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## Explanatory Statement

# Taxation Administration (Withholding Variation for Certain Payments to Religious Practitioners) Legislative Instrument 2026

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### General outline of instrument

1. This instrument is made under sections 15-15, 16-153 and 16-180 and subsection 389-10(1) in Schedule 1 to the *Taxation Administration Act 1953* (the Act).
2. This instrument reduces to nil the amount that an entity must withhold from certain payments it makes to a religious practitioner. It also removes the requirement for entities that are not religious institutions to issue payment summaries and provide an annual report in relation to some of the payments.
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. This instrument commences on the day after it is registered on the Federal Register of Legislation.
6. This instrument repeals and replaces the Legislative Instrument *Pay as you go withholding - Variation and exemption of withholding requirements for certain payments made to religious practitioners* (2016 Instrument) which would otherwise sunset on 1 April 2026.
7. This instrument introduces new limits on the amount that a religious practitioner can receive in relation to chaplaincy or counselling services performed from 1 July 2026, but otherwise has the same effect as the 2016 Instrument.

### Background

8. Under section 12-47 in Schedule 1 to the Act, an entity may be required to withhold an amount from a payment that it makes to a religious practitioner for services they perform as a member of a religious institution.
9. Section 12-47 in Schedule 1 to the Act applies to payments made on or after 1 July 2002 and was part of a suite of amendments to tax laws that sought to align the treatment of religious practitioners not engaged as employees more closely with the treatment of employees in order to resolve uncertainty about the potential treatment of religious practitioners as businesses under the 'A New Tax System' reforms that commenced in July 2000.
10. In recognition that not all activities undertaken by religious practitioners in pursuit of their vocation align with activities of employees or businesses, the Commissioner consulted in 2002 with

representatives of religious institutions and identified payments for which withholding should be varied to nil due to the unusual or irregular nature of the activity the payment related to.<sup>1</sup>

11. Payments in relation to locum services performed by a religious practitioner, services (other than chaplaincy or counselling services) provided by a religious practitioner, and certain allowances paid to a religious practitioner were identified.

12. The normal withholding rates that apply to withholding payments made in a financial year are provided in a legislative instrument made under section 15-25 in Schedule 1 to the Act for that financial year.

13. A religious practitioner is defined in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) as:

- (a) a minister of religion
- (b) a student at an institution who is undertaking a course of instruction in the duties of a minister of religion
- (c) a full-time member of a religious order, or
- (d) a student at a college conducted solely for training persons to become members of religious orders.

14. Religious institution has the same meaning as the term 'ACNC-registered religious institution' in the *A New Tax System (Goods and Services Tax) Act 1999*. Broadly, these are institutions that are registered as a charity with the Australian Charities and Not-For-Profits Commission with a purpose of advancing religion.

15. Under section 15-15 in Schedule 1 to the Act, the Commissioner may 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.

16. Without a variation under section 15-15 in Schedule 1 to the Act, a payer would be required to withhold from all payments covered by section 12-47 in Schedule 1 to the Act that they make to a religious practitioner, including payments which relate to activities that are unusual or irregular in nature.

17. Under sections 16-153, 16-180 and 389-10 in Schedule 1 to the Act, the Commissioner may also exempt an entity from providing reporting to a payee or the Commissioner in respect of a withholding payment.

### **Effect of this instrument**

18. This instrument reduces to nil the amount an entity must withhold from payments it makes to a religious practitioner in the circumstances in sections 6, 7 and 8.

### **Section 6 – Variation for payments related to certain allowances**

19. Under section 6, the amount required to be withheld by an entity from a payment that it makes to a religious practitioner is varied to nil where the payment relates to certain specified allowances.

20. Under section 6, withholding is varied to nil for a withholding payment if:

- (a) the payment relates to an allowance that is specified in subsection 6(2)

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<sup>1</sup> Paragraph 1.39 of the Explanatory Memorandum to the Taxation Laws Amendment (No. 5) Bill 2001.

- (b) the entity making the payment reasonably expects that the religious practitioner will incur deductible work expenses related to the allowance that in total are at least equal to the amount of the allowance, and
- (c) the entity making the payment records the amount and nature of the payment separately in their accounting records.

21. Subsection 6(2) specifies the allowances and the maximum amount of the payment that can be varied to nil. Where the payment exceeds the limit for the allowance in subsection 6(2), the variation to nil will apply up to that limit only and normal withholding will apply to any part of the payment that exceeds that maximum amount.

22. Varying the amount to be withheld to nil in relation to the specified allowance allows the religious practitioner (where they are expected to incur deductible expenses equal to the amount of the allowance), to receive the full amount of the allowance and helps to better align withholding during the year to their likely end-of-year tax position (taking into account the deductions they are likely to be entitled to).

23. Varying the amount to be withheld to nil in relation to the specified allowance also aligns the withholding treatment of these payments when paid to a religious practitioner with the way they are treated when paid to an employee.

24. The following allowances are specified for the purpose of subsection 6(1).

#### ***An allowance for car expenses***

25. Car expenses are defined in section 28-13 of the ITAA 1997. A deduction for car expenses can be calculated by various methods, including the cents per kilometre method in section 28-25 of the ITAA 1997.

26. Commonly, car expense allowances paid to employees are also calculated using the cents per kilometre method.

27. Under section 6, withholding from a payment to a religious practitioner that relates to a car expense allowance is reduced to nil where:

- (a) the allowance is calculated on a cents per kilometre basis
- (b) the rate of cents per kilometre used to calculate the allowance does not exceed the cents per kilometre rate determined by the Commissioner under subsection 28-25(4) of the ITAA 1997 for the year, and
- (c) the total number of business kilometres in respect of which an allowance is paid during the financial year does not exceed the number of business kilometres provided for in subsection 28-25(2) of the ITAA 1997.

28. Normal withholding rates will apply to any part of the payment that exceeds the limit in paragraph 6(2)(a).

#### ***An allowance for domestic travel allowance expenses***

29. Travel allowances are defined in section 900-30 of the ITAA 1997 and are amounts paid to employees to cover travel allowance expenses incurred when travelling away from the payee's ordinary place of residence. Paragraph 6(2)(b) applies to domestic travel allowance expenses.

30. Withholding from a payment to a religious practitioner that relates to domestic travel allowance expenses is varied to nil for amounts that do not exceed the amount the Commissioner considers reasonable, for the income year, for the purposes of section 900-50 of the ITAA 1997.

31. The amounts the Commissioner considers reasonable, for the purposes of section 900-50 of the ITAA 1997, is published annually on [ato.gov.au](http://ato.gov.au).

### ***An allowance for overseas travel allowance expenses***

32. Travel allowances are defined in section 900-30 of the ITAA 1997 and are amounts paid to employees to cover travel allowance expenses incurred when travelling away from the payee's ordinary place of residence. Paragraph 6(2)(c) applies to overseas travel allowance expenses.

33. Withholding from a payment to a religious practitioner that relates to overseas travel allowance expenses is varied to nil for amounts that do not exceed the amount the Commissioner considers reasonable, for that income year, for the purposes of section 900-55 of the ITAA 1997.

34. However, there is no reasonable amount relating to overseas accommodation because subsection 900-55(2) of the ITAA 1997 requires the Commissioner to disregard losses or outgoings relating to overseas accommodation when determining the reasonable amount.

35. As a consequence (and unlike for domestic accommodation), the variation provided by this instrument does not apply to travel allowances for overseas accommodation and payers must withhold from them.

36. The amount the Commissioner considers reasonable for the purposes of section 900-55 of the ITAA 1997 is published annually on ato.gov.au.

37. These allowances are the same as the allowances specified in paragraphs (a), (c) and (d) of section 7 in the *Taxation Administration (Withholding Variation for Payment of Certain Allowances) Legislative Instrument 2025*. While that instrument provides a withholding variation for these allowances when paid to an employee, the variation provided by this instrument provides the same treatment where these allowances are paid to a religious practitioner.

### **Section 7 – Variation for payments related to certain locum services**

38. Under section 7, a religious institution is not required to withhold an amount from certain payments it makes to a religious practitioner for locum services performed by the practitioner.

39. Locum services activities are performed by a religious practitioner in temporarily relieving another religious practitioner of their duties. The requirement for a locum may arise when the religious practitioner being relieved is on leave, ill, or when there is a short-term vacancy.

40. However, the variation to nil does not apply to all days of locum service that may be performed by the religious practitioner. It is limited to circumstances where the payment relates to 2 days or less of locum services provided during the quarter and the total days of locum services provided during the quarter in respect of which payment has been made is also 2 or less.

41. This limit ensures that the variation only applies in respect of locum services that are once-off or irregular, rather than those performed on a more enduring or systematic basis.

42. Normal withholding will apply to any payments that relate to more than 2 days of locum service performed in a quarter.

### ***Example***

*A church engages 3 religious practitioners (Don, Bruce and Angela) to provide locum services while their Minister is on 6 weeks of leave. They make payment for the locum services weekly.*

- (a) Don performs the locum service on the first 2 Sundays.*
- (b) Bruce performs the locum service on the following 3 Sundays.*
- (c) Angela then performs 3 consecutive days of locum services on the final Sunday, Monday and Tuesday.*

*The church will not be required to withhold any amount from either payment made to Don. Each payment relates to locum services provided on 2 or less days in the quarter and, when each payment is made, the total number of days of locum services in the quarter in respect of which payment has been made is also 2 or less.*

*Similarly, the church will not be required to withhold any amount from the first 2 payments made to Bruce. However, the church will be required to withhold an amount (using normal withholding rates) from the payment to Bruce in respect of the third Sunday because, although the payment relates to less than 2 days of locum services, the total days of locum services during the quarter in respect of which payments have been made now exceeds 2.*

*The church will also be required to withhold from the payment it makes to Angela in relation to the last 3 days of locum service performed because, although there have been no previous days of locum services provided by Angela in the quarter, the number of days to which this payment relates exceeds 2.*

## **Section 8 – Variation for certain payments related to work or services**

43. Under subsection 8(1), an entity that is not a religious institution is not required to withhold from a payment it makes to a religious practitioner for work or services they perform in pursuit of their vocation as a religious practitioner except for chaplaincy and counselling services where the payment exceeds the relevant limit specified in subsection 8(2).

44. Where a payment exceeds the relevant limits, this instrument will not apply and normal withholding applies to the entire payment.

45. Most situations in which an entity that is not a religious institution makes a payment to a religious practitioner for work or services in pursuit of the religious practitioner's vocation are likely to be once-off or irregular (for example, occasional payments by funeral directors for the performance of a religious funeral service).

46. However, chaplaincy and counselling services may be provided to non-religious entities on a once off, short term, or ongoing long term basis and the limits specified in subsection 8(2) set an objective boundary for payments for chaplaincy and counselling services that can be considered irregular (and to which the variation will apply).

47. The relevant limits that apply to a payment for chaplaincy or counselling services depend on when, and how frequently, the payment is made to the religious practitioner.

48. The amounts that apply in relation to payments made before 1 July 2026 are the same as those specified in the 2016 Instrument and will apply until the end of the 2025–26 financial year. Those amounts are:

- (a) for payments made on a weekly basis – \$150
- (b) for payments made on a fortnightly basis – \$300
- (c) for payments made on a monthly basis – \$650.

49. The amounts that apply in relation to payments made on or after 1 July 2026 have been increased to:

- (a) for payments made on a weekly basis – \$200
- (b) for payments made on a fortnightly basis – \$400
- (c) for payments made on a monthly basis – \$867.

50. These new limits have been worked out by:
- (a) increasing the amount for payments made on a weekly basis specified in the 2016 Instrument in the same proportion as the increase in the Average Weekly Ordinary Time Earnings (AWOTE) figure published by the Australian Bureau of Statistics from May 2015 to May 2025 (being the most recently published AWOTE figures at the time of preparation of the respective instruments)
  - (b) rounding the result to the nearest \$50, and
  - (c) deriving corresponding fortnightly and monthly amounts from the weekly amount using the method for working out fortnightly or monthly amounts specified in the withholding schedule made under section 15-25 of Schedule 1 to the Act that would otherwise apply to a payment made to a religious practitioner.

### **Section 9 – Payment summary, annual report and Single Touch Payroll reporting exemption**

51. An entity that makes a withholding payment may be required to provide an annual payment summary (under 16-155 in Schedule 1 to the Act) or a part-year payment summary (under section 16-160 in Schedule 1 to the Act) to the recipient of the payment, or to report to the Commissioner in relation to that payment (under subsections 16-153(2) or 389-5(1) in Schedule 1 to the Act) (or both). This is the case even if the amount withheld is zero.
52. Under sections 16-153, 16-180 and 389-10 in Schedule 1 to the Act, the Commissioner may exempt an entity from providing a payment summary to a payee, or corresponding reporting to the Commissioner, in respect of a withholding payment.
53. Section 9 provides such exemptions, consequently removing the requirement which would otherwise apply for the entity making a payment covered by section 8 to issue a payment summary to the religious practitioner, provide annual reporting to the Commissioner or provide Single Touch Payroll reporting to the Commissioner in respect of those payments.
54. These exemptions are limited to payments covered by section 8 (payments by an entity that is not a religious institution). The normal reporting requirements will continue to apply to an entity that pays an amount covered by section 6 or 7.

### **Compliance cost assessment**

55. To be confirmed.

### **Consultation**

56. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a determination.
57. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

<b>Due date:</b>	22 January 2026
<b>Contact officer:</b>	Andrew Lipshutt
<b>Email:</b>	<a href="mailto:andrew.lipshutt@ato.gov.au">andrew.lipshutt@ato.gov.au</a>
<b>Phone:</b>	(03) 9285 1588

## Statement of compatibility with Human Rights

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

### **Taxation Administration (Withholding Variation for Certain Payments to Religious Practitioners) Legislative Instrument 2026**

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

This legislative instrument varies to nil the amount an entity must withhold from a payment it makes to a religious practitioner in certain circumstances, including where:

- (a) an entity makes a payment to a religious practitioner that relates to a specified allowance and reasonably expects the religious practitioner will incur deductible expenses at least equal to the amount of the allowance. Withholding is only varied to nil for the part of the payment that does not exceed the limit for the specified allowance. Normal withholding rates apply to any part of the payment that exceeds that limit.
- (b) a religious institution makes a payment to a religious practitioner for locum services performed by the practitioner. Withholding is only varied to nil for payments that relate to no more than 2 days of locum service performed in a quarter, and only where those days are not performed as part of a continuous period of service of 3 or more days. Normal withholding rates apply to payments that relate to any other days of locum service performed in the quarter.
- (c) an entity (that is not a religious institution) makes a payment to a religious practitioner for certain work or services performed by the practitioner. Where the payment relates to chaplaincy or counselling services performed by the practitioner, withholding is only varied to nil for payments that do not exceed a specified limit. Normal withholding rates apply to payments that exceed that limit. This instrument also removes the requirement for that entity to issue a payment summary or provide annual reporting to the Commissioner in respect of these payments.

## Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it merely varies to nil the amount that an entity must withhold from payments made to religious practitioners in certain circumstances.

## Conclusion

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