

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2009-2010**

Outcome 3 - Higher Education

DEEWR Question No.EW1000_10

Senator Cormann asked on 11/02/2010, Hansard page 33.

Question

ATC CLAUSES THAT PROTECT THAT COMMONWEALTH EXPENDITURE.

Senator CORMANN—And what happens then? Does the building get returned to the Commonwealth? What happens? Ms McKinnon—That is one option. Ms Paul—And that is a really important point, which we have actually underplayed and which we should have offered earlier. The Commonwealth retains that long-term interest in the capital investment, and that is reflected through the funding agreement. What we might do is offer you the clauses that protect that Commonwealth expenditure. Senator CORMANN—That would be fantastic.

Answer

The Commonwealth's interest in ATC capital investment is protected through the inclusion of a requirement in funding agreements for ATC facilities to be used for the Approved Purpose of industry led education and training with a focus on nationally recognised Certificate III trade training for a "Designated Use Period". This period is generally twenty years depending on the agreement. In the case of ATC Spencer Gulf and Outback it is five years as the level of capital injection was small.

This is consistent with the capital investment provisions of the Commonwealth's Schools Assistance Act 2008.

The full clause is reproduced at Attachment A.

ATTACHMENT A

14A Repayments and security

14A.1 For the purpose of this clause 14A the following definitions apply:

- (a) 'Additional Condition' and 'Additional Conditions' mean the conditions, if any, specified in Schedule 2 item S;
- (b) 'Approved Purpose' means industry led education and training with a focus on nationally recognised Certificate III trade training;
- (c) 'Capital Expenditure' means an amount of the Grant equal to, or more than, \$75,000 (GST inclusive) in aggregate for a Facility used by You to:
 - purchase, construct, create or otherwise bring into existence a Facility; and/or
 - upgrade, refurbish, refit or renovate a Facility;
- (d) 'Designated Use Period' means the period of twenty years from the date when the Facilities were first used for the Approved Purpose;
- (e) 'Facility' or 'Facilities' means any land, buildings, structures and/or parts of buildings or structures owned by You towards which an amount of Capital Expenditure has been expended by You;
- (f) 'Repayment Amount' is the amount calculated as:
 - (i) the Capital Expenditure less a five per cent reduction to the Capital Expenditure for each year the Facility was used by You for the Approved Purpose from the date the Facility was first used for the Approved Purpose; or
 - (ii) if the Facility has not been used for the Approved Purpose at any time, the original amount of the Capital Expenditure.

14A.2 At any time within the Designated Use Period, We may require You to:

- (a) Deal with the Facility as We may at Our sole discretion direct in writing; or
- (b) Within 10 Business Days of a request by Us, repay to Us the Repayment Amount;

where:

- (c) the Facility is sold or otherwise disposed of without Our prior written consent;
- (d) the Facility is encumbered without Our prior written consent;
- (e) the Facility is not, or ceases to be, used principally for the Approved Purpose; or
- (f) You do not perform an Additional Condition.

14A.3 You must notify Us immediately if any of the circumstances identified in clauses 14A.2 (c), (d), (e) or (f) occur.

14A.4 If You fail to pay the Repayment Amount as required by clause 14A.2(b):

- (a) You must pay Us the Interest on the Repayment Amount from the date it was due for the period it remains unpaid; and
- (b) the Repayment Amount, and Interest owed under this clause, will, without prejudice to any other rights available to Us under the agreement or at law or in equity, be recoverable by Us as a debt due to Us by You without further proof of the debt being necessary.