

# ***CR 2022/26 - Victorian Department of Families, Fairness and Housing - early retirement scheme 2022-2023***



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## Class Ruling

# Victorian Department of Families, Fairness and Housing – 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 the Victorian Department of Families, Fairness and Housing (the Department).
2. Full details of this scheme are set out in paragraphs 9 to 31 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 24 March 2022 to 30 June 2023.

## Ruling

6. The Department of Families, Fairness and Housing – Early Retirement Scheme 2022–2023 (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

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 reorganise 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 Department will be required to reduce staffing to meet these savings, alongside other mechanisms. Reductions in staffing will be across the Department and will include both general reductions to meet savings, as well as reductions that will flow more directly from decisions to discontinue a function or initiative.

14. The class of employees to whom this Scheme applies are all ongoing employees of the Department, aged less than the pension age as defined by the *Social Security Act 1991* as at the date of their retirement.

15. The following employees are specifically excluded from participating in the Scheme:

- (a) executive officers
- (b) staff on fixed-term contracts
- (c) current participants in the VPS graduate recruitment and development scheme
- (d) casual employees
- (e) staff receiving WorkCover salary payments

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- (f) staff who are subject to misconduct processes or other disciplinary processes which may result in termination of employment
- (g) staff on leave without pay
- (h) staff with less than three months service with the Department
- (i) Disability Development and Support Officers (DDSOs) and the following DDSO-classified staff where a decision has not been made by the Victorian Government (as of the date of commencement of the Scheme) that the relevant services would cease to be provided by the Department
  - (i) Behavioural Support Intervention staff
  - (ii) Outreach services staff
  - (iii) Support Coordination staff, and
  - (iv) Ararat Day Services staff
 including
  - VPS classified staff, and
  - Allied Health classified staff employed within the services described in points (i) to (iv) of this paragraph
- (j) employees in the following respective functional areas, as these are known by the Department as at the date of their application
  - (i) Child Protection workers
  - (ii) Allied Health workers, and
  - (iii) Child, Youth and Families classified staff who are not engaged in 'head office' roles, and
- (k) staff in the Orange Door Network

16. For eligible employees within the following categories of the Housing function, a maximum of 90 packages would be on offer (with a maximum of 30 packages offered in the first round of expressions of interest (EOIs)):

- (a) Housing Service officers
- (b) Field Service officers
- (c) Housing call centre employees, and
- (d) team leaders and managers that the employees described in points (a) to (c) of this paragraph directly report to.

17. It is envisaged that there will be two rounds of EOI processes during the duration of the Scheme. The first EOI round would commence as soon as practicable after the Scheme is approved by the Commissioner. Employees will have 14 days from the date of invitation to submit an EOI. The second EOI round is expected to commence in the middle of 2022. Subject to the interest in the Scheme that the Department receives from its eligible employees, there may need to be a third EOI round commencing in late 2022 or early 2023. The same criteria under paragraphs 14 and 15 of this Ruling would apply in respect of each of the EOI rounds.

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18. The Department will adopt the following notification process in respect of each of the EOI rounds:

- (a) employees who submit an EOI will be notified within 14 calendar days from the conclusion of the EOI period for that round where the Department's decision is to decline an EOI (following confirmation of their eligibility)
- (b) eligible employees who submit an EOI (and within the relevant allocated package cap, for employees in the Housing function) will be notified within 28 days of the conclusion of the EOI period for that round of an offer to participate in the Scheme
- (c) employees who receive an offer to participate in the Scheme will have 14 calendar days from the date of receiving notification of the offer to accept or decline the offer to participate in the Scheme
- (d) if the Housing function is oversubscribed beyond the number of allocated packages, and an eligible employee within that function declines an offer, the next eligible employee within that function, as determined by the criteria, will be made an offer within 14 calendar days of the declined offer until the allocated package cap is filled or all applicants in the Housing function have received an offer, and
- (e) any remaining employees who would not be receiving an offer will be notified within 14 calendar days of the last offer acceptance. The Department's decision to decline an EOI or to make an offer to the employee to participate in the Scheme is final.

19. All eligible employees who accept an offer to participate in the Scheme will generally be required to terminate their employment and receive the early retirement payment within four weeks of accepting the offer. However, the date of termination may be extended by mutual agreement between the Department and the employee to ensure the maintenance of service delivery and to account for operational requirements, but no later than 30 June 2023.

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

21. Where the number of employees seeking to participate in the Scheme exceeds the number of packages available (such that the Scheme is oversubscribed), applications will be processed on the basis of age, with older employees to be given priority.

22. The employees who participate in the Scheme will be paid a termination of employment an amount comprising 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, described in paragraph 22 of this Ruling, is calculated based on completed years of service within the Victorian public sector only.

24. For ongoing part-time employees, payments described at (a) and (b) in paragraph 22 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, the payment described at (c) in paragraph 22 of this Ruling will be calculated on a pro rata

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basis. More details regarding what constitutes continuous service for these purposes is provided in Part 6 of the *Public Sector Industrial Relations Policies 2015*.<sup>1</sup>

25. Participants under the Scheme will also receive applicable accrued statutory entitlements (for example, annual leave and long serve leave). Such payments will not form part of the payment under the Scheme.

26. Employees who retire or terminate their employment other than under the Scheme will not receive the payment.

27. Employees who retire under the Scheme and receive the early retirement payment 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*).

28. The payments under the Scheme are in addition to and would not be made in lieu of any superannuation benefits.

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 that 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.

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**Commissioner of Taxation**

23 March 2022

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<sup>1</sup> Victorian Government (2016) *Public Sector Industrial Relations Policies 2015*, <https://www.vic.gov.au/public-sector-industrial-relations-policies-2015>

## 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

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

33. 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.

34. These three conditions are considered in paragraphs 35 to 44 of this Ruling.

### ***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 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 9 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 24 March 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 *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 as 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 is 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 49 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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## 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)
- TAA 1953
- Social Security Act 1991 23(1)

### *Other references:*

- [Victoria State Government Public Sector Industrial Relations Policies 2015](#)
- Department of Treasury and Finance (26 October 2021) [Victorian Budget 2021/22](#)

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### ATO references

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