

ATTACHMENT 2



Australian Government
Australian Taxation Office

Taxpayers' charter
Fair use of our access
and information
gathering powers

OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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 **www.ato.gov.au** or contact us.

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Introduction

We have a responsibility to the community to ensure that everyone complies with the laws we administer. One of the ways we do this is by checking some tax returns, activity statements and other documents.

To help us carry out these checks, the law gives us wide-ranging powers. We use these powers fairly and professionally and, as far as possible, in an open manner.

If we need to access information you hold, we prefer to consult with you and get the information cooperatively. However, in some situations we need to use our formal powers.

WHAT ARE OUR FORMAL POWERS?

Under the law we have access and information gathering powers.

ACCESS POWERS

We have, at all times, free and full access to all buildings, places, books, documents and other papers for the purposes of the Acts we administer. We can also take extracts from or copies of any such books, documents or papers.

Under the indirect tax and excise laws, this also extends to goods and includes the capacity to take samples.

INFORMATION GATHERING POWERS

Our information gathering powers allow us to require:

- information to be given
- a person to attend an interview with us and to provide information and evidence
- documents to be produced.

In some circumstances we use a combination of these powers.

We can only use our information gathering powers by serving you with a notice.

WHAT YOU CAN EXPECT FROM US

To ensure we take a fair, professional and, as far as possible, open approach to using our powers, we follow the principles set out below.

CONSULTING WITH YOU FIRST

We prefer to consult with you and to obtain information cooperatively. If you are reluctant to provide access or information, or do not provide it in a timely way, we may use our formal powers.

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

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 and provide information.

If we make a formal request, we recognise that it is best to continue talking to you about the best way to gain access to information.

- ❗ We can only use our access powers for the purposes of the laws we administer. We treat claims of possible abuse of these powers seriously and investigate them thoroughly. Any allegations of abuse should be made in writing to us.

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 also 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 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 to meet our request.

GIVING YOU TIME TO COMPLY

Generally, we will give you a 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 period.

RESPECTING YOUR LEGAL RIGHTS

If you are required to attend a formal interview, you may choose to have your representative or advisers 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 consult with your advisers.

We will respect your right to claim legal professional privilege for certain communications between you and your barrister or solicitor. In some circumstances, we will allow some advice given to you by a professional accounting adviser to remain in confidence between you and that adviser. You will need to provide sufficient information about each communication where you are claiming legal professional privilege or for each advice that you want to remain in confidence 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. There are some situations where you would not normally be told. These include but are not limited to:

- where we collect information relating to a large number of taxpayers in similar circumstances, such as from a financial institution, investment manager or employer
- where we collect information to help decide which individuals or businesses to audit
- where we make enquiries under an international tax treaty
- transfer pricing audits
- where we collect information relating to enquiries, reviews or investigations under the promoter penalty laws
- where we decide access without notice is appropriate
- where we have asked you for the information but you have not given it to us.

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 Magistrates Court.

Grounds for review include:

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

The Act also 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.

MORE INFORMATION

Our *Access and information gathering manual* contains more information about these powers, including guidelines on their use. To get a copy of the manual, visit our website at www.ato.gov.au and search for 'Access'.

For more information about your rights and obligations, visit our website at www.ato.gov.au and search for 'Charter'.

