Australian Government
Australian Taxation Office

Explanatory Statement

Taxation Administration (Withholding Variation for Payment of Certain Allowances) Amendment Legislative Instrument 2026

General outline of instrument

1. This instrument is made under section 15-15 in Schedule 1 to the *Taxation Administration Act 1953* (the Act).

2. This instrument amends the *Taxation Administration (Withholding Variation for Payment of Certain Allowances) Legislative Instrument 2025* (2025 Instrument) in relation to payments of allowances for laundry expenses and award transport payments. These amendments are required due to changes made to the *Income Tax Assessment Act 1997* (ITAA 1997) by Schedule 4 of the *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* (2026 Amending Act).

3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. Sections 1 to 4 (together with anything not elsewhere covered by the table in section 2) and items 1 to 5 of Schedule 1 commence at the same time as Schedule 4 of the *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* commences.

6. Items 6 and 7 of Schedule 1 commence on the later of:

   (a) 1 October 2026, and

   (b) the time that Schedule 4 of the *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* commences.

7. However, none of the provisions in this instrument will commence at all if Schedule 4 of the *Treasury Laws Amendment (Tax Reform No. 1) Act 2026* does not commence.

Background

8. Section 15-15 in Schedule 1 to the Act enables the Commissioner to vary the amount required to be withheld by an entity (through a written notice) or classes of entity (by legislative instrument) from a withholding payment (including to nil).

9. This power was exercised in making the 2025 Instrument, which varies to nil the amount required to be withheld from payments of the following allowances in certain circumstances (including where the payee is reasonably expected to be able to claim a deduction for the full amount of the allowance):

   (a) set rate per kilometre car allowances

   (b) laundry allowances

(c) domestic and overseas travel allowances

(d) overtime meal allowances, and

(e) award transport payments.

10. The 2025 Instrument also specifies limits on the amount of these payments that can be varied to nil.

11. The 2026 Amending Act changes the law relating to the substantiation of work-related expense deductions for the laundry allowances and award transport payments referenced in the 2025 Instrument and provides for a standard deduction for income years beginning on or after 1 July 2026. Amendments are required to the 2025 Instrument to reflect these changes.

12. The amendments to the 2025 Instrument, in relation to payments of allowances for laundry expenses, commences at the same time as Schedule 4 of the 2026 Amending Act commences. This will be the first 1 July, 1 October, 1 January or 1 April to occur after the 2026 Amending Act receives royal assent.

13. The amendments to the 2025 Instrument, in relation to award transport payments, commences on the later of 1 October 2026 and the same time that Schedule 4 of the 2026 Amending Act commences. This provides employers with a reasonable time to prepare, as the variation to nil for these payments in the 2025 Instrument will not apply after the commencement of these amendments.

14. However, this instrument will not commence at all if Schedule 4 of the 2026 Amending Act does not commence.

Effect of this instrument

Laundry allowances

15. The 2025 Instrument varies to nil the amount to be withheld from allowances for certain laundry expenses where the total amount of the allowance paid during a financial year does not exceed a specified limit. Laundry expenses had the meaning given in subsection 900-40(4) of the ITAA 1997 being a work expense to do with washing, drying or ironing clothes (but not dry cleaning).

16. Paragraph 7(b) of the 2025 instrument limited the variation to nil for laundry expenses allowances to the amount that can be deducted without substantiation under section 900-40 of the ITAA 1997.

17. As the 2026 Amending Act repeals section 900-40 of the ITAA 1997, the variation to nil for laundry expenses in the 2025 instrument, if not amended, would no longer have effect.

18. While the 2026 Amending Act changes the rules about when an individual is required to substantiate deductions they claim for work-related laundry expenses, it does not change the deductibility of those laundry expenses and, therefore, the need for a withholding variation for allowances paid in relation to these laundry expenses. Consequently, the variation to nil for certain payments relating to work-related laundry expenses is still appropriate.

19. To continue the variation, this instrument amends the 2025 Instrument by:

(a) inserting a definition of laundry expenses as a work expense to do with washing, drying or ironing clothes (but not dry cleaning), and

(b) replacing the reference to section 900-40 in paragraph 7(b) of the 2025 Instrument with a reference to the amount of $150.

20. $150 is the amount that could have been deducted without substantiation under section 900-40 before it was repealed.

21. The amendments made by this instrument therefore preserve the existing operation of the variation for laundry expense allowances.

Award transport payments

22. The 2025 Instrument varies to nil the amount required to be withheld from award transport payments.

23. Award transport payments were defined in section 900-220 of the ITAA 1997 as a transport payment covering particular travel that was paid under an industrial instrument that was in force on 29 October 1986.

24. The 2026 Amending Act repeals Subdivision 900-I of the ITAA 1997, which contains section 900-220 of the ITAA 1997 and other provisions concerning deducting expenses that relate to award transport payments.

25. To account for this repeal, the amendments made by this instrument also repeal the reference to award transport payments in the 2025 Instrument.

26. This means that, from the date the relevant provisions of this instrument commence, the variation in relation to award transport payments provided by the 2025 Instrument will no longer apply and payers will be required to withhold from payments that would previously have been considered award transport payments. The amendments relating to award transport payments will commence no earlier than 1 October 2026, providing those payers whose withholding obligations will change with reasonable time to prepare to withhold from these payments before the amendments commence.

27. It is also appropriate to remove the variation to nil for these payments because the nexus to industrial instruments in force 40 years ago means it has become increasingly difficult for payers and payees to identify when a payment meets this requirement to qualify as an applicable award transport payment. Therefore, requiring award transport payments to be identified for the purposes of the variation would unreasonably perpetuate that difficulty when there is no longer any differential treatment of these payments for income tax purposes.

28. The amount required to be withheld from a payment of an allowance for car expenses may still be varied to nil if it meets the requirements of the set rate per kilometre car allowance in the 2025 Instrument.

29. This instrument also makes minor editorial changes to the 2025 Instrument to ensure consistency with the Office of Parliamentary Counsel’s legislative drafting directions.

Compliance cost assessment

30. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (OIA26-11862).

Consultation

31. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a determination.

32. For this instrument, broad public consultation was undertaken for a period of 2 weeks.

33. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members. This ensures advice of the draft is disseminated widely across the tax professional community, and that they are in an informed position to provide comments and feedback.

34. Comments received during the consultation period were broadly in favour of the amendments this instrument makes to the 2025 Instrument and recognised the need for this instrument in light of changes to the primary law.

35. Some comments expressed concern about the difficulty that the timing of the amendments (particularly in relation to award transport payments) may pose to employers paying affected allowances and to the Commissioner in providing sufficient timely guidance to the community on implementing the change.

36. In response to these comments, the commencement arrangements for some provisions in this instrument were altered to ensure that the amendments in relation to award transport payments commence no earlier than 1 October 2026. However, the Commissioner recognises that, because the timing of this instrument's commencement is contingent on the commencement of Schedule 4 of the 2026 Amending Act, the timing may still present some difficulties for employers and will endeavour to provide guidance to the community about the change to the extent possible.

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Taxation Administration (Withholding Variation for Payment of Certain Allowances) Legislative Instrument 2025* (2025 Instrument) reduces the amount required to be withheld by a payer under the pay as you go withholding system from payments of specified allowances to nil in certain circumstances.

This instrument amends the 2025 Instrument to reflect changes in the *Income Tax Assessment Act 1997* (ITAA 1997), in relation to laundry expense allowances and award transport payments, made by Schedule 4 of the *Treasury Laws Amendment (Tax Reform No. 1) Act 2026*.

To ensure the variation for laundry expense allowance payments under the 2025 Instrument continues, this instrument amends the 2025 Instrument by inserting a definition for laundry expenses, specifying the limit on these payment that can be varied to nil, and makes other consequential amendments such as removing references to repealed provisions of the ITAA 1997.

The instrument also amends the 2025 Instrument to repeal provisions relating to award transport payments, as these payments have been removed from income tax law.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. It merely amends the 2025 Instrument to ensure the variation in relation to laundry expense allowances continues to apply, and removes the variation to nil for a type of payment that no longer exists.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.