

**NORTHERN TERRITORY OF AUSTRALIA**

**FINANCIAL MANAGEMENT REGULATIONS 1995**

As in force at 10 June 2020

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 10 June 2020

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## FINANCIAL MANAGEMENT REGULATIONS 1995

### Regulations under the *Financial Management Act 1995*

#### 1 Citation

These Regulations may be cited as the *Financial Management Regulations 1995*.

#### 2 Commencement

These Regulations shall come into operation on the commencement of the *Financial Management Act 1995*.

#### 3 Interpretation

In these Regulations, unless the contrary intention appears:

**gross salary** means the total amount of remuneration payable to an employee as part of his or her employment or contract of service or, where the employee is employed under an Executive Contract of Employment, within the meaning of the *Public Sector Employment and Management Act 1993*, means the amount that, in the opinion of the Treasurer, is equal to the monetary value to the employee of the employee's remuneration and other entitlements under that contract.

**overpayment** means an amount specified in regulation 5(2).

**public property** means all property held for or on behalf of the Territory or an Agency, but does not include money.

#### 4 Loss of money held by employee

- (1) Where there occurs a loss of money while the money is under the control of an employee, the amount of the loss is a debt due and payable by the employee to the Territory or relevant Agency.
- (2) Where an employee defends an action brought to recover money under subsection (1), the Territory or relevant Agency is entitled to judgment if it is proved that:
  - (a) the defendant is an employee;

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- (b) the money the subject of the action was under the control of the defendant; and
  - (c) the defendant converted the money to his or her own use or was guilty, by act or omission, of culpable negligence in relation to the control he or she exercised over the money.
- (3) For the purposes of this regulation, money is taken to be under the control of an employee if it has been collected or received by or has come into the custody of the employee but has not been paid to another person or to the credit of an account with a bank, building society or credit union as required by or under an instrument of a legislative or administrative character.

## **5 Recovery of overpayments**

- (1) The Territory and an Agency must recover any overpayment made by the Territory or the Agency to the following:
- (a) an employee;
  - (b) a person who holds office under an Act and is remunerated by the Territory or the Agency;
  - (c) a person who met the criteria of paragraph (a) or (b) when the overpayment was made;
  - (d) a superannuation fund for the benefit of a person specified in paragraph (a), (b) or (c);
  - (e) a third party for the benefit of, or on behalf of, a person specified in paragraph (a), (b) or (c) in accordance with a direction from or agreement with the person.
- (2) The following amounts paid by the Territory or an Agency are taken to be overpayments:
- (a) a salary, allowance or reimbursement payment to which a person is not entitled;
  - (b) a benefit for which a person is not eligible;
  - (c) a contribution to a superannuation fund in excess of the amount to which a person is entitled;
  - (d) a payment to a third party that a person is not entitled to have paid;
  - (e) any other amount paid in error that benefits a person.

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- (3) If an overpayment is not repaid as soon as practicable, the overpayment must be recovered from the person specified in subregulation (1)(a), (b) or (c) by deducting or withholding any amount or entitlement due to the person from the Territory or Agency.
  - (4) A deduction from a person's gross salary under subregulation (3) must not exceed 10% of the gross salary except with the written consent of the person.
  - (5) Before an amount or entitlement is deducted or withheld under subregulation (3), the person must be given:
    - (a) written notice of details of the overpayment and the amount proposed to be deducted or withheld; and
    - (b) a reasonable opportunity to propose an alternative arrangement to repay the overpayment.
  - (6) The Accountable Officer for an Agency, or the Treasurer, may enter into an alternative arrangement with a person to repay an overpayment if:
    - (a) the arrangement is reasonable in the circumstances; and
    - (b) the risk of not being able to recover the entire overpayment is low; and
    - (c) the arrangement would not result in any added costs to the Territory or Agency.

*Example for subregulation (6)*

*An employee who is having financial difficulties could be allowed a longer payment plan with lower individual deductions, as long as the plan does not result in additional fringe benefits tax.*

- (7) Despite subregulations (4) to (6), if recovering an overpayment from a person on the cessation of the person's employment or office, any amount or entitlement due to the person must be first used to repay the overpayment.

*Example for subregulation (7)*

*When an employee who received an overpayment leaves the public service, the person's long service leave must be used to pay off the overpayment. Any amount left over is then paid out to the employee.*

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## **6 Damage to, or loss or destruction of, public property**

(1) Where:

- (a) damage to public property has occurred, the value of the property or, where the damage to the property may be repaired, the cost of repairing the damage; or
- (b) public property has been lost or destroyed, the value of the property,

is a debt to and payable to the Territory or relevant Agency by:

- (c) the employee in whose care the property was at the material time; or
  - (d) another employee who contributed to the damage to or loss or destruction of the property.
- (2) For the purposes of subregulation (1), public property is taken to be in the care of an employee if it has been received by the employee and has not been returned or delivered to another person entitled to receive it on behalf of the Territory or the relevant Agency.
- (3) Where an employee defends an action brought under this regulation, the Territory or relevant Agency is entitled to judgment if the defendant:
- (a) was at the material time an employee; and
  - (b) converted the property to his or her own use or by his or her culpable negligence caused or contributed to the damage to or loss or destruction of the property.
- (4) Where the negligence or misconduct of an employee was not the sole cause of the damage to or loss or destruction of the property, the Territory or Agency may recover from the employee only so much of the damage, or the cost of replacing the property, as is just and equitable having regard to the contribution made by the employee to the damage, loss or destruction as determined by the court.

## **7 Other right of recovery**

These Regulations do not affect any other right that the Territory or an Agency may have to recover an amount from a person.

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**9      Repeal**

The *Treasury Regulations 1978* continued in force by section 45 of the Act, are repealed.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

### 2 LIST OF LEGISLATION

#### ***Financial Management Regulations (SL No. 10, 1995)***

Notified	31 March 1995
Commenced	1 April 1995 (r 2, s 2 <i>Financial Management Act 1995</i> (Act No. 4, 1995) and Gaz S13, 31 March 1995)

#### ***Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)***

Assent date	2 June 1997
Commenced	2 June 1997

#### ***Statute Law Revision Act 2008 (Act No. 6, 2008)***

Assent date	11 March 2008
Commenced	11 March 2008

#### ***Financial Management Amendment Regulations 2020 (SL No. 10, 2020)***

Notified	10 June 2020
Commenced	10 June 2020

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: rr 1, 3 and 9.

### 4 LIST OF AMENDMENTS

r 3	amd No. 10, 2020, r 4
r 4	amd Act No. 23, 1997, s 6(2)
r 5	sub No. 10, 2020, r 5
r 7	sub No. 10, 2020, r 6
r 8	rep Act No. 6, 2008, s 4