


# ***CR 2025/88 - WorkCover WA - settlement of compensation claim - Workers Compensation and Injury Management Act 2023 (WA)***

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Status: **legally binding**

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## Class Ruling

# WorkCover WA – settlement of compensation claim – *Workers Compensation and Injury Management Act 2023 (WA)*

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### **📌 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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<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
<b>Ruling</b>	<b>6</b>
<b>Scheme</b>	<b>10</b>
<b>Appendix – Explanation</b>	<b>58</b>

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of specific listed compensation amounts received under a registered settlement agreement in accordance with section 149 and Division 12 of Part 2 of the *Workers Compensation and Injury Management Act 2023 (WA)* (WCIM Act 2023).
2. Details of this scheme are set out in paragraphs 10 to 57 of this Ruling.
3. All further legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: by issuing this Ruling, the ATO is not endorsing this arrangement. Workers must form their own view about the arrangement.

### **Who this Ruling applies to**

4. This Ruling applies to you if:
  - you are a ‘worker’<sup>1</sup> who has made a claim for compensation for an ‘injury’<sup>2</sup> as defined in the WCIM Act 2023
  - you have entered into a settlement agreement (at the time of publication of this Ruling, WorkCover WA Approved Form SF1 – v2 [D2024/367534]) with

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<sup>1</sup> A ‘worker’ is defined in section 5 of Division 2 of Part 1 of the WCIM Act 2023.

<sup>2</sup> ‘Injury’ is defined in section 6 of Division 3 of Part 1 of the WCIM Act 2023.

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your employer that commutes various entitlements you are receiving or entitled to receive to a lump sum compensation in respect of your injury, and which operates to permanently discharge the liability of your employer, and

- the settlement agreement is registered in accordance with the WCIM Act 2023.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2024 to 30 June 2029.

## **Ruling**

### **Ordinary income**

6. If income compensation pursuant to Division 3 of Part 2 of the WCIM Act 2023 is commuted to a lump sum in a settlement agreement under section 149 of the WCIM Act 2023, the amount is assessable as ordinary income under section 6-5. This is because the payment relates to your loss of income. The amount of income compensation pursuant to Division 3 of Part 2 of the WCIM Act 2023 is included in your tax return in the income year in which it is received.

### **Statutory income**

7. If the compensation components listed in paragraph 9 of this Ruling are commuted to a lump sum in a settlement agreement under section 149 of the WCIM Act 2023, the amounts are not assessable as ordinary income under section 6-5.

8. CGT event C2 (section 104-25) happens when you receive any of the compensation components in paragraph 9 of this Ruling under section 149 of the WCIM Act 2023, in satisfaction of your rights under that Act.

9. A capital gain or capital loss made from receiving any of the following compensation components under section 149 of the WCIM Act 2023 are disregarded under subparagraph 118-37(1)(a)(i) as the CGT event is in relation to compensation received for any wrong or injury you suffer in your occupation. You do not include these amounts in your tax return:

- medical and health expenses compensation pursuant to Division 4 of Part 2 of the WCIM Act 2023
- miscellaneous expenses compensation pursuant to Division 5 of Part 2 of the WCIM Act 2023
- workplace rehabilitation expenses compensation pursuant to Division 6 of Part 2 of the WCIM Act 2023
- permanent impairment compensation for personal injury by accident pursuant to Division 7 of Part 2 of the WCIM Act 2023
- dust disease impairment compensation pursuant to Division 9 of Part 2 of the WCIM Act 2023.

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## **Scheme**

10. 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.

11. WorkCover WA (WorkCover) is the government agency responsible for regulating and administering the workers compensation scheme in Western Australia (WA).

12. The workers compensation scheme in WA is privately underwritten, with 7 private insurance companies offering workers compensation policies to employers, 1 insurer providing insurance to public authorities and 23 self-insuring employers.

13. WorkCover is established under subsection 445(1) of the WCIM Act 2023.

14. Section 447 of the WCIM Act 2023 outlines the objective of WorkCover is to ensure the efficient and effective operation of the workers compensation scheme.

15. The WCIM Act 2023 commenced on 1 July 2024 and replaced the *Workers' Compensation and Injury Management Act 1981* (WA).

16. Section 17 of the WCIM Act 2023 provides that an employer is liable for compensation if a worker suffers an injury from employment with the employer.

## **Forms of compensation**

17. The forms of compensation available to workers when they sustain an injury from employment are outlined in section 18 of the WCIM Act 2023 and includes:

- income compensation payable for injury that results in total or partial incapacity of the worker for work
- compensation for medical and health expenses
- compensation for miscellaneous expenses
- compensation for workplace rehabilitation expenses
- lump sum compensation for permanent impairment from personal injury by accident
- lump sum compensation for permanent impairment from a dust disease.

## **Income compensation**

18. Division 3 of Part 2 of the WCIM Act 2023 entitles a worker to be paid income compensation if the worker's injury resulted in incapacity of the worker for work.

19. Under section 47 of the WCIM Act 2023, an employer's obligation to pay income compensation to a worker arises when liability to pay income compensation for incapacity for work is accepted by the insurer or self-insurer. The obligation to pay may also be determined by an arbitrator if there is a dispute. The employer is required to pay the income compensation payments on the employer's usual pay days and in the way the worker would normally be paid.

20. Section 51 of the WCIM Act 2023 sets a maximum limit to the total amount of income compensation a worker can receive during the life of the claim to the general maximum amount. Additional income compensation is available to a worker in limited circumstances.

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21. Income compensation payments are calculated based on a worker's pre-injury weekly rate of income as described under Subdivision 3 of Division 3 of Part 2 of the WCIM Act 2023.

22. The amount of a payment of income compensation is set out in section 55 of the WCIM Act 2023 and is derived from the calculation of the worker's pre-injury weekly rate of income. The payment of income compensation for the first 26 weeks is the worker's pre-injury weekly rate of income, which is the worker's average weekly rate of earnings in the position the worker held on the day on which the worker's injury calculated over a 1-year period (or lesser period when the period of employment is less than 1 year). After 26 weeks, a step-down to 85% applies, with certain exceptions for workers employed under an industrial instrument.

23. Under section 56 of the WCIM Act 2023, there is a cap on the maximum weekly rate of income compensation. The payment must be reduced to the amount prescribed by the *Workers Compensation and Injury Management Regulations 2024 (WA)* (Regulations) as the maximum weekly rate of income compensation.

24. A minimum rate of income compensation also applies under section 57 of the WCIM Act 2023 and is determined by reference to the base award rate and any regular additional earnings, or where an award does not apply, the minimum amount the worker would have been entitled to under the *Minimum Conditions of Employment Act 1993 (WA)*. If a worker's calculated weekly rate of income compensation falls below the relevant amount that applies to that worker, payments must be made at the greater amount.

#### ***Medical and health expenses compensation***

25. Division 4 of Part 2 of the WCIM Act 2023 describes the medical and health expenses compensation payable for reasonable medical and health expenses incurred or to be incurred. Section 71 of the WCIM Act 2023 sets out the type of expenses which are medical and health expenses covered by a claim – for example, surgery, medicine costs, or physiotherapy.

26. Section 75 of the WCIM Act 2023 sets a general limit on compensation for medical and health expenses. The medical and health expenses general limit amount is 60% (or a greater percentage as prescribed by the Regulations) of the general maximum amount. It may be exceeded where certain conditions are satisfied. The limit is indexed annually in accordance with the Regulations.

#### ***Miscellaneous expenses compensation***

27. Miscellaneous expenses compensation is in addition to medical and health expenses and covered under Division 5 of Part 2 of the WCIM Act 2023. There is no aggregate limit on miscellaneous expenses, but the expense must be considered to be reasonable.

28. The Regulations set the limit on the amount payable for provision of a wheelchair or similar appliance, and travel expenses.

29. Section 83 of the WCIM Act 2023 provides the following are expenses that are miscellaneous expenses:

- first aid and emergency transport
- a wheelchair or similar appliance
- a surgical appliance or artificial limb

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- repair or replacement of clothing damaged or destroyed
- repair or replacement of an artificial aid damaged or destroyed
- travel
- assessment of degree or permanent impairment.

### ***Workplace rehabilitation expenses compensation***

30. Workplace rehabilitation expenses are for assistance to return the worker to work and are provided by a WorkCover-approved workplace rehabilitation provider.

31. Section 95 of the WCIM Act 2023 sets a general limit on compensation for workplace rehabilitation expenses. The total amount is not to exceed the workplace rehabilitation expenses compensation limit. The amount is 7% (or greater if prescribed by the Regulations) of the general maximum amount.

32. Circumstances where it is reasonably necessary to provide workplace rehabilitation are set out in regulation 36 of the Regulations. Some circumstances are to:

- identify and address risk factors that may impact on a worker's successful return to work
- assess a worker's functional capacity and provide recommendations to translate functional gains into meaningful work and assist in the development of a return to work
- provide advice on the best pathway to recovery at work
- engage with a worker's treating medical practitioner and provide information that will inform treatment plans, certificates of capacity and return to work programs by providing insight into the work environment
- make recommendations as to how a worker can be accommodated within the workplace while they recover.

### ***Permanent impairment compensation***

33. Permanent impairment compensation is payable under Division 7 of Part 2 of the WCIM Act 2023 as a lump sum amount for permanent impairment suffered by a worker as a result of an injury that is a personal injury by accident. Impairment refers to a loss, loss of use, or derangement of a body part or system. Impairment is different to incapacity for work which is the basis for income compensation.

34. Eligibility for permanent impairment compensation, including the total amounts payable, is based on an assessment of the degree of permanent impairment by an approved permanent impairment assessor.<sup>3</sup>

35. Section 97 of the WCIM Act 2023 prescribes permanent impairment compensation is payable only when the employer's liability to the worker for compensation for the injury is commuted by a settlement agreement and registered under Division 12 of Part 2 of the WCIM Act 2023.

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<sup>3</sup> Within the meaning given by subsection 193(1) of the WCIM Act 2023.

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36. Section 98 of the WCIM Act 2023 provides for the amount of permanent impairment compensation payable to be calculated on the basis of the worker's degree of permanent impairment resulting from the injury in accordance with section 101 of the WCIM Act 2023.

37. Section 100 of the WCIM Act 2023 limits the permanent impairment compensation amount as the general maximum amount applying at the time of the injury.

### ***Dust disease impairment compensation***

38. Dust disease impairment compensation is provided for in Division 9 of Part 2 of the WCIM Act 2023.

39. Dust disease includes pneumoconiosis, silicosis, mesothelioma, lung cancer and diffuse pleural fibrosis.

40. Subsection 119(3) of the WCIM Act 2023 prescribes lump sum compensation is payable only when the employer's liability to the worker for compensation for the injury is commuted by a settlement agreement registered under Division 12 of Part 2 of the WCIM Act 2023.

41. Subsection 119(2) of the WCIM Act 2023 provides the amount of lump sum compensation to which a worker is entitled under this section is the amount that is 30%, or greater percentage, if any, prescribed by the Regulations, of the general maximum amount applying on the day on which the determination of a Dust Disease Medical Panel under section 123 of the WCIM Act 2023 is made in relation to the worker's claim.

42. Section 123 of the WCIM Act 2023 provides the Chief Executive Officer<sup>4</sup> must refer a dust disease compensation claim to a Panel for determination of the following questions:

- (a) Is or was the worker suffering from diffuse pleural fibrosis, lung cancer, mesothelioma, pneumoconiosis or silicosis?
- (b) (Is or was the worker incapacitated for work as a result of the injury by dust disease and, if so, what is or was the extent of the worker's incapacity for work?)

Note for this question:

Incapacity for work and its extent is relevant for a claim for income compensation.

- (c) What is assessed to be the degree of permanent whole of person impairment resulting from the injury by dust disease?

Notes for this question:

1. Degree of permanent whole of person impairment is relevant for sections 119 and 426.
2. Lump sum compensation under this Subdivision is payable if the worker suffers some degree of permanent whole of person impairment but the worker's degree of permanent whole of person impairment must be at least 15% for the worker to be able to pursue a claim for damages — see sections 421 and 426.

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<sup>4</sup> The person holding or acting in the office of chief executive officer of WorkCover WA – see section 5 of the WCIM Act 2023.

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### Settlement of compensation

43. Section 149 of the WCIM Act 2023 provides the worker with an option to settle their workers compensation claim by agreement with the employer and receive a lump sum payment. Section 149 states:

1. An injured worker and the worker's employer may enter into an agreement in writing (a **settlement agreement**) that operates to —
  - (a) commute to a lump sum the liability of the employer to pay compensation to the worker in respect of the injury; and
  - (b) permanently discharge that liability of the employer.

Note for this subsection:

Lump sum compensation that is permanent impairment compensation or dust disease impairment compensation must be included in a settlement agreement — see section 150.

2. A settlement agreement must be in the approved form.
3. A settlement agreement is of no effect unless and until it is registered under this Division.
4. An agreement (however described) that purports to discharge a liability to pay compensation to a worker in respect of an injury is void unless the agreement is a settlement agreement registered under this Division.
5. A settlement agreement registered under this Division applies only to the employer's liability to pay compensation to the worker and does not affect any liability of the employer to pay compensation to a dependent of the worker under Division 10.

44. Section 150 of the WCIM Act 2023 requires a settlement agreement must include provision for commuting the liability for permanent impairment compensation or dust disease impairment compensation if the worker is entitled to either. Further, the application for registration of the settlement agreement must include information and documents to establish the worker's degree of permanent impairment as a result of the injury.

45. Section 151 of the WCIM Act 2023 does not allow commutation of medical and health expenses or miscellaneous expenses where the injured person is a participant in the catastrophic injuries support scheme under *Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016 (WA)*.

46. Section 154 of the WCIM Act 2023 provides the Director<sup>5</sup> is required to scrutinise the settlement for genuineness and be satisfied of the correct amount payable for any permanent impairment compensation, if the worker is entitled.

47. Under section 156 of the WCIM Act 2023, an employer who is liable to pay an amount under a settlement agreement must pay the amount within 14 days after the agreement is registered or, if another law (including a Commonwealth law) prevents payment within that period, within 7 days after payment is permitted under that other law.

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<sup>5</sup> Being the WorkCover WA officer designated under the WCIM Act 2023 to be Director – see section 5 and subsection 308(1) of the WCIM Act 2023.

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48. Section 157 of the WCIM Act 2023 sets a limit on the lump sum compensation included in the settlement agreement amount and has a note indicating that this may reduce what would otherwise be received under the amount of permanent impairment compensation or dust disease impairment compensation. Section 157 states:

(1) In this section —

**income compensation general limit amount** has the meaning given in section 45;

**total income compensation payments** means the total of all the payments of income compensation to which a worker is entitled in respect of incapacity for work resulting from an injury, including payments already paid and payments the entitlement to which is to be commuted by a settlement agreement.

Note for this definition:

The amount of income compensation payments includes provisional payments of income compensation — see section 43(1).

(2) The amount arrived at by adding the amount of permanent impairment compensation or dust disease impairment compensation to which a worker is entitled to the total income compensation payments to which the worker is entitled must not exceed the income compensation general limit amount.

(3) The amount of permanent impairment compensation or dust disease impairment compensation to which a worker is entitled for the purposes of a settlement agreement that applies to that compensation must be reduced to the extent, if any, necessary to ensure compliance with subsection (2).

Note for this section:

This section can operate to reduce the amount of permanent impairment compensation or dust disease impairment compensation to which a worker is entitled but does not affect entitlement to medical and health expenses compensation, miscellaneous expenses compensation or workplace rehabilitation expenses compensation.

### **Other features of the *Workers Compensation and Injury Management Act 2023 (WA)***

49. For the purposes of subsection 149(2) of the WCIM Act 2023, the approved form of the settlement agreement current at the time of publishing this Ruling, and effective from 1 Jul 2025, is WorkCover WA Approved Form SF1 – v2 [D2024/367534], published on the WorkCover WA website at [Resources](#).

50. The settlement agreement has specific fields for compensation amounts already paid to the worker, split into the various forms of compensation, amounts payable in the settlement agreement (split into the various forms of compensation), along with lump sum permanent impairment compensation, and lump sum dust disease impairment compensation (if any), providing the total settlement lump sum.

51. Registration of a settlement agreement is the only pathway to settle a workers statutory compensation claim via a lump sum and to discharge an employer's liability for the injury from employment. A worker is then precluded from seeking further compensation, or common law damages (with the exception of a settlement for dust disease impairment compensation only), from their employer with respect to the injury from employment. Entering into the settlement agreement permanently discharges the liability of the employer to pay compensation to the worker.

52. A worker may, in certain circumstances, exit the workers compensation scheme via an election process and seek common law damages against their employer. There is a

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separate settlement pathway for common law damages, but WorkCover has no oversight of settlements for common law damages.

53. Caps that apply to various worker entitlements under the WCIM Act 2023 are indexed annually. The applicable indexation methodology depends on the type of entitlement.

54. The Regulations set out the relevant methodology that applies to annual indexation.

55. The WCIM Act 2023 protects against any reduction in the capped amount if that would otherwise occur as a result of the indexation method in the Regulations.

56. Section 538 of the WCIM Act 2023 refers to the general maximum amount. The amount is indexed on 1 July each year.

57. Division 4 of Part 1 of the WCIM Act 2023 defines the meaning of worker and employer. The Regulations include and exclude specific work arrangements.

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**Commissioner of Taxation**

17 December 2025

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## Appendix – Explanation

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**ⓘ** *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.*

<b>Table of Contents</b>	<b>Paragraph</b>
Assessable income	58
<i>Ordinary income</i>	59
<i>Statutory income</i>	66
Compensation	78
<i>Lump sum compensation</i>	84
Forms of compensation commuted under the <i>Workers Compensation and Injury Management Act 2023 (WA)</i>	89
<i>Income compensation</i>	89
<i>Medical and health expenses compensation</i>	98
<i>Miscellaneous expenses compensation</i>	104
<i>Rehabilitation expenses compensation</i>	109
<i>Permanent impairment compensation</i>	115
<i>Dust disease impairment compensation</i>	123

### **Assessable income**

58. An amount received 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 taxation legislation is included in assessable income (statutory income).

### **Ordinary income**

59. Section 6-5 provides that the assessable income of a resident taxpayer includes income according to ordinary concepts (ordinary income) derived from all sources, whether in or out of Australia, during the income year.

60. Taxation legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics.

61. Ordinary income has generally been held to include 3 categories of receipts, namely income from:

- rendering personal services (for example, salary and wages)
- carrying on a business
- property.

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62. Other characteristics of income that have evolved from case law include receipts that are:

- expected
- relied upon
- periodical, regular or recurrent.

63. Compensation payments which are a substitute for periodic payments of salary or wage income have been held by the courts to be income under ordinary concepts (*Commissioner of Taxation v Inkster H. M.* [1989] FCA 626, *Tinkler v Commissioner of Taxation* [1979] FCA 136 (*Tinkler*), and *VT91/33 and Commissioner of Taxation* [1991] AATA 718).

64. The character of a redemption payment of this kind was considered in *Brackenreg and Commissioner of Taxation* [2003] AATA 824. There, the taxpayer received weekly compensation payments from Comcare, which took into account her normal weekly earnings. Comcare's liability to make these payments was subsequently redeemed for a lump sum. The Administrative Appeals Tribunal found that the taxpayer's weekly compensation was income, since it was in substitution for and was paid for loss of earnings, and the character of that compensation did not change upon being redeemed by the payment of a lump sum.

65. The consideration of the treatment of these types of payments was affirmed in *Sladden v Commissioner of Taxation* [2024] FCAFC 122. It was determined that, where the surrounding circumstances support the existence of multiple causes of action for unliquidated damages, a lump sum accepted as an entire settlement of the taxpayer's claims may be characterised as an undissected lump sum.

### **Statutory income**

66. Section 6-10 provides that your assessable income includes statutory income amounts that are not ordinary income, but are included in assessable income by another provision.

67. A list of the statutory income provisions is listed in section 10-5. That list includes reference to section 102-5, which deals with net capital gains. In broad terms, a net capital gain is the difference between a person's capital gains and capital losses for an income year.

68. Section 102-20 provides that a capital gain or capital loss is made only if a CGT event happens to a CGT asset.

69. Section 108-5 provides a CGT asset includes a legal or equitable right within the definition of a CGT asset. The right to seek compensation is therefore classified as an intangible CGT asset which is acquired at the time of the compensable wrong or injury.

70. Section 104-25 explains that CGT event C2 happens when the ownership of an intangible CGT asset ends by the asset being satisfied, surrendered, released, discharged or similarly ending. The timing of the event is when you enter into the contract that results in the asset ending or, if there is no contract, when the asset ends.

71. The receipt of a lump sum compensation amount may give rise to a capital gain under CGT event C2.

72. However, any capital gain or capital loss made upon the ending of a CGT asset is disregarded under subparagraph 118-37(1)(a)(i) if the CGT event is in relation to compensation or damages received for any wrong or injury you suffer in your occupation.

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73. The treatment of compensation receipts for personal wrong or injury, under the capital gains tax (CGT) provisions, is discussed in Taxation Ruling TR 95/35 *Income tax: capital gains: treatment of compensation receipts*.

74. Paragraph 20 of TR 95/35 explains 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.

75. TR 95/35 states that an undissected lump sum compensation receipt is any amount of compensation received by a taxpayer where the components of the receipt have not been and cannot be determined or otherwise valued or reasonably estimated. Where this is the case, the whole amount is treated as being consideration received for the disposal of the right to seek compensation.

76. A capital gain is disregarded under paragraph 118-37(1)(a) if a taxpayer receives compensation in an undissected lump sum which relates wholly to a personal wrong or injury suffered by the taxpayer.

77. Example 16 in TR 95/35 (paragraphs 301 to 302) outlines an example where compensation received by an individual as part of a settlement agreement for a wrong or injury suffered in their occupation is exempt from CGT.

### Compensation

78. For income tax purposes, an amount paid to compensate for loss generally acquires the character of that for which it is substituted (*Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65).

79. Whether the receipt of a compensation amount is taxable will depend on whether the amount is payable in respect of the loss of income, or in respect of an impairment or destruction of the injured person's earning capacity. The courts have likened a person's earning capacity to a tree and income to the fruit produced by the tree (*Federal Commissioner of Taxation v Smith* [1981] HCA 10). Compensation for the loss of earning capacity is of a capital nature and loss of income is of a revenue nature.

80. In *Tinkler*, the taxpayer received periodic payments under a scheme where if a person suffered a loss of income in the capacity of employee, as a result of injuries in a motor car accident, they were entitled to statutory compensation in respect of the loss of that income; calculated as a proportion of the person's weekly income as an employee. It was held by the Federal Court that the payments were ordinary income as they were a substitute for part of the wages which would have been earned if the accident had not taken place.

81. The decision in *Tinkler* can be contrasted with the later decision in *The Commissioner of Taxation of the Commonwealth of Australia v Slaven, Robyn Leanne* [1984] FCA 17 (*Slaven*), where it was found that the payments received were not assessable as income on the basis that they were in the nature of compensation for deprivation or impairment of earning capacity.

82. The *Slaven* case is discussed in Taxation Ruling IT 2193 *Income tax: compensation for loss of earning capacity*:

6. In the *Slaven* Case the taxpayer received five irregular payments totalling \$4,360 as compensation in respect of the deprivation or impairment of her earning capacity suffered as a result of a motor vehicle accident which left her unable to work for a period of nine months.

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7. The Federal Court accepted that the 1979 amendments to the Motor Accidents Act achieved a fundamental difference in the nature of a payment made to an injured person. The Court found that the essential character of payments following the amendments is compensation for loss or impairment of earning capacity - they are no longer payments in substitution for lost earnings.

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8. In reaching its conclusion that the amounts involved were not liable to income tax the Court relied on the following factors:-

- (i) "the purpose of a statutory payment, as disclosed by the terms of the statute itself, must be a powerful, though not conclusive, aid to the determination of the character of the payment";
- (ii) earning capacity is a capital asset;
- (iii) "the Board's task is essentially to determine the compensation payable to a person having regard to the deprivation or impairment of his earning capacity";
- (iv) "the exercise in which the Board is required to engage by the Act is not merely one of assessing lost earnings. It is in fact an exercise in valuation".

9. The decision should be applied to other similar payments by the Motor Accidents Board of Victoria. In addition, the decision will extend to payments made by other compensation boards where the payments made are in the nature of compensation for deprivation or impairment of earning capacity.

83. Our primary view for the South Australian Return to Work scheme is Taxation Determination TD 2016/18 *Income tax: is a redemption payment received by a worker under the Return to Work Act 2014 (SA) assessable income of the worker?* TD 2016/18 explains that weekly payments to compensate an injured worker for loss of income may be distinguished from payments pursuant to statutory compensation provisions dealing specifically with loss of future earning capacity.

### **Lump sum compensation**

84. Lump sum compensation payments may be a settlement of a claim made up of various compensation types, some being income in nature and some being of a capital nature.

85. Taxation Determination TD 93/58 *Income tax: under what circumstances is the receipt of a lump sum compensation/settlement payment assessable?* states that a lump sum will constitute assessable income:

- (a) if the payment is compensation for loss of income only e.g. past year profits, and/or interest (even when the basis of the calculation of the lump sum cannot be determined); or
- (b) to the extent that a portion of the lump sum payment is identifiable and quantifiable as income. This will be possible where the parties either expressly or impliedly agree that a certain portion of the payment relates to a loss of an income nature [cf. *Mc Laurin v. FC of T* (1961) 104 CLR 381; (1961) 8 AITR 180 and *Allsop v. FC of T* (1965) 113 CLR 341; (1965) 9 AITR 724].

86. The WCIM Act 2023 provides for various forms of compensation to be commuted to a lump sum under section 149.

87. The settlement agreement, being the 'approved form' referred to in subsection 149(2) of the WCIM Act 2023, allows for specific amounts to be shown for various types of compensation.

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88. Therefore, the total settlement lump sum amount received under section 149 of the WCIM Act 2023 can be dissected.

**Forms of compensation commuted under the *Workers Compensation and Injury Management Act 2023 (WA)***

***Income compensation***

89. Division 3 of Part 2 of the WCIM Act 2023 entitles you to income compensation payments to compensate you for loss of income in respect of your injury.

90. The calculation and timing of the income compensation payments indicate that the sole purpose is to compensate you for income you have lost because of your injury. Some features that demonstrate the income compensation payments have the character of income include:

- the amounts are payable on your employer's usual pay day and in the normal pay manner – that is, on a regular basis (the frequency of the payments can be weekly, fortnightly or monthly)
- the amounts are determined based on a formula referable to your pre-injury average earnings
- leave without pay is excluded from the calculation of the average weekly rate of earnings
- the amounts must be adjusted for any percentage increase or decrease in base rate of pay (except for overtime or bonus or allowance) effective after the day on which your injury occurred and likely to have applied if you were not injured.

91. Therefore, income compensation payments are assessable income under section 6-5 because they are paid to compensate you for loss of income.

92. Division 12 of Part 2 of the WCIM Act 2023 refers to the settlement process which enables you to commute the income compensation payments under Division 3 of Part 2 of the WCIM Act 2023 into a lump sum payment.

93. As the income compensation payments are income in nature, the lump sum settlement amount relating to the commutation of the income compensation payments is also in the nature of income.

94. A lump sum payment does not change its character of compensation for loss of income. Such a commutation results in the lump sum remaining assessable, as its effect is to pay in advance ongoing benefits to future income compensation payments.

95. Therefore, the income compensation specified in the settlement agreement will be assessable as ordinary income under section 6-5.

96. The income compensation is required to be declared in your tax return in the income year it is received.

97. The portion of the lump sum relating to the income compensation component is subject to withholding under section 12-120 of Schedule 1 to the *Taxation Administration Act 1953*.

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***Medical and health expenses compensation***

98. Medical and health expenses compensation is payable under Division 4 of Part 2 of the WCIM Act 2023 in the form of payment of the amount of reasonable medical health expenses incurred or to be incurred by you because of your injury.

99. Division 12 of Part 2 of the WCIM Act 2023 enables you to commute the medical and health expenses compensation under Division 4 of Part 2 of that Act to a lump sum payment.

100. The receipt of the lump sum payment for medical and health expenses compensation, under the settlement agreement, may give rise to a capital gain (statutory income) under CGT event C2 (section 104-25) which relates to cancellation, surrender or similar endings.

101. CGT event C2 happens because the lump sum compensation amount ends any ongoing benefits for future medical and health expense entitlements. These are rights of a capital nature and the lump sum payment you receive is to compensate you for the relinquishment of these rights.

102. However, a capital gain or capital loss made upon the ending of the CGT asset is disregarded under subparagraph 118-37(1)(a)(i) as the CGT event is in relation to compensation received for any wrong or injury you suffered in your occupation.

103. As the amount is not assessable, you are not required to include the medical and health expenses compensation stated in your settlement agreement in your tax return.

***Miscellaneous expenses compensation***

104. Miscellaneous expenses compensation payments are payable under Division 5 of Part 2 of the WCIM Act 2023 in the form of payment of the amount of reasonable miscellaneous expenses incurred or to be incurred by you because of your injury.

105. Division 12 of Part 2 of the WCIM Act 2023 enables you to commute the miscellaneous expenses compensation to a lump sum payment.

106. Where you receive the compensation as a lump sum under the settlement agreement, CGT event C2 happens because the lump sum compensation amount ends any ongoing benefits for miscellaneous expenses compensation. These are rights of a capital nature and the lump sum payment you receive is to compensate you for the relinquishment of these rights.

107. However, a capital gain or capital loss made upon the ending of the CGT asset is disregarded under subparagraph 118-37(1)(a)(i) as the CGT event is in relation to compensation received for any wrong or injury you suffered in your occupation.

108. As the amount is not assessable, you are not required to include the miscellaneous expenses compensation stated in your settlement agreement in your tax return.

***Rehabilitation expenses compensation***

109. Workplace rehabilitation expenses compensation is payable to you under Division 6 of Part 2 of the WCIM Act 2023 in the form of payment of the amount of workplace rehabilitation expenses incurred or to be incurred because of your injury.

110. Division 12 of Part 2 of the WCIM Act 2023 enables you to commute the rehabilitation expenses compensation under Division 6 of Part 2 of the WCIM Act 2023 to a lump sum payment.

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111. The receipt of a lump sum payment for rehabilitation expenses compensation may give rise to a capital gain (statutory income) under CGT event C2 (section 104-25) which relates to cancellation, surrender or similar endings.

112. CGT event C2 happens because the lump sum payment ends, under the settlement agreement, any ongoing benefits for future rehabilitation expenses entitlements. These are rights of a capital nature and the lump sum payment you receive is to compensate you for the relinquishment of these rights.

113. However, subparagraph 118-37(1)(a)(i) disregards the payment for capital gains purposes because the amount relates to compensation you receive for wrong or injury you suffered in your occupation.

114. As the amount is not assessable, you are not required to include the workplace rehabilitation expenses compensation stated in your settlement agreement in your tax return.

### ***Permanent impairment compensation***

115. Permanent impairment compensation is payable under Division 7 of Part 2 of the WCIM Act 2023 as a lump sum amount for permanent impairment suffered by you because of an injury that is personal injury by accident.

116. The amount of permanent impairment compensation payable is calculated based on your degree of permanent impairment resulting from your injury.

117. A lump sum permanent impairment compensation payment is not of an income nature. The amount lacks the characteristics of ordinary income (periodic, regular, recurrent or relied upon for regular expenditure). The amounts are based on a sum prescribed by statute which bears no relationship to your current or former earnings. The amount is not paid to compensate you for loss of income. Therefore, the lump sum amount is not assessable as ordinary income under section 6-5.

118. Permanent impairment compensation is payable when your employer's liability to compensate you for the injury is commuted by a registered settlement agreement.

119. The receipt of a lump sum permanent impairment compensation amount may give rise to a capital gain (statutory income) under CGT event C2 (section 104-25) which relates to cancellation, surrender or similar endings.

120. CGT event C2 happens because the lump sum payment ends any ongoing benefits for future permanent impairment entitlements. These are rights of a capital nature and the lump sum payment you receive is to compensate you for the relinquishment of these rights.

121. However, subparagraph 118-37(1)(a)(i) disregards payments or receipts for capital gains purposes as the amount relates to compensation or damages you receive for any wrong or injury you suffer in your occupation.

122. As the amount is not assessable as either ordinary income or statutory income, you are not required to include the permanent impairment compensation amount stated in your settlement agreement in your tax return.

### ***Dust disease impairment compensation***

123. If you suffer an injury by dust disease that results in some degree of permanent whole of person impairment, you could be entitled to lump sum compensation under

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Division 9 of Part 2 of the WCIM Act 2023. This is in addition to any other compensation to which you may be entitled.

124. To commute the liability for dust disease impairment compensation, the Dust Disease Medical Panel must answer questions including about whether you are or were suffering a dust disease and whether you are or were incapacitated for work as a result of the injury by dust disease and if so, what is or was the extent of your incapacity for work. The Dust Disease Medical Panel must also consider the degree of permanent whole-of-person impairment that resulted from the injury by dust disease.

125. Dust disease impairment compensation is payable when your employer's liability to compensate you for the injury is commuted by a registered settlement agreement.

126. Dust disease impairment compensation is a lump sum to compensate you for permanent impairment you suffered from dust disease. The amount is not income in nature as it is not paid to compensate for loss of earnings and is not assessable as ordinary income under section 6-5.

127. As discussed, the receipt of a lump sum compensation amount may give rise to a capital gain under CGT event C2 (which relates to cancellation, surrender or similar endings). A capital gain or capital loss made upon the ending of a CGT asset is disregarded under subparagraph 118-37(1)(a)(i), if the CGT event is in relation to compensation or damages received for any wrong or injury you suffer in your occupation.

128. Therefore, any capital gain or capital loss arising from the CGT event will be disregarded under subparagraph 118-37(1)(a)(i) and the payments will not be assessable as statutory income.

129. As the dust disease lump sum compensation payment is not assessable as either ordinary or statutory income, you are not required to include the dust disease impairment compensation amount stated in your settlement agreement in your tax return.

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Status: **not legally binding**

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## References

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- Motor Vehicle and Workplace Accidents (Catastrophic Injuries) Act 2016 (WA)
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