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Independent Parliamentary
Expenses Authority

5: MANAGING DEBTS AND AMOUNTS OWING TO THE COMMONWEALTH

Arrangements covered by this AAI

Accountable Authority Instruction (AAI) 5.1: Recovery of debts only applies to debts which arose after, or were not pursued before, 1 July 2014. For debts which pre-date this, recovery is to be undertaken in accordance with the procedures which applied under the *Financial Framework (Supplementary Powers) Act 1997* prior to 1 July 2014. Contact Legal Services Branch for further information.

Accountable Authority Instruction 5.1: Recovery of debts

1. What is a 'debt' and an 'amount owing to the Commonwealth'?

The Public Governance, Performance and Accountability legislation refers to 'debts' and 'amounts owing to the Commonwealth'.

- A 'debt' is money owing, which is known (or capable of being objectively determined) and not being disputed, due for payment now, and capable of being recovered in an action for debt. For example, an official who has been overpaid a salary, or a person who has been overpaid a social security payment, may owe a debt to the Commonwealth.
- An 'amount owing to the Commonwealth' includes all debts owed, as well as amounts not yet due for payment (e.g. an invoice has been issued but payment is not due until next month).

Amounts owing between non-corporate Commonwealth entities are not debts at law. This Accountable Authority Instruction (AAI) is to be followed, to the extent that this can be reasonably done, to ensure proper consideration of any decision not to pursue an amount.

Where an amount is owed by a Minister or official under sections 67 to 69 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) due to unauthorised gifting or loss of relevant money or property, if deemed appropriate, recovery must be pursued in accordance with section 70 of the PGPA Act (refer to *Accountable Authority Instruction (AAI): 1.3: Fraud control*).

2. Principles

It is important to identify and distinguish between a debt and an amount owing. The general principle is that amounts owing is to be paid in full immediately when they become due.

However, in certain circumstances it may be appropriate to defer the time for payment, allow payment by instalments, waive the amount owing to the Commonwealth, or set-off the amount owing to the Commonwealth. Sections 63 and 64 of the PGPA Act provide the Finance Minister (or their delegate in some instances) with the power to make such decisions.

Section 11 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule 2014) (Recovery of debts) requires the pursuit of the recovery of all debts, unless:

- the debt has been written off as authorised by an Act
- it is considered the debt is not legally recoverable (e.g. the debtor has a legal defence to a claim for repayment has a reasonable prospect for success)

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- recovery is not economical to pursue.

A decision to not recover (write off) an amount owing does not legally extinguish the debt. For example, if the debtor's circumstances change in the future the amount owing can be reinstated and pursued. The only way to legally extinguish an amount owing is for the Finance Minister to waive the amount owing under section 63 of the PGPA Act (refer to AAI 5.2: *Waiver (including Postponement or otherwise modify payment)* or set-off of amounts owing to the Commonwealth).

Where other avenues exist for a debt to be managed (e.g. payment in full, by instalments or deferral), those avenues is to be investigated prior to considering a waiver or set-off of amounts owing, refer to AAI 5.2.

3. Instructions – all officials

You must:

- cease any incorrect or ongoing overpayment as soon as you are made aware of it and determine the amount owing
- ensure recovery action is initiated as soon as possible
- ensure any decision in respect of recovering a debt or an amount owing is approved by the relevant delegate.

4. Instructions – officials with delegations to pursue amounts owing (including non-recovery) or approve payment by instalments or defer the time for payment

You must:

- comply with the directions for the applicable delegation (refer to the Internal Financial Delegation Instrument, delegations under section 11 of the PGPA Rule 2014 and subsection 63(1)(b) of the PGPA Act)
- report on and maintain records of recovery actions, including the reasons for decisions and contact with the debtor.

If it is deemed an amount owing by another non-corporate Commonwealth entity will not be recovered, delegates who may approve non-recovery of an amount owing under section 11 of the PGPA Rule 2014 are authorised to approve this (subject to the same thresholds). This does not involve the exercise of a legislative power, but ensures proper consideration of the internal administrative decision not to pursue the amount.

You may cancel an amount owing if it is discovered it was never owing or is no longer owing and return any collected monies as appropriate (where there is no appropriation for the repayment, this is subject to section 77 of the PGPA Act, which provides for a special appropriation to allow repayment (the Finance Minister has delegated this power to the Finance Chief Executive Officer (refer to the *PGPA (Finance Minister to Finance Chief Executive Officer) Delegation*)).

5. Roles and responsibilities

Role/Area	Responsibility
Chief Financial Officer	<ul style="list-style-type: none"> • Ensure IPEA arrangements for the recovery of amounts owing are monitored and compliant with legislative requirements.

OPERATIONAL GUIDANCE

SEE ACCOUNTABLE AUTHORITY INSTRUCTIONS OPERATIONAL GUIDANCE 5.1: RECOVERY OF DEBT.