

# ***CR 2021/92 - Victorian Department of Justice and Community Safety - early retirement scheme 2021-2023***



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This document has changed over time. This is a consolidated version of the ruling which was published on *19 January 2022*



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Status: **legally binding**

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## Class Ruling

# Victorian Department of Justice and Community Safety – early retirement scheme 2021–2023

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### **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.

**[Note:** *This is a consolidated version of this document. Refer to the Legal Database ([www.ato.gov.au/Law](http://www.ato.gov.au/Law)) to check its currency and to view the details of all changes.***]**

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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 the Department of Justice and Community Safety (the Department).
2. Full details of this scheme are set out in paragraphs 9 to 32 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 employees of the Department who receive a payment under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 9 December 2021 to 28 February 2023.

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## **Ruling**

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6. The Department of Justice and Community Safety Early Retirement Scheme 2021–2023 (hereafter referred to as ‘the Scheme’) is an early retirement scheme for the purposes of section 83-180.

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 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**

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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. The Victorian Government 2021/22 Budget included investments to stimulate the economy, promote economic recovery, create jobs and invest in the implementation of the Victorian Government’s reform agenda.

11. In the context of this changed economic landscape and increased expenditure to fund the health and economic response to the global COVID-19 pandemic, the Victorian Government is taking steps to progressively realign expenditure to target areas of highest priority.

12. The investment priorities and the realignment of the Victorian Government’s expenditure in the context of a moderate revenue outlook, referenced in paragraphs 10 and 11 of this Ruling, will require significant savings measures to be introduced, which will result in a reduction in the size of the Victorian Government and a corresponding reduction in the number of employees employed in the Victorian Public Service (VPS).

13. As a result, there will be a significant change to the Department’s operations that will necessitate the department to re-evaluate the size and composition of its workforce. One pillar of the Department’s overall strategy over the next four years is to enact workforce reductions over the 2021 to 2023 income years.

14. The class of employees who are eligible to participate in the Scheme are all employees of the Department aged 50 years and over who are employed in paid and ongoing employment under the *Public Administration Act 2004* (Vic) and whose employment conditions are governed by the *Victorian Public Service Workplace Determination 2020*. Employees must be aged at least 50 years by the end of the expression of interest (EOI) period referred to in paragraph 16 of this Ruling.

15. Employees who satisfy any of the following criteria will be specifically excluded from participating in the Scheme:

- clinicians (Allied Health category) staff in the Forensic Intervention Services team
- Digital Forensic Team staff in the Security and Intelligence Division
- staff in the National Coronial Information System
- executive officers

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- fixed-term and casual staff
- employees on probation or similar trial arrangements
- employees in an ongoing role for less than 12 months
- employees who entered the VPS as part of the Graduate Recruitment Program or a similar employment program
- employees who are secondees into the Department
- employees on leave without pay, with the exception of staff accessing an initial period of paid and unpaid parental leave not exceeding two years for the entire duration of the EOI period
- employees who are in receipt of WorkCover salary payments
- employees under misconduct or allegation of misconduct investigations, or
- employees who resigned from the Department prior to the announcement of the Scheme.

16. As soon as is practicable after the Scheme is approved, the Department will invite employees in the class to submit an EOI. Employees will have a limited time from the date of invitation to submit an EOI. There is a limit on the number of employees who can retire in a Group/Business Unit.

17. Where the number of employees seeking to participate in the Scheme exceeds the number of packages available, applications will be processed in the following order:

- length of continuous VPS service, with those employees with a service period of 10 years or more to be given priority
- pension age, with those employees who are closest to the pension age to be given priority, and
- in the order that EOI submissions were received by the Department.

18. Employees will be notified of the outcome of their EOI and those employees who are made an offer will have a limited time to accept or decline the offer to participate in the Scheme.

19. Employees who accept an offer to retire under the Scheme will generally be required to terminate their employment within exit date tranches. The termination by exit date tranches will enable the Department to manage its workforce exits against operational requirements in its frontline services and service delivery roles.

20. The date of termination may be extended by mutual agreement between the Department and an employee to ensure the maintenance of service delivery and to account for additional and unforeseen operational requirements. All employees who retire under the Scheme will terminate employment and receive payment by no later than 28 February 2023.

21. If the number of employees seeking to participate in the Scheme in a Group/Business Unit exceeds the number of packages in that Group/Business Unit, and another Group/Business Unit is under-subscribed, the Department may decrease the number of packages available in the Group/Business Unit that is under-subscribed and increase the number of packages available in the Group/Business Unit that is over-subscribed to deliver the savings where needed.

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22. The employees who participate in the Scheme will be paid at termination of employment a lump sum amount comprised of the following:
- (a) four weeks' pay, irrespective of the employee's length of service
  - (b) a lump sum incentive of up to \$15,000 (for a full-time employee)
  - (c) two weeks' pay per each completed year of continuous service, up to a maximum of 15 years, and
  - (d) an additional four weeks' pay for employees who are over 54 years of age.
23. The payment referred to in paragraph 22 of this Ruling will be calculated based on completed years of service within the VPS only.
24. For ongoing part-time employees, the payments listed in subparagraphs 22(a) and (b) of this Ruling will be calculated on a pro rata basis. For employees who have a period of part-time employment in the most recent years of continuous service, payment for subparagraph 22(c) of this Ruling will be made on a pro rata basis.
25. Participants under the Scheme will also receive applicable accrued statutory entitlements (for example, annual leave and long service leave). Such payments will not form part of the payment under the Scheme.
26. The Scheme payment will not be made in lieu of superannuation benefits.
27. Any employee who terminates employment other than under the Scheme will not be entitled to receive the payment.
28. 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*).
29. At the time of retirement, there will be no arrangement between the Department and terminating employees, or between the Department and any other person, for those employees to be employed after retirement.
30. An employee who participates in the Scheme will be restricted from working in the VPS for a period of 12 months.
31. Payments made under the Scheme will be at arm's length.
32. Participation in the Scheme is voluntary.

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**Commissioner of Taxation**

8 December 2021

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Status: **not legally binding**

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## Appendix – Explanation

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**❶** *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**

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

34. 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***

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

36. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraph 14, subject to paragraph 15, of this Ruling.

37. 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. In approving this class of employees, the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the Department.

38. 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***

39. 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).

40. Paragraphs 10 to 13 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 work force of the Department. It is considered that the Scheme is to be implemented by the Department with a view to rationalising or re-organising the operations of the Department for the purposes of paragraph 83-180(3)(b).

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

***The scheme must be approved by the Commissioner prior to its implementation***

42. The Scheme is proposed to operate for a period from 9 December 2021 to 28 February 2023.

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

44. 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***

45. 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.

46. 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, and
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

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47. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
48. 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.
49. 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.
50. For the 2021–22 income year, the tax-free amount is limited to \$11,341 (base amount) plus \$5,672 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that six months, eight months or even 11 months do not count as a whole year for the purposes of this calculation.
51. For the 2022–23 income year, the base amount and the service amount are yet to be determined at the date of publication of this ruling. Therefore, employees should check the ATO website for these indexed amounts at the relevant time.
52. The total of the amount received on the termination of employment calculated in accordance with paragraph 22 of this Ruling will qualify as an early retirement scheme payment.
53. The total payment calculated in accordance with paragraph 22 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 50 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
54. The tax-free amount will not be:
- an employment termination payment (ETP), and
  - able to be rolled-over into a super fund.
55. 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.
56. 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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Status: **not legally binding**

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Legislative references:*

- ITAA 1997 82-135
- ITAA 1997 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-180
- 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)
- TAA 1953
- Public Administration Act 2004 (Vic)
- Social Security Act 1991 23(1)

*Other references:*

- Department of Treasury and Finance (26 October 2021) [Victorian Budget 2021/22](#)
  - Victorian Public Service Workplace Determination 2020
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ATO references

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