Status: **legally binding**

Class Ruling

WA Stolen Generations Redress Scheme – ex gratia payment

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 for individuals who receive an ex gratia payment from the Western Australian (WA) Government under the WA Stolen Generations Redress Scheme (Scheme).

2. Details of the Scheme are set out in paragraphs 11 to 19 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*.

Who this Ruling applies to

4. This Ruling applies to:

- Individuals who are eligible to receive an ex gratia payment under the Scheme on the basis that they:
  - are a living Aboriginal, Torres Strait Islander person, or both
  - were removed from their family as a child (younger than 18 years old), prior to 1 July 1972 (living Stolen Generations member applicant).
- A beneficiary nominated by a living Stolen Generations member applicant under Part Four of an application to the Scheme who is a relative of the applicant.

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When this Ruling applies

5. This Ruling applies from 10 November 2025 to 30 June 2030.

When this Ruling does not apply

6. This Ruling will not apply to you if:

- you are part of a deceased estate as executor, administrator, trustee, beneficiary or similar roles and receive a payment, or
- you are a beneficiary nominated by a living Stolen Generations member applicant under Part Four of an application to the Scheme who is not a relative of the applicant.

7. If you are an individual that receives a payment, and this Ruling does not apply to you, you can discuss your circumstances with a taxation adviser or contact us.

Ruling

8. An ex gratia payment made by the WA Government to a person under the Scheme is not assessable as ordinary income under section 6-5.

9. CGT event C2 under section 104-25 happens to the entitlement to receive a payment under the Scheme when the entitlement is satisfied.

10. However, any capital gain or capital loss made as a result of receiving a payment is disregarded under subparagraph 118-37(1)(a)(ii) where it is received by an eligible living Stolen Generations member applicant or their 'relative' (as defined in subsection 995-1(1)).

Scheme

11. This 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.

12. The Scheme was announced on 27 May 2025 by the WA Government and provides a redress payment of $85,000 for eligible individuals, or a nominated beneficiary or an executor or administrator if the eligible individual has passed away, in recognition of the harm and trauma experienced by Aboriginal and Torres Strait Islander people who were removed from their families as children in Western Australia before 1 July 1972.

13. The redress payments under the Scheme are not legislated or part of any court order. The payments are provided under the discretionary power of the WA Government to make ex gratia payments. An application will need to be submitted which will be assessed for eligibility by the WA Government.

14. Where an eligible Stolen Generations member applicant is living at the time of payment, payment of the redress payment will be made to the applicant (living Stolen Generations member applicant).

15. An executor, administrator or family member may submit an application on behalf of stolen generation members who passed away on or after the Scheme was announced on 27 May 2025 (family member applicant). In relation to a family member applicant,

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payment will be made to the deceased's estate and administered under a valid will or according to the applicable intestacy procedures.

16. Where an eligible Stolen Generation member passes away after making an application but before it is finalised (deceased Stolen Generations member applicant):

- where the applicant nominated a beneficiary in Part Four of their application form, payment will be made to the beneficiary (a nominated beneficiary need not be a relative of the deceased Stolen Generation member)
- where there is no nominated beneficiary, but a valid will exists, payment will be made to the Executor of the estate
- where there is no nominated beneficiary and no will, the amount will be dealt with in accordance with *Administration Act 1903* (WA).

17. The WA Government will accept applications from eligible individuals from 10 November 2025. The administration of the Scheme is expected to continue until 30 June 2030.

18. After considering an applicant's application, the WA Department of the Premier and Cabinet may make an offer to an eligible applicant. Where the offer is accepted, the eligible applicant will sign a waiver of their acceptance relinquishing any right they may have to bring an action against the WA Government for any damages connected with their removal from their family.

19. Upon acceptance of the offer, the WA Department of the Premier and Cabinet will make an ex gratia redress payment of $85,000 to an eligible applicant. Recipients may have the option to request payment of the amount in a fixed number of instalments.

Commissioner of Taxation
11 November 2026

Status: **not legally binding**

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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Ordinary income

20. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts.

21. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts, however there is a substantial body of case law that identifies likely characteristics.

22. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25, the High Court stated:

> To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

23. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.[1] Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.[2]

24. No single factor is determinative of the receipt's character, but some factors may be more relevant than others in light of the circumstances of the case (see, for example, *Commissioner of Taxation v Montgomery* [1999] HCA 34).

25. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.[3] The whole of the circumstances must be considered[4] and the motive of the payer may be relevant to this consideration.[5]

26. In *Scott v Federal Commissioner of Taxation* [1966] HCA 48, Windeyer J considered whether a gratuitous payment to the taxpayer's solicitor was income. His Honour held that, to be income, the gratuitous payment had to be in a relevant sense a product of the donee's income-producing activities. In *The Commissioner of Taxation of the Commonwealth of Australia v Harris G.O.* [1980] FCA 74, a bank made a lump sum payment to supplement a former employee's pension to alleviate the negative effects of

[1] *Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston* [1995] FCA 834.
[2] *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65.
[3] *Scott v Federal Commissioner of Taxation* [1966] HCA 48; 117 CLR 514 at [526]; *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21; 96 CLR 47 at [55]; *Federal Coke Co Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29; 77 ATC 4255 at [4273].
[4] *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13; 86 CLR 570 at [627–628], per Kitto J.
[5] *Scott v. Federal Commissioner of Taxation* [1966] HCA 48; 117 CLR 514 at [527–528].

high inflation. The majority held that the payment was not a product of the former employment, and this was an important element in finding that the payment was not income.

27. Payments made under the Scheme are made ex gratia as a one-off lump sum amount, with the option to be paid in instalments. The amount is paid in recognition of the harm and trauma experienced by Aboriginal and Torres Strait islander people who were removed from their families. Furthermore, the payments, even where paid in instalments, are not being made as a substitute for any loss of past or future earnings of the eligible individual, but are made by the WA Government to express regret for past treatment. The amounts do not possess the characteristics of ordinary income in the hands of the recipient. Therefore, the payments will not be assessable as ordinary income.

Statutory income

28. An amount that is not ordinary income may still be included in assessable income as statutory income.

29. Statutory income includes net capital gains under section 102-5.

30. Generally, a capital gain or capital loss is made when a CGT event happens to a CGT asset.

31. A right to seek compensation under the Scheme is a CGT asset under section 108-5. Any expenditure incurred by the recipient in pursuing their entitlement to the payment may be included in the cost base of the CGT asset (being the right to seek compensation).

32. CGT event C2 under section 104-25 happens at the time a right to seek compensation comes to an end.

33. However, any capital gain or capital loss made from a CGT event is disregarded pursuant to subparagraph 118-37(1)(a)(ii) where the CGT event relates directly to compensation or damages received for any wrong, injury or illness an individual or their 'relative' suffers personally. 'Relative' is defined in subsection 995-1(1). Under subsection 995-1(1) a relative of a person means:

(a) the person's spouse; or

(b) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse; or

(c) the spouse of a person referred to in paragraph (b).

34. The treatment of compensation receipts for personal wrong or injury is discussed in paragraphs 19 to 22 of Taxation Ruling TR 95/35 *Income tax: capital gains: treatment of compensation receipts.* In particular, paragraph 20 of TR 95/35 explains that capital gains tax exemption is available if the taxpayer receives an amount in an undissected lump sum which relates wholly to a personal wrong or injury suffered by them.

35. Payments under the Scheme are made to acknowledge the harm and trauma resulting from the applicant's removal from their family. The payments are not an undissected lump sum but rather a single amount payable in recognition of the personal injury suffered by the applicant. The payments are therefore in the nature of compensation for a personal wrong, injury or illness.

36. Any capital gain (or capital loss) arising from CGT event C2 happening when the entitlement to receive the payment under the Scheme comes to an end, which is when the entitlement is satisfied by a payment being made, may be disregarded under

subparagraph 118-37(1)(a)(ii) where it relates directly to for a personal wrong, injury or illness suffered by the applicant or their 'relative'.

37. Accordingly, a payment made under the Scheme is not assessable under section 6-10 as statutory income where it is received by an eligible living Stolen Generations member applicant or their 'relative' (as defined in subsection 995-1(1)).

Status: **not legally binding**

References

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 118-37(1)(a)(ii)
- ITAA 1997 995-1(1)

Cases relied on:

- Commissioner of Taxation v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJR 505
- Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston [1995] FCA 834; 60 FCR 99; 95 ATC 4691; 31 ATR 392
- Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia [1977] FCA 29; 34 FLR 375; 77 ATC 4255; 7 ATR 519; 15 ALR 449
- Commissioner of Taxation v Montgomery [1999] HCA 34; 198 CLR 639; 99 ATC 4749; 42 ATR 475; (1999) 73 ALJR 1160
- GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; 170 CLR 124; 90 ATC 4413; 21 ATR 1; (1990) 64 ALJR 392
- Hayes v Commissioner of Taxation (Cth) [1956] HCA 21; 96 CLR 47; 11 ATD 68; 30 ALJR 96
- Scott v Federal Commissioner of Taxation [1966] HCA 48; 117 CLR 514; 40 ALJR 205; [1967] ALR 561; 14 ATD 286
- Squatting Investment Co Ltd v Commissioner of Taxation [1953] HCA 13; 86 CLR 570; [1953] ALR 366; 26 ALR 658; 10 ATD 126
- The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O. [1980] FCA 74; 43 FLR 36; 80 ATC 4238; 10 ATR 869; 30 ALR 10

ATO references

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