



Government
of South Australia

Office for the Public Sector

FREQUENTLY ASKED QUESTIONS:

RECOVERY OF OVERPAYMENTS

Frequently Asked Questions Accompanying the Determination and Guideline 6 of the Commissioner for Public Sector Employment - Recovery of Overpayments

Q1. Who does the Determination and Guideline apply to?

- A. The Determination applies to employees and public sector agencies covered by Part 7 of the *Public Sector Act 2009* ("PS Act"). That is, Public Service agencies and employees and declared public sector employment: see section 41 of the PS Act and regulation 13 of the *Public Sector Regulations 2010*.

For public sector agencies that are not bound by the Determination, the document applies as a Guideline and such agencies are encouraged to adopt the document as agency policy.

Q2. What is the legislative authority to deduct overpayments formally from remuneration or other monies otherwise payable to an employee?

- A. Section 70 of the PS Act provides the legislative authority to make deductions from remuneration or other monies otherwise payable to an employee, in order to recover a debt in the form of an overpayment.

The Commissioner for Public Sector Employment has determined that where an overpayment is \$50 or less, there will be an automatic deduction from an employee's remuneration following notification to the employee. Where an overpayment is greater than \$50, agencies will make reasonable attempts to negotiate repayment arrangements with employees. In the absence of agreement, unilateral deductions from remuneration will occur, as outlined in the Determination and Guideline: and if necessary, legal action may be required in order to recover a debt in the form of an overpayment (with human resource and/or legal advice as necessary).

Q3. Why are public sector agencies obliged to recover debts arising from overpayments?

- A. *Treasurer's Instruction No.5, Recovery and Writing off of Debts* ('T15') obliges Chief Executives and other agency heads to seek to recover debts to the Crown, including those caused by overpayment of wages.

Where a debtor is a public sector employee, T15 provides that the employee must be pursued for prompt repayment.

The circumstances leading to the administrative error responsible for an overpayment, and whether an employee is currently employed in another agency or their employment in the public sector has ended do not affect an agency's responsibility to seek to recover the debt.

T15 restricts potential waiver or write off of debts owed by public sector employees or former employees where the debt arose during their public sector employment from, for example, overpayment of wages. Chief Executives, other agency heads or delegates should seek advice from the Human Resources Unit in their agency or the Crown Solicitor's Office as necessary.

Q4. Who is responsible for the recovery of debts caused by overpayments?

- A. The public sector agency in which the employee is or was working at the time the overpayment occurred is responsible for the recovery of the debt caused by the overpayment. Shared Services SA is a service delivery business unit and not a stand-alone agency and it acts on instructions of agencies. The provision of payroll services has been transferred from most agencies to Shared Services SA however the responsibility for properly remunerating employees or, where necessary, taking steps to recover debts created by overpayments, rests with employing agencies as it always has.

Q5. Are there any time limitations constraining reliance by an agency on section 70 of the PS Act?

- A. Yes. Whilst there is no limitation of time *per se*, applying to the unilateral recovery or withholding of monies in respect of debts owed to the Crown when section 70 of the PS Act is relied upon, the Commissioner for Public Sector Employment has determined that where an agency relies upon section 70 of the PS Act to recover a debt owed by an employee created by an overpayment, the agency may only commence recovery of the debt within six (6) years of the debt being created.

Q6. What if an employee takes leave based on a mutual error to accrued entitlements: does this constitute an overpayment?

- A. No. Leave taken on the basis of mutual error by the parties as to the true accrued entitlement does not give rise to an overpayment.

This is different to where an employee is permitted to take leave in advance of an accrual. In this instance, if the employee's employment is terminated with a negative leave balance, a debt will exist necessitating recovery.

Q7. What to do when notified of an overpayment?

- A. An employee who has been overpaid will be provided with details of the overpayment and the proposed basis for a repayment arrangement. For further information or to negotiate an agreed repayment arrangement, employees can contact the relevant payroll team.

Q8. What if an employee purports they should not be required to repay a debt created by an overpayment?

- A. Occasionally, an employee may assert that they should not be required to repay a debt created by an overpayment, purporting that they received the monies in good faith and relied detrimentally on such monies. If an employee makes such assertions, advice should be sought from the Crown Solicitor's Office.

Q9. Can an employee seek a review of a decision to require them to make a repayment arising from the overpayment?

- A. Whether an overpayment has occurred and a debt exists is a question of fact and the existence of that fact is not a reviewable employment decision. However, an employee employed under Part 7 of the PS Act who is aggrieved by a decision to require them to repay a debt incurred as a result of an overpayment may seek an Internal Review of that decision under section 61 of the PS Act. Where the employee remains aggrieved after Internal Review, they may seek External Review by the South Australian Employment Tribunal under section 62 of the PS Act.

Some public sector employees employed outside of Part 7 of the PS Act, may be able to exercise grievance specific to their employment context.

Employees should note the obligation on agencies to recover debts under TI5 and possibility of reliance on section 70 of the PS Act. Employees should also note that debts can be repaid in instalments, as provided for in the relevant determination of the Commissioner for Public Sector Employment.

For information about any applicable grievance review process, employees are encouraged to contact their Human Resources Unit.