



Status: **legally binding**

Class Ruling

Parks Victoria – Early Retirement Scheme 2024

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of an early retirement scheme implemented by Parks Victoria.
2. Details of this scheme are set out in paragraphs 9 to 35 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an employee of Parks Victoria who receives a payment under this scheme.

When this Ruling applies

5. This Ruling applies from 29 February 2024 until 30 June 2024.

Ruling

6. The Parks Victoria Early Retirement Scheme 2024 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of subsection 83-180(3).
7. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in

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consequence of voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.

8. In addition, so much of the Scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Scheme

9. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

10. Parks Victoria is a statutory authority of the Victorian Government that manages the State's diverse parks systems in accordance with the powers, objectives and responsibilities under the *Parks Victoria Act 2018* (Vic).

11. Parks Victoria reports directly to the Minister for Environment. It separately reports to the Minister for Ports and Freight on matters concerning the management of local ports and piers.

12. As at 30 June 2022, Parks Victoria employed over 1,000 full-time and part-time employees.

13. As part of the Victorian Government 2019–20 Budget, a Base and Efficiency process was announced across all portfolios to find savings over the budget and forward estimates.

14. Parks Victoria identified operational efficiencies that could be achieved through an Early Retirement Program that was supported by the Department of Premier and Cabinet.

15. To implement the efficiencies, Parks Victoria is applying the *Public Sector Industrial Relations Policies 2015*¹ through offering the payment of a Voluntary Departure Package to eligible employees.

16. As a Victorian public service (VPS) employer, Parks Victoria will rationalise and reorganise its existing workforce by utilising workforce transition arrangements. In doing so, Parks Victoria will initiate and deploy a voluntary Early Retirement Scheme to reduce its headcount, and consequently contribute to the saving targets of the Victorian Government.

17. The class of employees that are eligible to participate in the Scheme are those that satisfy the following criteria at the conclusion of an expression of interest (EOI) period:

- employed by Parks Victoria on a permanent basis
- non-executive level public service employees
- aged 55 years or over and be under the pension age as defined under subsection 23(1) of the *Social Security Act 1991*
- employed under the *Public Administration Act 2004* (Vic) with their employment conditions governed by the *Parks Victoria Enterprise Agreement 2021* (PV EA)
- employed in a role that is funded by core or recurrent budget allocations.

¹ Department of Economic Development, Jobs, Transport and Resources, Industrial Relations Victoria (2016) [Public Sector Industrial Relations Policies 2015](https://www.vic.gov.au/public-sector-industrial-relations-policies-2015), vic.gov.au, accessed 22 February 2024.

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18. Conversely, the following types of employees are excluded from participating in the Scheme if any of the criteria specified apply at the conclusion of an EOI period:

- employees on VPS executive contracts
- employees engaged on a casual basis
- employees engaged on a fixed-term basis
- employees on probation
- employees with less than 12-months service
- employees on leave without pay
- employees in receipt of Workcover payments of compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)
- employees whose substantive position is outside Parks Victoria
- employees who have resigned in writing as at the date of the Scheme's commencement
- employees who were appointed to a new ongoing position within Parks Victoria within the last 3 months preceding the date of the commencement of the Scheme, and
- employees who are subject to investigation for allegations of misconduct/serious misconduct or have a current misconduct sanction on file.

19. There are approximately 30 packages to be offered under the Scheme.

20. Upon the Scheme being approved by the Commissioner of Taxation, Parks Victoria will invite all eligible employees to participate in the Scheme and, therefore, retire early.

21. Eligible employees will have 14 days from the date of invitation to submit an EOI. This 14-day period will represent the EOI period as noted in paragraph 17 of this Ruling.

22. Where an eligible employee submits an EOI they will be notified of the outcome within 28 days of the conclusion of the EOI period.

23. Where the outcome is favourable, Parks Victoria will extend a formal offer for the eligible employee to participate in the Scheme and they will have 14 days to accept or decline that offer.

24. Where an eligible employee accepts the formal offer to participate in the Scheme (Scheme Participant), they will generally be required to terminate their employment and receive an associated Scheme payment within 28 calendar days of accepting the offer. In certain circumstances, the employee's date of termination may be extended by Parks Victoria to ensure the maintenance of service delivery. However, all Scheme Participants will necessarily have their employment terminated on or prior to 30 June 2024.

25. Should the EOI responses result in the overall number of employees seeking to participate in the Scheme exceeding the number of packages available (meaning the Scheme is oversubscribed), the EOI will be prioritised in the following order (based on the classification structure under the PV EA):

- Grade 1 to 7 PV Officers and Senior Specialists, but not including Grade 1 to 3 PV Officers with a substantive role of Ranger or Senior Ranger
- Grade 1 to 3 PV Officers with a substantive role of Ranger or Senior Ranger

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- Grade 8 Senior Officers.

26. Should the EOI responses within each prioritisation tier described in paragraph 25 of this Ruling exceed the number of packages available, the EOI's will be further prioritised within each tier in the following order:

- Length of service with Parks Victoria – those with the longest service will be first to be successful in getting a package.
- Age – if the length of the service is the same, the highest age is to be prioritised in getting a package.

27. If the EOI responses result in the overall number of employees seeking to participate in the Scheme being lower than the number expected by Parks Victoria, Parks Victoria may initiate a subsequent and additional EOI process.

28. Scheme Participants will receive the following payment (Scheme Payment):

- 4 weeks' pay (irrespective of the employee's length of service)
- a lump sum incentive of up to \$10,000 (up to and including their date of termination), and
- 2 weeks' pay for each completed year of continuous service up to and including their date of termination (capped at 15 years).

29. If the Scheme Participant is a part-time employee at their date of termination all components of their Scheme Payment will be calculated on a pro rata basis.

30. All employees who retire under the Scheme will terminate employment and receive payment by no later than 30 June 2024.

31. Employees who retire under the Scheme would not be entitled to the payment described in paragraph 28 of this Ruling if they had otherwise voluntarily terminated their employment.

32. Employees will receive payment for any accrued statutory entitlements, however these payments will not form part of the payment under the Scheme.

33. The Scheme payment will not be made in lieu of superannuation benefits.

34. Employees who retire under the Scheme will do so before they reach the pension age (as defined in the *Income Tax Assessment Act 1997* by reference to the *Social Security Act 1991*).

35. There is no association between the eligible employees and Parks Victoria. Accordingly, the employees and Parks Victoria will be at arm's length.

36. At the time of retirement, there will be no arrangement between Parks Victoria and terminating employees, or between Parks Victoria and any other person, for those employees to be employed after retirement.

Commissioner of Taxation

28 February 2024

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Appendix – Explanation

❗ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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Requirements for an early retirement scheme

37. A scheme will be an early retirement scheme if it satisfies the requirements of subsection 83-180(3).

38. Subsection 83-180(3) states that:

A scheme is an **early retirement scheme** if:

- (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
- (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
- (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

All employees within a class approved by the Commissioner may participate in the Scheme

39. In order to satisfy the first requirement of subsection 83-180(3), the Scheme must be offered to all employees in a class approved by the Commissioner.

40. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 17, subject to paragraph 18, of this Ruling.

41. The Commissioner considers that, for the purposes of paragraph 83-180(3)(a), this is an appropriate class of persons for the Scheme to be offered to.

42. Therefore, the first requirement of subsection 83-180(3) is satisfied.

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The employer's purpose in implementing the Scheme is to rationalise or re-organise the employer's operations in a way approved by the Commissioner

43. The proposed Scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer, as required by paragraph 83-180(3)(b).

44. Paragraphs 10 to 16 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the workforce of Parks Victoria. It is considered that the Scheme is to be implemented by Parks Victoria with a view to rationalising or re-organising the operations of Parks Victoria for the purposes of paragraph 83-180(3)(b).

45. Accordingly, the second requirement of subsection 83-180(3) has been met.

The Scheme must be approved by the Commissioner prior to its implementation

46. The Scheme is proposed to operate for a period from 29 February 2024 to 30 June 2024.

47. The Scheme will be in operation for a period considered appropriate due to the circumstances of the re-organisation.

48. As the approval provided by this Ruling was granted prior to implementation, the third requirement of subsection 83-180(3) is satisfied.

Other relevant information

49. Under subsection 83-180(1), so much of the payment received by an employee because the employee retires under an early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of their employment at the time of termination is an early retirement scheme payment.

50. It should be noted that in order for a payment to qualify as an early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 83-180(2), (5) and (6)):

- The retirement occurred before the employee reached pension age or such earlier date on which the employee's employment would have terminated under the terms of employment because of the employee attaining a certain age or completing a particular period of service (as the case may be).
- If the employee and the employer are not dealing with each other at arm's length (for example because they are related in some way), the payment does not exceed the amount that could reasonably be expected to be made if the retirement was at arm's length.
- At the time of retirement there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the retirement.
- The payment must not be made in lieu of superannuation benefits.
- It is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

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51. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

52. The term 'arrangement' is defined in subsection 995-1(1) as meaning:

... any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

53. In accordance with section 83-170, an early retirement scheme payment that falls within the specified limit is referred to as the 'tax-free' amount and will not be assessable income and will not be exempt income.

54. For the 2023-24 income year, the tax-free amount is limited to \$11,985 (base amount) plus \$5,994 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.

55. The total of the amount received on the termination of employment calculated in accordance with paragraph 28 of this Ruling will qualify as an early retirement scheme payment.

56. The total payment calculated in accordance with paragraph 28 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 53 of this Ruling to determine the tax-free amount of the early retirement scheme payment.

57. The tax-free amount will not be:

- an employment termination payment (ETP), or
- able to be rolled-over into a super fund.

58. Any payment in excess of this limit will be an ETP and will be split into tax-free and taxable components. The tax-free component of an ETP includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.

59. The taxable component of the ETP will be taxed at various rates depending on the person's age. It should be noted that the 'whole of income cap' does not apply to any part of the early retirement scheme payment.

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References

Legislative references:

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180(1)
- ITAA 1997 83-180(2)
- ITAA 1997 83-180(3)
- ITAA 1997 83-180(3)(a)
- ITAA 1997 83-180(3)(b)
- ITAA 1997 83-180(5)
- ITAA 1997 83-180(6)
- ITAA 1997 995-1(1)

- Parks Victoria Act 2018 (Vic)
- Public Administration Act 2004 (Vic)
- Social Security Act 1991 23(1)
- Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)

Other references

- Public Sector Industrial Relations Policies 2015
- Parks Victoria Enterprise Agreement 2021

ATO references

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