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# PAYG Withholding Variation: Body Corporate

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## Explanatory Statement

### General outline of instrument

1. This instrument is made by the Commissioner of Taxation (the Commissioner) under section 15-15 of Schedule 1 to the *Taxation Administration Act 1953*.
2. This instrument enables a variation to the rate of withholding required by a payer under the pay as you go withholding system for payments in a certain class of cases.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. This legislative instrument repeals and replaces Legislative Instrument No. F2016L00440 registered on the 30<sup>th</sup> of March 2016.
5. 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

6. This instrument commences on the day after its registration on the Federal Register of Legislative Instruments.

### What is this instrument about?

7. Legislative Instrument No.F2016L00440 provided a variation to the rate of withholding to nil from payments made by members to its body corporate for a supply by the body corporate where no ABN has been quoted by the body corporate.
8. Upon registration this instrument repeals and replaces F2016L00440 and continues to provide the same treatment for the affected class of cases.

## **What is the effect of this instrument?**

9. The effect of this instrument is to continue the present withholding arrangements and vary to nil the amount of withholding required to any payment covered by section 12-190 in Schedule 1 to the *Taxation Administration Act 1953* to a body corporate of residential or commercial property made by a member of that body corporate in respect of:
  - (i) body corporate levies;
  - (ii) access fees to inspect books of account, insurance policies, rolls, minutes etc; or
  - (iii) fees payable to the body corporate for the collection of rents from the common property.
10. 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**

11. The original withholding variation was developed in June 2000 to lessen the withholding and reporting burden on body corporates when not quoting their ABN for the payment of levies and fees by members of that body corporate.
12. It was developed after industry consultation and is well understood by participants. It is beneficial to both payers and payees. Allowing its rules to remain in operation will reduce compliance costs for payers who would otherwise have to change their processes.
13. The variation helps avoid unnecessary over withholding from payments made to body corporates.
14. This instrument continues that treatment.

## **Consultation**

15. In March 2016 a draft of this instrument was referred to a peak industry body for Body Corporates and Community Title Management in Australia for dissemination to their members and for feedback, if any. No feedback was received.
16. No further consultation has been conducted as the effect of the instrument is to support current practices.

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### **Legislative references:**

*Taxation Administration Act 1953*

*Acts Interpretation Act 1901*

*Legislation Act 2003*

*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*.

### **PAYG Withholding Variation: Body Corporate**

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 any payment covered by section 12-190 in Schedule 1 to the *Taxation Administration Act 1953* to a body corporate of residential or commercial property made by a member of that body corporate in respect of:

- (i) body corporate levies;
- (ii) access fees to inspect books of account, insurance policies, rolls, minutes etc; or
- (iii) fees payable to the body corporate for the collection of rents from the common property.

#### **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 does not raise any human rights issues.