

18 October 2025

Tax Technical
Inland Revenue

By email: public.consultation@ird.govt.nz

Tēnā koe,

Re: ED0260 Section 17B notices & ED0258 CIR's search powers

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa welcomes the opportunity to comment on Inland Revenue's consultation documents **ED0260** (Section 17B notices) and **ED0258** (The Commissioner of Inland Revenue's search powers). This submission addresses both consultation items. It has been prepared with the assistance of the Law Society's Tax Law Committee.

ED0260: Section 17B notices

2. ED0260 sets out the procedures the Commissioner will follow when issuing notices under section 17B of the Tax Administration Act 1994 (**TAA**), and the consequences of non-compliance. ED0260 will replace the ten-year-old operational statement OS 13/02 once finalised.
3. As a general comment, OS 13/02 covered a wide range of matters arising out of the TAA and, since publication of OS 13/02 in 2013, the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018 has amended the relevant law. The Law Society recommends that in order to aid readability ED0260 should be amended to include a summary of those key changes.
4. Though confined to the exercise by the Commissioner of his section 17B powers, section 17B itself cross-references to seven other provisions of the TAA, which means it may be complex for non-experts to negotiate. For this reason, the provision of guidance by the Commissioner in the form of an operational statement is helpful. The Law Society considers it likely that most readers will take the content of ED0260 at face value, without checking it against the legislation. It is therefore important that it is consistent with the underlying legal framework and that its messaging is clear and accessible. Readers should be able to access and understand information about any limitations to basic rights, their legal duties and the consequences of non-compliance.

Specific comments

5. Page one states that the document outlines the procedures the Commissioner will "generally" follow, with a footnote that refers the reader to a resource about the status of the Commissioner's advice. However, the document contains no reference to the implied 'other

procedures' that the Commissioner may use, nor where the reader could obtain information about them. The Law Society recommends that this aspect be clarified.

6. Paragraphs 50 and 51 discuss "voluntary requests" for information, which is where the Commissioner requests information "*without relying on s 17B*". On this, we note:
 - a. While section 17B establishes a power to require information, it is noted that the information will often be requested voluntarily instead. The question arises as to whether voluntary provision of information is subject to the same legal framework – including the rights and obligations set out in Subpart 3A of the Act. There is at least a serious question as to whether any request for information by the Commissioner is truly voluntary, or whether section 17B applies to any request for information made by the Commissioner. In some circumstances, and assuming that there is a valid distinction at law between voluntary requests and section 17B requests, a taxpayer may be better protected by responding to a section 17B notice. The Law Society recommends that ED0260 be amended to set out the Commissioner's view as to the status of a voluntary request and the status of information voluntarily provided.
 - b. Paragraphs 6, 7, 50 and 51 could imply that a section 17B notice may be used as a punitive measure used where "information is not provided voluntarily in a timely manner" or "where the taxpayer and/or their advisors have previously been uncooperative." The Law Society considers that, in the absence of a clearly expressed legislative intention that section 17B may be used in a punitive manner (and in the absence of a process by which such punitive action is determined to be necessary), such statements are inappropriate.
7. Paragraph 16 outlines the likely content of a section 17B notice, and includes "the date by which the information must be provided." Paragraph 75 then notes that the legislation does not specify a time frame for response, but that the Commissioner will set one. There are stated to be consequences for not responding to a notice by the "required date", including potential prosecution. The Law Society questions whether it is appropriate to suggest that enforcement action may follow the tardy provision of information, noting that section 143(b) of the TAA relates to a failure to provide information when required by a tax law, and not to delay in doing so in a specified timeframe. The point is that the Commissioner's date for the provision of information under a section 17B notice is not a date specified by a tax law.
8. The Law Society notes, for example, *Worksafe v Whakaari Management Limited*,¹ where the Court considered the admissibility of some evidence in relation to Worksafe's exercise of powers under section 168 of the Health and Safety at Work Act 2015. Worksafe had used this power to require individuals who were (or appeared to be) in charge of a workplace to make statements, in this case by way of interview. Whakaari Management Ltd argued that Worksafe had exceeded its statutory powers when it specified the required time and date of the interview. The Court agreed and held that there was no power to require the interview to take place at a set time and place and that this could not be inferred. Rather, the law only

¹ [2023] NZDC 23244.

required the PCBU to give “all reasonable assistance” – which was interpreted as reasonably engaging with Worksafe to set a time and place for the interview.

ED0258: Commissioner of Inland Revenue’s search powers

9. Overall, ED0258 is a helpful explanation of the Commissioner’s interpretation of, and approach to, these powers. It is at its most helpful where it explains the approach that the Commissioner will take by reference to statutory provisions and, sometimes, case law. The feedback set out below identifies areas where certain statements, particularly for the more intrusive elements of the powers, require further explanation or reference to their legal basis.
10. Paragraph 16 states that reasonable force, including the use of a locksmith, can be used to obtain access. Given the level of intrusion, and the potential for physical damage to a taxpayer’s (or some other person’s) property to occur in such circumstances, it would be helpful for the Commissioner to refer to the legislative provision or case law authority that supports this position.
11. Paragraph 18 states that ‘where practicable, Inland Revenue officers will follow a standard process in relation to s 20 (legal privilege) and ss 20B to 20G (non-disclosure right).’ This raises three questions:
 - a. Given the importance of maintaining legal privilege as a fundamental legal right of taxpayers, it would be useful for Inland Revenue to explain when it does not consider it would be practicable to follow the standard process, or to provide relevant examples.
 - b. What is the “standard process” referred to? Cross-reference or explanation of this process should be included here.
 - c. If the standard process is not considered to be practicable, what alternatives steps would the Commissioner contemplate taking and are there examples of such steps having been taken in the past?
12. Paragraph 19 refers to prosecution and penalties for destroying documents or failing to assist under section 17. The Law Society recommends that, in order to be consistent with the approach taken elsewhere in the document, it would be helpful for Inland Revenue to cite or reference the legislative provisions of these offences.
13. Paragraph 110 and the preceding paragraphs refer to the distinction between proper questions and investigative questions. The Commissioner appears to regard the distinction as important. The Law Society notes that there is scope for overlap, or for readers to interpret proper questions as requiring them to answer questions as to the merits of positions. The Law Society considers that it would be helpful if the information or guidance that officers are going to give to assist with the understanding sought in paragraph 110 was published as an appendix to the finalised operational statement.
14. Paragraph 136.4 omits that this power (removal and retention) requires a warrant or occupier consent. This is made clear at paragraph 140, but for clarity the Law Society recommends that it is requirement is also referenced in paragraph 136.4.

15. Paragraph 166 notes that a person may obtain legal advice and have a lawyer present at the search. It states this can help make the search more efficient for the Commissioner. Paragraph 168, however, states that waiting for an advisor to arrive can delay the search, and paragraph 169 notes that it is not necessary to wait for the advisor to arrive before commencing the search.
16. These paragraphs leave the matter of 'how long to wait' somewhat unclear. While this is understandable to a degree, and it will be a balancing act, it is prudent for someone to have ready access to legal advice during a search. The Law Society considers that guidance for both Inland Revenue officers and those to be searched as to what factors should require that a search goes ahead without a legal advisor present (where the occupiers are making arrangements for this to occur) would be helpful.

Substantive content concerns

Search of persons

17. Paragraph 87 states:

The Commissioner considers this includes emptying their pockets if asked to do so, handing over documents and devices such as cellphones or USB drives, and allowing the Inland Revenue officers to search inside items such as handbags, briefcases and backpacks.

18. We acknowledge this reflects some of the current wording in paragraph 63 of OS 13/01. However, the first sentence in paragraph 63 of OS 13/01 has not been carried across: "Noting the restrictions set out in the SSA, the Commissioner's view is that officers are not empowered to directly search persons." It is not clear whether this means the Commissioner's views have changed and, if they have changed, what the legislative authority for that change in view is. As far as the Law Society is aware, nothing has occurred that would mandate such a change and the qualifying first sentence should be carried across.
19. The nature of the search described could effectively amount to search of a person (in particular, a search of pockets). Section 17 of the TAA relates to access to property and documents, and it is not clear this is directed at the search of a person. If the Commissioner is accessing business premises, there could be individuals there who are unconnected with the matters at issue, or they could have personal mobile phones on them, for example. If such an intrusive power were intended, we are of the view that it would be stated explicitly.
20. If (contrary to the Law Society's view of the law) the Commissioner considers that section 17 does in fact allow the search of a person, ED0258 should state the legislative or case law authority for this.

Detention and the Bill of Rights

21. Paragraph 96 states that "the obligations to provide assistance and answer proper questions under s17(3) do not amount to a detention within the meaning of s 23 of the NZBORA." A similar observation is made at paragraph 82.
22. The Law Society does not consider this to be quite so clear cut. It will be a question of fact and degree. It may be that the way a search of premises is undertaken, including the length

of time and the nature and extent of assistance that is required (including, for example, if an Inland Revenue officer does not permit a person to leave for an appointment, to pick up children, or to use bathroom facilities), could amount to detention. That is, a person is not free to leave the premises until they have provided all assistance and answered any proper questions raised by Inland Revenue.

23. While the Law Society agrees that Inland Revenue does not have the power to detain a person under section 17, and therefore section 23 of the Bill of Rights should not be triggered, there remains a risk that in some circumstances a search may be conducted in a way that amounts to a detention. Arbitrary detention under section 22 of the Bill of Rights can arise where an individual has a reasonably held belief, induced by the conduct of the Police or other official, that they are not free to leave.²
24. The Law Society recommends this aspect of ED0258 is amended to make it clear that Inland Revenue cannot detain a person while undertaking a section 17 search, and that the Commissioner will ensure that, wherever assistance with a search is required, such assistance will be required in a manner that does not infringe section 22 of the Bill of Rights.

Further assistance

The Law Society is available to answer any questions or provide further information in relation to this submission. Please contact Aimee Bryant (aimee.bryant@lawsociety.org.nz).

Nāku noa, nā



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Vice President

² *R v M* [1995] 1 NZLR 242, p 244 line 50, p 246 line 11.