Debt recovery

Background

1. This guideline sets out the process that is followed for the recovery of debts owed by current or former *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employees to the Commonwealth that are the responsibility of the Department of Finance (Finance) and the Independent Parliamentary Expenses Authority (IPEA).
2. A debt to the Commonwealth can arise in a variety of ways, including:
    a. overpayment of salary, allowances, travel expenses or an identified use of travel resources that falls outside of the relevant framework; or
    b. delayed submission of employment variations.
3. In accordance with section 11 of the *Public Government Performance and Accountability Rule 2014*, Finance and IPEA:
    a. are required to pursue the recovery of debts owed to the Commonwealth for which Finance or IPEA is responsible; or
    b. may modify the terms and conditions on which an amount owing to the Commonwealth is to be paid.
4. Finance or IPEA may choose not to pursue the recovery of a debt where:
    a. pursing recovery of the debt is not economical; or
    b. the debt is not legally recoverable.

Department - Recovery of debt processes

5. Debts will be recovered in accordance with clause 35 of the Enterprise Agreement and the *Fair Work Act 2009* (FW Act).
6. Where a debt has arisen, Finance will contact an employee in writing to provide details of their debt, including the amount of debt, how it has arisen, and options to resolve the debt.
7. Finance will make reasonable attempts to contact the employee or former employee to advise them that a debt has arisen that is owed to the Commonwealth. This may include:
    a. calling and/or emailing the employee or former employee to inform them that a debt has arisen based on Finance's records;

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b. for a former employee, checking with their former employer's office to confirm the former employee's contact details.

8. Once notified, the employee has 28 days to dispute the debt. Disputes can be advised to Finance by contacting the MaPS Helpdesk via MPSHelp@finance.gov.au or 02 6215 3333 (option 3).

9. Where Finance is unable to contact the employee after reasonable attempts, or a dispute is unable to be resolved, the matter may be referred for legal advice and action.

10. If there is a dispute regarding a debt, Finance will provide evidence for how a debt has arisen and work with the employee to reach an agreement on the debt.

Existing employees

11. All efforts to recover the debt from an existing employee will be made in accordance with the requirements of clause 35 of the Enterprise Agreement and the FW Act, including seeking the consent of the employee. Finance and the employee will agree to an arrangement for which the debt will be repaid by the employee (a repayment plan). A repayment plan will be documented in writing between Finance and the employee. Finance will not make a deduction from an employee's pay without authorisation or agreement to do so.

12. For existing employees, Finance will by default require repayment of 20 per cent of their gross salary to repay the debt and the first instalment is generally expected to occur within 14 days of the repayment plan being made. An existing employee may request a repayment plan on different terms, and Finance will consider the quantum of the debt and the employee's financial circumstances before agreeing to a repayment plan.

13. If MOP(S) Act employment ceases, then any outstanding overpayment will be recovered from the former employee as a debt to the Commonwealth. Finance may offset a debt against an employee's recognised final monies entitlements, including severance benefits, provided that doing so does not result in the employee receiving an amount less than they are entitled to under the National Employment Standards (which is an amount equivalent to any severance payment received from a genuine redundancy payment).

Former employees

14. Where a former employee has a debt to the Commonwealth, recovery will be pursued in accordance with Finance's recovery processes for debts owing to the Commonwealth.

Financial hardship

15. Where an employee or former employee is having financial difficulties, they should contact Finance and provide a rationale and relevant documentation of the hardship they are facing in repaying a debt, including financial and personal circumstances. Hardship exists when the amounts of repayments would leave the employee or former employee unable to provide food, accommodation, clothing, medical treatment, education or other necessities for themselves, family, or other people for whom they are responsible.

16. When notifying Finance of financial hardship, the employee may propose an amendment to the repayment plan that they can afford to pay.

17. Finance will genuinely consider any claims of financial hardship and will notify the employee in writing whether it agrees to the proposed amendments to the repayment plan. Finance may propose a different repayment plan, depending on its assessment of the employee's financial hardship.

18. If Finance rejects an employee's request for an alteration to the repayment plan, it must provide reasons for not accepting the proposed repayment plan in writing. Where a request to change the repayment plan is not accepted, the employee or former employee may request a review of the decision.

IPEA - Recovery of debt processes

19. Where IPEA has identified a debt owing from an overpayment of either, travel allowance, travel expenses or an identified use of resources that falls outside the framework, IPEA will undertake debt recovery action.

20. Where a debt has arisen, IPEA will contact an employee in writing to provide details of their debt, including the amount of debt, how it has arisen, and options to resolve the debt.

21. IPEA will make reasonable attempts to contact the employee or former employee to advise them that a debt has arisen that is owed to the Commonwealth. This may include:

    a. calling and/or emailing the employee or former employee to inform them that a debt has arisen based on IPEA's records.

    b. for a former employee, checking with their former employer's office to confirm the former employee's contact details.

22. If there is a dispute regarding a debt, IPEA will provide evidence for how a debt has arisen.

Existing employees

23. All efforts to recover the debt from an existing employee will be made in accordance with the requirements of the FW Act. An employee may choose to have the debt amount deducted from future travel allowances or motor vehicle claims (this option is only available where the future travel is expected within the next 60 days), recovered from their pay, or paid by credit card, direct debit or cheque.

24. For existing employees, IPEA will by default require repayment of 20 per cent of their gross salary to repay the debt and the first instalment is generally expected to occur within 14 days of the repayment plan being made. An existing employee may request a repayment plan on different terms, and IPEA will consider the quantum of the debt and the employee's financial circumstances before agreeing to a repayment plan.

25. If MOP(S) Act employment ceases, then any outstanding overpayment will be recovered from the former employee as a debt to the Commonwealth. IPEA may offset a debt against an employee's recognised final monies entitlements, including severance benefits, provided that doing so does not result in the employee receiving an amount less than they are entitled to under the National Employment Standards.

Former employees

26. Where a former employee has a debt to the Commonwealth, recovery will be pursued in accordance with IPEA's usual debt recovery processes, including regular reminders that a debt is due. Unpaid debts outstanding for greater than 90 days may be referred to a debt collection agency.

Financial hardship

27. Where an employee or former employee is having financial difficulties in making repayments, they should contact IPEA and be prepared to explain and provide relevant documentation of the hardship they are facing in repaying a debt, including financial and personal circumstances. Hardship exists when the amounts of repayments would leave the employee or former employee unable to provide food, accommodation, clothing, medical treatment, education or other necessities for themselves, family, or other people for whom they are responsible.

28. IPEA will genuinely consider any claims of hardship and will provide reasons for accepting or not accepting a claim of hardship in writing. Where a claim is not accepted, the employee or former employee may request a review of the decision.

Other arrangements

29. An employee or former employee may request that a debt not be recovered (also known as a debt 'write off'). A debt may not be pursued where it is considered not economical or a debt is not legally recoverable. A decision to write off a debt does not legally extinguish the debt. For example, if the debtor's circumstances change in the future the debt can be reinstated and pursued.

30. An employee or former employee may request that the Minister for Finance waive the debt in accordance with the *Public Governance, Performance and Accountability Act 2013*, which means the debt no longer exists. Further information is provided in *RMG 401: Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act 2013*.