

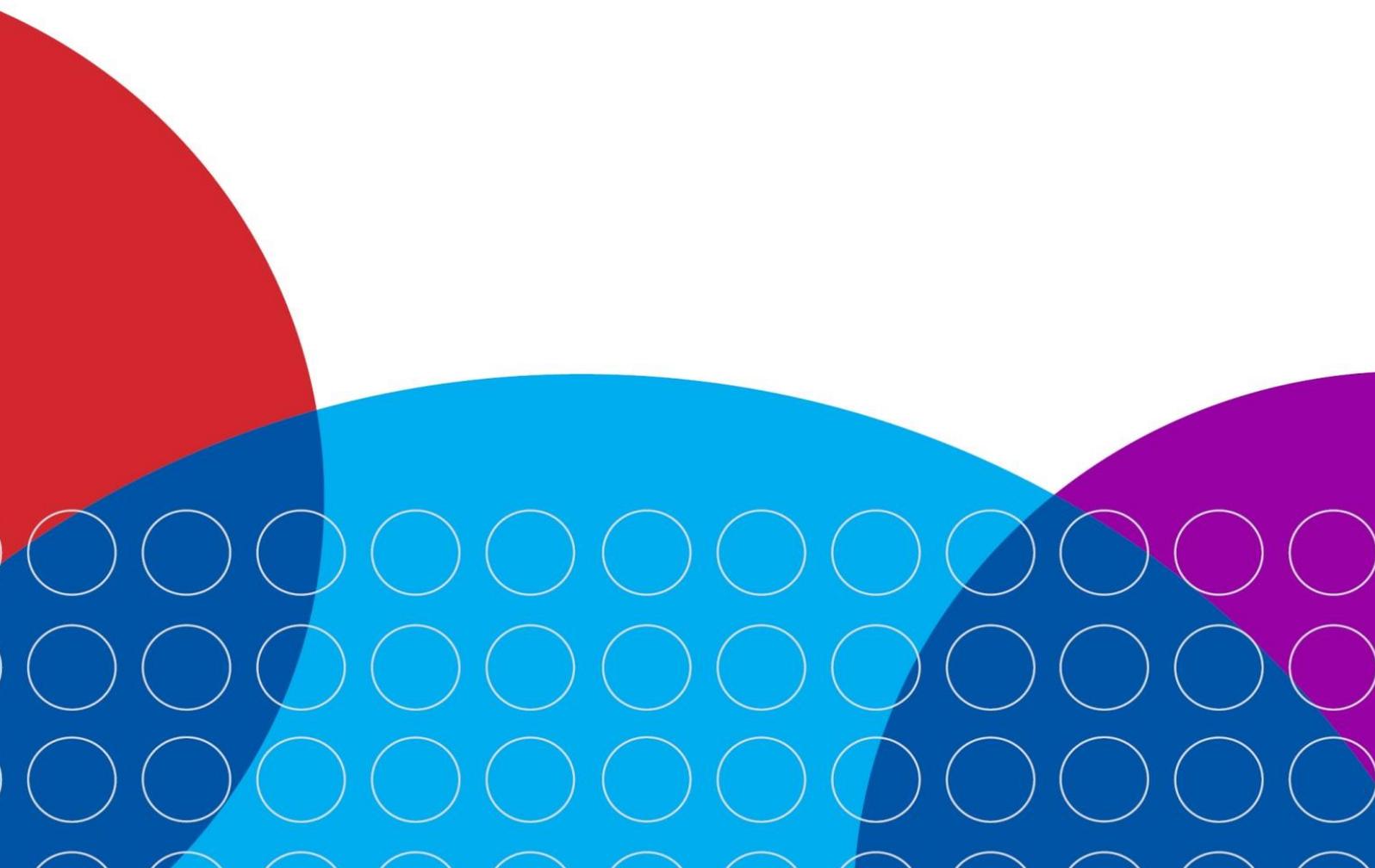


**Government
of South Australia**

Office of the Commissioner
for Public Sector Employment

FREQUENTLY ASKED QUESTIONS:

RECOVERY OF OVERPAYMENTS



The following Frequently Asked Questions accompany and should be read in conjunction with 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"). This includes public service agencies and employees, and declared public sector employment under section 41 of the PS Act and regulation 13 of the *Public Sector Regulations 2010*.

Public sector agencies not bound by the Determination should apply the content as a Guideline, and are encouraged to adopt the document as agency policy.

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

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

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. If the overpayment is greater than \$50, agencies will make reasonable attempts to negotiate repayment arrangements with the employee. In the absence of any agreement, unilateral deductions will occur, as outlined in the Determination and Guideline. If necessary, legal action may be required in order to recover an overpayment debt (with human resources and/or legal advice provided as necessary).

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

- A. *Treasurer's Instruction No. 5: Debt Recovery and Write Offs* ("TI5") requires agency heads to seek to recover debts to the Crown, including those caused by overpayment of wages.

Where the debtor is a South Australian Government employee, TI5 requires that they be pursued for prompt repayment.

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

Q4. Can a debt caused by an overpayment be waived or written off?

- A. Debts owed to the Crown can only be written off in exceptional circumstances, subject to the agency gaining the appropriate approvals required by T15, and depending on the amount owed.

T15 restricts the writing off of a debt owed by a current South Australian Government employee, unless the amount payable does not exceed \$20.00 in total. In this instance, the Chief Executive may use their discretion to waive the debt.

Q.5 Who is responsible for the recovery of a debt caused by an overpayment?

- A. The public sector agency in which the employee was working at the time of the overpayment is responsible for the recovery of the debt owed.

A large number of agencies use Shared Services SA as a service delivery business unit who act on instruction from agencies. While Shared Services SA may be instructed to take steps to recover the debt on behalf of an agency, it is ultimately the responsibility of the employing agency to ensure staff are appropriately remunerated, and that all possible steps are taken to seek recovery of an overpayment to one of their employees.

Q6. Are there any time limitations to the recovery of an overpayment for agencies relying on section 70 of the PS Act?

- A. While there is no limitation of time applying to the unilateral recovery or withholding of monies in order to recover a debt owed to the Crown when section 70 of the PS Act is relied upon, the Commissioner for Public Sector Employment has determined that any agency relying upon section 70 of the PS Act to recover an overpayment may only commence recovery within six years of the debt being created.

Q7. If an employee takes leave based on a mutual error to accrued entitlements, is this considered an overpayment?

- A. No. Leave taken on the basis of mutual error by both the employee and employer as to the true accrued entitlement does not amount to an overpayment.

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

Q8. I've been notified of an overpayment. What do I do?

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 should contact their payroll team.

Q9. What happens if an employee purports they should not be required to repay a debt created by an overpayment?

A. Occasionally an employee may challenge if they are required to repay a debt from an overpayment, asserting that they received the monies in good faith and relied detrimentally on such monies.

If an employee makes this assertion, advice should be sought from the Crown Solicitor's Office.

Q10. Can an employee seek a review of a decision to require them to make a repayment as part of the recovery of an overpayment?

A. Whether an overpayment has occurred and a subsequent debt exists is a question of fact. It is not a reviewable 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 through an overpayment may seek an Internal Review of that decision under section 61 of the PS Act. If the employee remains aggrieved after an Internal Review, they may seek an External Review by the South Australian Employment Tribunal under section 62 of the PS Act.

Some public sector agencies not covered under Part 7 of the PS Act may have processes in place to enable the employee to lodge a grievance specific to their employment context.

Employees should note the obligation on agencies to recover the debt under TI5, and the possible use of provisions in section 70 of the PS Act. Additionally, employees should note that debts can be paid in instalments as provided for in the *Determination and Guideline of the Commissioner 6: Recovery of Overpayments*.

Employees are encouraged to contact their Human Resources unit for further information about any applicable grievance review process.