

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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Notes | Pitopito kōrero: This draft operational statement on the Commissioner of Inland Revenue's search powers updates and will replace OS 13/01 once finalised.

OPERATIONAL STATEMENT

The Commissioner of Inland Revenue's search powers

Issued: XX Month 2024

ED0258

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This operational statement outlines the procedures the Commissioner of Inland Revenue will generally follow when exercising the Commissioner's search powers under ss 17, 17C and 17D of the Tax Administration Act 1994 and the Search and Surveillance Act 2012.¹

¹ See the Commissioner's Statement on [Status of Commissioner's advice](#) for further information on the status of public statements like this operational statement.

All legislative references in this statement are to the Tax Administration Act 1994, unless specified otherwise.

START DATE [issue date](#)

REPLACES

- **OS 13/01:** The Commissioner of Inland Revenue's search powers

Introduction

1. This statement outlines how the Commissioner of Inland Revenue (the Commissioner) will exercise one of the Commissioner's information gathering powers: the search powers under ss 17, 17C and 17D of the Tax Administration Act 1994 (TAA) and the Search and Surveillance Act 2012 (SSA). The statement aims to provide taxpayers and their advisors with information about what to expect when the Commissioner uses these powers, and the Commissioner's expectations of taxpayers.
2. This statement is supplemented by [SPS 10/02: Imaging of electronic storage media](#) and is to be read in conjunction with that SPS.

Summary

3. Under s 17 of the TAA and in accordance with Part 4 of the SSA the Commissioner may access any property or documents. This is for the purpose of inspecting any documents, property, process or matter which are considered necessary or relevant for the purposes and principles in ss 16 and 16B and/or is likely to provide information that would otherwise be required for the purposes of the Inland Revenue Acts and any function lawfully conferred on the Commissioner.
4. These search powers will be exercised by authorised Inland Revenue officers. An authorised Inland Revenue officer will have been delegated authority to exercise the powers in ss 17, 17C and 17D.
5. The purpose of these powers is to provide the Commissioner with the necessary powers to enable:
 - 5.1. the collection of all taxes or duties imposed by the Inland Revenue Acts:

- 5.2. the carrying into effect of any of the Inland Revenue Acts:
 - 5.3. the carrying out of functions lawfully conferred on the Commissioner.²
6. Section 17C supports these powers of access by enabling the Commissioner to:
 - 6.1. take an extract from the document:
 - 6.2. make a copy of the document:
 - 6.3. remove the document from the place to make a copy:
 - 6.4. remove the document from the place and retain it for a full and complete inspection.
7. Section 17(1) is a warrantless power of entry. This means that, except for private dwellings, the Commissioner does not need to obtain a warrant to access the property or documents. Documents include electronically stored information.
8. In order to enter a private dwelling, the Commissioner must obtain either:
 - 8.1. the consent of the occupier; or
 - 8.2. a warrant issued under s 17D.³
9. The Commissioner can remove documents for copying, and these must be returned as soon as practicable.⁴ The Commissioner can also remove and retain documents for a full and complete inspection but in these cases the Commissioner needs the consent of the occupier or a warrant issued under s 17D.⁵
10. Warrants can be obtained from an issuing officer. An issuing officer is a District Court Judge, a Judge of the High Court or an issuing officer who has been authorised by the Attorney-General. The Attorney-General may authorise any Justice of Peace, Community Magistrate, Registrar or Deputy-Registrar or any other person to act as an issuing officer.⁶
11. The Commissioner will use these search powers consistent with the legislation and will adopt a responsible practice that recognises the intrusive nature of these powers. The SSA, the New Zealand Bill of Rights Act 1990 (NZBORA) and the TAA provide a

² Section 16(a).

³ Section 17(2).

⁴ Section 17C(2).

⁵ Section 17C(3).

⁶ Section 17D(6) and ss 3 and 108 of the SSA.

statutory framework and principles for exercising the Commissioner's search powers. These are supplemented by these guidelines and the Commissioner's own internal checks and guidance to ensure the powers are exercised in a way that is appropriate to the circumstances.

12. Parts of the SSA apply to the Commissioner's search powers, as well as setting out requirements for the Commissioner and taxpayers to follow. The SSA also sets out the process by which warrants are obtained.
13. This statement provides taxpayers and their advisors with information about what to expect when the Commissioner exercises the search powers, including information on the processes the Commissioner will follow in relation to legal privilege (s 20) and non-disclosure rights (ss 20B to 20G). This statement also provides information on what the legislation requires of taxpayers and their advisors.
14. The Commissioner's search powers will generally be exercised when, in the Commissioner's opinion, other means of obtaining information are inappropriate or inadequate. Other information gathering powers do not have to be used before the Commissioner exercises the s 17 search powers, and these search powers can be exercised in conjunction with those other information gathering powers.
15. Occupiers of land, or a building, or a place accessed by the Commissioner under s 17 are required to:
 - 15.1. provide all reasonable facilities and assistance for the effective exercise of the powers under ss 17 and 17C; and
 - 15.2. to answer all proper questions relating to the effective exercise of the powers under s 17.⁷
16. The Commissioner can use reasonable force, including the services of a locksmith, where necessary to open property, such as locked doors and cabinets.
17. When documents are removed, owners of a document may inspect and may obtain a copy of the document at the premises to which the documents are taken.⁸
18. Where practicable, Inland Revenue officers will follow a standard process in relation to the protections in s 20 (legal privilege) and ss 20B to 20G (non-disclosure right).
19. Occupiers and other people who take steps to destroy documents or who fail to assist as required under s 17, or otherwise obstruct the Commissioner, could be liable to

⁷ Section 17(3).

⁸ Section 17C(5).

prosecution under the TAA and SSA. The penalties for such offences range from fines to sentences of imprisonment.

20. The Commissioner considers the powers provided in ss 17 and 17C to be essential to Inland Revenue's compliance functions and duties under the Revenue Acts. These powers will be exercised responsibly, preserving legal privilege and non-disclosure rights of taxpayers (and others), and in compliance with the NZBORA where applicable.

Search and Surveillance Act 2012

21. The purpose of the SSA is to facilitate the monitoring of compliance with the law and the investigation and prosecution of offences in a manner that is consistent with human rights values.⁹
22. The powers in the TAA are supplemented by various provisions of the SSA. These include clarifications to the Commissioner's powers, requirements for the Commissioner and taxpayers to follow, and the process by which warrants are obtained.
23. Not all of the provisions in the SSA apply to the Commissioner.¹⁰
24. The SSA took effect on the TAA from 1 September 2013.¹¹

Definitions

25. The Commissioner's search powers in the TAA were rewritten with effect from 18 March 2019. The rewrite was designed to make the information collection provisions in the TAA clearer and more navigable. Subpart 3A, ss 16 to 17K (the new law) are the previous ss 16 to 19, 21 and 21BA (the old law) of the TAA in rewritten form and are intended to have the same effect.¹² The case law on the old law is, therefore, still applicable to the new law.
26. The Commissioner considers that the principle in *Woodgate Ltd v Commissioner of Inland Revenue* [2023] NZHC 1132 that s 17B has the same effect and is not intended to change the nature of the Commissioner's information gathering powers applies to the whole of Subpart 3A:

⁹ Section 5 of the SSA.

¹⁰ Section 17D(5) and the schedule to the SSA.

¹¹ See the Search and Surveillance Act Commencement Order 2013.

¹² Section 227F.

[49] It is clear from the former s 17(1) that the current s 17B is not substantially different in effect. Additionally, the Taxation (Annual Rates for 2018—19, Modernising Tax Administration, and Remedial Matters) Act 2019 does not appear to have been intended to change the nature of the Commissioner's information gathering powers, but rather to generally (as an omnibus bill), simplify, improve, and modernise the tax system

27. Where a previous judgment, its reasoning or another publication refers to a predecessor section, this statement will refer to the new section unless otherwise specified.

Computer system

28. Section 3 of the SSA defines this as follows:

computer system—

- (a) means –
- (i) a computer; or
 - (ii) 2 or more interconnected computers; or
 - (iii) any communication links between computers or to remote terminals or another device; or
 - (iv) 2 or more interconnected computers combined with any communication links between computers to remote terminals or any other device; and
- (b) includes any part of the items described in paragraph (a) and all related input, output, processing, storage, software or communication facilities, and stored data

Document

29. Section 3 of the TAA defines this as follows:

document means—

- (a) a thing that is used to hold, in or on the thing and in any form, items of information:
- (b) an item of information held in or on a thing referred to in paragraph (a):
- (c) device associated with a thing referred to in paragraph (a) and required for the expression, in any form, of an item of information held in or on the thing

Enforcement officer

30. Section 3 of the SSA defines this as follows:

enforcement officer means—

- (a) a constable; or
- (b) any person authorised by an enactment specified in column 2 of the Schedule, or by any other enactment that expressly applies any provision in Part 4, to exercise a power of entry, search, inspection, examination, or seizure

31. Inland Revenue officers whom the Commissioner has authorised to exercise the powers under ss 17 and 17C fall within this definition of “enforcement officer.”

Full and complete inspection

32. Section 3 of the TAA defines this as follows:

full and complete inspection—

- (a) includes use as evidence in court proceedings:
- (b) does not include removal to make copies under sections 17C and 17D

Inland Revenue officer in charge

33. This term is not defined in the TAA. The Inland Revenue officer in charge is the officer who has charge of the search. They will identify themselves to the occupier(s) and will be the primary contact point for the occupier(s) and any advisors. This person is authorised to exercise the powers under ss 17 and 17C of the TAA and the applicable provisions of the SSA. They will hold an authority card which can be shown to occupiers and their advisors as confirmation of their authority as the officer in charge.

Necessary or relevant

34. This term is not defined in the TAA. For the s 17 search power it is what, in the Commissioner’s opinion, is necessary or relevant. “Necessary or relevant” for the purposes of s 17 means that the documents are necessary or relevant for the purposes and principles set out in ss 16 and 16B.

35. The purposes set out in s 16 include:

- (a) to provide the Commissioner with the necessary powers to enable -
 - (i) the collection of all taxes and duties imposed by the Inland Revenue Acts:

- (ii) the carrying into effect of any of the Inland Revenue Acts:
 - (iii) the carrying out of functions lawfully conferred on the Commissioner.
- (b) to enable the collection by the Commissioner of revenue information, including the power to –
 - (i) gain access to property or documents; and
 - (ii) remove documents to make copies; and
 - (iii) to require a person or entity to produce documents or to provide or allow access to information to the Commissioner:

36. The principles set out in section 16B include:

- (1) The collection of revenue information may be made for 1 or more of the following purposes:
 - (a) to protect the integrity of the tax system:
 - (b) to carry into effect the revenue laws:
 - (c) to carry out or support a function lawfully conferred on the Commissioner:
 - (d) to encourage compliance with the revenue laws:
 - (e) for any other function lawfully conferred on the Commissioner.
- (2) In collecting revenue information, the Commissioner may access property or documents only if taking that action is—
 - (a) necessary or relevant for one of the purposes noted in section 16B(1); and
 - (b) considered likely to provide the information required.

Occupier

37. The term occupier is not defined in the TAA or the SSA. For the purposes of ss 17 and 17C, the term is given a wide meaning. It includes all persons entitled to be on the property, including employees, tenants and family members, and is not restricted to the owner or lease holder. This may or may not include the taxpayer under investigation.
38. The Inland Revenue officer in charge will take reasonable measures to satisfy themselves that the occupier they are dealing with has lawful occupation of the place and is the appropriate person to deal with, and may also require other occupiers to provide assistance or answer proper questions.

39. A person under 14 years of age may not be treated as an occupier.¹³

Private dwelling

40. Section 17(5) of the TAA defines this as follows:

private dwelling means a building or part of a building occupied as residential accommodation, and includes—

- (a) a garage, shed, and other building used in connection with the private dwelling; and
- (b) any business premises that are, or are within, a private dwelling.

Proper questions

41. This term is not defined in the TAA. For the purposes of s 17(3)(b), proper questions are those relating to the effective exercise of powers under s 17. This does not include investigative questions. See paragraphs 103 to 121 for a discussion of how proper questions will be managed.

Property or documents

42. Section 17(5) of the TAA defines, for ss 16, 16B, 17 and 17D, “property or documents” as follows:

property or documents includes—

- (a) all lands, buildings, places, or other premises:
- (b) a document, whether in the custody or under the control of a public officer, or a body corporate, or any other person

43. In the Commissioner’s view a vehicle is included in the definition of “property”.

Reasonable facilities and assistance

44. This term is not defined in the TAA. For the purposes of s 17(3)(a), the provision of reasonable facilities and assistance means such assistance as the Inland Revenue officer in charge of the search considers necessary for the effective exercise of the search powers. This is reinforced by the SSA, and examples include unlocking cabinets, providing access to bathroom and kitchen facilities, the provision of

¹³ See s 131(6)(a) and s 95(1) of the SSA. However, a person under 14 years of age who is found driving a vehicle with no passenger of or over the age of 14 years can consent to the search of the vehicle; see s 95(2) of the SSA.

electricity, and remaining outside specified areas when required to do so (see paragraphs 94 to 102 and 122 to 123).

Search power

45. Section 3 of the SSA defines this as follows:

search power, in relation to any provision in this Act, means—

- (a) every search warrant issued under this Act or an enactment set out in column 2 of the Schedule to which that provision is applied; and
- (b) every power, conferred under this Act or an enactment set out in column 2 of the Schedule to which that provision is applied, to enter and search, or enter and inspect or examine (without warrant) any place, vehicle, or other thing, or to search a person

46. The power in section 17, including the power to access private dwellings under warrant, is a search power for the purposes of the SSA.¹⁴

Operational Practice

Overview

47. This section sets out the operational practice Inland Revenue officers will follow when exercising search powers and what the legislation requires of taxpayers, owners and occupiers, and their advisors.

48. This section covers the following matters:

48.1. When Inland Revenue will use s 17.

48.2. Warrants.

48.3. Entry, Identification and Advice of Rights:

48.3.1. Entry.

48.3.2. Identification and notices.

48.3.3. Remote access search.

48.3.4. Advice of rights.

¹⁴ Schedule of the SSA.

- 48.4. Exercising search powers (including taxpayers' obligations):
 - 48.4.1. Access.
 - 48.4.2. Search.
 - 48.4.3. Assistants.
 - 48.4.4. Reasonable facilities and assistance.
 - 48.4.5. Proper questions.
 - 48.4.6. Power to exclude.
 - 48.4.7. Obstruction and other offending.
 - 48.4.8. Other Inland Revenue activities.
 - 48.4.9. Electronically stored information.
 - 48.4.10. Removal of documents.
- 48.5. Legal advisors, tax agents and support persons.
- 48.6. Legal privilege and the non-disclosure right.
 - 48.6.1. Legal privilege.
 - 48.6.2. Tax advice document.
 - 48.6.3. Legal privilege and non-disclosure right process.
- 48.7. After the search:
 - 48.7.1. Access to documents;
 - 48.7.2. Return of documents.
- 48.8. Offences.

When Inland Revenue will use s 17

- 49. The efficient and effective use of information gathering powers such as those provided in ss 17 and 17C are necessary for the Commissioner to obtain information to verify various tax liabilities, to deter and detect offending, and to assist in tax collection.

50. The Commissioner may use s 17 where it is considered appropriate in the context of the particular investigation, and where it is reasonable. This includes, but is not limited to, cases where, in the Commissioner's opinion, there is a risk or history of non-compliance and/or a lack of co-operation, where it is likely that documents may be at risk, or likely that the case involves revenue offending (for example, tax crimes, including fraud and evasion). Section 17 may also be used to address problems of aggressive tax planning and tax avoidance.
51. It is not necessary for the Commissioner to use other avenues to obtain the information or other powers, such as s 17B, before exercising the powers in ss 17 and 17C.
52. The Commissioner recognises the intrusive nature of the exercise of s 17, and the need to use s 17 in a way that recognises the importance of the rights and entitlements affirmed in other enactments, including the NZBORA, the Privacy Act 2020 and the Evidence Act 2006, while ensuring the effectiveness of the Commissioner's investigative tools. The Inland Revenue officer in charge will explain clearly to occupiers what their rights and obligations are (see paragraphs 68 to 83).

Warrants

53. Section 17(1) is a warrantless power of entry. This means the Commissioner does not need to obtain a warrant to access all lands, buildings (except for private dwellings), places or other premises, and all documents (whether in the custody or under the control of a public officer, a body corporate, or any other person).
54. In order to access a private dwelling, the Commissioner must obtain either:
 - 54.1. the consent of an occupier; or
 - 54.2. a warrant issued under s 17D.
55. If the Commissioner knows the access is to be of a private dwelling, the Commissioner's usual practice is to apply for a warrant (rather than seeking the consent of the occupier). This provides occupiers with judicial oversight, helping balance their privacy rights against law enforcement needs. If part of a search area is found to contain a private dwelling, and if a private dwelling warrant is not already held, the officer in charge will seek either the occupier's consent or a warrant before searching that area.
56. The Commissioner can remove documents, including electronically stored information, to make a copy or to retain the documents for a full and complete inspection. To remove documents from any place, for inspection, the Commissioner must obtain either:

- 56.1. the consent of an occupier; or
 - 56.2. a warrant issued under s 17D.
57. The Commissioner does not require the consent of an occupier or a warrant to remove documents for copying under section 17C(1)(c). Copying of documents, including the imaging of electronically stored information, can occur either on-site or elsewhere.
58. Although s 17C(1)(d) provides that documents can be removed and retained for a full and complete inspection with the occupier's consent, the Commissioner will generally obtain warrants for the removal of documents for a full and complete inspection. In most cases, having a warrant to remove the documents will reduce the amount of time Inland Revenue officers will be present at the premises.
59. Subpart 3 of Part 4 of the SSA sets out the process by which warrants are to be obtained. An application for a warrant is required to contain a description of the items or other evidential material believed to be in the place, vehicle or other thing that are sought by the Commissioner.¹⁵ However, the warrant does not need to contain a description of what may be seized.¹⁶
60. The Commissioner is able to seize other items that are in plain view during a search when the Commissioner has reasonable grounds to believe that they could have seized the items under either a search warrant or a search power.¹⁷
61. Warrant applications are made without notice to the occupier and may include confidential information. The Commissioner will comply with the Official Information Act 1982, the Privacy Act 2020, the Criminal Disclosure Act 2008 and with any Court order to disclose information. Where a request for information in a warrant application is received, the Commissioner will particularly consider:
- 61.1. the tax confidentiality rules in the TAA:
 - 61.2. s 6(c) of the Official Information Act 1982, s 53(c) of the Privacy Act 2020 and s 16(a) of the Criminal Disclosure Act 2008 which provide that a reason for withholding information is if disclosure is likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

¹⁵ Section 98(1)(e) of the SSA.

¹⁶ Section 103(4)(g) of the SSA, which requires a warrant to contain a description of what may be seized, is excluded by s 17D(5) of the TAA from applying to s 17D.

¹⁷ Section 123 of the SSA.

62. While s 100(3) of the SSA provides that an issuing officer may allow an application for a search warrant to be made orally (for example, by telephone call), the Commissioner will generally seek warrants by written application.

Entry, Identification and Advice of Rights

Entry

63. Section 17(1) provides the Commissioner with wide powers of access to any property or documents. Property or documents is widely defined in s 17(5) and includes all lands, buildings, places or other premises. This includes motor vehicles, business premises, warehouses, and private dwellings (which require a court warrant to access). This is reflected in s 110 of the SSA.
64. Inland Revenue officers exercising search or seizure powers are able to use force in respect of any property (for example, to open doors and access cabinets) that is reasonable for the purposes of carrying out the search.¹⁸ These powers to use reasonable force do not authorise the use of force against persons.
65. An example of reasonable force is the use of a locksmith to gain entry if no one is present or if the occupier refuses entry. The use of non-Inland Revenue officers, such as locksmiths, is authorised by provisions in the TAA and SSA which permit Inland Revenue officers to bring along such assistants as they consider necessary (see paragraphs 88 to 93). Where locksmiths or other means of reasonable force are used to gain entry, and new locks and/or keys are required, the Inland Revenue officer in charge will attempt to contact the property owner and provide them with the new keys.
66. The Inland Revenue officer in charge will accompany all assistants when they first enter the place to be searched, and will supervise any assistant (that is not a Police constable) as is reasonable in the circumstances.¹⁹
67. Any Inland Revenue officer who has been delegated the s 17 powers is not an "assistant" under the SSA. In practice any such officer will be accompanied by the officer in charge upon first entry and will be subject to such supervision by the officer in charge as is reasonable in the circumstances.

¹⁸ Sections 110(c), 113(2)(b) and 131(3) of the SSA.

¹⁹ Sections 113(3), (4) and (5) of the SSA

Identification and notices

68. Before initial entry into or onto the place or vehicle or other thing to be searched under s 17 or a warrant, the Inland Revenue officer in charge of the search will:
- 68.1. Announce their intention to enter and search the place, vehicle or other thing under s 17 or a warrant, whichever is applicable.²⁰
 - 68.2. Identify themselves by name or by unique identifier.²¹
 - 68.3. Produce evidence of their identity.²²
 - 68.4. Produce the warrant, if any, before or on initial entry.²³ The Inland Revenue officer in charge will provide the occupier of the place or person in charge of the vehicle or other thing with a copy of the search warrant if there is one.²⁴
 - 68.5. Produce the evidence of identity and the warrant whenever subsequently reasonably required to do so.²⁵
 - 68.6. Where the search is not being carried out under a warrant and it is reasonably practicable in the circumstances to do so, provide the occupier of the place or person in charge of the vehicle or other thing with a written notice setting out:
 - 68.6.1. that the search is taking place under s 17;²⁶ and
 - 68.6.2. the reason for the search.²⁷ This will be in general terms describing the nature of the investigation, but not setting out specific detail. For searches being carried out under warrants, the reason for the search may be set out in the warrant.
 - 68.6.3. If there is more than one occupier present, it will be sufficient to provide the information to only one occupier.²⁸

²⁰ Section 131(1)(a)(i) of the SSA.

²¹ Section 131(1)(a)(ii) of the SSA.

²² Section 131(1)(a)(iii) of the SSA and s 17D(4).

²³ Section 17D(4).

²⁴ Section 131(1)(b)(i) of the SSA.

²⁵ Section 17D(4).

²⁶ Section 131(1)(b)(v)(A) of the SSA.

²⁷ Section 131(1)(b)(v)(B) of the SSA.

²⁸ *Erasmus v R* [2017] NZCA 222.

69. The Inland Revenue officer in charge will also identify themselves to the occupier as the main contact person for the occupier and any advisor during the search of the premises.
70. If the occupier of a place is not present during the search, or no person is in charge of the vehicle or other thing, the Inland Revenue officer in charge will leave the following in a prominent position on completion of the search:
- 70.1. A copy of the search warrant (where the search was carried out under a search warrant).²⁹
 - 70.2. A notice setting out:³⁰
 - 70.2.1. The date and time of the start and finish of the search.
 - 70.2.2. The name or unique identifier of the Inland Revenue officer in charge of the search.
 - 70.2.3. Where the search was exercised without a warrant, that it took place under s 17 and the reason for the search.
 - 70.2.4. The address and contact details of the Inland Revenue officer to whom enquiries should be made. This may not necessarily be the Inland Revenue officer in charge of the search.
 - 70.2.5. If nothing was seized, the fact that nothing was seized.
 - 70.2.6. If anything was seized, the fact that seizure occurred.
 - 70.2.7. If anything were seized, and where an inventory is not provided at the time, a statement that an inventory will be provided to the occupier no later than seven days after the seizure.
 - 70.2.8. If documents were seized, the information set out in paragraph 149 to the extent applicable.
71. Where it is not reasonably practicable to take the steps set out in paragraph 70, the Inland Revenue officer in charge will provide this information to the occupier of the place or owner of the vehicle or other thing no later than seven days after the search.³¹

²⁹ Section 131(4)(a) of the SSA.

³⁰ For [70.2.1] to [70.2.7] see s 131(5) of the SSA.

³¹ Section 131(4)(b) of the SSA

72. By taking the above steps, the Inland Revenue officer in charge of the search will have met the identification and notice requirements of TAA and the SSA. However, in the following circumstances, the Inland Revenue officer in charge is permitted to elect not to carry out some of these requirements:
- 72.1. Where the only persons present during the search are under the age of 14, the Inland Revenue officer in charge will not provide the information in paragraphs 68 and 70. They are not occupiers or in charge of a vehicle or other thing, except in very limited circumstances in relation to vehicles.³²
 - 72.2. Where the Inland Revenue officer in charge has reasonable grounds to believe any person present during the search is not the occupier of the place or is not the person in charge of the vehicle or other thing being searched, the Inland Revenue officer in charge will not provide that person with the information in paragraphs 68 and 70.³³
 - 72.3. Where the Inland Revenue officer in charge has reasonable grounds to believe that no person is lawfully present in or on the place, vehicle or other thing to be searched, they can elect not to carry out paragraph 68.1 to 68.6.³⁴
 - 72.4. Where the Inland Revenue officer in charge has reasonable grounds to believe that compliance with paragraphs 68.1, 68.2 and 68.3 would:
 - 72.4.1. endanger the safety of any person; or
 - 72.4.2. prejudice the successful exercise of the entry and search power; or
 - 72.4.3. prejudice ongoing investigationsthey may elect to not carry out paragraph 68.1 to 68.3.³⁵
 - 72.5. Section 131(2)(b) of the SSA (ie paragraph 72.4) does not authorise the Commissioner to dispense with the obligation to provide a copy of the search warrant or the enactment and reason for the warrantless search.³⁶

Postponement of Obligation to Leave Copy of Warrant

73. The Inland Revenue officer in charge may apply to a Judge for a postponement of the obligation to comply with paragraphs 70 and 71 (to leave a copy of the warrant, if

³² Section 131(6)(a)(i) of the SSA

³³ Section 131(6)(a)(ii) of the SSA.

³⁴ Section 131(2)(a) of the SSA.

³⁵ Section 131(2)(b) of the SSA.

³⁶ *McPherson v R* [2021] NZCA 249 at [23].

any, and a notice, either at completion of the search or no later than seven days after the search if no occupier/person in charge of vehicle or thing is present) on the grounds that compliance would:

- 73.1. endanger the safety of any person; or
 - 73.2. prejudice ongoing investigations.³⁷
74. If there is a search warrant, an application to postpone may be made at the time of the initial application for the warrant or until the expiry of seven days after the warrant is finally executed.³⁸
75. If there is no search warrant, an application to postpone may be made until the expiry of seven days after the search power is exercised.³⁹
76. The Judge may postpone for a specified period not exceeding 12 months if the Judge is satisfied there are reasonable grounds for believing that compliance would endanger the safety of any person or would prejudice ongoing investigations.⁴⁰

Remote access search

77. The Commissioner is able to undertake remote access searches under s 17(1). See paragraph 29 for the definition of "document".

78. A remote access search is defined in s 3 of the SSA as follows:

Remote access search means a search of a thing such as an Internet data storage facility that does not have a physical address that a person can enter and search.

79. While the Commissioner does not exercise a remote access search power under the SSA but instead conducts remote access searches pursuant to his power under s 17(1), the definition in the SSA is what the Commissioner means by remote access search for the purpose of this statement.

80. An officer conducting a remote access search under s 17(1) will perform the search in a manner that is consistent with the principles described in this statement.

³⁷ Section 134 of the SSA.

³⁸ Section 134(2)(a) of the SSA.

³⁹ Section 134(2)(b) of the SSA.

⁴⁰ Section 134(3) of the SSA.

Advice of rights

81. The Commissioner's use of s 17 is subject to the right to be secure against unreasonable search and seizure.⁴¹
82. Although a person who is on a property when the Commissioner accesses the property is not detained or arrested, to ensure the search powers in the TAA and the SSA are exercised consistently with the protections in the NZBORA, the Inland Revenue officer in charge of the search will provide the occupier with the following:
 - 82.1. Advice of the occupier's ability to consult and instruct a lawyer.
 - 82.2. An explanation of the occupier's obligation to provide reasonable facilities and assistance and to answer proper questions.
 - 82.3. An explanation of the privilege against self-incrimination under s 60 of the Evidence Act 2006 where proper questions are being asked that may also constitute investigative questions; refer to paragraphs 103 to 121 for more information on proper questions and investigative questions.
 - 82.4. A general explanation of the processes that will be undertaken on-site.
83. The Inland Revenue officer in charge of the search will provide the occupier with a written copy of the information in paragraph 82.

Exercising search powers (including taxpayers' obligations)

Access

84. Access will be undertaken at a time the Commissioner considers will balance causing minimal disruption to the occupier with the purpose of the search and the operational needs of the investigation.
85. Where no one is present at the premises being searched, Inland Revenue officers are able to use reasonable force to gain access. This includes forced entry or engaging the services of a locksmith to enter the premises, and disarming alarms.

Search

86. The power of access in s 17 includes the power to search for items covered by that section.

⁴¹ Section 21 of the NZBORA.

87. Occupiers are required to provide Inland Revenue staff with reasonable facilities and assistance in carrying out the search.⁴² 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. It also includes providing login and password details to officers to allow them to access devices, accounts or platforms holding relevant information.

Assistants

88. Section 17(4) authorises a person whose presence at a place is considered by the Commissioner to be necessary for the effective exercise of the powers under s 17 to accompany the Commissioner to a place. Section 113(4) of the SSA sets out the Commissioner's obligations in relation to those assistants; see paragraph 66. Examples of assistants include digital or other computer forensic experts, locksmiths, Police constables, dog control officers, interpreters, landlords and local council staff.
89. Where an assistant is not an Inland Revenue officer who has been delegated the s 17 powers or a Police constable, the Inland Revenue officer in charge will accompany that assistant when they first enter the place to be searched, and provide such supervision as is reasonably necessary.⁴³ Where the assistant is a Police constable, these requirements do not apply.⁴⁴
90. Assistants have all of the powers given to them under s 113(2) of the SSA. The powers include, for example, a locksmith using reasonable force in respect of any property,⁴⁵ or someone using reasonable measures to access a computer system or other data storage device.⁴⁶
91. Every assistant is subject to the control of the Inland Revenue officer in charge.⁴⁷
92. If a Police constable is an assistant, they are able to, without direction or supervision by the Inland Revenue officer in charge, exercise any power ordinarily exercisable by that constable.⁴⁸ This includes any power in relation to any obstruction of entry or the search and seizure by occupiers.

⁴² Section 17(3)(a).

⁴³ Section 113(4) of the SSA.

⁴⁴ Section 113(5) of the SSA.

⁴⁵ Section 113(2)(b) of the SSA.

⁴⁶ Section 113(2)(h) of the SSA.

⁴⁷ Section 113(1) of the SSA.

⁴⁸ Section 113(3) of the SSA.

93. Where the Commissioner has engaged the services of assistants who are not Inland Revenue officers to assist in the exercise of s 17, they will be required to have first signed a certificate of confidentiality under s 18B(2). This includes a Police constable.

Reasonable facilities and assistance

94. The Commissioner's search of premises may require some degree of assistance from occupiers of those premises, including unlocking doors and providing electricity. Section 17(3)(a) requires occupiers to provide reasonable facilities and assistance to the Commissioner.
95. Refer to paragraph 82 for further information as to what occupiers will be told.
96. The obligations to provide assistance and answer proper questions under s 17(3) do not amount to a detention within the meaning of s 23 of the NZBORA. However, occupiers will be treated with humanity and respect for the inherent dignity of the person.
97. The Inland Revenue officer in charge will ask the occupiers to provide assistance at an early stage. Wherever possible, the Inland Revenue officer in charge will avoid keeping occupiers longer than is necessary for them to assist during the course of the search.
98. When requiring assistance from occupiers, Inland Revenue will take into account the following factors:
- 98.1. who is the occupier and their role in relation to the premises (see paragraph 37);
 - 98.2. the compliance cost to the occupier;
 - 98.3. the need for the occupier to also meet the needs of their business during the search (where the search occurs during that business' working hours); and
 - 98.4. the purpose for which the search powers are being exercised.
99. Where the occupier is required to provide assistance, the Inland Revenue officer in charge will inform them of the reason for this, and that they have the right to refrain from making any incriminating statements (unless it is a proper question within the parameters discussed in paragraphs 103 to 121).
100. The SSA also imposes additional obligations on a "specified person" to provide access information and other information or assistance that is reasonable and necessary to allow access to data held in a computer system or other data storage

device or internet sites.⁴⁹ A specified person is not required to give any information tending to incriminate them.⁵⁰

101. A “specified person” is:
- 101.1. a user of a computer system or other data storage device or an internet site who has relevant knowledge of that system, device, or site; or
 - 101.2. a person who provides an internet service or maintains an internet site and who holds access information.⁵¹
102. A specified person may be a person that is not an occupier.

Proper questions

103. When the search power in s 17 is being exercised, the occupier must answer all “proper questions” as, and in the manner, required by the Commissioner.⁵²
104. There is an important distinction between:
- 104.1. proper questions, and
 - 104.2. investigative questions.
105. *Proper questions* are those relating to the effective exercise of powers under s 17. They are questions to facilitate access to property or documents for the purpose of inspecting a document, property, process, or matter. What is a proper question will depend on the context. They might, for example, include questions about how to access and locate documents or where a process takes place.
106. *Investigative questions* are those that are directed at obtaining evidence of offending or of the taking of any underlying tax position. Questions of this kind are not concerned with facilitating the search. Investigative questions may be put to the occupier separately, such as in a voluntary interview or an inquiry under ss 17I or 17J.
107. During a search the focus will be on proper questions. However, there may sometimes be overlap between proper questions and investigate questions. That is, a proper question may sometimes elicit a response that, in addition to answering the proper question, appears to answer investigation questions. For example, a

⁴⁹ Section 130 of the SSA.

⁵⁰ Section 130(2) of the SSA.

⁵¹ Section 130(5) of the SSA.

⁵² Section 17(3)(b).

discussion about the documents, property, processes or other matters contained on the premises may overlap with the substantive investigation.

108. The distinction between proper questions and investigate questions is important because if an occupier refuses to answer a proper question, or leaves without answering it, this could ultimately give rise to a prosecution for obstruction; see paragraphs 124 to 127.
109. Investigative questions should form part of a voluntary interview and importantly the privilege against self-incrimination may also apply.
110. The Inland Revenue officer will ensure an occupier understands that they are required to answer the proper questions but investigative questions are different and privilege against self-incrimination may apply.

Privilege against self-incrimination

111. Section 60 of the Evidence Act 2006 provides a privilege against self-incrimination where a person is required to provide specific information by a person exercising a statutory power or duty. This privilege is recognised in s 130(2) of the SSA, when a person is otherwise required to provide access or other information for computer systems. Section 60(3) of the Evidence Act 2006 restricts this privilege when an enactment removes it either expressly or by necessary implication. Section 17(3)(b) removes the privilege in relation to “proper questions.”
112. What this means in practice is that Inland Revenue officers may ask *proper questions* relating to the effective exercise of the search powers in s 17 and the occupier is compelled to answer them. An occupier is not compelled to answer any *investigative questions*.⁵³ However, a person may choose to answer any such questions if asked.
113. Where there is an overlap between proper and investigative question, the Inland Revenue officer will explain that the occupier has a right under s 60 of the Evidence Act 2006 not to answer the question if the answer is likely to incriminate them under New Zealand law for an offence punishable by a fine or imprisonment. The Inland Revenue officer will explain the same if an investigative question is asked.
114. If an occupier is unsure what information they are compelled to provide in response to proper questions, having a lawyer present can assist.
115. Where privilege against self-incrimination does apply, s 60 of the Evidence Act 2006 provides a privilege against self-incrimination if the information would be “likely to incriminate” the person, whereas s 130(2) of the SSA provides a person is not required to give any information “tending to incriminate” the person. These tests

⁵³ This is consistent with the common law right to silence and s 28 of the NZBORA.

have the same application, namely where the potential for incrimination is “real and appreciable” and not “merely imaginary and fanciful”.⁵⁴

116. The privilege only applies to information that would be likely to incriminate the person under New Zealand law for an offence punishable by a fine or imprisonment. It does not apply to information that may be relevant to liability for shortfall or other civil penalties under the TAA; these are not offences punishable by a fine or imprisonment.
117. The privilege also only relates to information asked of the person; it therefore does not extend to documents.⁵⁵ The privilege against self-incrimination does not extend to providing passwords or other access information to access data.⁵⁶
118. For completeness, subpart 5 (Privilege and confidentiality) of Part 4 (General provisions in relation to search, surveillance, and inspection powers) of the SSA are excluded from searches under the TAA; see s 17D(5) of the TAA and the schedule of the SSA, both of which exclude s 130(4) of the SSA applying to ss 17, 17C(1)(d), (3), (5), (6) and 17D.

Process for answering questions

119. As proper questions relate to the effective exercise of powers under s 17, generally the Commissioner’s practice is to require oral answers to these questions during the search. However, the occupier can be asked to provide answers to proper questions in any manner required by the Commissioner.⁵⁷ This could include being asked to provide answers in writing.
120. If a voluntary interview or inquiry is considered necessary, generally this will be arranged for a date after the search has been completed. Ensuring that any investigative interview/inquiry is conducted separately from the search will allow the taxpayer time to discuss their circumstances with an advisor and to obtain advice.
121. Doing so may also allow time for the taxpayer to make a post-notification voluntary disclosure under s 141G(1)(b). Notification for the purposes of the voluntary disclosure regime may be provided at the time of the search (if notification has not already been provided before this). However, whether or not the Commissioner has started the audit or investigation (per the criteria in s 141G(5)) will depend on the facts of each case. Refer to [SPS 19/02: Voluntary disclosures](#) and [SPS 16/03:](#)

⁵⁴ *Singh v R* [2010] NZSC 161 and *Williams v Jones* HC Auckland CIV-2003-404-006565, 16 November 2005.

⁵⁵ Section 51(3) of the Evidence Act 2006.

⁵⁶ *R v Spark* [2008] NZCA 561.

⁵⁷ Section 17(3)(b).

Notification of a pending audit or investigation. The form for making voluntary disclosures is the [IR281 – Voluntary disclosure](#).

Power to exclude

122. Under s 116 of the SSA, the Inland Revenue officer in charge can secure the place, vehicle or other thing being searched. Where the officer in charge has reasonable grounds to believe any person will obstruct or hinder any exercise of any power under s 116(1) of the SSA, the officer in charge can exclude any person from the place, vehicle or thing, or from any area within the place. The officer can also give any reasonable direction to any person.
123. In practice, this means that any person present may be required to:
- 123.1. remain outside a specified area;
 - 123.2. keep away from other occupiers or Inland Revenue officers or people assisting;
or
 - 123.3. leave the premises.

Obstruction and other offending

124. A person who obstructs the Commissioner or an Inland Revenue officer acting in the lawful discharge of the duties or exercise of their powers under a tax law commits an offence.⁵⁸ A search is the exercise of a power under a tax law and, accordingly, obstructing the Commissioner or an Inland Revenue officer in the exercise of that search power may be an offence.
125. Obstruction may include failing to provide reasonable facilities and assistance, failing to answer proper questions, or hiding or destroying documents (including electronically stored information).
126. Failing to remain outside a specified area, keep away from others or leave the premises when excluded under s 116 of the SSA may constitute an offence of obstruction under s 143H.
127. A taxpayer obstructing the Commissioner may also result in an increased shortfall penalty payable by the taxpayer.⁵⁹

⁵⁸ Section 143H(1).

⁵⁹ Section 141K.

Other Inland Revenue activities

128. The Inland Revenue officer in charge or their assistants may also do the following in the course of exercising the Commissioner's search powers under the TAA and SSA:
- 128.1. Take photographs, sound and video recordings, and drawings of the place, vehicle or other thing being searched, and of any thing found in or on that place, vehicle or other thing, if the Inland Revenue officer in charge has reasonable grounds to believe this may be relevant to the purposes of the entry and search.⁶⁰
 - 128.2. Record discussions with anyone present (but not children under 14 years of age).⁶¹
 - 128.3. Where an interpreter is being used, the discussion will generally be electronically recorded to provide an accurate record for both the occupier and the Commissioner.
 - 128.4. Question other occupiers who are present (for example, employees, tenants, family members, but not children under 14 years of age). Although a person of or over 14 years of age but under 18 years of age may be asked questions or recorded, the Inland Revenue officer in charge will make any decision about this, taking into consideration the age and understanding of the person. Any discussion will be in a manner and in language that is appropriate based on their age and level of understanding.
 - 128.5. Take a record of any cash or other valuables found during the search. This includes counting and photographing the items, because such assets could be representative of undeclared income. These items will generally not be seized by Inland Revenue.
129. Re-entry of the place, vehicle or thing depends on whether it is a warrant or warrantless search:
- 129.1. A warrant may be executed only once, unless the warrant provides for it to be executed more than once.⁶² A warrant is executed when the Inland Revenue

⁶⁰ Section s 110(j) of the SSA.

⁶¹ Although the Commissioner considers that asking and answering "proper questions" is not an interview, meaning SPS 12/01 *Tape recording Inland Revenue interviews* does not directly apply, as an occupier is required to answer proper questions, the substance of SPS 12/01 will be applied.

⁶² Sections 103(3)(c) and 103(4)(j) of the SSA.

officer in charge leaves the place, vehicle or other thing being searched and does not return within 4 hours.⁶³

- 129.2. For a warrantless search, the Commissioner considers that as long as the Inland Revenue officer in charge returns to the place, vehicle or other thing within 4 hours of leaving the place, it is a continuation of the original warrantless search and not a new warrantless search.

Electronically stored information

130. Refer to the following Standard Practice Statements for information on:
- 130.1. **SPS 21/02: Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori** for guidelines on retaining business records in electronic format.
- 130.2. **SPS 10/02: Imaging of electronic storage media** for the Commissioner's practice when taking an image of electronic storage media.
131. The Inland Revenue officer in charge or any assistant, may access, preview and image/clone electronically stored information. In particular, the Inland Revenue officer in charge or any assistant may:
- 131.1. use any reasonable measure to access computer systems or other data storage devices, whether located (in whole or in part) at the place, vehicle or thing being searched if any intangible material that is the subject of the search may be in that computer system or other device; or
- 131.2. if any intangible material accessed is the subject of the search, or may otherwise be lawfully seized, copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination).⁶⁴
132. Inland Revenue has a unit of specialist computer forensic staff. Wherever possible, the Commissioner will use staff from this unit to carry out the access, searching and copying of electronically stored information.
133. An example where it might not be possible to use Inland Revenue's specialist computer forensic unit could be where the size of the search operation means there are not enough staff in this unit to attend at every site. The Commissioner, if removing

⁶³ Section 106 of the SSA.

⁶⁴ Sections 110(h) and (i) and 113(2)(h) and (i) of the SSA. See also *Avowal Administrative Attorneys Limited v The District Court at North Shore* [2010] NZCA 183, [2010] 3 NZLR 661.

electronic storage devices and delivering them to Inland Revenue's specialist computer forensic unit for custody and imaging, could either contract in external specialists or use Inland Revenue officers. In such cases, a clear chain of custody over the electronic storage device will be maintained, and claims of legal privilege and the non-disclosure right (under ss 20 and 20B to 20G) can be made as described in this statement (see paragraphs 179 to 184 below).

Removal of documents

134. The provisions of Part 4 of the SSA do not provide stand-alone search powers. They specify how substantive powers provided elsewhere (such as the TAA) are to be carried out, and the obligations and restrictions that govern the exercise of those powers.
135. There is a cross-over or duplication of the provisions of the TAA and the SSA, both of which allow the copying and removal of documents found during a search. Both Acts apply and the Commissioner is able to exercise the copy/removal powers under either or both the TAA and SSA. The exercise of powers under one Act does not prevent the Commissioner exercising the powers available under the other Act.
136. In relation to a document accessed under s 17, s 17C(1) provides that the Commissioner (through the Inland Revenue officer in charge) may do one or more of the following:
- 136.1. take an extract from the document:
 - 136.2. make a copy of the document:
 - 136.3. remove the document from the place to make a copy:
 - 136.4. remove the document from the place and retain it for a full and complete inspection.
137. Section 110 of the SSA provides that the Inland Revenue officer in charge may:
- 137.1. seize anything that is the subject of the search or anything else that may be lawfully seized.⁶⁵
 - 137.2. copy any document, or part of any document, that may be lawfully seized.⁶⁶

⁶⁵ Section 110(d) of the SSA.

⁶⁶ Section 110(g) of the SSA.

- 137.3. copy any intangible material on a computer system or other data storage device, including by means of previewing, cloning, or other forensic methods either before or after removal for examination.⁶⁷
138. Section 123 of the SSA also provides for the seizure of items found in carrying out the search or as a result of observations at the place or in or on the vehicle; see paragraph 60 above.
139. These sections in the TAA and the SSA provide the Commissioner with an alternative to copying on-site where it is not possible or practicable to do so.
140. Under the TAA a document may be removed from a place and retained for a full and complete inspection for as long as necessary if the Commissioner has:
- 140.1. the consent of an occupier:
- 140.2. a warrant issued under s 17D.⁶⁸
141. The consent of an occupier or a warrant is not required to remove a document from a place to make a copy.

Inventory of Items Seized

142. The Inland Revenue officer in charge is required to provide:
- 142.1. an inventory notice (an inventory of the items seized); and
- 142.2. a copy of the authority for the search (the search warrant or the search power if there is no warrant).⁶⁹
143. The inventory notice is provided to:
- 143.1. the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place; and
- 143.2. the person who the officer in charge has reason to believe is the owner of the thing seized.⁷⁰
144. The inventory notice is not required to be provided to the occupier/person in charge of the vehicle or other thing if the Inland Revenue officer in charge is satisfied that

⁶⁷ Section 110(i) of the SSA.

⁶⁸ Section 17C(3).

⁶⁹ Section 133(1) of the SSA.

⁷⁰ Section 133(1) of the SSA.

none of the items seized are owned by the occupier/person in charge.⁷¹ In practice, the inventory notice will not be provided to the occupier/person in charge if the officer in charge is satisfied none of the seized things are owned by that person.

145. The practical effect of this is that the inventory notice will be provided to the owner of any items seized, who may also be the occupier.
146. As noted, if the Inland Revenue officer in charge is satisfied that none of the items seized are owned by the occupier, then the inventory notice need not be given to the occupier. When documents are removed from a tax agent's or lawyer's office, the inventory notice will be provided to the tax agent, not to each individual client whose records may have been uplifted.
147. The inventory notice shall be in writing and will be provided:
 - 147.1. at the time the seizure took place; or
 - 147.2. as soon as practicable after the seizure; and
 - 147.3. in any case no later than seven days after the seizure.⁷²
148. A failure to give the inventory notice within the seven days does not retrospectively render the search unlawful.⁷³
149. The inventory notice will specify:
 - 149.1. What has been seized. This will include a general description of what has been seized. For example, the number of folders or boxes of documents removed, and the number of hard drives imaged.
 - 149.2. Information about the extent to which a person from whom a thing was seized, or the owner of the thing, has a right to apply:
 - 149.2.1. to have access to the thing; or
 - 149.2.2. to have access to any document relating to the application for a search warrant (if any) or the exercise of the search power that led to the seizure.⁷⁴

⁷¹ Section 133(2)(c) of the SSA.

⁷² Section 133(1) of the SSA.

⁷³ *Rimene v R* [2021] NZCA 42 at [50].

⁷⁴ Section 133(2)(a) of the SSA.

- 149.3. Information about the legal privilege and non-disclosure right for tax advice documents in the TAA.⁷⁵
150. Section 17C(5) provides that an owner of a document may inspect and copy a document that is seized.
151. The practical effect of this is that a person from whom the thing was seized (eg an occupier who is not the owner) does not have a right under the TAA or SSA to apply for access to any thing seized during a search, only the owner does.
152. Accordingly, the person from whom a thing was seized (for example, an occupier who is not an owner) may only request access to any document seized during a search either under the Privacy Act 2020 or the Official Information Act 1982. This also means that the information in an inventory notice about the extent to which a person who is not the owner of a thing seized can request access will be different from that relating to the owner of the thing seized.
153. In relation to the extent that the occupier or the owner has a right to apply to have access to any document relating to the application for a search warrant or the exercise of the search power, there is no right to apply for this information under the SSA or the TAA. Accordingly, any request for this information will be either under the Privacy Act 2020 or the Official Information Act 1982, or, if a person is charged with an offence, under the Criminal Disclosure Act 2008.
154. A request will be considered on its own facts and circumstances, and there are a number of grounds for withholding information, including prejudice to the maintenance of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial).⁷⁶ This means that information used in warrant applications might not be released, if requested, until the conclusion of the investigation and any litigation.
155. In addition to the inventory notice, the Inland Revenue officer in charge is required to provide:
- 155.1. the occupier/person in charge of the vehicle or other thing; and
 - 155.2. the person who the officer in charge believes is the owner of anything seized

⁷⁵ Section 133(2)(b) of the SSA.

⁷⁶ Section 6(c) of the Official Information Act 1982, s 53(c) of the Privacy Act 2020, s 16(1)(a) of the Criminal Disclosure Act 2008 (which does not include the "right to a fair trial" ground).

with a copy of the search warrant (if any) and, if the search power is exercised without a warrant, the name of the enactment the search took place (ie the TAA) and the reason for the search.⁷⁷

156. If there is no occupier or person in charge of the vehicle or thing present at the time of the seizure, the inventory notice and the copy of the search warrant or the enactment and reason for search if a warrantless search may be provided to the occupier by leaving the notice/copy in a prominent position at the place, or in or on the vehicle or other thing.⁷⁸

Postponing the Inventory Notice

157. The Inland Revenue officer in charge may apply to a Judge for a postponement of the obligation to provide:

157.1. the information in paragraph 70 (ie the information required by s 131(4) and (5) of the SSA) if no occupier is present; or

157.2. the inventory notice

on the grounds that compliance would:

157.3. endanger the safety of any person; or

157.4. prejudice ongoing investigations.

158. An application may be made:

158.1. in the case of an entry and search power that is a search warrant, at the time of the application for a search warrant or until seven days after the warrant is finally executed; or

158.2. in the case of any other entry and search power, until seven days after the search power is exercised.⁷⁹

159. A Judge may postpone the requirement to give the information required for a specified period not exceeding 12 months.⁸⁰

⁷⁷ Section 133(1)(b) of the SSA.

⁷⁸ Section 133(3) of the SSA.

⁷⁹ Section 134(2) of the SSA.

⁸⁰ Section 134(3) of the SSA.

Seizure when uncertain if lawful to seize

160. Where the Inland Revenue officer in charge is uncertain whether any item found may be lawfully seized, and it is not reasonably practicable to determine whether the item can be seized at the place or vehicle where the search takes place, the item may be removed for the purpose of examination or analysis to determine whether it may be lawfully seized.⁸¹
161. If the item removed is, after examination or analysis, determined to not be able to be lawfully seized, it will be returned. Until the time it is determined that the item can be lawfully seized the inventory notice requirement in s 133 of the SSA does not apply.⁸²

Extent of Search

162. A warrant issued under s 17D is a warrant to access the premises. Once access is effected, the Commissioner is entitled to inspect any document, property, or matter as set out in paragraph 3. As the Court of Appeal noted in *Tauber v Commissioner of Inland Revenue*:⁸³

A warrant issued under s 16(4) is not a warrant to search premises for particular information or documents. Rather, it gives authority for access to enter a private dwelling. Once entry is made pursuant to the warrant the authorised officer(s) then has the powers under s 16(1) of the Act which involve at all times having “full and free access to all lands, buildings, and places, and to all documents ... for the purpose of inspecting any documents ...”

163. As long as the document, property, process or matter is considered:
- 163.1. necessary or relevant for the purposes or principles set out in ss 16 and 16B:
- 163.2. likely to provide information that would otherwise be required for the purposes of the Inland Revenue Acts and any function lawfully conferred on the Commissioner,

the powers in s 17C(1) are able to be exercised in relation to the document, property, process or matter.

164. Documents removed for copying under s 17C(1)(c) will be returned as soon as practicable. Refer to paragraphs 186 to 189 for further information on the return of documents.

⁸¹ Section 112 of the SSA.

⁸² Section 112 of the SSA and *A Firm of Solicitors v District Court at Auckland* [2006] 1 NZLR 586.

⁸³ *Tauber v Commissioner of Inland Revenue* [2012] NZCA 411, at [28].

165. Documents removed under s 17C(1)(d) will be retained for as long as necessary to undertake a full and complete inspection. This includes use in court proceedings.⁸⁴ If the Commissioner determines that documents removed under s 17C(1)(c) for copying will be required for a full and complete inspection, the Commissioner will either:

165.1. obtain the consent of the occupier; or

165.2. obtain a warrant under s 17D.

Legal advisors, tax agents and support persons

166. A person present at a search (eg an occupier or owner) is able to obtain legal advice and a lawyer can be present during a search. Having a legal advisor present may reduce the amount of time the Commissioner is present at the premises, reducing business interruption or presence in a private dwelling. It may also help facilitate the answering of proper questions and assist with the resolution of issues regarding legal privilege and non-disclosure.

167. Any person present during a search may have an advisor present, such as a lawyer, accountant or other tax advisor, however legal privilege only applies to advice from a lawyer. As it will likely be oral advice given during a search, the Commissioner does not consider the non-disclosure right under s 20B will apply as that is only for a tax advice document.

168. Waiting for an advisor to arrive can delay the search and result in those conducting the search being present on the site for longer than necessary. It is the Commissioner's practice to be present on a site for the minimum amount of time necessary to conduct the search (including copying and removal of documents). This is to cause the least disruption to occupiers and businesses that is consistent with achieving the purpose of the search.

169. Therefore, occupiers will be provided with a reasonable opportunity to contact an advisor and a decision as to when the search will commence will be made by the Inland Revenue officer in charge of the search. Commencing the search, imaging of electronically stored material or removal of documents does not have to wait until an advisor arrives.

170. Where proceedings have been commenced (for example, an injunction) in relation to the exercise of s 17:

170.1. the Commissioner is able to continue with the search;

⁸⁴ See definition of "full and complete inspection" in s 3.

- 170.2. no person is excused from fulfilling any obligations under the SSA or TAA (such as answering proper questions); and
- 170.3. any evidential material obtain may continue to be used for investigative purposes.⁸⁵
171. Occupiers may also prefer to have a tax agent or other support person present; however, that person's presence must not interfere with the search. As noted above, the Inland Revenue officer in charge may exclude any person, including a lawyer, if the officer has reasonable grounds to believe the person will obstruct or hinder any exercise of any power; see paragraphs 122 and 123.

Legal privilege and the non-disclosure right

172. For the purpose of the Commissioner's search powers, the only privilege from disclosure is provided for in s 20 (legal privilege). There is also a right not to disclose tax advice documents provided for in ss 20B to 20G (non-disclosure right for tax advice documents). The privileges and confidentiality in s 102 and subpart 5 of Part 4 of the SSA do not apply to the Commissioner's search powers in the TAA.⁸⁶
173. As noted above at paragraph 160, there is a difference between "removed" and "seized". Similarly, a document that is "removed" (or copied as provided by ss 110(h), 110(i), 113(2)(h) or 113(2)(i) of the SSA) is not "disclosed". This means the removal and/or imaging of a document that may be legally privileged or subject to the non-disclosure right will not breach the privilege or right.⁸⁷

Legal privilege

174. In practice, the Commissioner regards the s 20 legal privilege as extending to litigation privilege where New Zealand lawyers (as defined by the Lawyers and Conveyancers Act 2006) are involved. For this purpose, litigation privilege is regarded as documents created for the dominant purpose of advising or assisting on reasonably apprehended litigation.
175. Confidential communications between legal practitioners and their clients that meet the criteria under s 20 are privileged from disclosure for the purposes of ss 16 to 17E (and other sections of the TAA). This privilege from disclosure does not apply to

⁸⁵ Section 180(2) of the SSA.

⁸⁶ Schedule to the SSA.

⁸⁷ Section 112 of the SSA and *A Firm of Solicitors v District Court at Auckland* [2006] 1 NZLR 586 and *Avowal Administrative Attorneys Limited v The District Court at North Shore* (2009) 24 NZTC 23,252 (HC) at [48].

documents made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.⁸⁸

Tax advice document

176. A person who is required under one or more of ss 16 to 17E (and other sections or under a discovery obligation) to disclose information in relation to the information holder or another person is not required to disclose a document that is a tax advice document. A document is not a tax advice document if it was created for purposes that include a purpose of committing, or promoting or assisting the committing of, an illegal or wrongful act.⁸⁹ See [OS 18/02: Non-disclosure right for tax advice documents](#) for more information.
177. The Commissioner will adhere to the provisions of ss 20 to 20G regarding legal privilege and the non-disclosure right when exercising ss 17 and 17C, including when imaging electronic storage media.
178. See [SPS 10/02: Imaging of electronic storage media](#) for more information on the Commissioner's practices when imaging electronic storage media.

Legal privilege and non-disclosure right process

179. The Commissioner is not responsible for asserting privilege or the non-disclosure right for taxpayers. Legal privilege applies to a document whether it is claimed or not. However, the non-disclosure of tax advice document right must be claimed.⁹⁰
180. A blanket claim of legal privilege or of the non-disclosure right across all documents is unlikely to be a valid claim. As set out in the following process, the Commissioner will provide a reasonable opportunity for the owner of documents to review the documents to enable particularised claims to be made within a reasonable timeframe.
181. Where practical, Inland Revenue officers will use the following process in relation to s 20 (legal privilege) and ss 20B to 20G (the non-disclosure right):
- 181.1. Provide the occupier with the opportunity to seek advice and make particularised claims under s 20 and ss 20B to 20G.
 - 181.2. In relation to electronically stored documents that are potentially subject to legal privilege or non-disclosure of tax advice documents right claims, copy or

⁸⁸ Section 20(1)(c).

⁸⁹ Section 20B(2)(c).

⁹⁰ Section 20B(3)(b).

image, seal and remove them, or remove the electronic storage device containing those documents for imaging off-site.

181.3. Where electronically stored documents have been imaged:

181.3.1. the imaged copy will remain in the custody of Inland Revenue's specialist computer forensic unit, and will not be released to other Inland Revenue compliance officers until after this process is complete; and

181.3.2. the owner can provide a list of keywords to Inland Revenue's specialist computer forensic unit to be used to identify documents to which s 20 (legal privilege) or ss 20B to 20G (non-disclosure right) apply.

181.4. In relation to hard copy documents that are potentially subject to legal privilege or non-disclosure right claims, to seal and remove them.

181.5. Work with the owner of the documents to agree a process for:

181.5.1. storage of the documents;

181.5.2. the owner (or their representative) reviewing the documents;

181.5.3. making particularised claims of legal privilege or non-disclosure within a reasonable timeframe; and

181.5.4. reviewing and resolving disputed privilege and non-disclosure right claims within a reasonable timeframe.

181.6. Where particularised claims are not made or any disputed claims are not resolved within the agreed timeframe, the Commissioner will apply to a District Court Judge for orders under s 20(5) as to whether the claim for legal privilege is valid, or under s 20G as to whether the document is a tax advice document (or for related orders regarding tax contextual information).

182. The Commissioner might agree to documents potentially subject to claims of legal privilege or the non-disclosure right remaining sealed for a reasonable period until the owner (or their representative) has the opportunity to review them, make particularised claims and resolve any disputed claims. However, where the owner has neglected, unreasonably delayed or chosen not to do this, the Commissioner may take any steps necessary to enable the investigation to continue.

183. In addition, s 180(2)(b) of the SSA specifically authorises the Commissioner to continue with the investigation when proceedings have been commenced in relation to the exercise of search powers or the use for investigative purposes of any

evidential material obtained from the search. A person can apply to the High Court under s 180(3) of the SSA for interim orders overriding s 180(2). This means if the Commissioner (or the person claiming legal privilege or the non-disclosure right) applies to the District Court to determine whether the claim is valid or not, then the Commissioner can use any of the material obtained for investigative purposes, unless the High Court orders otherwise.

184. If the claim of legal privilege or the non-disclosure right cannot be resolved between the Commissioner and the person making the claim, either party can apply to a District Court Judge for orders under s 20(5) as to whether the claim for legal privilege is valid, or under s 20G as to whether the document is a tax advice document (or for related orders regarding tax contextual information).

After the search

Access to documents

185. Where the Commissioner removes a document under s 17C, the owner is entitled to inspect and obtain a copy of the document at the place to which it is removed:
- 185.1. at the time of removal; or
 - 185.2. at reasonable times subsequent to the removal.⁹¹

Return of documents

186. When a document is removed to make a copy under s 17C(1)(c), then the document will be returned as soon as practicable.⁹² This includes electronic storage media removed for imaging.
187. Where a document has been removed and retained for a full and complete inspection under s 17C(1)(d), the original does not need to be returned until the Commissioner has completed a full and complete inspection of the document. A full and complete inspection includes the use of the document as evidence in court proceedings.⁹³ Given this, the Commissioner may not be able to provide a timeframe by which documents are likely to be returned.
188. However, under s 17C(6), a copy of a document certified by or on behalf of the Commissioner is admissible in evidence in court as if it were the original. Therefore,

⁹¹ Section 17C(5).

⁹² Section 17C(2).

⁹³ See definition of "full and complete inspection" in s 3.

unless there are good reasons to retain the originals, the Commissioner will generally copy and return original documents retained under s 17C.

189. Examples of good reasons to retain an original document include:
- 189.1. where the Commissioner intends to undertake forensic examination of the document;
 - 189.2. where the documents are unable to be quickly organised and analysed (this could be due to the poor state of the documents or poor recordkeeping by the owner);
 - 189.3. where a certified copy will not provide the best or accurate evidence in court proceedings (for example, marks on the original document may be illegible on a copy); or
 - 189.4. where the original document is required for evidential purposes (for example, where the original is required by a handwriting expert or the original electronic file is required for forensic evidential purposes).

Offences

190. The importance of the Commissioner being able to obtain information under the TAA and the SSA means that it is an offence to obstruct the Commissioner or an authorised officer in carrying out those powers, and it is an offence to provide the Commissioner with false information in relation to the exercise of s 17.
191. The TAA and SSA offences include:
- 191.1. Obstruction, under s 143H.
 - 191.2. Not providing information when required to do so by a tax law, under s 143(1)(b).
 - 191.3. Knowingly not providing information, under s 143A(1)(b).
 - 191.4. Knowingly not providing information with intent to evade tax or obtain a refund or payment of tax, under s 143B(1)(b) and any of (f), (g) or (h).
 - 191.5. Knowingly providing altered, false, incomplete or misleading information, under s 143A(1)(c).
 - 191.6. Knowingly providing altered, false, incomplete or misleading information intending to evade tax or obtain a refund or payment of tax, under s143B(1)(c) and any of (f), (g) or (h).

- 191.7. Aiding, abetting, inciting or conspiring with another person to commit an offence against the TAA, under s 148.
- 191.8. Failing to comply with a direction under s 117(1) of the SSA when a search warrant is pending, under s 176 of the SSA.
- 191.9. Failing to carry out obligations in relation to computer systems when required to do so by s 130(1) of the SSA, under s 178 of the SSA.
- 192. It is an offence for anyone who acquires information through the exercise of a search power to disclose that information.⁹⁴ There are also offences for accessing information on a matter relating to a Revenue Law before completing a declaration of confidentiality or disclosing that information after accessing it.⁹⁵
- 193. Decisions to prosecute will be made in accordance with the Solicitor-General's Prosecution Guidelines and Inland Revenue's Prosecution Framework.

This Operational Statement is signed on XX Month 2024.

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⁹⁴ Section 179 of the SSA.

⁹⁵ Section 143D.

Appendix: Summary of the application of the SSA to the TAA

194. Section 89 of the SSA sets out the extent and manner in which the general provisions in Part 4 of the SSA apply to:
- 194.1. powers conferred by other Parts of the SSA; and
 - 194.2. other enactments.
195. In relation to other enactments, s 89(2) of the SSA provides that Part 4 of the SSA applies in respect of powers conferred by the enactments listed in column 2 of the Schedule to the SSA, to the extent identified in column 4 of the Schedule.
196. The use of a schedule in this way makes it clear that the only provisions which apply to the TAA are those listed in the Schedule. The Schedule itself consists of four columns, listing as follows:
- 196.1. column 1 states the Act;
 - 196.2. column 2 specifies a section of that Act (the specific search powers);
 - 196.3. column 3 contains a brief description of the power in that section; and
 - 196.4. column 4 sets out which provisions in Part 4 of the SSA apply.
197. The TAA is listed in column 1 of the Schedule, and the Commissioner's search power (s 17) and power to obtain a warrant to (i) enter a private dwelling and (ii) remove documents and retain them for a full and complete inspection (ss 17D(2) and (3)) are listed in column 2.
198. Column 4 states that only Subparts 1, 3, 4, 7, 9 and 10 (except ss 102, 103(3)(b)(ii), 103(4)(g), 103(7), 115(1)(b), 118, 119 and 130(4)) of Part 4 apply to these TAA powers.
199. To the extent that there is any inconsistency between the Schedule to the SSA and the TAA, the TAA prevails.⁹⁶
200. The table below summarises how the SSA applies to the TAA.

⁹⁶ Section 89(3) of the SSA.

Part of SSA	Content	Applies to TAA	
Part 1	General provisions – interpretation	<p>Yes – Inland Revenue officers fall within the definition of “enforcement officers”.</p> <p>Plus, the TAA adopts subparts 1, 3, 4, 7, 9, and 10 of Part 4 of the SSA (except for ss 102, 103(3)(b)(ii), 103(4)(g), 103(7), 115(1)(b), 118, 119 and 130(4)), see s 17D(5).</p>	
Part 2	Police powers	No	
Part 3	Enforcement officers’ powers & orders	Some – see below. (because of the definition of “enforcement officer”).	
	Subpart 1	Surveillance device regime	Not able to apply for surveillance device warrants, but some surveillance activities are permissible without a warrant.
		Declaratory orders	Yes.
	Subpart 2	Production orders	Yes, but Commissioner will generally use s 17H of the TAA.
	Subpart 3	Misuse of Drugs Act search powers	No.
	Subpart 4	Powers of search incidental to arrest/detention	No.
Part 4	Subpart 1	Application of this part	Yes.
	Subpart 2	Consent searches	No.
	Subpart 3	Application for, and issuing of, search warrants	Yes.

	Subpart 4	Carrying out search powers	Yes, with some exclusions: ss 102, 103(3)(b)(ii), 103(4)(g), 103(7), 115(1)(b), 118, 119 and 130(4).
	Subpart 5	Privilege and confidentiality	No.
	Subpart 6	Procedures for seized/produced materials	No.
	Subpart 7	Immunities	Yes.
	Subpart 8	Reporting	No.
	Subpart 10	Miscellaneous	Yes.
Part 5	Amendments to other enactments	Section 302 amends TAA	Yes.
Sch	Application of specified provisions of Part 4 to other enactments		Yes – to ss 17 and 17D(2) and (3).

References

Legislative references

Criminal Disclosure Act 2008, s 16

Evidence Act 2006, ss 51 and 60

New Zealand Bill of Rights Act 1990, ss 21 and 23

Official Information Act 1982, s 6

Privacy Act 2020, s 53

Search and Surveillance Act 2012, ss 3 (“computer system”, “enforcement officer”, “remote access search” and “search power”), 5, 18D, 89, 95, 98, 100, 102, 103, 106, 110, 112, 113, 115, 116, 117, 118, 119, 123, 130, 131, 132, 133, 134, 176, 178, 179, 180, Schedule

Search and Surveillance Commencement Order 2013

Tax Administration Act 1994, ss 3 (“document” and “full and complete inspection”), 16 to 17K, 18B, 20, 20B to 20G, 102, 141K, 143, 143A, 143B, 143G, 143D, 143E, 143EB, 143H, 148, 227

Case references

A Firm of Solicitors v District Court at Auckland [2006] 1 NZLR 586

Avowal Administrative Attorneys Limited v The District Court at North Shore [2010] NZCA 183, [2010] 3 NZLR 661

Erasmus v R [2017] NZCA 222

McPherson v R [2021] NZCA 249

Rimene v R [2021] NZCA 42

R v Spark [2008] NZCA 561

Singh v R [2010] NZSC 161

Tauber v Commissioner of Inland Revenue [2012] NZCA 411

Tupoumalohi v R [2020] NZCA 117

Williams v Jones HC Auckland CIV-2003-404-006565, 16 November 2005

Woodgate Ltd v Commissioner of Inland Revenue [2023] NZHC 1132

Other references

OS 18/02: *Non-disclosure right for tax advice documents* (operational statement, Inland Revenue, 2018). <https://www.taxtechnical.ird.govt.nz/operational-statements/operational-statement-1802>

SPS 10/02: *Imaging of electronic storage media* (standard practice statement, Inland Revenue, 2010). <https://www.taxtechnical.ird.govt.nz/standard-practice-statements/investigations/sps-1002-imaging-of-electronic-storage-media>

SPS 12/01: *Recording Inland Revenue interviews* (standard practice statement, Inland Revenue, 2012). <https://www.taxtechnical.ird.govt.nz/standard-practice-statements/investigations/sps-1201-recording-inland-revenue-interviews>

SPS 16/03: *Notification of pending audit or investigation* (standard practice statement, Inland Revenue, 2016). <https://www.taxtechnical.ird.govt.nz/standard-practice-statements/investigations/sps-1603-notification-of-pending-audit-or-investigation>

SPS 19/02: *Voluntary disclosures* (standard practice statement, Inland Revenue, 2019). <https://www.taxtechnical.ird.govt.nz/standard-practice-statements/shortfall-penalties/sps-1902-voluntary-disclosures>

SPS 21/01: *Deduction notices* (standard practice statement, Inland Revenue, 2021). <https://www.taxtechnical.ird.govt.nz/standard-practice-statements/processing/sps-21-01>

Status of the Commissioner's advice (Commissioner's statement, Inland Revenue, November 2012) <https://www.taxtechnical.ird.govt.nz/commissioner-s-statements/status-of-commissioner-s-advice>

Voluntary disclosure form – IR281 (form, Inland Revenue, February 2020). <https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir200---ir299/ir281/ir281-2020.pdf?modified=20200512211409&modified=20200512211409>