

## TREASURER'S INSTRUCTION 5

### DEBT RECOVERY AND WRITE OFFS

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#### Scope

- 5.1 This instruction applies to all public authorities unless otherwise stated.
- 5.2 The requirements outlined in this instruction are to be read in conjunction with the requirements specified in other legislation that may be applicable to the public authority eg an authority's enabling legislation, *Taxation Administration Act 1996*, *Public Finance and Audit Act 1987*, *Limitation of Action Act 1936* etc. To the extent there is an inconsistency between this instruction and any relevant legislation, the legislation shall prevail.

#### Objective

- 5.3 To require the Chief Executive of each public authority to ensure that the authority establishes and implements policies for the management of debt recovery that aim to recover all amounts owing to the authority.
- 5.4 To prescribe the circumstances under which a debt may be written off or waived by a public authority.

#### Interpretation and Definitions

- 5.5 This instruction should be interpreted and applied in accordance with Treasurer's Instruction 1 *Interpretation and Application*.
- 5.6 For the purposes of this instruction:
  - 5.6.1 "debt" means a sum of money owed by a person or an entity to a public authority. It includes an obligation due to the authority and/or the right to receive and enforce payment (eg a loan receivable, claim, salary overpayment, loss, theft and deficiency of public assets, money owed for goods sold or services provided). For the purposes of this instruction, debt excludes sums of money owed by entities within the same reporting entity.
  - 5.6.2 "employee" has the same meaning as defined in Treasurer's Instruction 1 *Interpretation and Application*.

- 5.6.3 “Proof of debt” refers to the *Formal Proof of Debt or Claim (General form)* under the *Corporations Act 2001, sub-regulation 5.6.49(2)* or the *Proof of Debt* form under the *Bankruptcy Act 1966*.
- 5.6.4 “State taxation debt” refers to an amount due and payable to the Commissioner of State Taxation pursuant to the *Taxation Administration Act 1996* or the *First Home and Housing Construction Grant Act 2000*.
- 5.6.5 “Waiver” means permanently expunging a debt owed to the State, such that the debt cannot be pursued by the State at a later date. Subject to the approvals required in this instruction, this can occur when there is a moral obligation on the State to extinguish the debt (eg a direct act or omission of a public authority or impact of a state law has caused a person or entity to incur an unintended debt, the recovery of which would result in an overall loss to the person or entity concerned) or the debt is irrecoverable.
- 5.6.6 “Writing off a debt” is where a debt or part of a debt is removed from the accounts of the authority. Subject to the approvals required pursuant to this instruction, this can occur when a debt remains enforceable, but a management decision is taken not to pursue the debt either indefinitely or for a set period of time. The decision may subsequently be reversed and enforcement proceedings commenced or recommenced in response to changes in the debtor’s circumstances, subject to the statutory limitation period for commencement of legal action. By way of examples, debts could be written off, without necessarily being waived, where the debtor’s whereabouts are unknown, or the debtor does not have the capacity make good the debt.

## Instruction

### Recovery of Debts

- 5.7 The Chief Executive of each public authority must ensure that the authority establishes and implements policies for the management of debt recovery that aim to recover all amounts owing to the authority.

### Writing off Debts

- 5.8 No debt, other than a State taxation debt, that is owed to a public authority is to be written off unless:
- 5.8.1 the authority’s debt recovery policies and procedures have been followed;  
and
- 5.8.2 the approvals required by clauses 5.13 or 5.14 have been obtained.
- 5.9 Where a public authority becomes aware that a debtor is an entity that is being wound up; or a person petitioned for bankruptcy; that public authority shall lodge a Proof of debt as soon as possible.

- 5.10 Where the authority has been unable to recover a debt under the original terms or conditions relating to that debt, a public authority may accept another method of monetary recovery provided that:
- 5.10.1 the Chief Executive considers the arrangement will enable the public authority to maximise the amount recovered from the debtor; and
  - 5.10.2 approvals required by this instruction are obtained if the arrangement involves writing off all or part of the debt.
- 5.11 A debt may, subject to any legal requirements, and with the consent of the debtor, be offset against any amounts owing to that debtor. Any agreement entered into for the offset of a debt must be evidenced in writing.
- 5.12 The Chief Executive of a public authority that holds information that would assist another public authority to recover a debt must, upon request, make that information available to the requesting public authority unless prevented by law.
- 5.13 For public authorities that are administrative units, a debt may only be written off if approved by:
- 5.13.1 the Treasurer, where the debt owed is equal to or greater than \$50,000 (GST inclusive);
  - 5.13.2 the Treasurer or the Chief Executive, where the debt owed is less than \$50,000 (GST inclusive);
  - 5.13.3 an employee of the administrative unit to whom the Chief Executive has delegated his/her authority (for any amount up to \$50,000, GST inclusive) where the debt is within the limit of the authority delegated.
- 5.14 For public authorities that are not administrative units, a debt, other than a State taxation debt, may only be written off, if approved by:
- 5.14.1 the Chief Executive, where the debt owed is less than \$50,000 (GST inclusive);
  - 5.14.2 an employee of the public authority to whom the Chief Executive has delegated his/her authority (for any amount up to \$50,000, GST inclusive) where the debt is within the limit of the authority delegated;
  - 5.14.3 the Board or governing authority;
  - 5.14.4 in the case of the levy payable pursuant to the *Emergency Services Funding Act 1988*, the Commissioner of State Taxation or an employee of Revenue SA to whom the Commissioner has delegated his/her authority.
- 5.15 Subject to clause 5.15.1 debts must not be written off where the debtor is a current South Australian Government employee. A current South Australian Government employee must be pursued for prompt repayment.

- 5.15.1 If an amount is due and payable by a current South Australian Government employee and that amount does not exceed \$20.00 in total, that amount may be waived at the discretion of the Chief Executive.
- 5.16 No employee is permitted to approve any debt write offs in which they may have a conflict of interest.
- 5.17 Except where an administrative unit has entered into an agreement with a debtor to accept some lesser amount in settlement of a debt consistent with clause 5.10, or where a debt has been written off following a debtor's liquidation or bankruptcy, a debtor must not be informed that the debt has been written off.
- 5.18 Except where a public authority that is not an administrative unit has entered into an agreement with a debtor to accept some lesser amount in settlement of a debt consistent with clause 5.10, or where a debt has been written off following a debtor's liquidation or bankruptcy, a debtor must not to be informed that the debt has been written off.
- 5.19 Where it becomes known that a debt that had been written off becomes recoverable, the debt must be re-instated (ie the debt write-off is to be reversed) in the accounts of the public authority and recovery action commenced or resumed.
- 5.20 Each Chief Executive must ensure that all recovery action is documented and this documentation is retained in accordance with the State Records General Disposal Schedule.
- 5.21 Where the Crown Solicitor has been requested to recover a debt, the authority shall not deal directly with the debtor without the prior approval of the Crown Solicitor.

## Waiver of Debts

- 5.22 Waiver of debts must only occur under exceptional circumstances. For example, a waiver of a debt is generally not appropriate where the debtor cannot be located; these situations may lead to the write off of debts but not necessarily the waiver of debts.
- 5.23 For public authorities that are administrative units, a debt may only be waived if approved by the Treasurer.
- 5.24 Subject to clause 5.24.1, for public authorities that are not administrative units, a debt may only be waived if approved by the Board, governing authority or Treasurer.
- 5.24.1 Debts payable pursuant to any Act of Parliament that is administered by the Commissioner of State Taxation may only be waived if approved by the Treasurer.

## Register of Debts Written Off and/or Waived

- 5.25 All debts written off and/or waived by a public authority must be recorded in a register showing the following details:
- 5.25.1 the name of the debtor;
  - 5.25.2 the amount written off /waived;
  - 5.25.3 the transaction/claim for which the debt is owed;
  - 5.25.4 the reason the debt is to be written off /waived;
  - 5.25.5 any recovery action; and
  - 5.25.6 the name of the employee approving the transaction and the file in which this approval can be located.

For queries contact:

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