


CR 2021/89 - NSW Police Force - optional disengagement scheme

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Status: **legally binding**

Class Ruling

NSW Police Force – optional disengagement scheme

📌 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 the NSW Police Force (NSWPF).
2. Full details of this scheme are set out in paragraphs 9 to 27 of this Ruling.
3. All legislative references in this Ruling are to provisions of the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are a police officer who receives a payment under the scheme.

When this Ruling applies

5. This Ruling applies from 1 January 2022 to 30 June 2024.

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Ruling

6. The NSW Police Force Optional Disengagement Scheme (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

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 NSWPF is currently undergoing substantial organisational reform with a view to reviewing and revitalising the organisation. The primary purpose of the Scheme is to refresh the internal ranking structure and promotion base.

11. The Scheme has been funded to run over three financial years. The Scheme is intended as a one-off reorganisation of the operations of the NSWPF and has not been proposed, funded or approved to be an ongoing scheme. The NSWPF will not need or offer any other early exit scheme before 30 June 2029.

12. Currently, a large number of officers exit the service via medical retirement. These officers are generally at the rank of senior constable and sergeant.

13. Consequently, the NSWPF has identified a need to reform the workforce for these internal rankings in an effort to encourage officers to leave and retrain before they may have to exit through medical retirement, as well as to enable the progression of junior officers.

14. The class of employees eligible to participate in the Scheme applies are those officers who satisfy the following criteria:

- all current serving non-commissioned or commissioned officers (other than a Probationary Constable)
- have completed a minimum of ten years' continuous service (with previous service of officers who have been reappointed into the NSWPF not being recognised for this purpose), and
- are under pension age at the time of terminating employment,

excluding those officers who:

- have submitted an intent to resign or retire from 1 July 2021
- are subject to a process that may result in their retirement or removal

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- are, or become, the subject of an active investigation or conduct action under Parts 8A or 9 of the *Police Act 1990* (NSW), or
- are in receipt of any weekly workers compensation benefit payments under Division 2 of Part 3 of the *Workers Compensation Act 1987* (NSW).

15. There is a limit on the number of officers who can retire in each financial year based on the Scheme funds that are available. Further, to maintain operational continuity there is a limit on the number of officers who can retire from each region/Command.

16. Eligible officers will be invited to express interest to participate in the Scheme after 31 December 2021. Officers will have a limited time to submit an expression of interest.

17. If the number of officers who express interest in participating in the Scheme exceeds the number of places available for the year, participation will be on a first-in basis. Similarly, if the number of officers from a region/Command exceeds the number of places available, participation will be on a first-in basis.

18. Separate rounds will be run for each financial year the Scheme is in operation. Additional rounds may be run during a year if the Scheme is undersubscribed or if funding is still available.

19. The exit date of officers will be based on operational requirements but will generally be within 12 months of an officer submitting their expression of interest.

20. All officers who participate in the Scheme will terminate their employment and receive payment by no later than 30 June 2024.

21. Officers who retire under the Scheme will receive a lump sum payment calculated using the following formula:

- four weeks' pay for each year of service, capped at 30 years' service (this will be rounded to the nearest point of 10, 15, 20, 25 and 30 years, with payment defaulting to the lower exit point if between points)
- four weeks' pay in lieu of notice
- eight weeks' pay incentive, and
- an additional one weeks' pay for officers aged over 45 years of age.

22. The maximum total payment available to officers (irrespective of substantive rank) is capped at the equivalent amount of up to a Sergeant Level 9 with 30 years total service.

23. Officers who terminate employment under the Scheme will receive their statutory entitlements such as annual leave and long service leave where applicable. Commissioned officers may also be entitled to payment of non-renewal benefits. However, these amounts will not form part of the payment made under the Scheme.

24. The payment made under the Scheme is in addition to, and will not be made in lieu of, superannuation benefits to which officers would otherwise be entitled.

25. The retirement of officers who receive a payment under the Scheme will occur before they reach age pension age.

26. Payments made under the Scheme will be at arm's length.

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27. There is no arrangement in place between an officer and the NSWPF, or between the NSWPF and any other person, to employ the officer after the retirement under the Scheme.

Commissioner of Taxation

8 December 2021

Status: **not legally binding**

Appendix – Explanation

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

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

29. 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

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

31. The class of employees to whom early retirement will be offered under the Scheme is set out in paragraphs 14, 15 and 17 of this Ruling.

32. 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 NSWPF.

33. 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

34. 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).

35. Paragraphs 10 to 13 of this Ruling describe the nature of the rationalisation or re-organisation of the NSWPF operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the NSWPF. It is considered that the Scheme is to be implemented by the NSWPF with a view to rationalising or re-organising the operations of the NSWPF for the purposes of paragraph 83-180(3)(b).

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

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

37. The Scheme is proposed to operate for a period from 1 January 2022 to 30 June 2024.

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

39. 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

40. 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.

41. 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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42. The term 'pension age' has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
43. 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.
44. 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.
45. 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.
46. For later income years, 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.
47. The total of the amount received on the termination of employment calculated in accordance with paragraph 21 of this Ruling will qualify as an early retirement scheme payment.
48. The total payment calculated in accordance with paragraph 21 of this Ruling will be measured against the limit in accordance with the formula mentioned in paragraph 45 of this Ruling to determine the tax-free amount of the early retirement scheme payment.
49. The tax-free amount will not be:
- an employment termination payment (ETP), and
 - able to be rolled-over into a super fund.
50. 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.
51. 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.

Status: **not legally binding**

References

Previous draft:

Not previously issued as a draft

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
- Police Act 1990 (NSW) Pt 8A
- Police Act 1990 (NSW) Pt 9
- Social Security Act 1991 23(1)
- Workers Compensation Act 1987 (NSW) Pt 3 Div 2

ATO references

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