Resource Management Guide No. 402
Payment of an amount owed to a person at time of death
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This guide contains material that has been prepared to assist Commonwealth entities and companies to apply the principles and requirements of the *Public Governance, Performance and Accountability Act 2013* and associated rules, and any applicable policies. In this guide the: mandatory principles or requirements are set out as things entities and officials 'must' do; and actions, or practices, that entities and officials are expected to take into account to give effect to those principles and/or requirements are set out as things entities and officials 'should consider' doing.
Audience

This guide is relevant to accountable authorities in all non-corporate Commonwealth entities and officials who have been sub-delegated an accountable authority’s power.

Key points

This guide:

- provides guidance on the power for making a payment of an amount owed by the Commonwealth to a person at the time of their death, under section 103 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) and section 25 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)
- comes into effect on 1 July 2014, when the PGPA Act and PGPA Rule also take effect.

Resources

This guide is available on the Department of Finance website at www.finance.gov.au.

Relevant legislation

Public Governance, Performance and Accountability Rule 2014
Section 25—Payment of amount owed to person at time of death

Guide to this section

The purpose of this section is to allow the Finance Minister to authorise a payment of an amount that is owed by the Commonwealth to a person who has died. It allows the Finance Minister to decide who to make the payment to, and to authorise the payment without needing probate or letters of administration. It is made for paragraph 103(f) of the Act.

(1) If, at the time of a person’s death (whether before or after this section commences), the Commonwealth owed an amount to the person, the Finance Minister may authorise payment of that amount to a person who the Finance Minister considers should receive the payment.

(2) The Finance Minister may authorise the payment without requiring:

   (a) production of probate of the will of the deceased person; or
   (b) letters of administration of the estate of the deceased person.

(3) In deciding who should receive the payment, the Finance Minister must consider the people who are entitled to the property of the deceased person under:

   (a) the deceased person’s will; and
   (b) the law relating to the disposition of the property of deceased persons.

(4) After the payment is made, the Commonwealth has no further liability in relation to the amount that was owed.

(5) This section does not relieve the recipient from a liability to deal with the money in accordance with law.
**Introduction**

1. Section 103 of the PGPA Act allows a rule to be made that enables the Finance Minister to authorise the payment of an amount if, at the time of a person's death, the Commonwealth owed that amount to the person. This includes authorising a payment without requiring production of probate of the person's will or letters of administration of the person's estate.

2. Section 25 of the PGPA Rule provides this discretionary power to the Finance Minister. The Finance Minister has delegated this power to accountable authorities of non-corporate Commonwealth entities. The Finance Minister's delegation is available on the Department of Finance website.

**Making a payment of an amount owed to a person at time of death**

3. The power provided in section 25 of the PGPA Rule addresses circumstances where a deceased person's spouse or family member requires the payment to satisfy a debt or other requirement before probate or letters of administration can be produced, which can be a lengthy and complex process.

4. The Finance Minister (or delegate) has discretion to decide who should receive an amount payable by the Commonwealth. The will or letters of administration do not have to be produced to the Minister (or delegate) before a payment is made.

5. Section 25(3) of the PGPA Rule states that, in exercising this power, the Finance Minister (or delegate) must take into consideration the people who are entitled to the payment under succession law. However, the Finance Minister (or delegate) is not bound to act in accordance with that law.

6. In practice, section 25 of the PGPA Rule is expected to be used in limited circumstances, since many statutory payment schemes (such as superannuation Acts) include arrangements for payments owed to a deceased person. Section 25 of the PGPA Rule is meant for circumstances when a payment is owed to a deceased person and there is no other provision to make this payment to an appropriate recipient, such as a spouse or family member.

7. Section 25 of the PGPA Rule is concerned with the discharge of a debt on the part of the Commonwealth. It is therefore likely to be used mainly in circumstances involving the death of an employee with accrued salary and entitlements potentially payable to a spouse.

8. Section 103 of the PGPA Act and section 25 of the PGPA Rule do not create an appropriation. Payments must be made from existing appropriations.