Explanatory Statement

**Pay as you go withholding – Variation and exemption of withholding requirements for certain payments made to religious practitioners**

## General outline of instrument

1. This instrument is made undersection 15-15, subsection 16-153(6) and section 16-180 of Schedule 1 to the *Taxation Administration Act 1953.*
2. This instrument varies to nil the amount of withholding required by a payer under the pay as you go withholding system for allowance payments, payments made for locum services, and payments made by non-religious entities to religious practitioners, in a certain class of cases. It also removes the requirement to issue payment summaries and provide an annual report for those payments, when they are made by an entity which is not a religious institution.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This legislative instrument repeals Legislative Instruments numbers F2006B00294, F2006B00298 and F2006B00292 registered on 7 February 2006,Legislative Instrument No.F2006B00322 registered on 10 February 2006 and Legislative Instrument No.F2006B00299 registered on 24 February 2006.

## Date of effect

1. The instrument commences on the day after it is registered.

## What is this instrument about

1. The purpose of this instrument is to continue with existing arrangements for withholding and reporting requirements for certain payments made to religious practitioners, as the current Legislative Instruments are due to sunset on 1 April 2016.
2. Legislative Instrument numbers F2006B00294, F2006B00298, F2006B00292 were registered on 7 February 2006, and provide variations to the rate of withholding from payments made to religious practitioners covered by section 12-47 of Schedule 1 to the *Taxation Administration Act 1953* when certain conditions are met. Broadly the variations apply in the following class of cases:
3. allowances which are expected to be fully expended on tax deductible items where the payee can substantiate the expenditure incurred or which the payee would not be required to substantiate because of the provisions contained in Division 900 of the *Income Tax Assessment Act 1997* (ITAA 1997);
4. payments made by a religious institution to a religious practitioner for locum services performed for a period of not greater than two (2) days in a quarter;
5. payments made by an entity that is not a religious institution to a religious practitioner for work or services performed as a religious practitioner except for the performance of chaplaincy and/or counselling services; and
6. payments made by an entity that is not a religious institution to a religious practitioner, for chaplaincy and/or counselling services, where the payment does not exceed amounts stipulated in the Legislative Instrument.
7. This instrument consolidates the five instruments listed in paragraph 3 and continues the existing withholding arrangements, with the exception that the payment amounts stipulated in Legislative Instrument No. F2006B00292 will be increased from 1 July 2016.
8. For that instrument, the withholding variation to nil applied for payments made by an entity that is not a religious institution to a religious practitioner, for chaplaincy and/or counselling services, where the payment does not exceed the following amounts:

- where the entity pays the religious practitioner weekly: $100; or

- where the entity pays the religious practitioner fortnightly: $200; or

- where the entity pays the religious practitioner monthly: $433

This instrument increases these amounts to $150, $300 and $650 respectively for payments made from 1 July 2016, in order to reflect general growth in incomes.

1. This instrument also exempts payment summary and varies annual reporting requirements for an entity which is not a religious institution for certain payments covered by this instrument. Those requirements were formerly contained in Legislative Instrument number F2006B00322 registered on 10 February 2006 and Legislative Instrument number F2006B00299 registered on 24 February 2006.

## What is the effect of this instrument

1. The effect of this instrument is to vary to nil the amount of withholding required by a payer for payments made to religious practitioners in respect to allowances and payments made for locum services.
2. The effect of this instrument is to also vary to nil the amount of withholding required for payments by non-religious entities for work or services performed as a religious practitioner, and for chaplaincy and counselling services up to the amounts stipulated in the instrument, and to remove payment summary and annual reporting obligations for non-religious entities in relation to those payments.
3. This will avoid the need for unnecessary withholding and will make administration easier for payers that include both religious institutions and non-religious entities, for payments that are fully expendable allowances and for minor or infrequent payments made to religious practitioners.
4. An assessment of the compliance cost impact indicates that the impact will be minor for both implementation and on-going compliance costs. The new instrument is of a minor or machinery nature.

## Background

1. This instrument has been developed to ensure that the current withholding and reporting arrangements continue for certain payments made to religious practitioners. The instruments were originally created to lessen withholding and reporting burdens on religious institutions and non-religious entities, to allow religious practitioners to receive payments for allowances, locum services, work and services performed as a religious practitioner, chaplaincy and counselling services, without unnecessary withholding.

## Consultation

1. This instrument was developed in consultation with a number of religious institutions of various faiths and denominations, along with a large non-religious entity where its members make payments to religious practitioners. No negative feedback was received.
2. No further consultation has been conducted as the effect of the instrument is to essentially support current practices.

**Steve Vesperman**

**Deputy Commissioner of Taxation**

4 February 2016

*Legislative references:*

*Taxation Administration Act 1953*

*Legislative Instruments Act 2003*

*Income Tax Assessment Act 1997*

*Human Rights (Parliamentary Scrutiny) Act 2011*

### Statement of compatibility with Human Rights

### This Statement is 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**

This Legislative Instrument varies to nil the amount to withhold from the following payments made to religious practitioners:

* when certain allowances are expected to be fully expended on tax deductible items and the payee either has evidence to substantiate their claim or would not be required to substantiate the expenditure incurred in relation to the allowance;
* payments made by a religious institution to a religious practitioner for locum services performed for a period of not greater than two (2) days in a quarter;
* payments made by an entity that is not a religious institution to a religious practitioner for work or services performed as a religious practitioner except for the performance of chaplaincy and/or counselling services; and
* payments made by an entity that is not a religious institution to a religious practitioner, for chaplaincy and/or counselling services, where the payment does not exceed the amounts stipulated in the Legislative Instrument.

This Legislative Instrument also exempts payment summary and varies annual reporting requirements for the payers of certain payments. Specifically, payers who make the following types of payments will be exempt from providing payment summaries in respect of those payments and are not required to report those amounts in their annual report:

* payments made by an entity that is not a religious institution to a religious practitioner for work or services performed as a religious practitioner except for the performance of chaplaincy and/or counselling services; and
* payments made by an entity that is not a religious institution to a religious practitioner, for chaplaincy and/or counselling services, where the payment does not exceed amounts stipulated in the Legislative Instrument.

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms because the new instrument is of a minor or machinery nature.

**Conclusion**

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