AUSTRALIAN FEDERAL POLICE COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)

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OCTOBER 2014

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The Australian Federal Police
Commissioner's Financial Instructions

I, Andrew Colvin, Commissioner of the Australian Federal Police, in the exercise of my powers under:

- Section 37(1) of the *Australian Federal Police Act 1979*;
- Section 69C of the *Australian Federal Police Act 1979*;
- Regulation 33 of the Australian Federal Police Regulations;
- Section 16 of the *Public Governance, Performance and Accountability Act 2013*; and
- Section 20A of the *Public Governance, Performance and Accountability Act 2013*.

issue Commissioner's Financial Instructions at Annexure A.

These instructions take effect from the date of publication and apply to all AFP Appointees. Publication is satisfied by placement on the hub together with an electronic message to AFP Appointees announcing the existence of the Commissioner's Financial Instructions.

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Andrew Colvin
Commissioner

Dated: 3 October 2014

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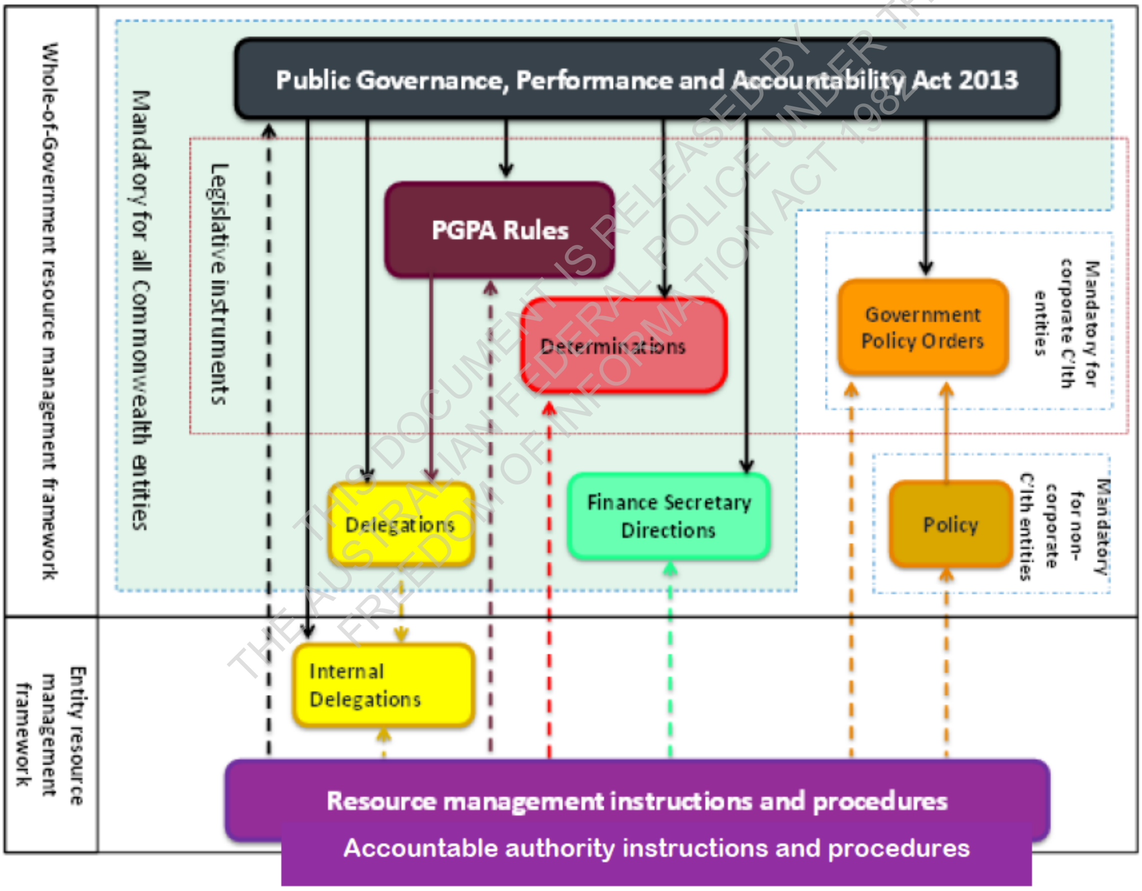
COMMISSIONER'S FINANCIAL INSTRUCTIONS

Preamble

These Instructions give effect to PGPA legislation and the policy of the Australian Federal Police with respect to the exercise of financial responsibilities and delegations by Officials (including special members) and the application of Commissioner's Financial Instructions. These Instructions are referred to as Commissioner's Financial Instructions (CFIs).The CFIs are concerned solely with legislative and regulatory requirements relating to the financial management and accountability for public resources within the AFP, including relevant money and relevant property. Relevant Money is distinct from operational money. Varied requirements for the financial management and accountability of operational money are set out in a separate, restricted Commissioner's Order 8 – Finance (CO 8).

In the context of the PGPA Act, the CFIs are the AFPs Accountable Authority Instructions (AAIs). AAIs fit into the Commonwealth's resource management framework as illustrated by the following:



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Accountable Authority

The PGPA Act (s12) prescribes that each Commonwealth entity has an Accountable Authority. In the AFP's case, this is the Commissioner. The AFP Act (s6) also states that for the purposes of the PGPA Act, the Commissioner is the Accountable Authority of the AFP.

The PGPA Act requires the Commissioner to ensure systems and processes are in place to properly manage public resources. Included are systems of risk oversight and management and an appropriate system of internal controls. The Commissioner is expected to create an operating environment that supports the proper use and management of public resources.

General Duties and Powers of the Commissioner under PGPA Legislation

Division 2 of the PGPA Act specifies the general duties of accountable authorities (the Commissioner) as the:

- Duty to govern the Commonwealth entity;
- Duty to establish and maintain systems relating to risk and control;
- Duty to encourage cooperation with others;
- Duty in relation to requirements imposed on others;
- Duty to keep the responsible Minister and the Finance Minister informed.

The Commissioner has the power, on behalf of the Commonwealth, to enter into, and to vary and administer arrangements relating to the affairs of the entity. Arrangements include contracts, agreements and deeds of understanding. More specifically, the PGPA Act (s20A) provides that the Commissioner may give instructions to an official of the entity about any matter relating to the finance law. This document applies these duties and powers.

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Officials

The PGPA Act (s13) specifies that each Commonwealth entity has officials. An official of a Commonwealth entity is an individual who is in, or forms part of, the entity and includes any individual who:

(a) Is the accountable authority of the entity; or
(b) Is an officer, employee or member of the entity.

Officials do not include an individual who:

(a) Is a Minister; or
(b) Is a judge; or
(c) Is a consultant or independent contractor of the entity.

General Duties of Officials under PGPA Legislation

The accountable authority's (Commissioner's) duties operate in concert with the general duties of officials, to support the proper use and management of public resources. Division 3 of the PGPA Act specifies the general duties of Officials as the:

- Duty of care and diligence;
- Duty to act in good faith and for proper purpose;
- Duty in relation to use of position;
- Duty in relation to use of information;
- Duty to disclose interests.

Commissioner's Financial Instructions

Commissioner's Financial Instructions (CFIs) are set out in Annexure A. The Commissioner's powers, functions or duties under section 69C of the AFP Act, sections 15 through 19 and 20A of the PGPA Act, and other instructions related to the PGPA Act are detailed in the CFIs.

All Officials, special members, or any other person providing services to, or on behalf of the AFP, including consultants, contractors and secondees, must comply with the CFIs.

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Delegation of the Commissioner's Powers

Under Section 18 and 52 of the PGPA Act, the Commissioner's powers or functions regarding the approval of proposed commitments of relevant money and to exercise other powers under legislative or related authorities are delegated as provided in the Schedules at Annexure B of these Instructions.

Delegations approved by the Commissioner apply only when an official is performing the duties of, or occupying a position or role identified in those delegations. Any other person filling a position or role for which a power has been delegated by the Commissioner may not exercise that power.[1]

Delegates personally hold and possess the powers and responsibilities that have been delegated to them and are personally accountable for decisions and actions they take in respect of such delegated powers.

Note[1]: *''Official' in this context includes non-ongoing employees directly employed by the AFP. Non-ongoing employees employed via a third party ie in a capacity similar to a contractor or consultant, are not entitled to exercise delegations relating to a position or role which they are filling unless they have been appointed by the Commissioner or his delegates under AFP Act s. 35(2).*

Officials' responsibilities in Exercising Delegations

Officials should ensure that their actions and decisions in managing the AFP's resources:

- are legal;
- will stand up to public scrutiny;
- are fair and ethical;
- are economical; and
- contribute to the achievement of the AFP's objectives, outcomes and functions.

The Executive, together with relevant Managers and Coordinators, should ensure that Officials exercising delegations and/or authorisations are adequately trained and sufficiently experienced to adequately carry out tasks associated with the exercising of their delegations and/or authorisations.

Managers at all levels throughout the organisation share the stewardship of AFP resources and are responsible for exercising leadership and good management in relation to those resources.

All Officials are required to uphold and apply the values of honesty, integrity and fairness and to maintain the professional standards set out in Commissioner's Order 2 – Professional Standards.

Managers at all levels throughout the organisation will be held accountable for their performance in providing Officials with the necessary authority, tools, skills and environment to assist them in achieving the efficient, effective, economical and ethical use of the AFP's resources.

Officials must neither split nor divide amounts for payment into multiple arrangements to circumvent financial limits detailed in any Instrument of Delegation or Authorisation, Commissioner's Instruction or Commissioner's Rule.

An Official must not purport to exercise a power if:

- the Instrument of Delegation or Authorisation conferring that power has been revoked; or
- the Official is no longer occupying a role/position to which the delegation applies; or
- the Official does not have any formal delegation.

Administered funds

Administered funds are subject to the same financial regulatory requirements as normal Departmental appropriations.

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CFI 18 - DEBTS OWING TO THE AFP AND DEBT MANAGEMENT

18.1 Official's Responsibilities

Commissioners Instruction

18.1.1 Officials must manage debts in a manner that promotes the proper use of Commonwealth resources.

Commentary:
A debt owed to the AFP is considered property of the AFP. The PGPA Act places an obligation on the Commissioner to manage the affairs of the AFP in a way that promotes the proper use of Commonwealth resources. Proper use means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth.

The PGPA Act does not define debt and in the absence of a definition the term 'debt' should be interpreted in its ordinary sense. It is generally accepted that a debt is something owed (especially money) and there is a state of obligation to pay something.

18.2 Establishing a debt

Commissioner's Rule

18.2.1.1 Prior to commencing recovery of an amount owing, Officials must establish that a debt exists.

Commentary
There is a legal distinction between the terms 'amount owing' and 'debt' in the context of the PGPA Act. Until such time as an 'amount owing' is completely defined as to quantum and legal obligation it is not considered a debt. Legal establishment of a debt would occur:

- With reference to a contract or agreement and evidence of the delivery of goods or services in accordance with the terms of the contract;
- A legal remedy under a contract;
- A court judgement; or
- Statutory entitlements under legislation.

Legal establishment can also occur via written acknowledgement from the person or organisation owing the money – this would be normally be the case where money is owed by an AFP employee.

Advice should be sought from Manager, Legal in relation to the definition of a debt in cases where the circumstances and/or liability are not clearly defined.

18.3 Reporting and Recording debts

Commissioner's Rules

18.3.1.1 Officials must advise Shared Services Centre (SSC) of the existence of all debts.

18.3.1.2 The Shared Services Centre must record all debts in the AFP's financial information management system.

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18.3.1.3 ***Officials are required to assess all receivables for objective evidence of impairment on a quarterly basis. The rationale for impairment should be documented. All outstanding debts as well as an allowance for impairment are to be recognised in the AFP's financial statements.***

Guidance:
Officials should contact the AFP Financial Reporting Team about the processes and procedures to be implemented in respect to assessing impairment.

18.4 Recovery of Debts

Commissioner's Instructions

18.4.1 Officials are required to pursue all debts unless:

- **(a) the debt has been written off as authorised by an Act; or**
- **(b) the Commissioner (or his delegate) is satisfied that the debt is not legally recoverable; or**
- **(c) the Commissioner (or his delegate) considers that it is not economical to pursue recovery of the debt.**

18.4.2 Amounts owing should normally be paid in full immediately on the due date. However, an authorised delegate may approve the payment of the debt by instalments or in full at a deferred date. The following must be in place before a debt can be paid by instalments or deferred until a future date:

- **(a) Evidence of hardship;**
- **(b) Imposition of conditions on payments in order to recover the debt as soon as reasonably practicable;**
- **(c) Charging of interest on the monies owing;**
- **(d) Provision of certain information to the debtor; and**
- **(e) The acceptance of provisions for the payment of a debt by the debtor.**

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Guidance:
The delegate must require the debtor to provide evidence (by statutory declaration or other means) sufficient to satisfy the delegate that it would be unreasonable to require the debtor to discharge the debt other than in instalments or at a deferred date.

When allowing payment by instalments, the delegate must impose conditions on such payment with the object of ensuring that the Commonwealth recovers the amount as soon as is reasonably practicable, having regard to the debtor's ability to repay.

The delegate must ordinarily impose interest at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia); not impose interest at a higher rate than the 90 day bank-accepted bill rate less 10 basis points; and if a lesser rate of interest, or no interest, is imposed, record in writing the reasons.

The following Information is to be given to the debtor in writing:

- (a) amount owing to the Commonwealth;
- (b) date or dates when payment is due;
- (c) interest rate (if any);
- (d) any other matter the delegate considers relevant, taking into account the evidence of hardship;
- (e) conditions of acceptance by the debtor; and
- (f) a requirement for the debtor to confirm, in writing, acceptance of the above matters.

The debtor must accept the provisions for repayment in writing.

Finally, the delegate may, at any time, review, and if necessary revise, the arrangements to determine whether different conditions should be imposed, taking into account the debtor's ability to pay. As a general guide, debt repayment or deferral arrangements should be reviewed at least annually.

Commissioner's Rules

18.4.1.1 ***It is the responsibility of the Pay team to develop standard operating procedures for the processes to be followed to establish a debt in the event of over payment of salary or allowances. On establishment of a debt the Pay Team must do all that is necessary for the debt to be recorded in the AFP's corporate systems.***

18.4.1.2 ***When negotiating repayment of salaries or allowances by instalments, the amount of instalments should not be less than 5% of the Official's gross fortnightly salary. Repayment arrangements must be approved by an authorised delegate (see Schedule 3 of the Delegations). The Coordinator, Financial Services must be consulted if the proposed instalments are to be less than 5% of the official's gross fortnightly salary.***

18.4.1.3 ***When an Official leaves the AFP, the amount of any recoverable overpayments (which have been established as a debt) must be deducted from any monies, except superannuation money, owing to the Official at the time of termination.***

18.4.1.4 ***Where a debt has been clearly established but the debtor fails, or refuses to pay an amount outstanding to the AFP, the relevant delegate should make a decision in consultation with Manager, Legal in relation to pursuing the debt and recovering all outstanding money.***

18.5 Non-recovery of Debts

Commissioner's Instruction

18.5.1 **Officials have the responsibility to recover debts within their management area of responsibility unless:**

(a) the debt has been written off as authorised by an Act; or
(b) a delegate is satisfied that the debt is not legally recoverable; or
(c) a delegate considers that it is not economical to pursue recovery of the debt.

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Guidance:
Approval of non-recovery of a debt does not expunge the debt by law and only defers recovery of the debt which could be pursued at a later date should the circumstances which led to the deferral change *eg* the debtor's financial circumstances improve. Should circumstances change, recovery of the debt should be pursued.

Delegates may approve non-recovery of a debt on the basis that after all reasonable action has been taken the debt is not recoverable. The debt is then deemed to be irrecoverable. In other instances, a delegate might make a judgement that a debt is not recoverable legally on the basis that if the matter went to court, the court would be likely to determine in favour of the debtor and rule that the debtor was not liable for the debt. Advice should be sought from Manager, Legal in this regard.

When, in a delegate's judgement, the recovery of a debt would leave the Commonwealth financially worse off than it would have been had recovery not been undertaken the debt could be regarded as uneconomical to pursue and written-off.

An amount owed by a bankrupt or company in liquidation should not be formally regarded as irrecoverable until:

- the bankrupt has been discharged from bankruptcy, or the liquidation of the company has been finalised; or
- advice of the extent of the likely distribution of funds has been received from an Official Receiver or Trustee in Bankruptcy or from a Liquidator in winding up of a company.

While awaiting the discharge of bankrupts or the wind-up of companies, the debt should be regarded as impaired and only the amount for which there is a reasonable chance of recovery should be disclosed as a receivable in financial statements.

CFI 18 Source References:
PGPA Act sections: 15, 23A
PGPA Rule section: 11
PGPA (Finance Minister to Accountable Authorities of Non-Corporate Commonwealth Entities) Delegation 2014

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