

Regulatory Impact Statement

Co-location and secrecy

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

It provides an analysis of options to remove a significant barrier to Inland Revenue employees co-locating with employees of other state agencies.

The analysis involved examining Inland Revenue's current co-location arrangements in Christchurch and other regional offices. The special circumstances of the co-location arrangements in Christchurch were noted. The analysis was limited to examining options for removing barriers to Inland Revenue sharing call centres and administrative areas with other government agencies. The analysis did not examine secrecy issues with reception and front counter areas. The analysis also did not examine any wider options for co-locating with other government or private sector agencies.

The consultation on this proposal involved discussing the secrecy issues with Inland Revenue employees that were involved in the current co-location arrangements. The Privacy Commissioner was also consulted.

The policy options will not:

- impose additional costs on businesses
- impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest, or
- override fundamental common law principles .



Keith Taylor
Policy Manager, Policy and Strategy
Inland Revenue

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STATUS QUO AND PROBLEM DEFINITION

1. The current secrecy provision in the Tax Administration Act (section 81 of the TAA) does not allow Inland Revenue employees to communicate taxpayer information (including to other government agencies) except in limited, defined circumstances. Further, the provision requires employees to maintain, and assist in maintaining, the secrecy of taxpayer information. There are severe penalties for an Inland Revenue employee who knowingly breaches secrecy provisions. In addition, under section 6 of the TAA every Inland Revenue employee must use their best endeavours at all times to protect the integrity of the tax system (including the rights of the taxpayers to have their individual affairs kept confidential). The effective administration of the tax system relies on voluntary compliance. A critical element of voluntary compliance is taxpayers trusting that Inland Revenue will not disclose their information inappropriately.
2. One of the four key priorities of the Government is to ensure the delivering of better public services. Inland Revenue is investigating co-location opportunities as part of the future direction of service delivery. Co-location is aimed at providing a better service by standardising processes, reducing duplication of effort and delivering prioritised services to meet local needs. Inland Revenue is currently co-locating with other government agencies in some offices and call centres across New Zealand. While some co-locations have been able to be achieved while still maintaining physical separation between agencies (which minimises secrecy risks) such separation is not always possible — for example, in post-earthquake Christchurch co-locations are "open-plan". Specifically, about 370 Inland Revenue call centre and collections staff share an "open-plan" area with 130 Ministry of Social Development staff at Russley Road and 10-12 Inland Revenue staff at Durham Street are surrounded by about 70-80 Ministry of Social Development staff.
3. Under such an approach, Inland Revenue employees are exposed to the risk of inadvertently disclosing taxpayer information to other government agencies at co-located sites. This could arise if the other agency's employees were to overhear conversations (between Inland Revenue staff discussing a case, and conversations with taxpayers themselves), or if they happen to see Inland Revenue correspondence, or as a result of shared office facilities and equipment.
4. Given that further co-location is planned (including in open-plan sites) this gives rise to the issue of proximity with other government employees and inadvertent disclosure of taxpayer information with those employees. Inland Revenue considers that no amount of training or best practice guidelines or adopted behaviour is likely to adequately address the substantial risk of Inland Revenue employees inadvertently disclosing taxpayer information to other government employees in the co-location environment. Inland Revenue considers that architectural changes can be made to open-plan areas to reduce the risks. However, the changes would be costly and would arguably undermine the benefits of co-locating.
5. There is, therefore, a balance between maintaining the integrity of the tax system (including taxpayers' perceptions of the tax system) and delivering better public services through co-location.
6. Maintaining the status quo means the existing risk to employees of inadvertently breaching section 81 will remain, and so being subject to severe penalties. That this risk exists makes employees reluctant to work in an open-plan environment. In addition, given this risk, taxpayers may have concerns about the level of secrecy applying in a co-located environment, which may harm the perception of the integrity of the tax system. The current

risks also make Inland Revenue more reluctant to enter into co-location arrangements with other government agencies. Such a result is counter to the Government's policy of increasing efficiency in the delivery of government services and achieving cost reductions across government.

OBJECTIVES

7. The key objectives to facilitate co-location are to:
 - (a) reduce the risks for Inland Revenue employees and co-located staff from other government agencies in a co-location environment;
 - (b) confirm for taxpayers secrecy will be maintained in a co-location environment (bearing in mind the importance of taxpayer secrecy in the administration of the tax system); and
 - (c) enable Inland Revenue to deliver better public services in an efficient manner without imposing significant additional administrative costs.

REGULATORY IMPACT ANALYSIS

8. Four broad options and the status quo (option 5) have been considered for addressing the problems and achieving the stated objectives. These options are:

- **Option 1:** lowering the overall secrecy standard in section 6 of the TAA to reduce the risks from co-locating with other government agencies. The current standard in section 6 for Inland Revenue officers to use "best endeavours" to protect the integrity of the tax system (including ensuring the individual affairs of taxpayers are kept confidential) is a very high threshold. Inland Revenue believes that lowering the general secrecy standard to "reasonable endeavours" could reduce some of the risks from co-locating;
- **Option 2:** deem the co-located staff from the other government agency to be Inland Revenue staff for the purposes of the secrecy provision. Option 2 would apply the same secrecy requirements to the co-located staff as apply to Inland Revenue staff in Inland Revenue open-plan areas and call centres;
- **Option 3:** include a specific provision that sets out the secrecy requirements in a co-location environment. The specific provision would mean that an Inland Revenue employee is deemed to have not breached section 81 by inadvertently disclosing tax secret information to a co-located employee of another government agency. The employee from the other government agency will have signed a secrecy certificate under section 87. The specific provision will only apply when the Commissioner of Inland Revenue considers that the risk of communication is consistent with her obligation at all times to use best endeavours to protect the integrity of the tax system;
- **Option 4 (preferred option):** include a general provision for communications by Inland Revenue employees where the Commissioner of Inland Revenue expects them to perform their duties. The employee will not breach the secrecy provision in those circumstances if the employee communicates the information unintentionally to an employee of Inland Revenue or an employee of another state agency subject to section 87 of the TAA;
- **Option 5:** maintain the status quo.

9. The impacts of options 1 to 4 and the status quo option, and whether they meet the objectives in paragraph 7, are summarised in the table below.

<i>Option</i>	<i>Meets objectives (a), (b), or (c)?</i>	<i>Fiscal/ economic impact</i>	<i>Administrative impact for Inland Revenue</i>	<i>Compliance impact for taxpayers</i>	<i>Risks</i>	<i>Summary</i>
Option 1	b,c	Nil	<p>Lowering the overall standard in section 6 would not provide Inland Revenue employees with any clarity as to the required standard of secrecy in a co-located environment because:</p> <ul style="list-style-type: none"> • the change would not affect the specific secrecy requirements in section 81; and • the employees would have to determine in any environment whether reasonable steps had been taken to protect the integrity of the tax system. <p>The option would provide Inland Revenue with significant operational flexibility to deliver better public services in an efficient manner without imposing significant additional administrative costs.</p>	<p>Reducing the overall standard in section 6 could suggest to taxpayers a decreased focus on maintaining the integrity of the tax system, which could undermine taxpayers' perceptions of the tax system and voluntary compliance.</p>	<p>The broad-brush approach of reducing the overall standard may have unforeseen consequences in other situations or environments.</p>	<p>Option 1 does not meet all of the stated objectives. While it provides increased flexibility to Inland Revenue, it may undermine taxpayers' perceptions of the tax system and voluntary compliance.</p>

Option 2	a, b, c	Nil	<p>Option 2 would seem to provide Inland Revenue employees with clarity because they will be able to apply the same internal secrecy standards to co-located environments.</p> <p>The option would provide Inland Revenue with significant operational flexibility to deliver better public services in an efficient manner without imposing significant additional administrative costs.</p>	<p>Option 2 would suggest to taxpayers that the same high standards that apply internally in Inland Revenue would apply in co-located environments.</p> <p>However, it would arguably also allow sharing of information between Inland Revenue employees and co-located staff which could be inconsistent with the limited specific information sharing provisions in the TAA. In other words, the option may sanction more than is intended. If taxpayers consider that there is unlimited sharing of information, this may undermine taxpayers' perceptions of the tax system and voluntary compliance.</p>	<p>Section 81 only exempts communications for the purpose of carrying into effect the relevant legislation or performing a duty of the Commissioner. There is a risk that communications between Inland Revenue employees and co-located staff would not satisfy that requirement (even if the co-located staff were deemed to be Inland Revenue employees). This would mean that there is a risk that the option will not remedy the relevant policy problem.</p> <p>Having the co-located staff sign secrecy certificates under section 81 would mean that they were subject to the same sanctions for any secrecy breaches as Inland Revenue employees. However, there has been some level of opposition in the past from other government agencies to having their staff sign Inland Revenue secrecy certificates. As a result, there is a risk that the other agencies will not agree to sign the certificates.</p>	<p>Option 2 meets all of the stated objectives, but it arguably allows more information sharing than is intended.</p>
Option 3	a, b, c	Nil	<p>Option 3 would provide clarity to Inland Revenue employees by setting out the specific secrecy requirements in a co-located environment. It would also specify the requirement on the</p>	<p>Option 3 applies the same high standard of secrecy to the co-located staff (including imposing the same severe sanctions for any breaches). The option only applies to inadvertent sharing and does</p>	<p>There is a risk that the other agencies will not agree to sign the certificates.</p>	<p>While option 3 meets all the objectives, it only allows inadvertent communication of tax secret information in limited circumstances.</p>

		<p>Commissioner to ensure that the risk of communication is consistent with her obligation at all times to use best endeavours to protect the integrity of the tax system. Getting the co-located staff to sign a section 87 secrecy certificate would provide them with clarity as to the extent that they can disclose any information.</p> <p>Further, the relevant co-location arrangement agreement between Inland Revenue and the other government agency could set out any exceptions to the disclosure requirements and the process to be followed in case of any conflicts.</p> <p>The option would provide Inland Revenue with significant operational flexibility to deliver better public services in an efficient manner without imposing significant additional administrative costs in a co-location environment. However, the option will not enable the provision of better public services in a broader range of circumstances.</p>	<p>not sanction any wider sharing of information. This will suggest to taxpayers that the same high standards that apply internally in Inland Revenue would apply in co-located environments and reinforce taxpayers' perceptions of the tax system and voluntary compliance.</p>		
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Option 4	a, b, c	Nil	<p>Option 4 provides clarity to Inland Revenue employees in a broad range of circumstances. It applies wherever the Commissioner of Inland Revenue expects them to perform their duties. This may extend beyond the strict confines of the office to include situations such as where two employees are driving to a location. The employee will not breach the secrecy provision in those circumstances if the employee communicates the information unintentionally to an employee of Inland Revenue or another state agency (eg, where they answer a phone call while travelling in the car).</p> <p>The option would provide Inland Revenue with significant operational flexibility to deliver better public services in an efficient manner without imposing significant additional administrative costs in a broader range of circumstances.</p>	<p>The exemption only applies if the person communicated to is subject to section 87. This means that they need to have signed a secrecy certificate. As a result, the same standard of secrecy that applies in Inland Revenue offices will apply to co-located offices. Inland Revenue considers that the option will reinforce taxpayers' perceptions of the tax system and voluntary compliance.</p> <p>While there is no specific reference to the obligation on employees to use their best endeavours at all times to protect the integrity of the tax system, the employees are still subject to section 6.</p> <p>While the more general nature of the provision could suggest more information sharing than is currently the case, this is not intended to be the case. Any sharing of information would have to be unintentional.</p>	<p>There is a risk that the other agencies will not agree to sign the certificates.</p> <p>There is a small risk that the general nature of the provision will suggest to taxpayers that Inland Revenue is lowering its overall secrecy standard. This could undermine taxpayers' perceptions of the tax system and voluntary compliance. However, the specific requirement in the proposed provision, that the sharing be unintentional, should mitigate any significant risk.</p>	<p>Option 4 is the preferred option because it meets all the objectives and allows inadvertent communication of tax secret information in a broader range of circumstances. Inland Revenue considers that the option will reinforce taxpayers' perceptions of the tax system and voluntary compliance.</p>
Option 5 (status quo)	c	Nil	As discussed above at [6].	As discussed above at [6].	As discussed above at [6].	As discussed above at [6], there are significant risks with maintaining the status quo.

CONSULTATION

10. This proposal has been discussed with the Privacy Commissioner. The Privacy Commissioner said that it seemed very logical to remove barriers to having conversations in the open-plan environment. The Privacy Commissioner noted that the preferred option had to extend the confidentiality requirements to the co-located staff. The Privacy Commissioner also said that she did not have any issues with the proposed options.

CONCLUSIONS AND RECOMMENDATIONS

11. Inland Revenue prefers option 4 because it best achieves the stated objectives. Specifically, option 4:

- reduces the risks for Inland Revenue employees and co-located staff from other government agencies in a co-location environment;
- confirms for taxpayers that the same high standards that apply internally in Inland Revenue would apply in co-located environments, reinforcing taxpayers' perceptions of the tax system and voluntary compliance; and
- enables Inland Revenue to deliver better public services in an efficient manner without imposing significant additional administrative costs.

IMPLEMENTATION

12. Any legislative amendments will be included in the proposed Taxation (Business Transformation and Simplification) Bill, which is scheduled for introduction in June 2015, and could be implemented from the date of enactment.

13. No implementation risks have been identified. No changes need to be made to existing systems and there would be no other significant administrative issues.

MONITORING, EVALUATION AND REVIEW

14. There are no specific plans to monitor, evaluate and review the changes. If any detailed concerns are raised in relation to these changes, Inland Revenue will determine whether there are substantive grounds for review under the Generic Tax Policy Process (GTPP).

15. In general, Inland Revenue's monitoring, evaluating and reviewing of new legislation takes place under the GTPP. The GTPP is a multi-stage tax policy process that has been used to design tax policy in New Zealand since 1995. The final stage in the GTPP is the implementation and review stage, which involves post-implementation review of the legislation, and the identification of any remedial issues. Opportunities for external consultation are also built into this stage. In practice, any changes identified as necessary for the new legislation to have its intended effect would generally be added to the Tax Policy Work Programme, and proposals would go through the GTPP.