

# ***CR 2022/81 - Victoria Police - early retirement scheme 2022-2023***



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## Class Ruling

# Victoria Police – early retirement scheme 2022–2023

### **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.

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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 Victoria Police (the Department).
2. 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 8 September 2022 to 30 June 2023.

## **Ruling**

6. Victoria Police – early retirement scheme 2022–2023 (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

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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 Victorian Government 2021/22 Budget included significant 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 significant 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. 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. The Department will be required to implement the Scheme to rationalise and re-organise its operations in order to make a significant contribution to the initiatives being carried out by the Victorian Government, including the reduction in the number of employees engaged in the Victorian Public Service (VPS).

13. The class of employees that are eligible to participate in the Scheme and receive payments under the Scheme are employees of the Department who satisfy all 3 of the following criteria:

- they are at least 50 years of age as at the date of the conclusion of the expression of interest (EOI) period
- they are below the pension age as defined by the *Social Security Act 1991* (SSA 1991) as at the date of the end of their employment with the Department, and
- their substantive role is as a member of any of the following organisational structure portfolios
  - Capability
  - Corporate & Regulatory Services
  - Information Technology & Infrastructure Services, or
  - Office of the Chief Commissioner.

14. Employees that satisfy any of the criteria set out below, as at the date of the conclusion of the EOI period, will be specifically excluded from participating in the Scheme:

- Police Officers, Recruits and Reservists
- Protective Services Officers
- Police Custody Officers
- Senior Executive Service Officers
- employees engaged on a casual basis

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- employees engaged on a fixed-term basis, including those on secondment from other VPS or public sector agencies
- employees on probation
- employees on leave without pay, except those on unpaid parental leave
- employees in receipt of Workcover payments of compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic)
- employees under investigation for alleged misconduct
- employees who have formally resigned in writing prior to the first day of the scheme's commencement
- employees who were appointed to an ongoing position within the Department on or after 1 January 2022
- employees employed in any of the following job functions
  - psychologists
  - doctors
  - nurses
  - Public Support Information Officers within the Police Enquiry & Data Sharing Department
  - Senior Information Officers within the Police Enquiry & Data Sharing Department
  - VPS4 Intelligence Analysts within Professional Standards Command
  - Technical Advisors within the Digital Services and Security Department, or
  - Domain Architects within Digital Services and Security Department, and
- employees where their substantive role is in any of the following organisational structure portfolios
  - Regional Operations
  - Specialist Operations, or
  - Public Safety & Security.

15. Following approval of the Scheme by the Commissioner:

- the Department will invite an EOI as soon as practicable after the Scheme is approved, and
- employees will have 2 weeks from the date of the invitation to submit an EOI.

16. Employees who submit an EOI will be notified of the outcome within 4 weeks where:

- the Department's decision to decline an EOI (following an assessment of eligibility) or to make an offer to the employee to participate in the Scheme is final, and
- employees who receive an offer to participate in the Scheme will have

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2 weeks, from receiving notification of the offer, to accept or decline the offer to participate in the Scheme.

17. Employee exits will be spread over a series of tranches to ensure that risks to business continuity and critical service delivery needs are managed.

18. The implementation of exit tranches as mentioned in paragraph 17 of this Ruling will be made clear to employees as part of the EOI process. When offers are made to eligible employees, they will be notified which tranche they have been allocated to. The allocation of exit tranches to each participating employee will be based on the employee's role, business continuity considerations and operational requirements. Alternatively, the Department may, by mutual agreement with the participating employee, determine an alternate exit date to ensure the maintenance of service delivery and to account for operational requirements.

19. All eligible employees who accept an offer to participate in the Scheme will be required to terminate their employment no later than 30 June 2023.

20. There is no minimum number of employees that the Department expects to retire under the Scheme.

21. If the number of participating employees is less than the number expected by the Department (that is, the Scheme is under-subscribed), the Department may implement a second EOI process during the duration of the Scheme. All the class criteria outlined in paragraph 13 of this Ruling will apply in respect of the second EOI round, except that the number '50' is to be substituted with the number '45', with the effect that the Scheme would now also apply to employees between 45 years and 50 years of age as at the date of the conclusion of the second EOI period.

22. Where the number of employees participating in the Scheme exceeds the number of packages available (such that the Scheme is oversubscribed), applications will be processed on the basis of their proximity to pension age as defined by the SSA 1991, as at the conclusion of the EOI period, with the oldest employees (that is, those closest to 'pension age') being given priority.

23. A 20% cap will apply to the total eligible VPS employees in each department or command (calculated on a full-time equivalent basis), rounded up to the nearest whole number. The Department may decide to increase the total number of packages available on the basis of operational requirements.

24. The employees who participate in the Scheme will be paid at termination of employment an amount comprising of the following:

- (a) 4 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) 2 weeks' pay per each completed year of continuous service, up to a maximum of 15 years, and
- (d) an additional 4 weeks' pay for employees who are over 54 years of age.

25. The payment in paragraph 24 of this Ruling is calculated based on completed years of service within the Victorian public sector only (as distinct from the VPS).

26. For ongoing part-time employees, payments for subparagraphs 24(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, payments as set out in subparagraph 24(c) of this Ruling will be calculated on a pro rata basis.

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27. Employees will receive payment for any accrued statutory entitlements; however, these payments will not form part of the payment under the Scheme.

28. Employees who retire or terminate their employment other than under the Scheme will not receive the payment as mentioned in paragraph 24 of this Ruling.

29. There is no agreement in place between the employee and the Department, or between the Department and another person, to employ any employee after retirement under the Scheme.

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**

7 September 2022

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## 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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### 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), participation in 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 13, subject to paragraph 14, 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 12 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 workforce 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 8 September 2022 to 30 June 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 SSA 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 2022–23 income year, the tax-free amount is limited to \$11,591 (base amount) plus \$5,797 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation.
51. The total of the amount received on the termination of employment calculated in accordance with paragraph 24 of this Ruling may qualify as an early retirement scheme payment.
52. The total payment calculated in accordance with paragraph 24 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.
53. The tax-free amount will not be:
- an employment termination payment (ETP), and
  - able to be rolled-over into a super fund.
54. 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.
55. 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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## References

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*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)
  - Social Security Act 1991 23(1)
  - Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)
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ATO references

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