


***CR 2008/8 - Income tax: assessable income:  
payments received under the Redress Scheme for  
former residents of Queensland children's  
institutions***

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## Class Ruling

### Income tax: assessable income: payments received under the Redress Scheme for former residents of Queensland children's institutions

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#### **❶ This publication provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### **Relevant provision(s)**

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997; and
- paragraph 118-37(1)(b) of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies is individuals who receive a payment under the Queensland Government's Redress Scheme for former residents of Queensland children's institutions.

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 22 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies from 1 October 2007 to 30 June 2010.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Scheme

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13. The following description of the scheme is based on information provided by the applicant. This description is based on:

- an application for Class Ruling from the Department of Communities (Queensland);
- Queensland Government Joint Ministerial Media Statement '\$100 million Redress Scheme for Children Abused in Queensland Institutions' released on 31 May 2007;
- correspondence received from the applicant dated 4 September 2007; and
- draft Deed of Release Discharge and Indemnity received on 20 November 2007.

14. The Redress Scheme for former residents of Queensland children's institutions (the Redress Scheme) was announced on 31 May 2007 by the Queensland Government and provides a one-off payment to eligible former residents of Queensland children's institutions to acknowledge the impact of past institutional abuse and neglect.

15. Applicants under the Redress Scheme are limited to individuals who satisfy the eligibility criteria including those who:

- were in Queensland in a licensed government or non-government institution or detention centre covered by the terms of reference of the Forde Inquiry;<sup>1</sup>
- had been released from care, and had turned 18 years, on or before 31 December 1999; and
- experienced institutional abuse or neglect.

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<sup>1</sup> Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Report), tabled in Queensland Parliament 8 June 1999.

16. Applications under the Redress Scheme will be accepted from 1 October 2007 and close on 30 June 2008.

17. Individuals who are assessed as meeting the eligibility criteria are offered a payment of \$7,000 (first level offer).

18. If the applicant indicates that the initial offer of \$7,000 is insufficient, they can seek an increased amount (a second level offer).

19. A three person expert panel will assess claims for second level offers and will determine whether an increased amount is to be offered, once all first level claims have been allocated.

20. Second level offers vary depending upon the individual's circumstances. However, the maximum overall payment that can be offered to any individual is restricted to \$40,000, comprising:

- a \$7,000 first level offer; and
- a maximum \$33,000 second level offer.

21. The payment is a one-off offer and is subject to applicants signing a Deed of Release intended to release and indemnify the State of Queensland against any current or future legal claims. The Deed of Release also includes a confidentiality clause.

22. Once an applicant accepts an offer of payment under the Redress Scheme and signs the Deed of Release, they are entitled to receive the payment.

## Ruling

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### Section 6-5 – income according to ordinary concepts

23. A lump sum payment made by the Queensland Government under the Redress Scheme to former residents of Queensland children's institutions is not assessable as ordinary income under section 6-5.

### Capital gains tax

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

25. However, any capital gain or capital loss made as a result of receiving a payment under the Redress Scheme is disregarded under paragraph 118-37(1)(b).

## Appendix 1 – Explanation

**❶** *This Appendix 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.*

### Section 6-5 – income according to ordinary concepts

26. A payment is assessable income if:
- it is income in the ordinary sense of the word (*ordinary income*); or
  - it is not ordinary income but through the operation of the legislation it is included in assessable income (*statutory income*).

#### **Ordinary income**

27. Ordinary income received by a person is included in their assessable income under section 6-5.

28. The legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics. Amounts that are periodical, regular or recurrent and relied upon by the recipient for their regular expenditure are likely to be ordinary income, as are amounts that are the product of any employment of, or services rendered by, the recipient (*Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; (1995) 95 ATC 4691; (1995) 31 ATR 392).

29. Payments under the Redress Scheme are one-off lump sum payments in the nature of compensation or settlement sums. They do not possess the characteristics of ordinary income. The fact that some applicants may receive both a level one payment and a level two payment does not alter this conclusion.

#### **Statutory income**

30. An amount that is not ordinary income may still be assessable income as a result of the operation of section 6-10 which includes statutory income in assessable income.

#### **Capital gains tax**

31. Statutory income includes a net capital gain calculated under section 102-5. In broad terms a net capital gain is the difference between a person's capital gains and capital losses for an income year.

32. Generally a capital gain or capital loss is made when a capital gains tax (CGT) event happens to a CGT asset.

33. The entitlement to receive a payment under the Redress Scheme is a CGT asset under section 108-5. The entitlement arises when an applicant has done everything necessary to be entitled to the payment including:

- making an application; and
- satisfying the eligibility criteria.

34. CGT event C2 under section 104-25 happens when the entitlement to receive a payment under the Redress Scheme comes to an end which is when the entitlement is satisfied. This would be the point in time when the Deed of Release is signed.

35. However, any capital gain or capital loss made as a result of CGT event C2 is disregarded under paragraph 118-37(1)(b) when the CGT event relates directly to compensation or damages received for any wrong, injury or illness you suffer personally.

36. The treatment for CGT purposes 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 provides that CGT exemption is available if the taxpayer receives compensation in an undissected lump sum which relates wholly to the personal wrong or injury suffered by the taxpayer.

37. A payment under the Redress Scheme is made to compensate eligible former residents of Queensland children's institutions to acknowledge the impact of past institutional abuse and neglect experienced while they were residents in Queensland children's institutions.

38. Therefore, any capital gain or capital loss arising from the CGT event is disregarded under paragraph 118-37(1)(b) as it relates wholly to compensating individuals for personal wrong, injury or illness.

## **Appendix 2 – Detailed contents list**

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39. The following is a detailed contents list for this Ruling:

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 95/35

*Subject references:*

- assessable income
- capital gains tax
- CGT event
- CGT exemptions
- compensation
- statutory income

*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 108-5

- ITAA 1997 118-37(1)(b)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

*Case references:*

- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; (1995) 95 ATC 4691; (1995) 31 ATR 392

*Other references:*

- Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Report), tabled in Queensland Parliament 8 June 1999

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ATO references

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ATOlaw topic: Income Tax ~~ Assessable income ~~ other payments  
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset  
Income Tax ~~ Capital Gains Tax ~~ exemptions other than main residence  
Income Tax ~~ Exempt income ~~ compensation and ex gratia payments