases within the building which regularly occurs particularly for grants with DUPs of more than five years, costing the Department approximately $8,000 each time. Breaches of DUP by grantees can also be pursued, however the legal costs may outweigh the benefits.
- Agreeing the Framework will support consistent use of DUPs and appropriate application of any securities. Early cessation of disproportionate securities will save the Commonwealth and grantees ongoing significant administrative costs over the DUP period.

Application of the Framework to the GP Super Clinic (GPSC) Program

6. s47C, s47E(d) [redacted]

7. [redacted]

8. To mitigate these risks, the department will apply these factors from the Framework to each GPSC: consideration of level of Commonwealth investment; land ownership; time remaining in DUP; organisational risk including viability; and proximity/availability of other health services.

9. Based on an initial analysis, it is anticipated that around 75 per cent of GPSCs may be eligible under the Framework to have their DUPs ceased early. The remaining clinics would have their duration reduced.
   - Of these, there are a small number of GPSCs on state or territory or local council owned land. The department will consult with the relevant entity to reach an agreed approach prior to decision making.
   - A recommendation for each GPSC will be put to the relevant Deputy Secretary.

Next Steps

10. If approved, the department will conduct an analysis of other capital works programs and ad hoc grants to determine if the Framework should be retrospectively applied.
    - Your approval will be sought if the risks associated with ceasing certain DUPs or removing securities for grants are high.

11. A letter has been provided for your signature at Attachment B to notify the Prime Minister, the Minister for Finance and the Minister for Infrastructure, Transport, Regional Development and Local Government of the department's approach to the application of DUPs.
    - The letter also seeks authority to use the s47E(d) [redacted] in annual recurrent administered funding allocated to the GPSC program to also support the administration of other capital works grants in the department, including the removal of securities and legal costs.

Background:

Under the PGPA Act, an accountable authority must govern their affairs in a way that promotes proper use and management of public resources. In the context of grant administration, responsibilities can be mainly met by ensuring there are appropriate policies, procedures, guidelines, and internal controls in place. Entities then undertake grant administration proportionate to the risks identified and outcomes sought, ensuring they are consistent with the resource management framework and CGRGs.

To support the department to meet its obligations under the PGPA Act, the department, in conjunction with the Department of Social Services Community Grants Hub, developed standard clauses on DUPs for inclusion in capital works funding agreements. The Framework is another way the Department is ensuring capital works grants are administered in line with obligations under the PGPA Act and CGRGs.

It is estimated there are over 600 capital works grants managed by the department. Capital works projects are not currently managed or tracked centrally, making it difficult to definitively know how many facilities the department holds an interest in. The department will establish a centralised capital works team to provide subject matter expertise and develop centralised tracking and reporting to better support capital works grants, including DUPs.

Attachments:

A: Designated Use Period Framework – Capital Works Grants.

B: Letter to Prime Minister, copied to the Minister for Finance and Minister for Infrastructure, Transport, Regional Development and Local Government.

Sensitivities:

The inclusion of a DUP, including securities, is one tool for the Commonwealth to ensure proper use of public resources for capital works grants. Currently DUPs are not consistently applied in the department (as noted above, only approximately half of capital works have DUPs and the range is between 1-30 years). There is a risk that if a funding agreement does not include a DUP, or if a DUP is ceased early, that a grantee will discontinue operations and reinvest the capital obtained for another purpose, possibly unrelated to the original intent. However, these risks will be considered against any retrospective application of the Framework. For new or varied grants, the Framework will support the department to use DUPs consistently and appropriately with a more proportionate duration and form (such as no securities, only contractual agreements).

During consultation, the Department of Finance queried the potential impact of removing the s47E(d) [redacted] allocated in Bill 1 Administered, Program 1.1, each year used to support the establishment and administration of grants for GPSCs. Removal of this funding would limit the department's ability to adequately manage GPSCs (and other infrastructure programs in line with the request to broaden the policy authority). Further, if approval is not provided to apply the Framework to remove GPSC DUPs then several hundred thousand dollars each year would be added to departmental expenditure.

Consultations:
Department of Health and Aged Care (including specific consultation with Legal and Assurance Division, Financial Management Division and broad consultation across the Department with infrastructure grant policy areas), Department of Finance, National Indigenous Australians Agency, Department of Social Services Community Grants Hub, Department of Infrastructure, Transport, Regional Development, Communications and the Arts; and the Department of the Prime Minister and Cabinet.

Designated Use Period Framework – Capital Works Grants

Contents

Purpose of the Framework

The Designated Use Period Framework – Capital Works Grants (Framework) is designed to support consistent decision making on the inclusion and management of Designated Use Periods (DUPs), including security encumbrances (securities), in capital works grants across the Department of Health and Aged Care (the department).

DUPs and securities are risk management tools that can be included in capital works funding agreements. A DUP is established to ensure that the funding recipient uses the infrastructure (for example, property, structure and/or assets and/or equipment) funded through the grant for the intended designated use as outlined in the funding agreement for a defined period of time.

A security protects the Commonwealth's interest in the item that has been funded through the grant throughout the DUP. This safeguards the Commonwealth's investment should something unexpected occur (such as the grantee becoming insolvent or bankrupt), providing the department with some protection and control over its interests, for example by ensuring a property cannot be sold without the Commonwealth's consent. A funding agreement may include clauses that outline the designated use arrangements and may or may not establish obligations for securities, including any relevant step-in rights.

There is currently no formal requirement to include DUPs in capital works grants. There is also no Australian Government guidance to support the inclusion of DUPs or the requirement for funding recipients to grant the Commonwealth securities in capital works funding agreements. This is a decision made by the relevant policy area.

The Framework is designed to promote consistent decision making, supporting the department to administer capital works grants in a way that is proportionate to the level of Commonwealth investment and risk. This Framework has been designed to guide when and how DUPs, including securities, should be used. It will also assist policy areas in considering the early cessation of a DUP or removal of a security, including through variations to funding agreements where the DUP has not yet commenced.

This Framework should be used in conjunction with the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs), advice available on the Department of Finance's website, as well as the department's templates and advice on the intranet Grant Toolkit - Home (sharepoint.com). Policy areas should also consider other relevant policies and frameworks, including, but not limited to, the Project Management Framework, the Risk Management Framework, the Enterprise Change Management Framework, and the Assurance Framework if required.

Further, policy areas should ensure opportunities for fraud and corruption are considered when making a decision to include a DUP or security in a capital works funding agreement. The Fraud Control Toolkit provides tools and guidance materials to assist policy areas to take reasonable measures to control fraud and corruption, manage public resources, and provide assurance of the department's activities.

The decision to apply the Framework can be made at an individual project level, for example ad hoc grants, or at a program level.

There are three standard grant agreement templates for capital works grants: HC1; HC2; and HC3, with HC3 being the highest risk template. These templates are tiered according to according to minor, moderate and major capital works. Only capital agreement type HC3 (for capital major works projects) contains securities provisions. The Funding Agreement Selection Tool (FAST) will support policy areas to choose the appropriate funding agreement template. The FAST grant agreement matrix provides guidance on the main settings applied to each template, and provides more detail about which of the standard and supplementary terms and conditions should be included in the funding agreement. Annexure A for example provides clauses to be included on DUPs.

Please contact the Streamlining Grants Branch for further information and guidance on implementing the Framework.

Determining if a DUP is required

The inclusion of a DUP is a risk-proportionate decision made by the relevant policy area. When considering the inclusion of a DUP in a capital works funding agreement, policy areas should consider the level of Commonwealth investment, the grant characteristics (whether it is a minor, moderate, or major capital works project), the program/project's objectives and outcomes, and the level of risk. Policy areas should use the below guidance in conjunction with their knowledge of the organisation and project/program objectives to determine suitable DUP requirements.

DUPs should be included for all major capital works projects (HC3s) and are optional for minor (HC1) and moderate (HC2) capital works projects.

It is best practice for DUP obligations to be considered when the New Policy Proposal (NPP) is being developed as this facilitates Government agreement to the ongoing financial (including legal) and staffing resources required to administer the DUP for the proposed timeframe. This also provides an opportunity for Government to consider and potentially make alternative decisions regarding the ongoing management of the project.

The DUP and any intentions to impose security encumbrances can be included in the grant opportunity guidelines (GOGs), with the final DUP and securities determined once an organisation has been selected in the course of negotiating and drafting the funding agreement.

If resourcing for the management of a grant during the DUP has not been agreed, policy areas need to be cognisant that management of a grant throughout the DUP period will require ongoing resources, such as administering compliance and staffing to assess grantee reports. If securities are involved, resourcing will also need to be allocated to cover legal fees to grant, facilitate consent when needed, and remove the securities at the end of the DUP.

The below table outlines factors to be taken into consideration when determining if a DUP is required.

Factors	
Commonwealth and other investments	Consider the level of Commonwealth investment, the grant characteristics (minor, moderate, or major capital works) and whether the Commonwealth is the sole source of funds. If the Commonwealth is a co-contributor, consider the level of Commonwealth funding compared to funding from other sources including state and territory governments.
Realisation of policy intent	Consider the intended policy objectives and intended outcomes of the grant. ○ Was the grant program established through legislation? If so, this legislation may state the length of the program or impose other requirements, and the DUP must align with this. ○ Will the realisation of the policy objectives be adversely impacted if a DUP is not included in the funding agreement, for example if the facility is repurposed?

Factors	
Organisational risk	Using the risk assessment and due diligence into the viability of the organisation undertaken as part of the grant assessment process (including the Organisational Risk Assessment), consider the risk rating and the potential impacts the risks may have on the ongoing use of the building and/or assets for its intended purpose. Considerations may include: o What are the program level risks (using the program risk assessment)? Will these have an impact on the implementation of the grant, including at an organisational level? o Effectiveness of current controls. o Governance and ownership arrangements. o Current financial state and history. o Resourcing, including available workforce.
Repurpose risk	Consider the likelihood of the building and/or assets being repurposed or used to provide a service other than the original and intended purpose, either upon practical completion or at the cessation of the DUP. Particular consideration should be given to whether this will result in fiscal gain for the grantee. Considerations include: o Location, for example metropolitan, regional or remote. o Demand for property in the area, for example increased rent and property prices. o Ease of repurposing the building/asset. o If this will adversely affect other Commonwealth investments or programs.
Community needs	Consider the needs of the local community: o Are there similar and accessible facilities or services in the area? Will other health services be impacted if the building/asset is repurposed/the service potentially discontinued? o Are there any sensitivities associated with the project or program? o Is there a thin market reliant on Commonwealth support for continued services? o What are the community's expectations around the provision of the health service? o The target population group of the health service, for example culturally and linguistically diverse communities, First Nations people, or adolescents.
Departmental considerations	Consideration should be given to how the department will manage the grant during the DUP. For example, are resources available to administer the DUP, including administrative (ASL) and legal costs (see below on securities)?

Property, works, and assets

A DUP is the period of time the funding recipient is required to deliver the designated use for the activity as outlined in the funding agreement. The purpose, aims and objectives of the activity will be outlined in the funding agreement, stating what outcomes the project intends to deliver through the purchase of property, capital works and/or purchase of assets and equipment.

Property is the property on which the works and DUP are performed and includes the land, any buildings, fixtures and other improvements on the land (including the works), but does not include items that would be regarded as the tenant's fittings. **Works** are part of an activity which relates to things like the design, refurbishment, furnishing, or equipping of the property for an activity as set out in the funding agreement, for example the fit-out of a building. **Assets** are any item purchased, leased, created, or otherwise brought into existence wholly, or in part, with the use of the grant, for example a medical scanner.

There are several options available when considering the most appropriate way to ensure the property, works or assets are used for their intended purpose. For example, more than one DUP can be included in a funding agreement to cover the different types of property, i.e., a building may have a longer DUP than a medical scanner to take account of the shorter lifespan of the equipment. Please note that multiple DUPs for different activities can be accommodated by the HC1 and HC2 agreement templates, but the HC3 agreement template only allows for one activity per schedule.

DUP exemptions

There may be some instances where a policy area determines that a DUP is not required. For example, minor (HC1) and moderate (HC2) capital works projects may not require a DUP. Please see the FAST matrix or contact the Streamlining Grants Branch for further information.

In addition, a DUP may not be required if the agreement is with a state or territory or with a Local Health District associated with a state or territory. As states/territories have responsibility for running their health systems and delivering the associated services, infrastructure projects funded under National Partnership Agreements (NPAs) do not generally have DUPs. This is because funding provided through NPA and Federal Funding Agreements (FFA) is through the relevant frameworks that govern those agreements (for example by appending a Schedule to the FFA which sets out at a high level how the state agrees to use the funding).

The risk of capital works completed by states/territories and funded or supported by Commonwealth financial contributions being reappropriated for purposes other than those intended are negligible. A Commonwealth contribution can often be a co-contribution, and often these works are being integrated into larger state infrastructure development plans. Not including DUP requirements also allows the state/territory to deliver the intended service (including responsibility for mitigating risks) and to have the flexibility to adapt the service should community needs change. Refer to the Federal Financial Relations website for further information on funding arrangements with states and territories Home | Federal Financial Relations.

Please note that there may be circumstances where the department awards a grant to a state/territory corporate entity for example significant investment in a university or public hospital, in which case a DUP should be considered.

Other considerations

Land ownership may also impact security considerations. For example, a security may not be able to be granted if the building is on Crown Land or state/territory land. In this instance there may be Commonwealth or state/territory legislation that governs the use of that land and provides the relevant minister with certain rights to the land. There may also be other securities or other properties owned by the organisation to satisfy security requirements of the funding agreement. Policy areas should also consider First Nations peoples' rights and interests in land including through Native Title and the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Determining the length of a DUP

If you have determined a DUP should be included in the funding agreement, based on the total Commonwealth investment, an analysis of the above factors, and any other risks identified by the policy area, the below three grant characteristics can be used as a guide to determine the length of the DUP.

Grant Characteristics	Length of DUP
Capital Minor Works (HC1)	DUP not required (optional)
Capital Moderate Works (HC2)	DUP optional. Suggested two-to-five-year DUP.
Capital Major Works (HC3)	DUP required. Suggested ten-year DUP.

Determining if securities are required

This Framework is to be used in conjunction with existing guidance available through the Grants Toolkit on the department's Intranet Grant Toolkit - Home. This guidance outlines the relevant funding agreement templates and clauses for DUPs and securities. Note that only agreement types HC2 and HC3 allow for the imposition of a DUP and only agreement type HC3 allows for securities. The Department of Finance's website also has guidance for grants.

DUPs are enforced through contractual obligations under the funding agreement. Securities are also included in the funding agreement and ensure that if the terms of the funding agreement are not complied with (such as the DUP obligations), the Commonwealth has added protection to secure its rights to recover funds.

DUPs both with and without securities need to have robust DUP clauses in the funding agreement which clearly detail what will be delivered by the organisation during the DUP. These clauses should be supported by the purpose, aims, and objectives of the activity, with a clear statement on what outcomes the activity intends to deliver through the purchase of property, capital works and/or purchase of assets and equipment.

DUPs without securities

In the absence of securities, funding agreements can provide the department with some general legal protections such as step-in rights. Taking action against a grantee who has breached a DUP clause can require legal processes to resolve regardless of whether the department has securities or not. However, breaches of DUPs without securities can be more difficult to manage as they can occur without the department being notified. Alternative mitigation strategies can also be put in place, for example the funding agreement could include additional clauses to strengthen the department's position on the return of funds, should there be a breach of the funding agreement.

DUPs with securities

Securities are intended to ensure the capital works are used for the intended purpose, and to secure the department's rights in the funding agreement (for example so the Commonwealth can recover funds if this does not occur). A key risk securities are intended to mitigate is guaranteed tenure/ownership, and prevention of the grantee selling or dealing with the property without the department's consent. Security requirements are intended to work in conjunction with broader risk mitigation measures, such as bank guarantees and other agreements/deeds with the landowner.

There are different securities that can be placed over a property to secure the interests of the Commonwealth for the duration of the DUP. This includes, but is not limited to, a mortgage (over property, and leases) and a charge (secured by a caveat). The nature of securities held for a particular project will depend on a range of circumstances for example the legal structure of the organisation, how tenure of the property or assets and equipment is achieved, and the extent to which the Commonwealth may wish to recover its investment.

While the inclusion of securities is a decision for the policy area, securities are only recommended for Capital Major Works (HC3) funding agreements, and should fully secure the whole of the initial grant amount. As outlined in the Assessment of Security Position, if a HC3 Capital Major Works is not fully secured for part or all of the initial grant amount, this decision should be approved by the delegate. The Assessment of Security Position should be completed for all HC3 grants and may be consulted as a guide for HC1 and HC2 projects.

Security clauses are negotiated at the time the agreement is made and are chosen from the security clause bank or generated when the funding agreement template is chosen. If a funding agreement does not include the appropriate security clauses and the department does not register those securities, the department may have limited legal recourse to the property should the grantee sell or transfer the property before the DUP has ceased. Some securities also ensure the department is notified of any requested changes to the title of the property. Where the department holds registered securities on the title of the property and the grantee seeks to make changes to the title, the department may need to consent to the change. The presence of the department's securities listed on the title will mean that third parties may become aware of the department's interest in the property.

When developing a HC3 capital works funding agreement, policy areas should consider the most appropriate point within the milestone schedule to require a security to be granted to the Commonwealth, for example at Commencement of the Works or at the point of Practical Completion.

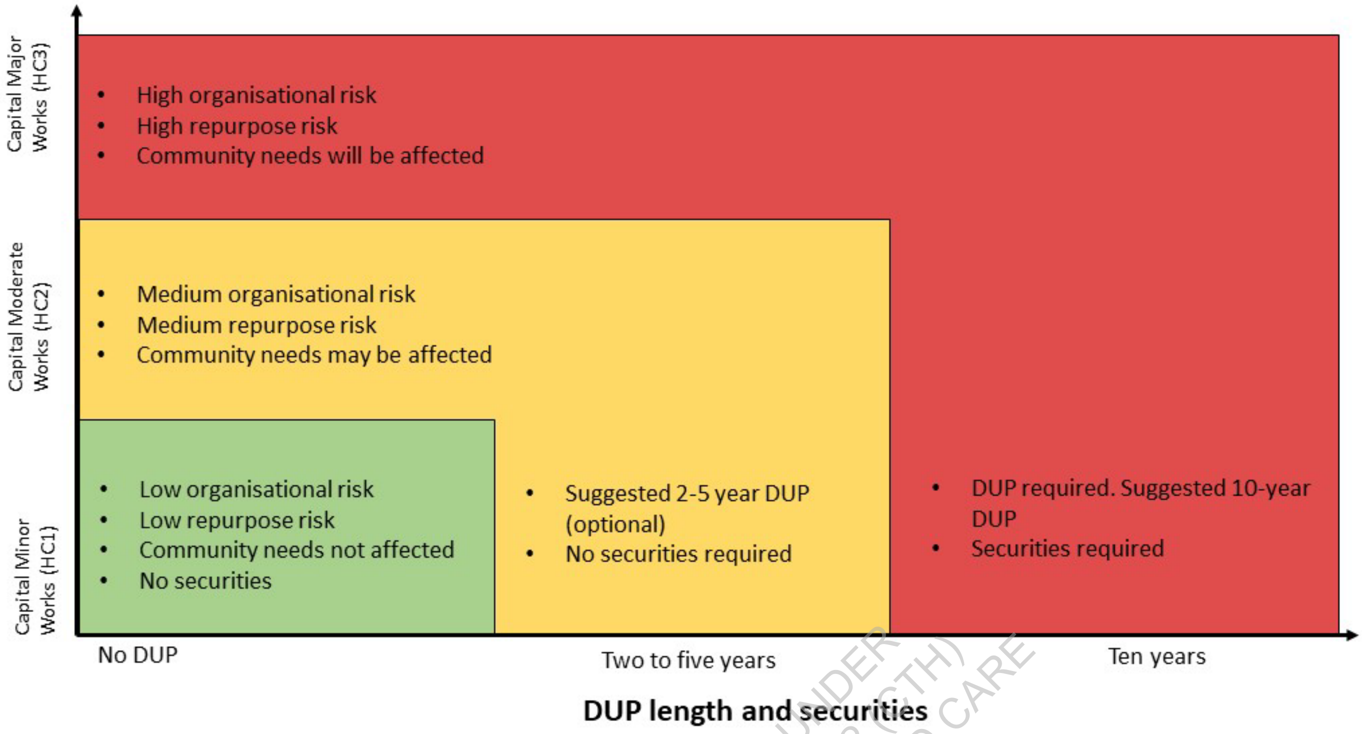
While the use of securities is consistent with general commercial practice when funding building work and purchases, it is a decision for the policy area. Policy areas should consider a number of factors in making this decision, including the risk profile of the project, obligations to ensure value for money under the CGRGs, and obligations to ensure the proper use of public funds under the *Public Governance, Performance and Accountability Act 2013*. The policy area should conduct a detailed risk assessment, including reference to a range of factors including, but not limited to, the risk profile of the program, the nature of the grantees, the amount of funding, and any opportunities for fraud or corruption. See also the Risk Information page of the Grant Toolkit.

There are legal costs associated with the inclusion, variation, and removal of a security (either during or at the completion of the DUP). In addition, securities can be jurisdiction-based and therefore require expertise from external legal providers with knowledge of specific state and territory requirements and laws. Policy areas will need to ensure resources are available to cover items such as legal costs to manage a security throughout the DUP and should be considered as part of the NPP process. Costs will vary depending on the jurisdiction, nature of the matter, the securities being discharged, the department's intended approach, and the agreements being amended.

Determining the length and type of DUP

In addition to using the above factors and guidance, the below matrix can be used to help determine if a DUP is needed, and if so whether a security is also required to secure DUP requirements.

Matrix: considerations to determine if a DUP or security is required



Reporting requirements during DUP

If a DUP is applied, reporting requirements during the DUP should be included in the funding agreement (see agreement type HC3). It is recommended the grantee is required to provide an annual report to the department, with clear reporting requirements in line with the designated use requirements as outlined in the funding agreement that provide meaningful updates to the policy area. Grantees with multiple projects in a program will need to complete a separate DUP report for each project. The responsible policy area has the discretion to request additional reports (as per standard funding agreements).

When determining reporting requirements while in DUP, consideration should be given to the organisation and department's capacity to process these reports, which includes notifying the grantee of the outcome. Policy areas should also take into consideration other reporting touch points the department has with the organisation. For example, where a grant is used to support the ongoing delivery of services from the same organisation over a period of years, policy areas could consider reducing the detail of their reporting requirements, given a grantee's established record of compliance and performance. See the CGRGs for further information.

If a policy area becomes aware of, or is concerned that a breach of the funding agreement has occurred, policy areas should first contact the Streamlining Grants Branch for advice and to determine if legal advice should be sought to discuss next steps.

Ceasing DUPs which may include removing a security

In some circumstances it may be appropriate to consider ceasing a DUP, which may include removing a security earlier than agreed upon in the funding agreement. The responsible policy area can use the below guidance, in conjunction with their knowledge of the organisation and project/program, to determine if it is appropriate to cease a DUP or remove a security early.

In removing DUPs or changing the type of securities, policy areas must assess the associated risks and potential change in risk level to ensure the department is not exposed to a greater level of risk. Policy areas should consult with the Streamlining Grants Branch to understand the implications of this decision and potential risk mitigation strategies. Policy areas should also clearly document the reasoning and delegate approval of the decision, and ensure the associated paperwork is completed. If a significant DUP for an individual activity or DUPs at a program level are considered for release, policy areas should determine if the Minister should be consulted.

Grant recipients may approach the department and request a reduction or cessation to the DUP. In these cases, the department should consider this request and the reasoning for it, in conjunction with the advice below.

Risk	Considerations
Realisation of policy intent	Consider the policy objectives and intended outcomes of the grant and if these have been achieved. ○ Was the grant program established through legislation? If so, this legislation may state the length of the program or impose other requirements, and the DUP must align with this. ○ Does the Commonwealth have a strong policy objective it wants to achieve through this grant and has this objective been realised? ○ What is the risk the building could be repurposed? ○ Will the policy intent be undermined if the building is repurposed? ○ Are there implications for health outcomes for the local community if this service is no longer available?
Departmental risk	Consider any risks that ceasing a DUP or removing a security early may subject the department to, including interaction with other programs or policies, reputational damage, stakeholder management, fraud, corruption and legal risks. Consider how ceasing the DUP early aligns with the CGRGs and if any other grant agreements within the same program should also be amended.
Duration of DUP	Consider how far into the DUP the grant is and the administrative requirements of continuing the DUP against ceasing the DUP. This includes ensuring consistency across a program which may have DUPs ending at different times, i.e., all grants should reach a minimum DUP to be consistent and fair to all recipients.
Total investment and repurpose risk	Consider the total amount of investment made by the Commonwealth and the likelihood of the building being repurposed/sold if the DUP ceases, particularly if this will result in fiscal gain for the grantee. ○ Has the project achieved its intended purpose and provided value-for-money?
Community Needs	Consider if the needs of the community have changed since the establishment of the building/service. Does there continue to be a need for the building/service? ○ Are there similar and accessible facilities/services in the local area? Will other health services be impacted if the building is repurposed/the service discontinued? ○ Are there any sensitivities associated with the project/program or recipients of the service?

How to cease a DUP early

If a policy area determines that a DUP should be removed either during the DUP period or before the capital works project has reached practical completion, this may need to be actioned through a deed of variation and may also involve the removal of securities (see paragraph below).

The process for completing a deed of variation is detailed in the Variation FAQ on the Grant Toolkit. Refer to the Delegation section for further information on who can approve the variation, noting that there are separate delegations required if the department is discharging its interest in land. There may also be different delegations required if the program is supported by specific legislation. If, based on advice from Streamlining Grants Branch and the Legal and Assurance Division, an external legal services provider should assist with the removal of securities (explained below), they may also assist in the amendment/termination of agreements with DUP to ensure a consistent approach.

If you intend to amend a funding agreement to remove a DUP requirement or terminate the agreement, and this deletes or amends the security requirements in the funding agreement (for example deletes the clause which charges the grantee's interest in the land to the Department), you should seek legal advice from Legal and Assurance Division.

How to remove a security early

Policy areas should consider a range of factors when deciding whether to remove a security prior to the original DUP end date. These factors include the nature of the matter, which securities were placed on the grant (and thus need to be removed), the department's intended approach, the agreements which need to be amended, any flow on impacts, and the jurisdiction. The time required to vary securities will depend on the complexity involved, such as validating details of the grant and security, advice from Legal and Assurance Division and external legal service providers if required, and delegate approval.

As a first step, policy areas need to determine the legislative authority under which a program/project was funded and the securities which are applied. Policy approval is required from the relevant delegate, including consideration of any statutory/legislative authority issues with the change.

If the department is removing securities which constitute a disposal of an interest in land (for example discharging a mortgage), this may fall under the *Land Acquisitions Act 1989* (LAA) and as such must comply with the LAA requirements, such as reporting obtaining prior approval from an LAA delegate and to the Department of Finance. For further information, see the Department of Finance's Land Acquisition Framework – Reporting and Lands Acquisition Delegation.

To action the disposal of a security, documents need to be lodged at the relevant jurisdiction's Land Titles Office, with fees varying between the states and territories. It is best practice for the LAA delegate to sign the discharge form. Policy areas should seek advice from Legal and Assurance Division regarding the LAA delegate and the lodgement process. Removing a security may also require completing a deed of variation to remove it as a clause or condition on the funding agreement.

Note: The withdrawal of a caveat may not represent a disposal of an interest in land under the LAA, but further legal advice should be sought on this.

An external legal services provider will also need to be engaged to assist in preparing and lodging the documents required to discharge the securities (such as the mortgages and caveats). This legal provider will also advise on requirements from the relevant delegate as this is dependent on the requirements of the relevant jurisdiction where the securities are lodged.

Delegation

Recording decisions relating to DUP

All decisions and underpinning factors considered in making the decision about whether a DUP or security is required, and the length of the period for a DUP or type of security (if required), must be recorded in a decision record and filed appropriately for the project.

Inclusion of a DUP or security

As noted above, the inclusion of DUPs and securities should be considered when writing the NPP as this will confirm the implementation approach and selection process. Please see the NPP Process Intranet page for more information. See Determining if a DUP is required above for factors to consider in the NPP process.

The DUP and securities requirements may be reflected in the GOGs, with the final DUP and securities determined once an organisation has been selected and the funding agreement drafted. It is possible to introduce a DUP or security requirement after the GOGs have been published and/or funding has been announced. In addition, any changes to GOGs rated medium or high must be approved by the Minister.

See the Grants Toolkit and Financial delegations for information on delegation.

Cessation of a DUP

The decision to implement or not implement a DUP and/or to cease a DUP early will require written approval by the relevant delegate responsible for the funding agreement.

Removal of securities

The decision to remove securities prior to their original end date will require approval by the relevant delegate responsible for the funding agreement and if the LAA applies, the responsible LAA delegate must also authorise this. Delegates are listed in Schedule 2 of the Lands Acquisition Delegation 2022 (no. 2). The relevant delegate responsible for the funding agreement and the LAA delegate (if relevant) will need to consider a range of factors outlined above.

Definitions

Assets: any item purchased, leased, created, or otherwise brought into existence wholly, or in part, with the use of the Grant.[1]

Capital works*:* works undertaken to create a new asset or space, or to change the use, function, or layout of an existing space. Capital works may include: a new building infrastructure, new site infrastructure for a building (for example a new lift), or renovation of an existing building or space.[2] The Commonwealth could be the sole funder or a co-contributor to a capital works grant.

Capital Minor Works: smaller scale, low value capital works projects including equipment and asset installs, repairs, and maintenance.[3]

Capital Moderate Works: mid-scale and value capital works projects including refurbishments, extensions, and building upgrades.[3]

[1] Department of Finance – Standard Agreement Clause Bank Provisions - Clause Bank Standard Agreement (finance.gov.au).
[2] University of Tasmania – Works and Funding definitions. Works and funding definitions - Infrastructure Services & Development | University of Tasmania (utas.edu.au).
[3] Australian Government, Community Grants Hub – FAST Grant Template Matrix - FAST Grant Template Matrix Version 4.2 December 2022 (sharepoint.com)

Capital Major Works: complex and high value infrastructure building works including land/property purchases.[3]

Delegate: Refer to the department's intranet at [Financial delegations (sharepoint.com)]() for further information on financial delegations.

Designated Use Period: the period commencing on the date that the grantee achieves Practical Completion of the Works and expiring at a set number of years after that date. Designated use can be a requirement included in capital works funding agreements to ensure the completed project is used for the intended purpose for a set period of time.[4] A DUP can be in the form of contractual obligations.

Designated use: the designated use as outlined in the funding agreement.

Insolvency risk: if the grantee goes insolvent, the department may be an unsecured creditor if it does not have a security interest and may have limited abilities to recover funds from the grantee and little or no rights to the property.

Land Acquisition Act (LAA) delegate: if the department is removing securities which may dispose an interest in land (for example discharging a mortgage), this may fall under the *Land Acquisitions Act 1989* (LAA Act) and as such must comply with the LAA Act's requirements, and may include appointment of LAA delegate. The LAA delegates are set out in the Lands Acquisition Delegation.

Policy area: the section responsible for the project or program that includes capital works. Governance and implementation arrangements in Divisions may vary, however this will include responsibility for the development of the policy and/or guidelines for the project or program.

Property: the property on which the works are to be undertaken and the designated use performed. It includes the land, and any buildings, fixtures and other improvements on the land, including the works, but does not include items that would be regarded as tenants' fittings or personal property (an individual's belonging which does not include property or buildings).

Securities*:* a security is an interest in the property or assets, temporarily given by way of guarantee that an undertaking will be fulfilled, and liable to be forfeited if it is not; particularly any sort of right over a debtor's property given by the debtor to the creditor and exercisable by the creditor in the event of a default.[5]

Works: the part of an Activity which relates to the design, construction, modification, expansion, refurbishment, installation, furnishing, equipping, or fit-out and related activities of the property for an Activity, as reflected by the Activity Plan and Budget.

[4] Department of Social Services – Designated Use Annual Reporting. Designated Use Annual Reporting | Department of Social Services, Australian Government (dss.gov.au).

[5] The CCH Macquarie Concise Dictionary of Modern Law.

The Hon Mark Butler MP
Minister for Health and Aged Care

Ref No: MS23-000482

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime ~~Minister~~ Anthony

As you may be aware the Department of Health and Aged Care is the largest granting organisation in the Commonwealth. The grants administered by the department help deliver better health outcomes to all Australians, including by funding critical health and aged care services and infrastructure such as hospitals, cancer centres and mental health and drug and alcohol facilities.

I am writing to advise that I have approved the enclosed *Designated Use Period (DUP) Framework for Capital Works Grants* (Framework) for capital works projects in the department. DUPs, including security encumbrances, are an important risk management tool for capital works grants to ensure the project is used for the intended purpose for a set period of time and to protect the Commonwealth's investment. However there is no formal requirement to include DUPs in capital works grants, or Australian Government guidance to support decision making on the application of a DUP.

The Framework will support consistent risk-based decision made by the department when considering DUPs, including security encumbrances for capital works grants, and will facilitate the administration of capital works grants in line with the department's obligations under the *Public Governance, Performance and Accountability Act 2013* and *Commonwealth Grants Rules and Guidelines* (CGRGs). The department will look to retrospectively apply the Framework to existing DUPs which may have been applied disproportionately to the risk, investment and changing health needs of the community, for example a 20 year DUP for a $1 million project.

To support the use of the Framework within the department and support departmental reforms to strengthen the administration of capital works grants, I am seeking your authority to broaden the authority for the s47E(d) [redacted] allocated in Bill 1 Administered, Program 1.1 to support the ongoing management of the GP Super Clinics program through the 2008-09 Budget. I request that in addition to using the funds to administer the GP Super Clinic program, you agree that the policy authority be broadened so that the funds can be used to administer other capital works grant agreements as determined by the department, in particular legal costs.

The s47E(d) [redacted] in Bill 1 Administered funding is ongoing. To the extent that DUP requirements are shortened for existing capital grants, and new capital grants have shorter, simplified, or no DUP requirements at all, the need to spend this funding on legal expenses to manage DUPs and infrastructure grants will reduce, and the balance with be surplus funding that will make administration of any current or future Bill 1 save easier to deliver.

The department will provide an update on the implementation of the Framework to the Department of the Prime Minister and Cabinet, the Department of Finance, and the Department of Infrastructure, Transport, Regional Development Communications and the Arts; whom were consulted in the development of the Framework and broader policy authority request.

I have copied this correspondence to the Minister for Finance and the Minister for Infrastructure, Transport, Regional Development and Local Government.

Yours sincerely

Mark Butler

05/05/2023

Encl (1)

cc: Senator Katy Gallagher, Minister for Finance
The Hon Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government