

Practices, Procedures and Standards No. 6

PAYMENT OF SALARY INCREASES – ARRANGEMENTS FOR FORMER EMPLOYEES

Operative date: 29 June 2023

Pursuant to s 15(1)(b) of the *State Service Act 2000*, I hereby direct that the arrangements and requirements, set out in this Practices, Procedures and Standards document apply.



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Issued by the Director, State Service Management Office under delegation from the Head of the State Service

Date: 29 June 2023

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1. Introduction and Purpose

- 1.1 As a result of the decision of the Full Court of the Supreme Court in *Gutwein v Tasmanian Industrial Commission* [2021] TASSC 2 (the decision), payments must be made to any former employees who are entitled to salary increases conferred by industrial agreements that had effect when any former employees were employed by the Tasmanian State Service (TSS). The decision has effect for all TSS agencies and authorities.
- 1.2 The decision means that where an Agreement is registered, former employees who left the TSS between the date of salary increase and the date of registration of the Agreement, are entitled to the payment of salary increases up to their date of cessation.
- 1.3 The purpose of this PPS is to outline the process for managing and implementing the payment of these salary increases to former employees arising from the Supreme Court decision.

2. Date of Operation and Agency Requirements

- 2.1 This Practice, Procedure and Standard (PPS), issued under s 15(1)(b) of the *State Service Act 2000*, applies to all TSS agencies and authorities with former State Service employees who are owed salary increases as a result of an industrial agreement that commenced on a date during which the former employee was employed in the agency or authority. Each agency must comply with this PPS and apply it to former employees who have left the TSS but are entitled to the payment of salary increases for the period the former employee was employed within the agency.
- 2.2 Agencies are required to undertake an audit of payroll records for the period from 1 October 2014 onwards to identify former employees who are entitled and have not received payments in accordance with this PPS.
- 2.3 Agencies and Authorities must complete audits and make salary increase payments where identified as required by 31 December 2023 or a date as otherwise agreed between the individual Agency or Authority and the Public Sector Industrial Relations Committee (PSIRC). In order to complete the process agencies may need to extend normal record retention processes.
- 2.4 Agencies must assess claims for payment of salary increases that may be presented to them including claims that pre-date 1 October 2014. Claims prior to 1 October 2014 require the claimant to provide certifiable records to substantiate the claim.

3. Roles and Responsibilities

- 3.1 The State Service Management Office (SSMO) will support agencies in the application of this PPS.

- 3.2 Agencies will manage communication with former employees and/or their representative. It is an agency's responsibility to take reasonable steps to contact former employees in order to obtain and update or verify personal information required to make payment including tax file and superannuation fund details.
- 3.3 Refer to Clause 4.6 of this PPS for information regarding making payments with missing or incomplete information.
- 3.4 Agencies are required to perform an audit to identify relevant industrial agreements and impacted former employees since 1 October 2014. On completion of this audit, a report as described in 5.2 and 5.3 is to be provided to the Director, SSMO.
- 3.5 The Director, SSMO is responsible for ensuring all audits are completed in accordance with this PPS.
- 3.6 Agencies are responsible for the calculation and payments to the former employees including the associated payroll tax, superannuation and any other applicable components of pay. Any payments must be completed by 31 December 2023 or a date as otherwise agreed between the individual Agency or Authority and PSIRC.
- 3.7 Agencies are responsible for reporting to the Office of the Superannuation Commission (OSC), where required, as described in Clause 5.4 of this PPS.
- 3.8 The Superannuation Commission is responsible for determining the treatment of any payment for the RBF defined benefit schemes including the Contributory Scheme. For the purpose of the Contributory Scheme, the treatment of the payment is determined having regard to whether the recipient is a current or former member of the Contributory Scheme when the relevant industrial agreement was registered.

The OSC is responsible for providing employers with a reporting template for relevant members and for communicating with any impacted members.

4. Calculation and Payment of Salary Increases for Former Employees

4.1 Period of payment

Each agency and authority is responsible for employees only while they are in the employment of that agency. As a result, a former employee may receive payments from more than one agency.

4.2 Salary

Any payments will need to include examining any former employee entitlements that reference hourly rates, including any allowances that are based on a percentage of earnings (i.e. wage

related allowances). This will also include examining former employees' annual and long service leave taken and paid out on cessation.

4.3 Superannuation Guarantee Surcharge

Superannuation is payable at the statutory rate prevailing at the date the payment is made. The rate of super applicable at the date the services were provided is irrelevant.

Reference: [How much super to pay | Australian Taxation Office \(ato.gov.au\)](https://ato.gov.au/How-much-super-to-pay)

4.4 RBF Defined Benefit Schemes

For the purposes of the *Public Sector Superannuation Reform Regulations 2017*, "salary" does not include any increases in salary ratified after cessation of employment.

Former members of the RBF Contributory Scheme who receive payments arising from an industrial agreement, but who at the time the industrial agreement was registered had ceased their employment, are not entitled to have RBF contributions deducted from the payment nor have their Contributory Scheme benefit recalculated.

Providing that a Benefit Certificate is issued pursuant to s 22 of the *Superannuation Guarantee (Administration) Act 1992*, any superannuation guarantee shortfall in respect of a former member of the RBF Contributory Scheme is reduced to nil.

Where questions arise regarding the RBF Defined Benefits Schemes, agencies should contact the Superannuation Commission.

4.5 PAYG Withholding tax & Tax Return information

Receipt of a payment is reportable income for employees receiving the payment in the year that the payment is received. PAYG tax is to be calculated and withheld from payments made and remitted to the ATO in accordance with [Schedule 5 - Tax table for back payments, commissions, bonuses and similar payments](#).

Former employees eligible for the salary increase payments will require information regarding the year in which the payment related to in order to complete their tax return correctly.

Former employees eligible for the salary increase payments must receive written advice of pay details within 14 days of receiving the deposit, this may be by way of the payroll system or separate written remittance advice that contains the data required to constitute a payment advice.

If the pay advice cannot be given to an employee, the employer shall retain the pay advice for a period of 12 months in accordance with s 75 of the *Industrial Relations Act 1984*.

These payments do not require resubmission of prior Single Touch Payroll files or prior Payment Summaries.

4.6 Missing or Incomplete Information

Where an agency is unable to make contact with a former employee and, as a result, has information that is missing, incomplete or insufficiently recent to use for the payment, the following should be applied to each component of pay:

- 4.6.1 Tax file number missing: Withholding tax rates are to be applied to the payment and remitted to the ATO
- 4.6.2 Superannuation fund details: Remit funds to the ATO, the former employee will be able to claim lost super directly from the ATO.
- 4.6.3 Bank account details: Remit funds to Treasury in accordance with the *Unclaimed Money Act 2015* and the associated guidelines published on the Department of Treasury and Finance Tasmania's website.

5. Reporting Requirements

5.1 Each Agency and Authority must complete an audit to identify former employees that were in its employment back to 1 October 2014 and provide the information detailed below to the Director, SSMO by 31 December 2023 or a date as otherwise agreed between the individual Agency or Authority and PSIRC.

5.2 Identifying and Reporting Industrial Agreements

For each Agreement relevant to that Agency or Authority that has operated since 1 October 2014, the following is required to be reported by 31 December 2023 or a date as otherwise agreed between the individual Agency or Authority and PSIRC:

- 5.2.1 Agreement title
- 5.2.2 Date and period of operation of Agreement
- 5.2.3 Registration date of Agreement

5.3 Identifying and Reporting Former Employees

Agencies and Authorities are required to identify former employees, including any former employees or their representative presenting themselves to the agency for assessment, and report the following information:

- 5.3.1 Employee number

5.3.2 Classification

5.3.3 Employee type (permanent/fixed term/fixed-term casual/relief/seasonal/sessional)

5.3.4 Agreement title

5.3.5 Period of operation of Agreement

5.3.6 Date of separation

5.3.7 Assessment (outcome i.e. eligible or declared not eligible and why)

5.3.8 Amount paid (gross)

5.4 Defined Benefits Scheme Members

Former employees who are (or were) members of Defined Benefit Schemes must be identified and reported to the OSC.

The OSC will provide Agencies and Authorities with a reporting template for relevant members.

Contributory Scheme members that ceased employment with the Tasmanian State Service prior to registration of a relevant industrial agreement are not required to be reported to the OSC.

6. Other Matters

6.1 It is likely that ongoing issues will continue to emerge as the audit and payment process is undertaken. These issues can be considered and advice requested on a case-by-case basis with SSMO.