



Australian Government  
Australian Taxation Office

# Fair use of our access and information gathering powers | 06



## Our commitment to you

We are committed to providing you with advice and information you can rely on.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

### **The information in this publication is current at November 2018.**

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at [ato.gov.au](http://ato.gov.au) or contact us.

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We have formal access and information gathering powers under the law. We use these powers fairly and professionally and in an open manner, as appropriate.

We have these powers because we are responsible to the community and government for ensuring everyone complies with the laws we administer. One of the ways we do this is by reviewing some tax returns, activity statements and other documents.

## Working cooperatively

We prefer to work cooperatively with you to obtain information we require. This cooperative approach does not involve the use of formal powers. If we cannot obtain the information in a cooperative way, we may use our formal powers. We may decide to move to a formal approach, for example, where:

- the information we have been given is not complete and accurate
- escalation to our senior officers has not resolved an issue
- there has been a lack of cooperation
- you have requested a formal approach
- we require information from third parties and the information is subject to confidentiality arrangements.

We may also use our formal powers at the outset in certain circumstances.

Our access and information gathering powers will only be used by authorised individuals.

We will tell you when we are relying on your cooperation to give us access to or provide information. We will also tell you when we are using our formal powers to compel you to give us access to or provide information.

If we make a formal request, we continue talking to you about the most effective and efficient way to access information or documents relevant to you.

We can only use our access powers for the laws we administer. We take claims of abuse of our formal powers seriously. We consider the facts and circumstances of each case. Our investigations could result in counselling or disciplinary proceedings against the officers involved. Any allegations of abuse should be made in writing to us for thorough investigation.

## Our formal powers

### Access powers

We have, at all reasonable times, free and full access to any land, premises, place, documents, goods or other property for the purposes of the Acts we administer. We can take extracts from, or copies of, any documents.

For indirect tax and excise laws, we have the capacity to test and analyse goods and other property and to take samples.

### Our formal notice powers

We can only use our information gathering powers by serving you with a notice setting out:

- information to be given
- documents to be supplied
- if a person is required to attend an interview with us and provide information and evidence.

In some circumstances, we use a combination of these requirements.

# What you can expect from us

To ensure we take a fair, professional and, where appropriate, open approach to using our powers, we follow these principles.

## Telling you your rights and obligations

If we are asking for information or documents, we will tell you about your rights and obligations under the law as early as possible.

We will be as open as circumstances allow. We will tell you why we are seeking access or information, unless this may affect the enquiry or audit, or breach the secrecy provisions and privacy laws.

We will tell you which law gives us the authority to collect the information and who may be given the information.

## Giving you prior notice

In most cases, we will let you know in advance that we intend to access your premises or documents. In exceptional circumstances, we may not give you prior notice, for example, if we have a reasonable belief that documents may be destroyed.

Access without prior notice requires the approval of a designated senior tax officer.

## Taking into account any possible costs to you

When we decide what information or documents we require access to, we will consider ways of minimising the cost to you of meeting our request.

## Giving you time to comply

We will give you reasonable time to comply with our notice asking you to produce information or documents or for you to attend an interview. This is usually 28 days although, in some circumstances, we may negotiate a shorter or longer time.

## Respecting your legal rights

If you are required to attend a formal interview, you may choose to have your representative or adviser present. However, your representative or adviser will not be able to answer questions put to you. They may advise you about what a question means but they cannot tell you the answer you should give.

In some limited circumstances, you may not be able to have your choice of representative or adviser at the meeting. This may be because they were involved in the transaction under review. In this case, we will give you reasonable time to find an alternative representative or adviser.

You will be given reasonable opportunity at any time to discuss this with your advisers.

## Respecting limits to our formal powers

We will respect your right to claim legal professional privilege for certain communications between you and your barrister or solicitor. In some circumstances, some advice given to you by a professional accounting adviser may remain in confidence between you and that adviser.

Advice prepared for a corporate board on tax compliance risk should, in all but exceptional circumstances, remain within the confidence of a board of company directors (including properly constituted sub-committees) and their advisers.

You will need to provide sufficient information about:

- each communication where you are claiming legal professional privilege
- each piece of advice you want to remain private between you and a professional accounting adviser.

## Telling you when we ask for third party information

If we ask third parties about you, we will normally tell you about this before we make the enquiry. However, there are some situations where you would not normally be told. These include when:

- we are collecting information about a group of taxpayers in similar circumstances, such as from a financial institution, investment manager or employer
- we are collecting information to help decide which individuals or businesses to audit
- we are making enquiries under an international tax treaty
- we are collecting information relating to enquiries, reviews or investigations under the promoter penalty laws
- transfer pricing audits are involved
- we decide access without notice is appropriate
- we have asked you for the information, but it has not been given to us
- there is a potential risk to the safety of our officers
- the matter relates to refund integrity or fraud
- you cannot be contacted
- it is otherwise impossible, impracticable or inappropriate to contact you.

## What we expect of you

We expect that you will cooperate with requests for access and information. Under the tax laws you must provide all reasonable facilities and assistance when we ask for access.

## Penalties and offences

The law imposes penalties if a taxpayer refuses or fails to provide information when required.

Penalties also apply if the occupier of premises does not provide us with all reasonable facilities and assistance to use our access powers effectively.

We can prosecute taxpayers who:

- refuse or fail to provide a tax return or information, or to produce records or documents
- refuse or fail to meet with a tax officer or answer questions
- hinder or obstruct us when we are using our access powers.

The penalties that can be imposed by the courts include fines and imprisonment and, in some cases, both.

## Explaining and reviewing our decisions

We will provide you with a clear explanation of the decisions we make about gaining access and gathering information and documents.

We must use our access and information gathering powers in good faith. The law protects you from the abuse of those powers. For example, under the *Administrative Decisions (Judicial Review) Act 1977*, decisions can be reviewed by the Federal Court and the Federal Circuit Court.

Grounds for review include that:

- use of the power was unreasonable
- the power was used in bad faith
- the power was abused.

This Act gives you the right to get a free, written statement of our reasons for a decision, for example, if we have decided to issue a notice requiring you to give us information. However, even if you ask us for a statement of reasons, you will still need to give us the information we have asked for.

There are exceptions to this right under the Act. These include where powers are used in relation to the institution or conduct of civil proceedings, such as under the promoter penalty laws.

Where you believe our officers have not conducted themselves according to the principles and practices in this document, a senior officer will be available to hear your concerns. Any claim of abuse of our formal powers is a serious matter. We consider the facts and circumstances of each case. This could result in counselling or disciplinary proceedings against the officers involved.

If you are not satisfied with the way your concerns have been addressed you can have them independently reviewed by phoning our complaints line on **1800 199 010**.

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