

INLAND REVENUE'S TECHNICAL ISSUES ESCALATION POLICY AND PROCESS

REPLACES | WHAKAKAPIA

- **Escalation policy 2017**

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Summary

Escalation Policy

1. The Technical Issues Escalation Policy and process is intended to ensure that Inland Revenue (IR) staff apply IR's view of the Inland Revenue Acts (IR Acts) consistently, while enabling any IR view to be reconsidered if a staff member thinks it is incorrect.¹ It sets out obligations for all IR staff making technical decisions about how the IR Acts apply, but does not create any rights for customers to have issues reconsidered by IR.
2. An IR staff member must not apply an interpretation or position on the application of any of the IR Acts to a customer (including in litigation and settlement) when they are aware that this would be inconsistent with IR's existing view.
3. The only exceptions that apply relate to litigation (see [72]), draft consultation items (see [96]), Tax Counsel Office (TCO) adjudications, binding rulings and public statements (see [100], [102], and [107]), and a current escalated issue (see [110]).
4. IR's existing view may be:

¹ The IR Acts are listed in Sch 1 of the Tax Administration Act 1994.

- set out in documents IR has published externally (other than as a draft, withdrawn or superseded view) – for example, public advice and guidance such as Interpretation Statements, Standard Practice Statements, customer-specific documents (eg, Notice of Proposed Adjustment, Private Ruling) and the other documents listed at [27];
- set out in technical opinions that IR staff have prepared and are only available within IR – for example, in decisions or reports of TCO, or litigation decisions, opinions, operational guidelines or memoranda Legal Services has completed;² or
- evident from an established practice IR applies to customers. Whether an established IR practice exists depends on the extent to which IR staff have seen and applied a practice as such. If there is doubt as to whether an established IR practice exists, the Tax Intelligence Group (TIG) will decide.

Escalation process

Usual Escalation process

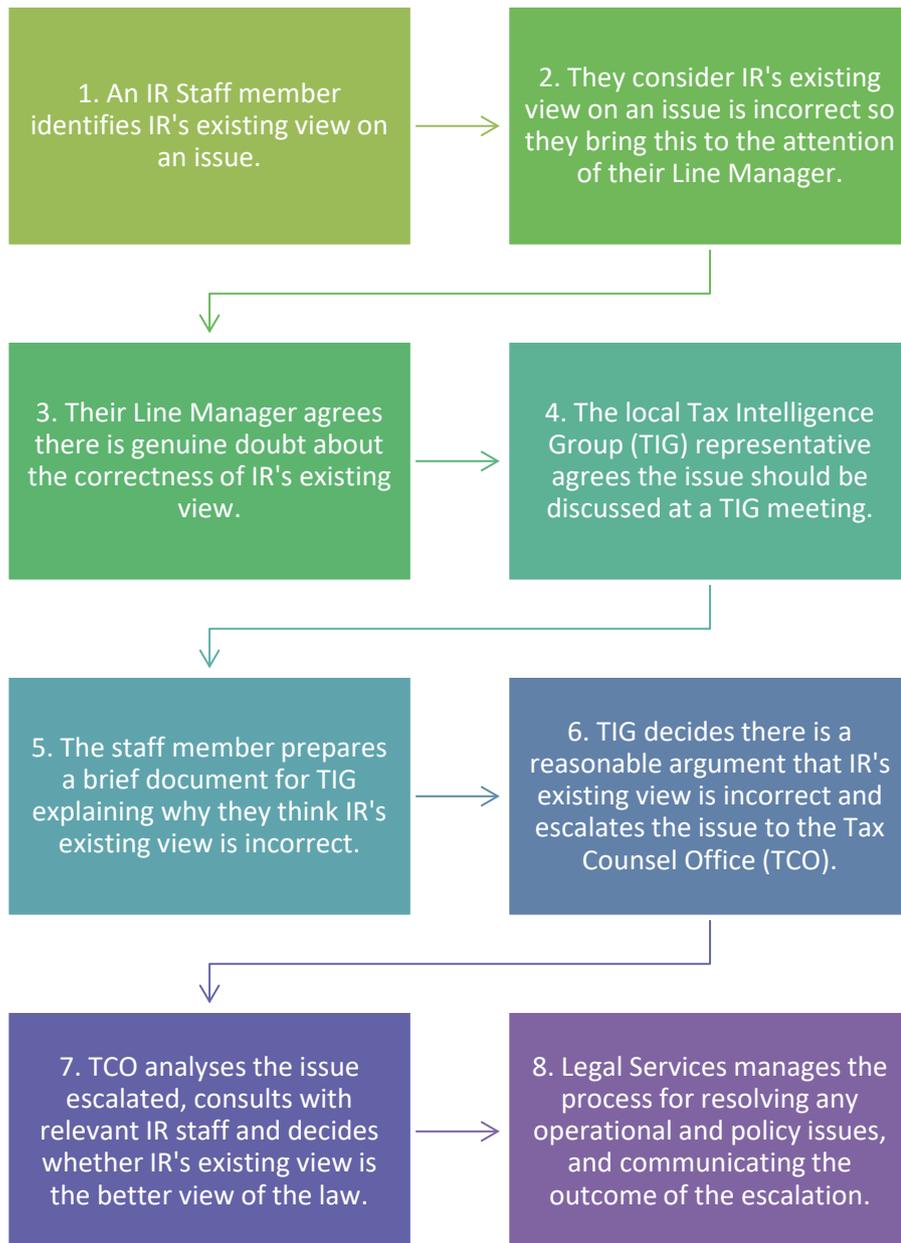
5. The usual Escalation process in a non-litigation context (see [43] to [66]) is summarised below and in the diagram after [11].
6. When a staff member considers that IR's existing view on an interpretation or application of any of the IR Acts is legally incorrect, they must bring this to the attention of their Line Manager (or another person the appropriate Business Group identifies). If their Line Manager (or other appropriate person) agrees that IR's existing view appears to be legally incorrect, then they must escalate the issue.
7. In the usual Escalation process, the appropriate Business Groups consider the escalated issue, then TIG does so and finally, if necessary, TCO resolves it. Legal Services manages the progress of issues through the Escalation process, as well as the operational response to the final decisions reached.
8. When an issue is escalated, any detrimental effect for customers from delays must be minimised. Staff must give priority to resolving escalated issues and should keep customers appropriately informed of the escalation and progress of the issue.
9. Until a final view on the escalation has been reached, and Legal Services has communicated the operational response to staff, a staff member must either follow IR's existing view or (if time permits) put dealing with the customer's affairs "on hold" pending the outcome of the escalation. The exception is where the Legal Services Leader and Chief Tax Counsel agree a different approach is appropriate, taking into account the matters referred to at [110].
10. Once a final view on the escalation has been reached, Legal Services will communicate this view to staff and all IR staff must follow that decision. An exception is where IR's Technical Governance Committee (TGC) has made a

² All references to TCO and Legal Services include their predecessor groups, unless the context requires otherwise.

decision not to follow that approach. In such circumstances, Legal Services will communicate the approach that staff must follow.

11. Where IR changes its view following an escalation and the new position is less favourable to a customer, generally the change will be applied prospectively only. For more detail on this approach, see "[Internal approach to managing changes or perceived changes of interpretation or practice](#)" (January 2017).

Diagram – Summary of usual Escalation process



Variations to usual Escalation process

12. The usual Escalation process varies slightly when:
- the timeframes for making a decision require a shorter process (see [77] and [78]);
 - IR's existing view on the issue being escalated is clearly incorrect (see [79] and [80]);
 - IR's information products or channels (eg, IR forms, guides, booklets or the IR website) incorrectly or inconsistently communicate IR's existing view (see [81] and [82]);
 - Legal Services has not previously been involved in the technical correspondence that Customer and Compliance Services (CCS) staff sent to a customer³ or third party and the correspondence did not rely on previous advice from Legal Services (see [83] to [86]);
 - CCS staff are undertaking a binding ruling and they disagree with a previous concluded view by TCO (see [87] to [92]); or.
 - TCO's final decision on an escalated issue is re-escalated (see [93] to [95]).

Escalation process in a litigation context

13. The Escalation process for litigation (including the impact of recent court cases) and settlements is different (see [67] to [76]). The Legal Services Leader will seek agreement from the Chief Tax Counsel to advance a different argument in court or a different basis for settlement.

Background

Protect the integrity of the tax system

14. The task of administering the IR Acts involves interpreting the law every day. Because the law must be interpreted, there is always room for more than one opinion about the correct interpretation. It is possible, and indeed inevitable, that different people within IR may form different views.
15. Under s 6(1) and (2)(f) of the Tax Administration Act 1994 (the TAA), all IR officers must use their best endeavours to administer the IR Acts "according to law". However, s 6 of the TAA imposes other obligations on IR officers, and these are not always easy to balance.
16. In particular, our over-riding obligation to protect the integrity of the tax system in s 6 also includes having regard to public perceptions of that integrity, the right of persons to have their liabilities determined "fairly" and "impartially", and their right to have their individual affairs "treated with no greater or lesser favour than the tax affairs of other persons".
17. Because of these obligations, it is important that IR, to the greatest extent possible, does not apply the IR Acts inconsistently between customers. An

³ References to customer in this document include any agent of the customer.

inconsistent approach can lead to perceptions that the tax system is not fair and impartial and instead that it can advantage, or disadvantage, some customers relative to others.

18. Another consideration is that IR officers get the power to undertake their duties by delegation from the Commissioner. It is important that the holder of that office does not knowingly apply different views of the IR Acts (through their delegates) to different customers.

Use expertise and experience

19. This need for consistency does not, however, prevent IR staff from using their expertise and experience in seeking to establish the correct view of the IR Acts. Having staff who are willing to question and review IR's existing view is an important element of ensuring high-quality technical decision-making in IR. That is why it is important that IR has a process for dealing with different technical views.
20. The Escalation Policy and Escalation process describe how to bring together and consider different technical views for the benefit of IR and customers generally, and achieve a balance between the various responsibilities under s 6 of the TAA.

Purpose of the Escalation Policy and process

21. The Escalation Policy and process help IR to:
 - maximise certainty for IR staff and customers by establishing a consistent approach to technical decisions;
 - constructively address and resolve differences of technical views within IR; and
 - build positive customer perceptions of the integrity of the tax system and so promote voluntary compliance with the IR Acts.

Consistent decision-making

Preventing inconsistent views

22. A staff member should not apply a view of the IR Acts to a customer's affairs when they know that doing so would be contrary to IR's existing view. This includes distinguishing IR's existing view without adequate justification.
23. An inconsistent view will occur at the point when staff communicate the view to a customer or apply it to a customer's affairs.
24. This principle of consistency also applies to prevent policy documents from expressing inconsistent views to customers or the Minister of Revenue.

IR/CLO protocol

25. This principle of consistency also applies to arguments put forward in court proceedings. However, the Escalation Policy and process must be applied in light of the Protocol that the Commissioner and the Solicitor-General, Crown Law Office (CLO) have entered into, agreeing on the processes for discharging their respective roles.

Identifying IR's existing view

26. Subject to the exceptions discussed from [96] to [110], an IR staff member must apply IR's existing view to a customer's affairs. Identifying IR's existing view is discussed below.

Document IR has published externally

27. Any view of the IR Acts set out in a document IR has published externally (other than as a draft, withdrawn or superseded view) is IR's existing view. This includes statements made in:
- Public advice and guidance such as Public Rulings, Interpretation Statements, Interpretation Guidelines and Questions We've Been Asked;
 - Standard Practice Statements, Operational Statements and Determinations;
 - *Tax Information Bulletins*, forms, booklets, guides and IR's website;
 - customer-specific documents such as a Notice of Proposed Adjustment, Notice of Response, Statement of Position, Private or Product Ruling, Determination, Short Process Ruling or Adjudication Report; and
 - technical correspondence sent to a customer.

Technical opinions

28. IR's existing view may also be set out in technical opinions that IR staff have prepared and are only available within IR. For example, it may appear in decisions or reports of TCO, litigation decisions, or opinions, operational guidelines or memoranda Legal Services has completed.

Established practice

29. IR's existing view may also be evident from an established practice IR applies to customers. Whether an established IR practice exists depends on the extent to which IR staff have seen and applied a practice as such.
30. For example, if IR staff in multiple locations have applied an approach to multiple customers for a few years, and it is not clear that staff have applied any other approach, then that approach is likely to be IR's established practice.
31. However, if IR staff have applied different approaches to a material number of customers, then there will not be an established IR practice. In this situation, Legal Services will determine IR's view on the relevant issue.
32. On occasions it may not be clear whether a practice is an established IR practice. If there is doubt on that matter, IR staff can raise the question with the local representative of TIG. TIG will then determine whether an established IR practice exists that raises the need for escalation.

TCO Issues Reports

33. A TCO Issues Report that expresses a concluded view on the interpretation or application of the IR Acts may also set out IR's existing view. A concluded view is a view of the IR Acts that TCO expresses a definite position on and is signed off.

34. In contrast to a TCO concluded view, a tentative view is either:
 - a view that a TCO Issues Report states as not having been finally decided; or
 - an initial view put to the applicant for a binding ruling which was tentative only and to be the subject of further submissions, but the applicant withdrew at that stage.
35. Where two different TCO Issues Reports present two different concluded views, and the team in the later project has referred to and appears to have fully considered the views of the earlier project team, the later TCO Issues Report is IR's existing view.
36. Where staff have any doubts over what view, if any, is TCO's concluded view, they can refer their question to the Technical Lead, Integration in TCO to determine.

Draft consultation items

37. When a draft consultation item (eg, draft Standard Practice Statement, Interpretation Statement or draft public ruling) is distributed for internal or external consultation and it differs from IR's existing view, IR staff must continue to apply IR's existing view and not apply the draft consultation item to customers before IR finalises and publishes the item.

Resolving doubt about consistency with IR's existing view

38. If staff have any doubt about whether an action or interpretation would be inconsistent with IR's existing view, they should ask themselves:

"Could a reasonable person consider that IR is applying the IR Acts inconsistently as between customers and, therefore, acting unreasonably and promoting uncertainty?"
39. If the answer is "yes", staff should not undertake the action or interpretation. Instead, they should consider escalating the issue for review and decision.
40. Staff should talk to their Line Manager (or another person identified by the appropriate Business Group) about whether escalation is required in a particular case. Staff can also consult with their local TIG representative for advice.
41. If a staff member considers that IR's existing view on an interpretation or application of any of the IR Acts is legally incorrect, they must bring this to the attention of their Line Manager (or another person the appropriate Business Group identifies).
42. If their Line Manager (or other appropriate person) agrees that IR's existing view appears to be legally incorrect, then they must escalate the issue. They must not apply a different view based on their interpretation until the matter has been resolved through the Escalation process.

Usual Escalation process

43. Subject to the variations discussed from [77] to [95], the usual Escalation process in a non-litigation context is discussed below (and summarised in the diagram after [11]). The Escalation Policy and process in a litigation context (including the impact of recent court cases) is discussed from [67] to [76].

No IR existing view

44. When there is no IR existing view, no escalation is required. The relevant Business Group (eg, Legal Services or TCO) should deal with any differences of view or practice within the Business Group internally, where possible. The view reached will become IR's existing view on the relevant matter, which staff must then follow unless a different decision is reached through the Escalation process.

Contact appropriate person

45. Where an IR staff member disagrees with IR's existing view on an issue (as described at [27] to [37] above), they must bring this to the attention of their Line Manager (or another person the appropriate Business Group identifies).

IR's existing view correct

46. If the Line Manager (or another person the appropriate Business Group identifies) concludes that IR's existing view is correct, their decision is final. IR staff must follow that position and the Escalation process is at an end.

Genuine doubt about IR's existing view

47. Where the Line Manager (or another person the appropriate Business Group identifies) thinks there is genuine doubt about IR's existing view, TIG should first test the matter. This must be done before communicating to the customer (if applicable) the substance of the proposed revised view. However, customers must be appropriately updated about any escalation and its progress (and any related audit).
48. Before raising an escalation issue at TIG, the staff member should first discuss it with the local TIG representative. If the representative agrees that it is an issue that TIG should discuss, they will refer the issue to the [TIG Administration](#) mailbox.

Brief email, memorandum or opinion required

49. The staff member escalating the issue must prepare a brief email, memorandum or opinion that clearly explains the issue they are escalating, provides legal reasons in support of the preferred view and explains why IR's existing view is incorrect. That email, memorandum or opinion should also briefly refer to any relevant analysis IR has previously undertaken on the issue that the staff member is aware of.

TIG consideration

50. The staff member will provide this email, memorandum or opinion to TIG via their local TIG representative.

51. TIG may ask the staff member to undertake further work on the email, memorandum or opinion if it sees this as necessary to make its decision on whether escalation is warranted.
52. TIG must then determine whether the escalation raises a reasonable argument that IR's existing view is incorrect. If it decides the escalation has not raised a reasonable argument, the Escalation process is ended and IR's existing view stands. However, if it decides the argument is reasonable, then TIG refers the matter to TCO.

Legal Services manages Escalation process

53. Legal Services manages the progression of issues through the Escalation process, including where appropriate to TCO. It will keep the staff member who escalated the issue appropriately informed of progress.
54. Legal Services will provide TCO with a brief written summary of TIG's thinking on the issue escalated and all relevant documentation.

TCO consideration

55. TCO will first seek to understand the issue escalated by contacting relevant IR staff members who it is appropriate to involve given the nature of the issue. This usually includes the referrer and staff members from PaRS. TCO will then analyse the issue escalated and reach a view, following the approach to statutory interpretation set out in the Legislation Act 2019. IR's existing view will prevail if that is the better view of the law (ie, demonstrably more likely than not to be correct).
56. Apart from in exceptional circumstances where the Chief Tax Counsel or the TCO Group Leader responsible for escalations authorises otherwise, before finalising its view TCO will prepare a draft opinion and seek comments on its content and correctness from those appropriate IR staff involved (including the referrer and staff members from PaRS). This internal consultation process will generally include TIG members and will be coordinated by Legal Services. TCO will coordinate consultation with TCO staff, PaRS staff and any external consultation with people outside IR.
57. Once TCO has reached a final view, it will communicate that view to the referrer and appropriate IR staff involved in the escalation. IR will not adopt TCO's final view as IR's existing view until any operational and/or policy issues have been identified and resolved. After that, wider communication to other IR staff will occur. Legal Services manages the process for resolving any operational and policy issues, and communicating the outcome to stakeholders, and TGC oversees that process.
58. Until a final view on the issue escalated has been reached and Legal Services has formally communicated IR's approach to staff, staff must either follow IR's existing view or (if time permits) put dealing with the customer's affairs "on hold" pending the outcome of the escalation.

Interaction with customers during Escalation process

59. When an issue is referred to TIG for consideration and/or to TCO for resolution, staff must minimise any detrimental effect on customers from IR's processes. They must give priority to the issue and keep affected customers appropriately informed of the escalation and progress of the issue.
60. These customers should receive an update on progress at least every two months or at intervals staff agree with them. The appropriate CCS staff member will provide these updates, in consultation with a Technical Lead, Legal Services responsible for escalations.

Operational response to TCO's final decision

Legal Services manages operational response

61. Legal Services will manage IR's operational response to TCO's final decision on an escalated issue. This role includes coordinating a process for identifying and resolving any issues that arise, and developing any interim position required. It also includes liaising with PaRS on any policy response.

Referral to TGC

62. When TCO's final decision is likely to give rise to significant operational, legislative, system or other issues, a Technical Lead, Legal Services responsible for escalations or the TCO Group Leader responsible for escalations may refer the matter to TGC to decide what IR will do.
63. One decision TGC could make is that IR will not implement TCO's final decision in the short to medium term. It might reach this conclusion, for example, where the TCO final decision:
 - is inconsistent with the clear policy intent and PaRS intends to recommend that the government makes a legislative change; or
 - raises significant issues for IR's computer systems that need to be addressed.

Communication to staff and stakeholders

64. Once TCO has reached a final decision and IR's approach has been determined (taking into account any TGC decisions), Legal Services will communicate the decision on IR's approach to all IR staff, who must all follow it.
65. Legal Services will also communicate the outcome to any stakeholders.

Generally prospective application to customers

66. As "[Internal approach to managing changes or perceived changes of interpretation or practice](#)" describes in more detail, where IR's existing view changes following an escalation and the new view is less favourable to customers, generally the new view will be applied prospectively only.

Escalation process in a litigation context

Impact of recent court cases

Case Impact Statement or memorandum

67. In some situations, a recently decided court case or Taxation Review Authority (TRA) decision may cast doubt on the correctness of IR's existing view. In most cases, staff will receive a Case Impact Statement that sets out IR's view following any such court case or TRA decision. Alternatively, the Legal Services Leader or TCO may send staff a memorandum setting out IR's view.
68. If there is no Case Impact Statement or memorandum for such a court case or TRA decision, IR staff may not adopt an interpretation based on their own view that the court case or TRA decision establishes that IR's existing view is incorrect.

Escalation – court or TRA decision

69. If a staff member thinks that, following a court or TRA decision, IR's existing view on an issue (including as set out in a Case Impact Statement or memorandum as noted above) is incorrect, then they can escalate that issue by following the usual Escalation process. In these circumstances, staff should consult Legal Services as part of the escalation referral process.

Litigation and settlements

70. The litigation process is subject to the Escalation Policy. Legal Services must:
- implement the TCO adjudication decision in the arguments presented in court; and
 - not put forward any argument that is inconsistent with or significantly differs from any other decision that establishes IR's existing view.
71. The settlement process is also subject to the Escalation Policy. Legal Services must:
- implement the TCO adjudication decision in any settlement made; and
 - not make settlements on a basis that is inconsistent with or significantly differs from any other decision that establishes IR's existing view.

Escalation – Litigation and settlements

72. If a staff member in Legal Services wants to advance a different argument in court or a different basis for settlement, they do not follow the usual Escalation process. Instead, the Legal Services Leader will seek agreement from the Chief Tax Counsel. In considering whether a different approach is required in the litigation context, the Chief Tax Counsel will consider:
- whether IR's analysis to date, or any other relevant material, indicates that IR's existing view is very likely to be incorrect;
 - CLO's views on the merits of particular arguments;
 - how long IR has held the existing view, whether staff have applied it consistently and the extent of the analysis on which it is based,

- whether IR's existing view is inconsistent with the clear policy intent and PaRS intends to recommend that the government makes a legislative change;
- the desirability of obtaining a judicial decision on the relevant issues;
- any potential difficulties for any customer involved in the litigation, or for other customers, in complying with their obligations, including any increase in customers' tax liabilities and compliance cost implications; and
- any potential impacts on voluntary compliance and on the care, management and integrity of the tax system generally.

Normal weighing of litigation risk

73. The intention behind the above requirements on litigation relates to legal principles and arguments. It is not to constrain, in the context of settlements, Legal Services' normal weighing of litigation risk based mainly on evidentiary matters, witness credibility, new factual information and similar considerations.
74. Further, the requirements are not intended to preclude Legal Services from:
- responding to new arguments a disputant raises; or
 - revising IR's approach appropriately where facts are established that are materially different from those on which previous IR arguments were based.
75. This is provided that IR's arguments and the approach IR then adopts are not inherently inconsistent with the applicable reasoning in the relevant adjudication, or any other decision establishing IR's existing view.

CLO wishing to diverge from IR's existing view

76. On some occasions in a particular dispute in litigation, CLO or instructed counsel may wish to diverge from IR's existing view in the arguments to be presented in court. In such situations, Legal Services will promptly advise TCO, and the Chief Tax Counsel will liaise with Legal Services and CLO to resolve any differences under the IR/CLO protocol.

Variations to usual Escalation process

Variation – fast-track escalation to TCO

77. In exceptional circumstances, an escalation may be referred to TCO without TIG considering it first. This could occur if the timeframes within which a decision must be made require a shorter process.
78. However, this modification to the process can only occur when the TCO Group Leader responsible for escalations and a Technical Lead, Legal Services responsible for escalations agree to such a change. In these circumstances, Legal Services will ensure that TIG members are advised of the nature of the issue escalated once the issue has been referred to TCO.

Variation – correcting clear errors in IR's existing view

79. Another variation to the usual Escalation process is when IR's existing view on the issue being escalated is clearly incorrect. This is on the basis that no reasonable argument supports IR's existing view and the correct view is clear from the relevant legislation.
80. In these circumstances, a Technical Lead, Legal Services responsible for escalations will:
- decide the matter in consultation with TIG and the Domain Lead, Legal Services;
 - arrange any necessary communication of this decision to IR staff; and
 - advise the TCO Group Leader responsible for escalations.

Variation – correcting errors in communications of IR's existing view

81. A variation to the usual Escalation process is permitted where any of IR's information products or channels incorrectly communicate IR's existing view. Examples of products or channels that may contain such errors are IR forms, guides and booklets or the IR website.
82. In such circumstances, a Technical Lead, Legal Services responsible for escalations will arrange for those products or channels to be amended. Where necessary, the Domain Lead, Legal Services and the TCO Group Leader responsible for escalations will be advised of the correction.

Variation – CCS technical correspondence not involving Legal Services

83. A further variation to the usual Escalation process relates to technical correspondence CCS staff send to a customer or third party. Specifically, it applies to interpretations in that technical correspondence when:
- there was no IR existing view;
 - Legal Services was not involved in preparing that correspondence; and
 - the correspondence did not rely on previous advice from Legal Services.
84. In these circumstances, if a staff member wishes to deviate from the interpretation or position set out in that correspondence, they must raise this with a Technical Lead, Legal Services responsible for escalations rather than with TIG.
85. Legal Services will then determine IR's view on the relevant issue. Legal Services will communicate the view it reaches to appropriate staff, and all IR staff must apply that view.
86. If a staff member disagrees with the view Legal Services has reached, then they may escalate the matter by following the usual Escalation process.

Variation – CCS undertaking binding rulings

87. When CCS staff are undertaking a binding ruling (including a short process ruling) and they disagree with IR's existing view, then a shorter version of the Escalation process will apply. In these cases, with the agreement of a Technical Lead, Legal

Services responsible for escalations, the relevant issue will be escalated directly to TCO for resolution.

88. CCS staff are not required to escalate in this context when they are simply considering their view and exploring issues or arguments with the applicants and their agents.
89. However, when CCS staff have formed a view that they would (in the absence of the Escalation process) put forward to the applicant, escalation will be required before they communicate that view to the applicant. CCS and TCO may also have had informal discussions on the issues before that stage.
90. When an issue is escalated regarding a binding ruling application, the applicant should be advised that this is occurring and then be kept aware of progress. If a final decision on the ruling application must be made before TCO can finalise its conclusion, then CCS staff must follow IR's existing view.
91. If, after an issue has been concluded as above, and the subsequent escalation outcome TCO reaches is that the conclusion reached in the binding ruling was incorrect, then the ruling will stand, but the escalation view will become the new IR existing view.
92. The applicant for a binding ruling will not be charged for the work TCO undertook in considering escalated issues. It is fair and reasonable to waive charging for this time under reg 6 of the Tax Administration (Binding Rulings) Regulations 1999 because this work relates to wider issues involving the Escalation process rather than simply considering the applicant's ruling application.

Variation – Re-escalating TCO's final decision on an escalated issue

93. If a staff member thinks that TCO's final decision on an escalated issue is incorrect, then TIG may agree to have that decision reconsidered through the Escalation process.
94. TCO's final decision on an escalated issue can only be re-escalated when TIG is satisfied that:
 - a material argument exists that TCO did not consider; and/or
 - there is a demonstrable, material error in TCO's reasoning.
95. If TCO's earlier decision on an escalation is found to be incorrect, then Legal Services will communicate the appropriate information to the relevant staff.

Exceptions not requiring escalation

Exception – applying draft consultation item before finalised

96. It is only in exceptional cases, which the Legal Services Leader and Chief Tax Counsel determine, that IR will adopt a draft consultation item as IR's existing view before it is finalised. In determining whether to apply the view in the draft consultation item before it is finalised, the Legal Services Leader and Chief Tax Counsel will consider:

- whether the analysis already undertaken, or any other relevant material, indicates that IR's existing view is very likely to be incorrect;
 - how long IR has held the existing view, whether staff have applied it consistently and the extent of the analysis on which it is based;
 - whether IR's existing view is inconsistent with the clear policy intent and Policy and Regulatory Stewardship (PaRS) intends to recommend that the government makes a legislative change;
 - any potential difficulties for customers in complying with their obligations, including any increase in customers' tax liabilities and compliance cost implications; and
 - any potential impacts on voluntary compliance and the care, management and integrity of the tax system generally.
97. When IR adopts a draft consultation item as IR's existing view before it is finalised, staff will receive instructions withdrawing an existing Ruling or Statement and/or specific instructions to apply the draft consultation item to customers.
98. Consideration will also be given to what communication is required with customers who are dealing with IR on the issue and with customers more generally.
99. As "[Internal approach to managing changes or perceived changes of interpretation or practice](#)" describes in more detail, where IR's existing view changes and the new view is less favourable to a customer, generally IR will apply the new view prospectively only.

Exception – TCO may depart from IR's existing view

100. A key aspect of TCO's adjudication function is to provide a fresh and impartial review of the technical decisions of other IR Business Groups that customers are disputing. Therefore, to fulfil this function, TCO must be able to make adjudication decisions that differ from IR's existing view, including views of TCO.
101. This means that an adjudication decision could potentially be inconsistent with a previous escalation decision (otherwise TCO is not taking a fresh view). However, the Chief Tax Counsel must approve any departure from a previous escalation decision.
102. Similarly, in some instances, TCO may prepare a binding ruling or public statement that takes a substantively different view from IR's existing view. Again, however, this can only occur with the approval of the Chief Tax Counsel.
103. If TCO takes any view departing from IR's existing view, then it will advise Legal Services who will be responsible for operationalising the new IR view.

Addressing inconsistency

104. The Chief Tax Counsel will decide how to address the inconsistency that arises if an adjudication, binding ruling or public statement TCO has prepared takes a different view from IR's existing view.

105. Addressing the inconsistency may involve a subsequent escalation of the relevant issues to determine IR's view. Depending on the outcome of that process, it may also require the subsequent modification or withdrawal of a public statement. If escalation is required, the relevant issues will be sent immediately to TCO for a decision (without first involving TIG). Legal Services will consider whether an interim position is appropriate.
106. However, the Chief Tax Counsel may decide that their own level of involvement in the issue means it is not necessary to escalate the issue. When that is the case, the Chief Tax Counsel may decide that the view reached in the adjudication, binding ruling or public statement is correct. In such circumstances, any modification or withdrawal of a public statement will occur without escalation.

Exception – not following an adjudication, binding ruling or public statement TCO has prepared

107. It is not necessary to follow a particular decision in an adjudication, binding ruling or public statement TCO has prepared for other customers if the Legal Services Leader and Chief Tax Counsel approve making it an exception on the basis that the matter is being considered as a priority at a national level.
108. In these circumstances, Legal Services will advise appropriate staff in a memorandum signed off by the Legal Services Leader that IR will adopt a specified contrary or modified approach (which the Legal Services Leader will have determined in consultation with the Chief Tax Counsel) pending further consideration of the matter at a national level. In such a case, all IR staff must follow the approach outlined in that memorandum until further advised.
109. In determining whether IR staff should or should not follow a particular decision in a TCO adjudication, binding ruling or public statement, the Legal Services Leader and the Chief Tax Counsel will consider:
- whether the analysis already undertaken, or any other relevant material, indicates that the TCO decision is very likely to be incorrect;
 - how long IR has held, or expressed, the existing view and the extent of the analysis on which it is based;
 - whether the TCO decision is inconsistent with the clear policy intent and PaRS intends to recommend that the government makes a legislative change;
 - any potential difficulties for customers in complying with their obligations, including any increase in customers' tax liabilities and compliance cost implications; and
 - any potential impacts on voluntary compliance and on the care, management and integrity of the tax system generally.

Exception – before Escalation process completed

110. The only exception to the requirement in [58] is where the Legal Services Leader and Chief Tax Counsel agree staff can apply a different approach to IR's existing view before the Escalation process is complete in the particular circumstances. In determining whether to apply a different approach, the Legal Services Leader and Chief Tax Counsel will consider:

- whether the analysis already undertaken during the Escalation process, or any other relevant material, indicates that IR's existing view is very likely to be incorrect;
- how long IR has held the existing view, whether staff have applied it consistently and the extent of the analysis on which it is based;
- whether IR's existing view is inconsistent with the clear policy intent and PaRS intends to recommend that the government makes a legislative change;
- any potential difficulties for customers in complying with their obligations, including any increase in customers' tax liabilities and compliance cost implications; and
- any potential impacts on voluntary compliance and on the care, management and integrity of the tax system generally.

Impacts on outputs and potentially on revenue

Performance standards

111. Clearly, the Escalation process involves some delays as issues are being escalated. While every effort will be made to minimise delays, the delays may well have impacts on performance standards for individual cases. This could occur if staff decide to put dealing with a customer's affairs "on hold" pending the outcome of the escalation, rather than applying IR's existing view.

Time bar

112. Further, in some instances the application of the time bar date may make it impossible to make an assessment for customers while an issue is being resolved through the Escalation process. IR is willing to accept this as a possible consequence in the interests of ensuring its decisions are, as far as possible, consistent and legally correct.
113. The Escalation process must be followed, even though this may occasionally result in the loss of some tax revenue. Staff must not issue an assessment contrary to this process merely because the time bar is approaching.

Subsequent amendments to Escalation Policy and process

114. Any proposed amendments to this statement of administrative policy and process must first be formally referred to and approved by TGC, and then approved in writing by the Commissioner.

Approved by the Commissioner of Inland Revenue on the 27th day of February 2023.

Peter Mersi