



# Salary Adjustment and Overpayments Policy

**Policy number: 22/2021**  
**Issue Date: September 2021**

ISSUED BY:

WORKFORCE CAPABILITY AND  
GOVERNANCE, CMTEDD

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## Introduction

1. The purpose of the Salary Adjustment and Overpayments Policy (the policy) is to provide a framework for facilitating salary adjustments and recovering overpayments for current ACT Public Sector (ACTPS) employees.
2. For the purpose of this policy, an overpayment is considered as any debt owed to the Territory in relation to an employee's salary, including their pay, allowance or leave. This is in accordance with clause D5 of the relevant ACTPS Enterprise Agreements (the Enterprise Agreements).
3. The principles and procedures set out in this policy will ensure that employees do not receive a payment which they are not entitled to and that debts owing to the Territory can be recovered in a timely manner. This promotes certainty and integrity in the management of public funds.

## Application

4. This policy contains a set of whole-of-government instructions issued by the Head of Service under the *Public Sector Management Act 1994* (PSM Act) which applies to all ACT Government Directorate and Public Sector body employees engaged under the PSM Act.
5. For the purpose of this policy, employees are defined as including current permanent officers, temporary employees, casual workers and Statutory Office Holders of the ACTPS.
6. The scope of the policy only covers overpayments owed to the Territory by current ACTPS employees. Overpayments owed by former employees will sit under a future process yet to be implemented. Please refer to the [ACT Government Debtor Management Policy](#) for further information on these matters for now.
7. All directorates/agencies are expected to adhere to this policy as a minimum standard. However, directorates/agencies may put in place their own policy and procedural documents which recognises differences in their operating environments and organisational structures.

## Key Legislative Provisions

8. The recovery of overpayments in the ACTPS is governed by three pieces of legislation:
  - a. the *Fair Work Act 2009* (FW Act) and the Enterprise Agreements approved pursuant to the FW Act;
  - b. the *Public Sector Management Act 1994* (PSM Act); and
  - c. the *Financial Management Act 1996* (FM Act).
9. The FM Act requires that, as part of good financial practice, debts must be recovered. The Enterprise Agreements then sets out the process of recovering overpayments to ACTPS employees.
10. The PSM Act establishes the underlying authority for the recovery of overpayments without an employee's consent and the relevant Enterprise Agreements provide the process for how this is to occur. The PSM Act amendments and the renegotiation of the Enterprise Agreement provisions now clarify the salary adjustment and overpayment arrangements.
11. As per clause D.5.10.1, recovery of overpayments will ordinarily be calculated at a rate of up to 10% of an employee's gross fortnightly pay.
12. In the event that the Head of Service or delegate (the 'financial delegate') and the employee do not agree on an appropriate recovery rate, the Head of Service (or financial delegate) will determine a reasonable recovery rate up to 10% having regard for the relevant circumstances in accordance with Section 246 of the PSM Act.

## Principles

13. The ACT Government is committed to its responsibility of ethically managing public funds in an effective, efficient and accountable way. There are risks to the Territory if these processes are not managed effectively, such as misappropriation of public funds and potential corruption.
14. When negotiating with an employee, the Head of Service (or financial delegate) must allow a reasonable period (in most circumstances 28 calendar days) to agree on an arrangement before determining the repayment process. This is a subjective test based on the opinion of the Head of Service (the financial delegate) and in accordance with the factors under section 246(4) of the PSM Act.
15. Generally, the Head of Service (or financial delegate) will only decide to proceed with an overpayment arrangement after an employee has had an opportunity to be heard and engaged in negotiating a reasonable recovery arrangement (usually with payment to be recovered within 26 pay periods).
16. The FW Act prohibits an employer from deducting money from an employee's salary without the employee's express written authorisation unless the recovery is authorised by a State/Territory law. This is authorised by the amendments to the PSM Act which is consistent with the FW Act and the Enterprise Agreements in relation to employer deductions from an employee's salary where an overpayment has occurred.
17. In determining reasonable arrangements for repayment, the Head of Service must have regard to:
  - a. the period in which the overpayment occurred;
  - b. the circumstances of the overpayment;
  - c. the gross and/or net amount of the overpayment;
  - d. the employee's financial circumstances;
  - e. any hardship the arrangement may cause to the employee; and
  - f. any other relevant circumstance.
18. Hardship factors go beyond financial circumstances and generally may include (but not be limited to) family tragedy, serious illness, family or domestic violence, impacts of natural disaster and other serious or difficult circumstances.
19. Consideration of these factors ensures that reasonable repayment arrangements are established in a compassionate and sensible manner, balanced by the need for the Territory to be fiscally responsible in the management of public funds.

## Procedure

20. The amendments to the PSM Act list the process for when an employee receives unentitled money paid to them by the Territory. The steps are as follows:
  - a. assess if the payment is a 'discrepancy'. A discrepancy is where the payment results from an amendment to, or late submission of, a time sheet, evidence, material or other forms. Where the unentitled payment has been identified and does not exceed 10% of the employee's fortnightly gross pay, it may be recovered in the next pay period. A discrepancy is not treated as an overpayment;
  - b. consider whether it would be appropriate in the circumstances to waive part or all of the overpayment under the provisions of the FM Act and relevant Enterprise Agreement due to the circumstances of which the debt arose, if applicable; and

- c. if the payment is an 'overpayment debt', confirm and seek to recover the overpayment in accordance with the debt recovery process, including consideration of employee-initiated waiver applications, if applicable; and
- d. assess whether the overpayment debt balance is irrecoverable and consider whether it should be written off under the provisions of the FM Act.

21. A summary of the salary adjustment and overpayment process can be found at **Attachment A**.

## **Discrepancies**

- 22. The Enterprise Agreements provide an alternative process for recovering an overpayment considered a 'discrepancy'; otherwise known as a 'salary adjustment'.
- 23. A discrepancy is defined as a payment that has been made to an employee to which they are not entitled as a result of an amendment to, or late submission of, a time sheet, evidence, material or other forms.
- 24. Under the relevant Enterprise Agreements, where a discrepancy has been identified, the amount may be deducted in the following two pay periods, provided it is no greater than 10% of the employee's gross fortnightly pay or with the employee's agreement.
- 25. In the majority of these circumstances, the employee has initiated the request or is aware that the request is being processed.
- 26. Discrepancies are regularly processed by the Shared Services Payroll Services Division (Shared Services Payroll) and these are usually resolved within the next available pay period. This is particularly common within shift/roster settings and where manual paperwork is not received on time.
- 27. Shared Services Payroll will notify employees where a discrepancy has been processed as soon as practicable.
- 28. If more than two pay periods have passed since the discrepancy was paid, and/or the amount exceeds 10% of the employee's gross fortnightly pay, the amount is not considered a discrepancy and instead, must be treated as an overpayment. In this situation the remaining overpayment provisions of the relevant Enterprise Agreements will apply.
- 29. Employees have a responsibility to ensure timesheets, evidence and other forms are submitted in a timely manner.

## **Overpayments**

- 30. If recognised as an overpayment, the cascading process includes:
  - a. a collaborative approach between Shared Services Payroll and the directorate to confirming the overpayment, including establishing the circumstances of how it arose;
  - b. the ability in certain circumstances to waive the debt in part or in full using the provisions of the FM Act, which may be initiated by the directorate and approved by the Treasurer or delegate (the waiver delegate);
  - c. the development of a repayment schedule between Shared Services Payroll and the employee;
  - d. the ability in certain circumstances to write off or waive the debt in part or in full using the provisions of the FM Act, which may be initiated by the employee and approved by the Treasurer (or waiver delegate);
  - e. a unilateral right to recover the debt at a rate determined by the Head of Service (or financial delegate), where agreement on the rate of recovery has not been reached (ordinarily, at a rate up to 10% of the employee's gross fortnightly pay); and

- f. the ability in certain circumstances to write off the debt (in part or in full) under the provisions of the FM Act.
- 31. The most common causes of overpayments include, but are not limited to:
  - a. late submission of change of hours advice (reduction in fortnightly hours worked);
  - b. late submission of leave-without-pay advice;
  - c. late submission of half-pay leave advice;
  - d. late notification of termination of employment;
  - e. expiry of paid leave credits;
  - f. incorrect salary and/or allowance information provided; or
  - g. genuine payroll processing errors.

### **Establishing the overpayment**

- 32. Where an overpayment has been identified, the following will be established between Shared Services Payroll and the directorate:
  - a. the pay period(s) in which the overpayment occurred;
  - b. the nature of the overpayment;
  - c. reasons why the overpayment occurred; and
  - d. gross and net components of the overpayment.
- 33. The directorate can consider whether it is appropriate to apply for a waiver of the overpayment (in part or in full), due to the circumstances in which the overpayment arose, before seeking to recover the overpayment debt. This can be in the form of a minute, with attaching evidence to the Treasurer (or waiver delegate)
- 34. The Head of Service (or financial delegate) must endorse this minute before it proceeds to the Treasurer (or waiver delegate) for approval.
- 35. If a directorate chooses not to initiate a waiver, the recovery process of the overpayment will then be commenced by Shared Services Payroll.

### **Development of a repayment schedule**

- 36. Shared Services Payroll will advise employees on their overpayment details in writing as soon as practicable, along with a Recovery of Overpayment and Authority to Deduct form at **Attachment C**.
- 37. Where an overpayment has been identified within the same financial year in which it occurred, the net amount of the overpayment is recoverable. However, if the overpayment is identified from a different financial year, the gross amount of the overpayment must be recovered.
- 38. The employee will be given the options to repay the amount as regular deductions from their fortnightly pay, or in a lump sum through an electronic funds transfer or a cheque to the Territory. Alternatively, it may be agreed with the employee to adjust their leave credits instead of, or in combination with, a cash recovery, provided that the employee cannot be worse off in terms of their leave entitlements than if they requested payment in lieu of annual leave or long service leave. Consideration should be had to any taxation implications that this may have. Please refer to the Fact Sheet - Tax Implications for Salary Overpayments at **Attachment B** for further information.
- 39. Annual leave and/or long service leave credits can be used to offset the overpayment (either in part or in full). However, this can only occur in accordance with the provisions in the relevant Enterprise Agreement that covers payment in lieu of accrued leave. In particular, the offsetting of annual leave

credits must not result in a reduction of the employee's remaining annual leave credits by below one year's accrued entitlement. The employee must also be taking at least one week of annual leave in conjunction with this offsetting, or taken at least one week of annual leave in the past six months.

40. In most circumstances, the employee would have 14 calendar days to return the signed Recovery of Overpayment and Authority to Deduct form back to Shared Services Payroll.
41. If the employee considers themselves to have compelling circumstances, such as financial hardship, they can also seek an employee-initiated waiver in part or in full. The employee should complete the Application for Waiver of Overpayment form at **Attachment D** to action on this request. The Head of Service (or financial delegate) must endorse this application before it proceeds to the Treasurer (or waiver delegate) for approval.
42. If an employee does not return the signed Agreement to Recovery of Overpayment and Authority to Deduct form or Application for Waiver of Overpayment form within 14 calendar days, Shared Services Payroll will advise the employee in writing that the overpayment will be recovered at the rate of 10% of the employee's gross fortnightly pay in accordance with section 246 of the PSM Act. Shared Services Payroll will also confirm the date that the recovery will commence. Any updates to the deductions will be done once any salary increases have been processed.
43. If the employee does not agree to the recovery rate of 10% of their gross fortnightly salary, they may seek a recovery rate lower than this amount. The employee is required to complete the Application to Negotiate Recovery of Overpayment form at **Attachment E** within 14 to action on this request, and provide further evidence of financial and other hardship which limits their repayment capacity.
44. The Head of Service (or financial delegate) will consider this request according to the relevant Enterprise Agreement and section 246 of the PSM Act. They would then make a decision about whether to agree with the proposed recovery rate or such other rate, having regard for the relevant circumstances affecting the employee. Shared Services Payroll would then commence the recovery process of the overpayment at the decided rate.
45. Where there has been a reasonable period of time (in most circumstances 28 calendar days would be considered reasonable) for an employee to finalise on a repayment arrangement and agreement has not been reached, Shared Services Payroll will proceed with a recovery arrangement in accordance with section 246 of the PSM Act and the relevant Enterprise Agreement. The Recovery of Overpayment and Authority to Deduct form instructs Shared Services Payroll to commence recovery action on this basis.
46. The overpayment will be recovered at a rate of up to 10% of the employee's gross fortnightly pay, or such other rate determined by the Head of Service (or financial delegate), having regard for the relevant circumstances affecting the employee. The recovery period will not usually exceed 26 pay periods.

## **Waiver of overpayment debts**

47. The general expectation is that all debts will be repaid to the Territory.
48. Waivers may be granted as an exception if there are compelling circumstances. Compelling circumstances include, but are not limited to:
  - a. financial hardship;
  - b. that it would be unreasonable for the employee to repay the debt because of the circumstances under which the debt arose; and
  - c. other exceptional circumstances, such as instances where the employee is affected by family or domestic violence, health issues or other personal matters.
49. Where circumstances warrant a consideration to waive the overpayment in part or in full, the directorate or the employee can apply for a waiver as appropriate. Any necessary information or



evidence must be provided to support the waiver request. These circumstances will be considered on a case-by-case basis.

50. The power to waive monies for overpayments owed rests with the Treasurer under section 131 of the FM Act. Applications for waivers will be considered by the Treasurer or the waiver delegates as appropriate.
51. In terms of the waiver delegates of the Treasurer:
  - a. the Deputy-Director General, Workforce Capability & Governance, Chief Ministers, Treasury and Economic Development Directorate (CMTEDD) has been delegated the power to waive overpayment debts up to \$19,999;
  - b. the Deputy-Director General, Workforce Capability & Governance, CMTEDD jointly with the Under-Treasurer have been delegated the power to waive overpayment debts from \$20,000 up to \$49,999; and
  - c. the Treasurer alone has the power to waive overpayment debts from \$50,000 or more.
52. Waiving overpayments may have fringe benefit tax and payment summary reporting implications for both the employee and the Territory. The amount of the debt waiver fringe benefit is the 'grossed up' amount relating to unrecovered salary that was overpaid.
53. The taxable value of a debt waiver fringe benefit is the amount of the debt that is released. For example, when an overpayment of \$1,000 owed by an employee is waived, the taxable value of the debt waiver fringe benefit is \$1,000. Where the amount waived includes an amount of principal and accrued interest (for example, \$1,000 principal and \$100 interest), the taxable value of the debt waiver fringe benefit is the total amount waived – that is, \$1,100 in this example. Please refer to the Fact Sheet - Tax Implications for Salary Overpayments for further information
54. Under the requirements of section 131 of the FM Act, any waivers must be reported in the notes to the financial statements of the relevant directorate that relate to the year in which the right recovery of the overpayment was waived. The overpayment must also be from the financial records of the directorate, as its waiver would be a relinquishment of a legal claim to a debt over which the directorate has control.

## **Write-off of overpayment debts**

55. Under section 31 of the FM Act, there is provision for directors-general to consider a write-off of the debt under limited circumstances. A write-off of an overpayment may be appropriate where the overpayment is considered an irrecoverable debt
56. Write-off is a separate consideration for the directorate. In relation to irrecoverable debts, the directorate must be satisfied that:
  - a. it is probable that the costs of recovery action will exceed the benefits of collection; and/or
  - b. the debt is irrecoverable at law, or the debtor is without funds and there is no reasonable prospect of their financial situation improving.
57. The Application for Write-off of Overpayment form at **Attachment F** should be completed by Shared Services Payroll and provide necessary information or evidence to support the write-off request. These circumstances will be considered on a case-by-case basis.
58. In the case on the death of an employee, their overpayment may be recovered from any final entitlements payable to their estate. Where the amount of overpayment exceeds the final entitlements payable, that excess amount will be written-off. However, this is subject to the directorate's position.
59. A write-off is the accounting process to remove the debt from financial records. It is different to a waiver, as a write-off does not extinguish the legal right of the Territory to collect a debt.



60. Before a debt can be written-off from the records, approval is required by the director-general or financial delegate in writing and undertaken in accordance with the relevant directorate's Financial Instructions.

### **Recent lump sum payments made in error**

61. Employees should be aware of their obligations under section 9 of the PSM Act of complying with any lawful and reasonable direction given by a person with the authority to do so.
62. Where possible, Shared Services Payroll will advise employees as soon as practicable where a lump sum overpayment is about to be paid or has recently been paid to which they are not entitled.
63. Where an employee is advised that a lump sum overpayment is about to be paid or has recently been paid to which they are not entitled and it is an obvious error or mistake, they are required to repay the amount back to the Territory.
64. The misconduct and discipline provisions of the Enterprise Agreements may apply if the employee fails to comply with this reasonable direction to repay a lump sum overpayment, with consideration to any relevant factors impacting their repayment capacity.

### **Cessation of employment arrangements**

65. When an employee ceases employment with the ACTPS, an overpayment should be recovered by deduction from any final entitlements payable to the employee.
66. Where an employee considers they have compelling circumstances, they may make application for a waiver of the overpayment.
67. If the overpayment exceeds the available amount in the final entitlements, further recovery action should be undertaken unless it is established that either:
- a. the remaining amount should be waived, in part or in full, due to compelling or exceptional circumstances or that such recovery would cause undue hardship; or
  - b. the overpayment is irrecoverable and should be written-off in accordance with the directorate's Financial Instructions.

### **Legal proceedings**

68. As a matter of policy, the Territory only pursues legal action against current employees to recover and resolve outstanding debts due to salary overpayments in exceptional circumstances. Unless it is inappropriate to do so, every effort will be made by the Territory to recover the debt using the overpayment provisions.
69. However, it is open to the Territory to pursue legal action against current and former employees to recovery and resolve significant outstanding debts due to salary overpayments, depending on the extent and circumstances of the overpayment.

### **Statute of limitations in relation to overpayment debts**

70. It is important that debts are recovered and resolved within a timely manner. The *Limitation Act 1985* (ACT) (Limitation Act) governs the time limit within which the Territory can take legal action to collect a debt. Debts that arise due to overpayments typically amount to a payment made due to a mistake.
71. For a former employee, where a debt arises from a payment made by mistake, section 34 of the Limitation Act governs how the limitation period (within which legal action must be taken) is calculated. Legal action to recover payments made by mistake must be taken within 6 years of the date when the Territory discovers, or could have with reasonable diligence discovered, the mistake.
72. Section 246 of the PSM Act provides authority to recover a debt from current employees regardless of when the overpayment was made. While the 6-year limitation period under the Limitation Act does

not apply to current employees, it does provide a relevant consideration when determining whether a waiver or write-off of the debt is appropriate. If, for example, with reasonable due diligence the Territory could have been expected to identify an overpayment within 6 years of the overpayment being made to the employee, then depending upon the relevant circumstances of the matter it may be appropriate to waive or write-off the debt.

## **Dispute resolution and Fair Work Commission**

73. Where employees would like to raise a dispute about the recovery of an overpayment, they should address this through the Dispute Avoidance/Settlement procedures outlined in clause G6 of the relevant Enterprise Agreement. Unless the employee agrees, recovery of overpayments will not occur while a dispute raised under these provisions is in progress.
74. If the internal dispute process under the relevant Enterprise Agreement has been exhausted and the dispute remains unresolved, the matter can be referred to the Fair Work Commission for a resolution as delineated in the Enterprise Agreement.

## **Responsibilities**

### **Shared Services Payroll Services**

75. The Shared Services Payroll Services (exercising Head of Service's Enterprise Agreement functions) is responsible for:
  - a. working with current employees to establish the:
    - i. pay period(s) in which the overpayment occurred;
    - ii. nature of the overpayment;
    - iii. reasons why the overpayment occurred;
    - iv. gross and/or net components of the overpayment that is to be recovered;
    - v. process for recovery of the overpayment, if any; and
    - vi. proposed recovery rate, if any;
  - b. providing the details of the salary adjustment, discrepancy or overpayment to the employee and directorate HR team in writing;
  - c. processing salary adjustments or discrepancies and recovering overpayments owed by current employees; and
  - d. referring overpayments to the Head of Service or financial delegate in the directorate to consider a waiver or write-off under the FM Act.

### **Employee responsibilities**

76. Employees are responsible for:
  - a. ensuring timesheets, evidence and other forms are submitted in a timely manner;
  - b. actively monitoring payments made to them by the Territory;
  - c. advising their manager/supervisor and Shared Services Payroll where they are aware of a payment that has been made to them which they are not entitled to;
  - d. negotiating in good faith with the Shared Services Payroll to arrange for a reasonable repayment arrangement to be established as soon as possible after the overpayment has

been identified, and for this amount to be repaid to the Territory within a reasonable period of time;

- e. providing necessary information to:
  - i. the Treasurer and waiver delegates to assist in determining whether to waive part or all of the overpayment under the FM Act; and
  - ii. Shared Services Payroll to assist in determining a reasonable repayment arrangement; and
- f. following reasonable directions to repay an amount where an employee has been paid a lump sum that they are not entitled to.

77. Intentional employee actions that result in an overpayment may lead to misconduct proceedings. This may include situations where the employee is aware that they have no leave credits available, and deliberately and frequently submits late leave forms without an arrangement in place with their manager/supervisor.

## **Manager/Supervisor responsibilities**

78. Managers/supervisors are responsible for exercising due diligence and timely processing of leave applications or other relevant forms, given that delayed processing may lead to an overpayment.
79. Where a manager/supervisor's actions frequently lead to overpayments occurring, it will be considered a performance issue and should be managed in accordance with the Underperformance provisions of clause H6 in the relevant Enterprise Agreements.

## **Directorate responsibilities**

80. Directorates are responsible for:
- a. actively monitoring overpayments made to employees by the Territory to ensure that employees do not receive payments that they are not entitled to;
  - b. providing timely advice to the employee and Shared Services Payroll where an employee has received a payment which they are not entitled to;
  - c. considering whether the circumstances warrant an application to the Treasurer (or waiver delegate) to waive the overpayment in full or in part, including considering any hardship the arrangement may cause to the employee and any other relevant circumstances, prior to any recovery being made; and
  - d. including providing any comments to the Treasurer (or waiver delegate) in support or rejection of any request by the employee for waiver of debt;
  - e. assessing referrals from Shared Services Payroll where write-off may be considered and advising Shared Services Payroll of the decision;
  - f. accurately monitoring overpayments, waivers and write-offs; and
  - g. accurately recognising overpayments as debts within their financial systems and reporting on overpayments, waivers and write-offs within their financial statements and annual reports.
  - h. advising the employee and Shared Services Payroll that a decision has been made to progress with a repayment arrangement without agreement from the employee, after a reasonable period has passed where attempts have been made to negotiate a reasonable repayment arrangement, and having considered the relevant factors including the circumstances of the overpayment and any hardship the arrangement may cause to the employee.

## Treasurer responsibilities

81. The Treasurer (or waiver delegate) is responsible for:
- a. considering whether it would be appropriate in the circumstances to waive part or all of the overpayment under the FM Act; and
  - b. advising the employee in writing as soon as practicable of the decision as to what, if any part of the overpayment will be waived.

## References

82. The key principles of this policy are aligned with the following authorised sources:
- a. [Public Sector Management Act 1994](#)
  - b. [Financial Management Act 1996](#)
  - c. [ACTPS Enterprise Agreements](#)
  - d. [Fair Work Act 2009](#)
  - e. [Limitation Act 1985 \(ACT\)](#)
83. Other references include:
- a. *Relevant Directors-General Financial Instructions for each directorate*
  - b. [ACT Government Debtor Management Policy](#)

## Consultation

84. This policy was consulted with the ACTPS People Forum, unions, the Government Solicitors' Office and Shared Services Payroll.

## Further Information

85. The contact for further information is the Executive Group Manager, Whole of Government Industrial Relations and Public Sector Employment, Workforce Capability and Governance, Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

## Review

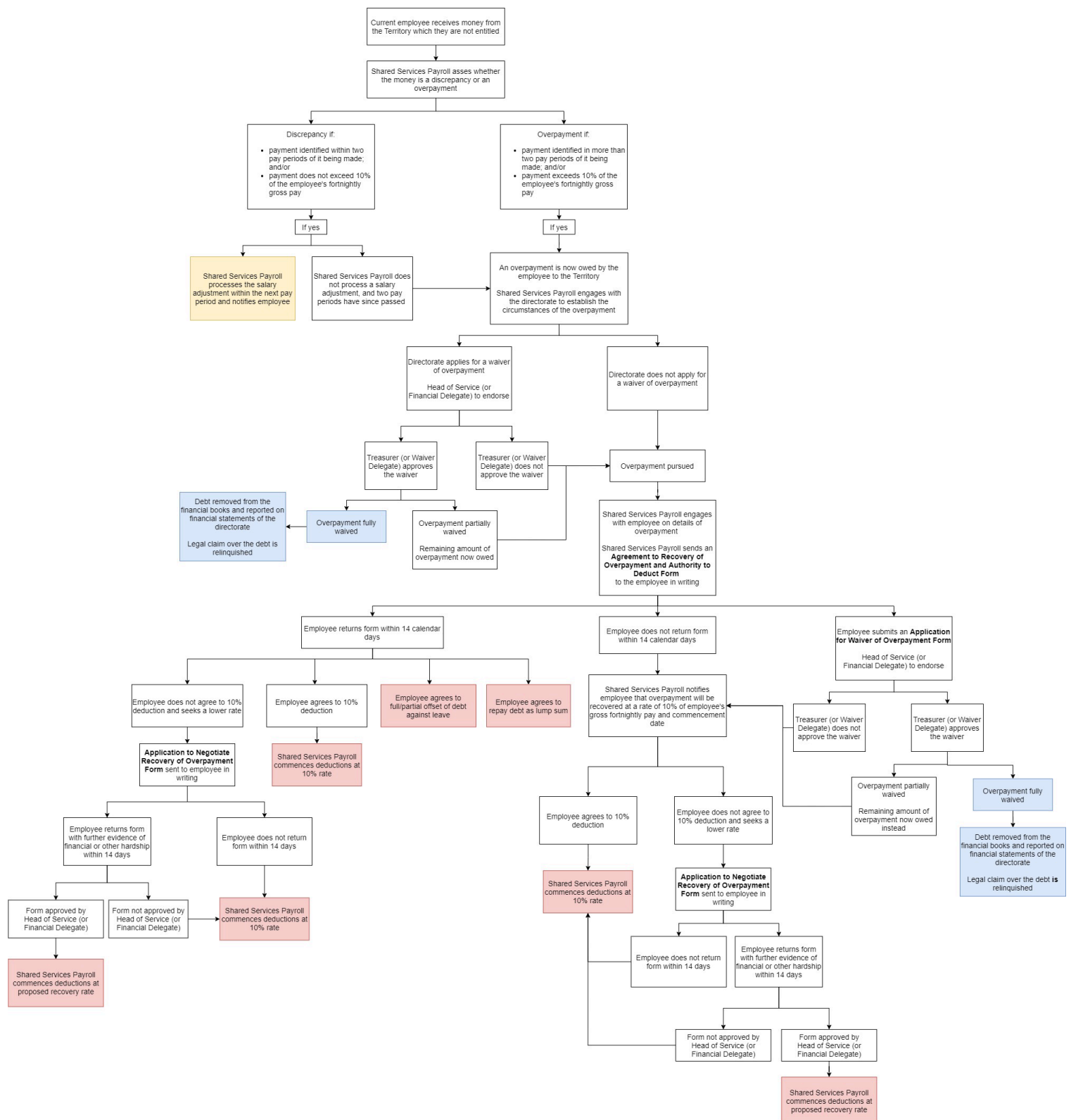
86. This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

Document name: ACTPS Salary Adjustment and Overpayments Policy	Prepared by: Assistant Director, Industrial Relations and Public Sector Employment, Workforce Capability & Governance, CMTEDD
Policy Number: 22/2021	Feedback to: <a href="mailto:eba@act.gov.au">eba@act.gov.au</a>
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## Approval Authority

Dr Damian West  
Deputy Director-General  
Workforce Capability and Governance Division  
Chief Minister, Treasury and Economic Development Directorate  
On behalf of the Head of Service  
20 September 2021

# Attachment A – Salary Adjustment and Overpayments Process Flowchart



# Attachment B – Tax Implications for Salary Overpayments

## Factsheet

### Debt waiver fringe benefit

1. A debt waiver fringe benefit occurs when an employee is overpaid an amount they were not entitled to, and the employer waives the right to recover the overpayment.
2. The amount of the debt waiver fringe benefit is the 'grossed up' amount relating to unrecovered salary that was overpaid. Provided that the amount of the debt waived exceeds \$300, then the amount of fringe benefits tax payable on this debt is first multiplied by the type 2 factor (grossing-up) and then multiplied by the top marginal tax rate plus Medicare levy (i.e. 45% + 2% = 47%). The employer is liable for the fringe benefits tax.

### Reportable Fringe Benefit Amount

3. Where the total of all fringe benefits received by the employee, including the debt waiver fringe benefit exceeds \$2,000, this total amount will be multiplied by the type 2 factor (grossing-up) and will be reported on an employee's annual payment summary (reportable fringe benefit amount).
4. Even though a reportable fringe benefits amount is included on an employee's annual payment summary, it is not included in the employee's assessable income. The reportable fringe benefits amount is required for a number of income tests relating to a range of government benefit obligations including the Medicare levy surcharge; deduction for personal superannuation contributions; tax offset for eligible spouse contributions; superannuation contributions and termination payments surcharge; superannuation co-contribution; Higher Education Contribution Scheme (HECS) repayments; child support obligations; and assessing entitlement to certain income tested government benefits.
5. The reportable fringe benefits amount is also considered in the income tests for the family tax benefit and the childcare benefit, and for the parental income test for the youth allowance. However, these income tests include only non-grossed-up value of the fringe benefits. This amount can be calculated by multiplying the reportable fringe benefits total by 0.515.

### Loan Fringe Benefit

6. At the point at which the employer becomes aware of the salary overpayment a loan fringe benefit may arise.
7. The amount of a loan fringe benefit is calculated by multiplying the outstanding amount of the overpayment debt by the statutory interest rate as determined annually by the Australian Tax Office (ATO). If the resulting amount is less than \$300, the minor fringe benefit rule applies to exempt the amount from fringe benefits tax and from being reported on the employee's annual payment summary.
8. Where the amount of the loan fringe benefit is greater than \$300, fringe benefit tax will then be payable by the employer of the employee. However, where total fringe benefits of less than \$2,000 are provided, these amounts are not reportable on an employee's payment annual summary.

### Recovery of Fringe Benefit Amount

9. If the overpayment is identified in the same financial year that it occurred, only the net amount is required to be repaid by the employee. In these circumstances, the amount of the overpayment is not reported on the employee's payment summary. Depending on the amount of the overpayment, both a loan fringe benefit and a reportable fringe benefit amount may arise.

10. If the overpayment is identified in a subsequent financial year to when it occurred, the total gross amount is required to be repaid by the employee to the Territory. The employee may seek a re-assessment of a previous financial years' income to recover the 'overpaid' tax amount for that year.



# Attachment C – Recovery of Overpayment and Authority to Deduct Form



**ACT**  
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## Recovery of Overpayment and Authority to Deduct Form

The provisions of the Enterprise Agreement and the *Public Sector Management Act 1994* outlines the process for the Head of Service (or financial delegate) and employee where an overpayment has occurred. An overpayment is considered a debt to the Territory.

This form is sent to an employee by Shared Services Payroll where an overpayment has been identified and confirmed. This form is used for an employee to provide Shared Services Payroll with advice on how the overpayment debt will be repaid.

In most circumstances, if this form is not returned within 14 calendar days, recovery of the overpayment will begin at the rate of 10 per cent of the employee's gross fortnightly pay.

Further, in most circumstances, if a repayment arrangement with the employee has not been agreed to within 28 calendar days, recovery of the overpayment will begin at the rate of 10 per cent of the employee's gross fortnightly pay.

If the employee wishes to apply for a waiver of the overpayment debt, please see the *Application for Waiver of Overpayment*.

Please note that processing the recovery of an overpayment over more than two pay periods may attract Fringe Benefits Tax (FBT) liability for the Territory and impact your reportable income. For more information on this, please see the Tax Implications for Salary Overpayments factsheet.

Employee and overpayment details (Shared Services Payroll to complete)			
Family name:		Given names:	
Directorate:		Section:	
Classification:	AGS/Employee number:	Full-time/Part-time:	
<b>Details of the overpayment:</b> Over what period of time was the overpayment made:			
<b>Gross (pre-tax) amount of overpayment</b> The gross amount of the overpayment must be recovered if the overpayment is identified in a different financial year to when it occurred.			
<b>Net (after tax) amount totals</b> The net amount of the overpayment is recoverable if the overpayment is identified in the same financial year in which the overpayment occurred.			
Outline how the overpayment occurred:			
<b>Current Leave Balances:</b>		As at date:	
Annual Leave Balance:	Full-time LSL Balance:	Part-time LSL Balance:	
<b>Directorate Bank Account details:</b>			
<i>Note: please use your Surname and AGS number as a reference when making an EFT payment</i>			
Account Name:	BSB:	Account No:	
Employee to complete			
Name of employee's supervisor			
<b>Repayment/recovery options</b>			
<b>Option 1: Repayment of overpayment in full</b>		<b>Option 2: Repayment of overpayment by instalments</b>	
<input type="checkbox"/> In full by a single deduction from my pay on the next available pay day:		I agree to the repayment of the overpayment being made at 10% of my	<input type="checkbox"/> Yes <input type="checkbox"/> No

	gross fortnightly pay.	
<input type="checkbox"/> Immediately offset full amount against current Annual Leave balance (subject to payment in lieu of annual leave arrangements in relevant Enterprise Agreement)	I agree to the repayment of the overpayment being above 10% of my gross fortnightly pay (please specify)	per cent OR amount
<input type="checkbox"/> Immediately offset full amount against current Long Service Leave balance (subject to Long Service Leave clause of relevant Enterprise Agreement)	If you do not agree to the repayment of the overpayment at 10% or above, please complete the <i>Application to Negotiate Recovery of Overpayment Form</i> to request a lower recovery rate and provide additional evidence for financial or other hardship.	
<input type="checkbox"/> Immediately offset full amount by utilising a combination of Annual and Long Service Leave balances as above.		
<input type="checkbox"/> In full via cheque/EFT. Please insert date the repayment will be made		
Employee Comments:		
<input type="checkbox"/> I understand that the overpayment may attract Fringe Benefits Tax (FBT) liability for the Territory and impact my reportable income and other consequences arising from the overpayment.  <input type="checkbox"/> I agree to repay the overpayment I have incurred through the option I have selected on this form and where applicable, authorise the Territory to make deductions from my pay (or leave balance) as specified by me.		
Signature:	Date:	
<b>Shared Services Payroll Use Only</b>		
Is further information needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Processed? <input type="checkbox"/> Yes <input type="checkbox"/> No Pay day:	
Employee advised by Shared Services Payroll? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Supervisor advised by Shared Services Payroll? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Comments:		
Name:	Position Title:	
Signature:	Date:	

# Attachment D – Application for Waiver of Overpayment Form



## Application for Waiver of Overpayment

Under the provisions of the Enterprise Agreement, where the Head of Service (or financial delegate) has determined that an overpayment has occurred, it is a requirement that consideration be given to waiving all or part of the overpayment in accordance with section 131 of the *Financial Management Act 1996*.

An overpayment is considered a debt to the Territory. The general expectation is that all debts will be repaid to the Territory. Waivers may be granted in exception compelling circumstances, which may include but are not limited to:

- hardship;
- that it would be unreasonable for the employee to repay the debt because of the circumstances under which the debt arose;
- other exceptional circumstances such as instances where the employee is affected by family or domestic violence, health issues or other personal matters.

The form is used to apply for a waiver of an overpayment and must be **signed by the applicant, supervisor and the financial delegate**.

Please note that the waiver or partial waiver of an overpayment debt may attract Fringe Benefits Tax (FBT) liability for the Territory and impact your reportable income. For more information on this, please see the Tax Implications for Salary Overpayments factsheet.

The completed form will be sent to:

- the Deputy-Director General, Workforce Capability & Governance, CMTEDD for overpayment amounts of up to \$19,999;
- the Deputy-Director General, Workforce Capability & Governance, CMTEDD and the Under-Treasurer for overpayment amounts from \$20,000 up to \$49,999; and
- the Treasurer for overpayment amounts from \$50,000 upwards.

Employee to complete			
Family name:		Given names:	
Directorate:		Section:	Tel (work):
Classification:	AGS/Employee number:		Full-time/Part-time:
<b>Details of the overpayment:</b> Over what period of time was the overpayment made:			
<b>Gross (pre-tax) amount of your overpayment</b>  A gross overpayment must be recovered if the overpayment occurred in a different financial year to when it is being recovered.			\$
<b>Net (after tax) amount totals</b>  A net overpayment is recoverable if the overpaid monies are being recovered in the same financial year in which the overpayment occurred.			\$
Outline how the overpayment occurred:			
Outline the exceptional circumstances that exist which warrant consideration of waiving the overpayment or deferring the time for payment to the Territory ( <i>provide necessary information or additional evidence to support the waiver request</i> ):			
I am seeking to:	Waive                      per cent of the overpayment		
	Waive                      amount of the overpayment		
	<input type="checkbox"/> defer the time for payment to the Territory (include details above)		

If you are only seeking a partial waiver, please complete the Application to Negotiate Recovery of Overpayment form.			
<input type="checkbox"/> I understand that I am seeking a waiver of an overpayment and debt owed to the Territory. The information in this application is correct and accurate.			
<input type="checkbox"/> I understand that the waiver may attract Fringe Benefits Tax (FBT) liability for the Territory and impact my reportable income and other consequences arising from the overpayment.			
			Date:
<b>Directorate comments</b>			
Comments:			
Application supported? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Name:		Position Title:	
Signature:		Date:	
<b>Delegate/s of the Treasurer to complete</b>			
Is further information needed? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Application is:	<input type="checkbox"/> Approved	<input type="checkbox"/> Modified and approved	<input type="checkbox"/> Not approved
Reasons/comments (mandatory if modified/not approved):			
Name:		Position Title:	
Signature:		Date:	

# Attachment E – Application to Negotiate Recovery of Overpayment Form



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## Application to Negotiate Recovery of Overpayment

Under the provisions of the Enterprise Agreement and the *Public Sector Management Act 1994*, where the Head of Service (or financial delegate) has determined that an overpayment has occurred, the Head of Service and employee must negotiate a repayment arrangement. An overpayment is considered a debt to the Territory.

The form is to be used when an employee would like to negotiate with the directorate about the rate of recovery below 10 per cent of the gross fortnightly pay and where further evidence of financial and other hardship is provided. This form must be signed by the applicant and financial delegate and may be signed by the employee's supervisor.

In most circumstances, if a re-negotiated rate to recover the overpayment has not been agreed to within 14 calendar days, recovery of the overpayment will begin at the rate of 10 per cent of the employee's gross fortnightly pay.

Please note that the recovery of an overpayment debt may attract Fringe Benefits Tax (FBT) liability to the Territory and impact your reportable income. For more information on this, please see the Tax Implications for Salary Overpayments factsheet.

Employee to complete			
Family name:		Given names:	
Directorate:		Section:	Tel (work):
Classification:	AGS/Employee number:	Full-time/Part-time:	
<b>Details of the overpayment:</b> Over what period of time was the overpayment made:			
<b>Gross (pre-tax) amount of your overpayment</b> A gross overpayment must be recovered if the overpayment occurred in a different financial year to when it is identified.			
<b>Net (after tax) amount totals</b> A net overpayment is recoverable if the overpaid monies are being recovered in the same financial year in which it is identified.			
Annual Leave Balance:	Full-time LSL Balance:	Part-time LSL Balance:	
Outline how the overpayment occurred:			
Has a waiver been requested or approved? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, please select: <input type="checkbox"/> Full waiver <input type="checkbox"/> Partial waiver	
If there is a remaining amount after a partial waiver, what is this amount?			
<b>Repayment/recovery of overpayment by instalments</b>			
<input type="checkbox"/> At _____ per cent per fortnight of gross salary through the payroll system		Commencing pay day _____ over: _____ period of time OR <input type="checkbox"/> Until the overpayment is repaid.	
<input type="checkbox"/> By instalments of \$ _____ per fortnight from gross salary through the payroll system		Commencing pay day _____ over: _____ period of time OR <input type="checkbox"/> Until the overpayment is repaid.	
<input type="checkbox"/> By instalments made via cheque or EFT of \$ _____ per fortnight		Commencing pay day _____ over: _____ period of time OR <input type="checkbox"/> Until the overpayment is repaid.	
<b>Offset some of the overpayment against leave entitlements</b>			

Note that where the leave credits are taken without any tax withheld, this would result in a resulting debt waiver fringe benefit.	
<input type="checkbox"/> Immediately offset amount against current Annual Leave balance	<input type="checkbox"/> Immediately offset amount against current Long Service Leave balance
Outline your circumstances to explain the repayment/recovery of the overpayment by instalments including financial circumstances, any hardship or other relevant circumstances (please provide necessary information or additional evidence to support your application). This will allow the delegate to give consideration to this request.	
<input type="checkbox"/> I understand that I am negotiating the recovery/repayment of an overpayment and debt owed to the Territory. The information in this application is correct and accurate.  <input type="checkbox"/> I understand that the overpayment may attract Fringe Benefits Tax (FBT) liability to the Territory and impact my reportable income and other consequences arising from the overpayment.  <input type="checkbox"/> I understand that the rate of repayment may be reviewed in consultation with me upon any increase in salary due to promotion, long term temporary transfer at a higher level and wage rises.	
Signature:	Date:
<b>Delegate to complete</b>	
Comments:	
Is further information needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Application supported? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If no, please provide comments:  Having considered the employee's application and their circumstances, please outline the repayment arrangement that Shared Services Payroll should process:  Instalments of \$       per fortnight from net salary OR       per cent of gross salary per fortnight from net salary through the payroll system commencing pay day       . Period of instalments: Over       period of time OR <input type="checkbox"/> Until the overpayment is repaid.	
Employee advised of the decision by the delegate? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name:	Position Title:
Signature:	Date:
<b>Shared Services Payroll Use Only</b>	
Is further information needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Processed? <input type="checkbox"/> Yes <input type="checkbox"/> No
Employee notified by Shared Services Payroll of the outcome? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Comments:	
Name:	Position Title:
Signature:	Date:

# Attachment F – Application for Write-off of Overpayment Form



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## Application for Write-off of Overpayment

Under the overpayment provisions of the Enterprise Agreement, directorates/agencies are required to consider whether it is appropriate for an overpayment debt to be pursued, which includes considering whether the overpayment (or any outstanding balance of an overpayment) should be written off.

The *Financial Management Act 1996* and the directorate/agency Financial Instructions address the circumstances in which directorates/agencies may write-off debts.

This form is used for Shared Services Payroll to refer an overpayment matter to the directorate/agency to consider whether the overpayment debt should be written off under the overpayment provisions of the Enterprise Agreements and the *Public Sector Management Act 1994*. Write-offs must only be considered where there has been a rigorous pursuit of the debt already conducted, where it can be demonstrated that the costs of pursuing a debt outweigh the benefits or where any waiver of the debt has been first considered.

Employee details (Shared Services to complete)			
Family name:		Given names:	
Directorate:		Section:	
Classification:	AGS/Employee number:		Full-time/Part-time:
<b>Details of the overpayment:</b> Over what period of time was the overpayment made:			
<b>Gross (pre-tax) amount of overpayment</b> A gross overpayment must be recovered if the overpayment occurred in a different financial year to when it is being recovered.			
<b>Net (after tax) amount totals</b> A net overpayment is recoverable if the overpaid monies are being recovered in the same financial year in which the overpayment occurred.			
Outline how the overpayment occurred:			
Date when Shared Services Payroll identified the overpayment			
Shared Services Payroll comments and recommendations			
Other information relevant to the overpayment:			
Supporting documentation attached? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Name:		Position Title:	
Signature:		Date:	
Directorate HR to complete			
Comments:			



Is further information needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
I have decided that based on the information available:	
<input type="checkbox"/> the directorate/agency will give consideration to the overpayment being written off under the provisions of the <i>Financial Management Act 1996</i> and the directorate Financial Instructions. <u>Note:</u> the directorate/agency will be required to write to the employee to advise them to the decision to write off the overpayment debt  A write-off of an overpayment could be considered an irrecoverable debt. In relation to irrecoverable debts, the delegate must be satisfied that: <ul style="list-style-type: none"> <li>it is probable that the costs of recovery action will exceed the return; and</li> <li>the debt is irrecoverable at law, or the debtor is without funds and there is no reasonable prospect of their financial situation improving;</li> </ul> or	
<input type="checkbox"/> the overpayment should be pursued under the overpayment provisions of the Enterprise Agreements and the <i>Public Sector Management Act 1994</i> . Shared Services Payroll is requested to proceed on this basis.	
<input type="checkbox"/> I confirm that I have given consideration to the following matters in reaching this decision: <ul style="list-style-type: none"> <li>the period in which the overpayment occurred, and the mistake was made, or could have with reasonable diligence discovered, the mistake (the 6 year statute of limitations); and</li> <li>the circumstances of the overpayment; and</li> <li>the gross and/or net amount of the overpayment; and</li> <li>the financial and other impacts that the recovery will have on the employee; and</li> <li>the financial impact that the debt has on the Territory; and</li> <li>the reputational and other risks to the Territory; and</li> <li>any other relevant circumstance.</li> </ul>	
Strategic Finance notified or referred? <input type="checkbox"/> Yes <input type="checkbox"/> No    Contact Officer:	
Supervisor/Manager/Executive notified? <input type="checkbox"/> Yes <input type="checkbox"/> No    Contact Officer:	
Referral to Write-Off Delegate within directorate/agency? <input type="checkbox"/> Yes <input type="checkbox"/> No    Contact Officer:	
Other instructions:	
Name:	Position Title:
Signature:	Date:
<b>Shared Services Payroll Use Only</b>	
Is further information needed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Processed? <input type="checkbox"/> Yes <input type="checkbox"/> No
Comments:	
Name:	Position Title:
Signature:	Date:



Workforce Capability and Governance,  
CMTEDD

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