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Dear John

***Request for information***

I refer to your online Official Information Act 1982 (OIA) request of 29 July 2022, in which you ask for:

*"All Search parts 01-16. All Surveillance parts."*

In response to your request, please find attached copies of relevant chapters of the NZ Police Manual:

- Search Introduction
- Search warrants
- Warrantless powers to search places, vehicles and things
- Consent searches
- Carrying out search powers with or without warrants
- Road blocks and stopping vehicles for search purposes
- Methods for searching places and vehicles
- Searching people
- Production orders
- Examination orders
- Declaratory orders
- Procedures applying to seized and produced things
- Privilege and immunities under the Act
- Reporting
- Government agency requests for assistance with search warrants and production orders
- Property damage incurred during searches or exercise of statutory powers
- Surveillance introduction
- Categories of surveillance with a device
- Surveillance device warrants
- Surveillance by radar and from aircraft, drones etc
- Surveillance squad
- Surveillance reporting
- Retention and destruction of surveillance data and documents
- Privilege and immunities involving surveillance.

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You will notice that some of the text in the sections provided is in underlined blue type. This text links to other information in the Police Manual, which has not been provided to you.

Any redactions in the material provided relate to information that is withheld pursuant to section 6(c) of the OIA, in that making that information available would be likely to prejudice the maintenance of the law, including the prevention, investigation and detection of offences.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.



Craig Scott  
Detective Inspector  
Police National Headquarters

## Part 1 - Search introduction

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# Policy statement and principles

## What

The [Search and Surveillance Act 2012](#) brings together most Police and law enforcement search, seizure, surveillance and related powers. The Act sets out detailed rights, powers and obligations in relation to exercising those powers. The powers in the Act are designed to make it easier to detect and apprehend offenders committing serious criminal offences.

The Act also recognises the importance of rights and entitlements affirmed in other enactments, including the [New Zealand Bill of Rights Act 1990](#), the [Privacy Act 2020](#), and the [Evidence Act 2006](#).

Exercising Police powers have inherent safety risks and because of their intrusive nature have the potential to cause harm to Police employees and the public. Police employees planning and undertaking the exercise of entry, search, inspection, production, examination, seizure, road blocks and stopping vehicles must therefore mitigate these risks as much as possible while enforcing the law.

The multi-part ‘Search’ chapter outlines the powers and obligations detailed in the Act and Police procedures in relation to those powers. It also comprises:

- the Act’s declaratory order regime enabling a judicial opinion as to lawfulness and reasonableness to be obtained in advance of the use or undertaking of any new device, technique procedure or activity
- Police policy for government agency requests for assistance with search warrants and production orders
- Police policy relating to property damage incurred during searches or exercise of statutory powers.

## Why

Key functions of the Police are law enforcement with targeting and catching offenders, crime and victimisation prevention, delivering a more responsive Police service and the maintenance of public safety. As an employer, Police also has a responsibility to ensure that its employees are safe when they undertake their duties.

Compliance with the guidance and procedures in the ‘Search’ chapter when carrying out powers of entry, search, inspection, production, examination, seizure, road blocks and stopping vehicles will:

- ensure compliance with the [Search and Surveillance Act 2012](#) and other enactments like the New Zealand Bill of Rights Act 1990
- maximise safety and eliminate or minimise the potential harm that executing the Act’s powers may have
- increase the chance of successful prosecutions.

## How

To meet its objectives and obligations when carrying out entries, searches, inspections, productions, examinations, seizures, road blocks and stopping vehicles, Police will:

- ensure it has a lawful authority to conduct such activities and exercise any other incidental power in relation to those activities, including the use of force
- conduct risk assessments when planning the exercise of those powers and take action to mitigate risks to protect the safety of the public and employees carrying out the Act’s powers.
- only seize what it is lawfully entitled to seize
- provide appropriate announcements and identification on the exercise of those powers
- satisfy requirements detailed in the Act (e.g. notice and inventory requirements after search or seizure).

## Overview

### Parts of the 'Search' chapter

The 'Search' chapter is comprised of multiple parts detailing Police powers and obligations under the [Search and Surveillance Act 2012](#), including powers incidental to search, and related procedures. The parts are:

- [Search introduction](#)
- [Search warrants](#)
- [Warrantless powers to search places, vehicles and things](#)
- [Consent searches](#)
- [Carrying out search powers with or without a warrant](#)
- [Roadblocks and stopping vehicles for search purposes](#)
- [Methods for searching places and vehicles](#)
- [Searching people](#)
- [Production orders](#)
- [Examination orders](#)
- [Declaratory orders](#)
- [Procedures applying to seized and produced things](#)
- [Privilege and immunities under the Act](#)
- [Reporting](#)
- [Government agency requests for assistance with search warrants and production orders](#)
- [Property damage incurred during searches or exercise of statutory powers](#)

**Note:** Searches of persons subsequent to arrest, are not covered in this chapter. (See [Arrest and detention](#) chapter)

### This 'Search introduction' part

This Introduction part of the '[Search](#)' chapter details:

- definitions that apply in the Act
- general principles applying to searches, and
- requirements for ensuring the lawfulness and reasonableness of searches.

### Related information

Further guidance on specific types of searches is available in other chapters. For example, see:

- [Crime scene examination](#) and the '[Forensic evidence](#)' chapters if you are conducting an investigative search at a crime scene
- [Improvised explosive devices and bomb threats](#) if you are searching for improvised explosive devices or dealing with bomb threats.

### References to the "Act"

References to "the Act" or to sections of an Act in the above chapters are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

# About the Search and Surveillance Act 2012

## Introduction to the Act

The Search and Surveillance Act 2012 brings most Police and law enforcement agency<sup>1</sup>

search, seizure and surveillance powers under one Act. The legislation has wide reaching implications for Police, particularly for frontline staff.

The Act clarifies the nature and scope of search and surveillance powers. It makes the powers more accessible and easier to understand for the agencies using them and for those subject to the powers. Some of the powers in the Act are completely new, for example production and examination orders.

The Act recognises the importance of rights and entitlements affirmed in other enactments, including the New Zealand Bill of Rights Act 1990, the Privacy Act 2020, and the Evidence Act 2006

The Search and Surveillance Act 2012 allows for the regulated use of technologies that were not previously regulated.

## Purpose of the Act

Section 5 states that the purpose of the Act 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 by:

- modernising the law of search, seizure, and surveillance to take into account advances in technologies and to regulate the use of those technologies
- providing rules that recognise the importance of the rights and entitlements affirmed in other enactments, including the [New Zealand Bill of Rights Act 1990](#), the [Privacy Act 2020](#), and the [Evidence Act 2006](#)
- ensuring investigative tools are effective and adequate for law enforcement needs.

# Definitions

## Table of definitions

This table provides definitions for key terms used in the [Search and Surveillance Act 2012](#) and throughout the 'Search' Police Manual chapters. Further definitions are included where they are most relevant.

Unless otherwise stated, definitions can be found under section [3](#) of the Act.

Term	Definition
<b>Applicant</b>	Under section 97 applicant for a search warrant means: <ul style="list-style-type: none"> <li>• a constable, or</li> <li>• any other person authorised to apply for a search warrant by the Search and Surveillance Act or any enactment specified in column 2 of the Schedule to which that provision applies.</li> </ul>
<b>Arms</b>	Arms means any firearm, airgun, pistol, restricted weapon, imitation firearm, or explosive (as those terms are defined in section <a href="#">2</a> of the Arms Act 1983), or any ammunition.
<b>Chief executive</b>	Chief executive includes the Police Commissioner.
<b>Constable</b>	'Constable' has the same meaning as in section <a href="#">4</a> of the Policing Act 2008.
<b>Controlled drug</b>	'Controlled drug' has the same meaning as in section <a href="#">2(1)</a> of the Misuse of Drugs Act 1975.
<b>Enforcement officer</b>	'Enforcement officer' means: <ol style="list-style-type: none"> <li>a. a constable (<i>see definition above</i>), or</li> <li>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.</li> </ol>
<b>Evidential material</b>	Evidential material, in relation to an offence or suspected offence, means evidence of the offence or any other item, tangible or intangible, of relevance to the investigation of the offence.
<b>Examination order</b>	Examination order means an examination order made under section 38. (See Part 10 <a href="#">Examination orders</a> ).
<b>Informant</b>	'Informant' is not restricted to a covert human intelligence source (CHIS).  'Informant' has the same meaning as in section <a href="#">6(1)</a> of the Criminal Disclosure Act 2008, i.e. a person who provides verbal or written information (whether or not in recorded form) to a law enforcement officer.
<b>Issuing officer</b>	Issuing officer means: <ul style="list-style-type: none"> <li>• a Judge</li> <li>• a person, such as a Justice of the Peace, Community Magistrate, Registrar, or Deputy Registrar, who is for the time being authorised to act as an issuing officer under section 108 of the Search and Surveillance Act 2009.</li> </ul>
<b>Judge</b>	Judge means a District Court Judge or a Judge of the High Court.
<b>Police bail</b>	'Police bail' has the same meaning as in <a href="#">Part 2</a> of the Bail Act 2000.

<b>Police employee</b>	'Police employee' has the same meaning as in section <a href="#">4</a> of the Policing Act 2008 and means: <ul style="list-style-type: none"> <li>• a person employed under section <a href="#">18</a> of the Policing Act (Commissioner may appoint Police employee); and</li> <li>• except in <a href="#">Part 4</a> (provisions relating to employment of Police employees) of that Act, includes a person seconded to the Police.</li> </ul>
<b>Police uniform</b>	'Police uniform' has the same meaning as in section <a href="#">4</a> of the Policing Act 2008. (See additional information about uniform in "Entry, announcement and identification requirements" in Part 5 - <a href="#">Carrying out search powers with or without a warrant</a> ).
<b>Production order</b>	Production order means a production order made under section 74 of the Search and Surveillance Act 2012. (See Part 9 - <a href="#">Production orders</a> ).
<b>Reasonable grounds to believe</b>	Having a sound basis for believing that a situation or circumstance actually exists e.g. reasonable grounds to believe that the search will locate evidential material relating to that offence.  <i>(Definition not taken from Search and Surveillance Act 2012)</i>
<b>Reasonable grounds to suspect</b>	Having a sound basis for suspecting that a situation or circumstance is likely to exist, e.g. reasonable grounds to suspect that an offence has been committed.  <i>(Definition not taken from Search and Surveillance Act 2012)</i>
<b>Remote access search</b>	Remote access search means a search of an entity that does not have a physical address that a person can enter and search. For example, an Internet data storage facility.
<b>Road block</b>	Road block means any form of barrier or obstruction preventing or limiting the passage of vehicles.
<b>Rub-down search</b>	Rub-down search means a search described in sections <a href="#">85</a> , <a href="#">86</a> and <a href="#">87</a> .
<b>Seized items</b>	Seized items do not include anything made or generated by a person exercising a search or surveillance power (e.g. photographs, drawings, or audio or video recordings made by or on behalf of that person, or a forensic copy of a computer hard drive).
<b>Strip search</b>	Strip search means a search where the person conducting the search may require the person being searched to undress, or to remove, raise, lower, or open any item or items of clothing so that the genitals, buttocks, or (in the case of a female) breasts are: <ul style="list-style-type: none"> <li>• uncovered; or</li> <li>• covered only by underclothing.</li> </ul>
<b>Thing</b>	Includes any tangible or intangible thing e.g. an email address or information used to access an Internet data storage facility.
<b>Tracking device</b>	Tracking device means a device that may be used to help ascertain, by electronic or other means, either or both of the following: <ul style="list-style-type: none"> <li>• the location of a thing or a person;</li> <li>• whether a thing has been opened, tampered with, or in some other way dealt with, but does not include a vehicle or other means of transport, such as a boat or helicopter.</li> </ul>

<b>Unique identifier</b>	Unique identifier, in relation to an enforcement officer, means an identifier, used to identify the officer, that is not their name and that:
	<ul style="list-style-type: none"> <li>a. is assigned to them by the law enforcement agency that employs or engages them for the purposes of its operations; and</li> <li>b. uniquely identifies them in relation to the law enforcement agency.</li> </ul>
<b>Unlawfully at large</b>	Unlawfully at large, in relation to a person, means that a person is any one or more of these:
	<ul style="list-style-type: none"> <li>a. a person for whose arrest a warrant (other than a warrant issued under Part 3 of the Summary Proceedings Act 1957) is in force;</li> <li>b. unlawfully at large within the meaning of the <a href="#">Corrections Act 2004</a> or the <a href="#">Parole Act 2002</a></li> <li>c. a prison breaker within the meaning of section <a href="#">119</a> of the Crimes Act 1961</li> <li>d. an escapee from lawful custody within the meaning of section <a href="#">120</a> of the Crimes Act 1961</li> <li>e. a special patient or restricted patient within the meaning of the <a href="#">Mental Health (Compulsory Assessment and Treatment) Act 1992</a> who has escaped or failed to return on the expiry or cancellation of a period of leave</li> <li>f. a care recipient or special care recipient within the meaning of the <a href="#">Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003</a> who has escaped or failed to return on the expiry or cancellation of a period of leave</li> <li>g. a young person within the meaning of the Children, Young Persons, and Their Families Act 1989 who is subject to an order made under section <a href="#">311(1)</a> of that Act and who is absconding from the custody of the chief executive (as defined in that Act).</li> </ul>
<b>Vehicle</b>	Vehicle means any conveyance capable of being moved under a person's control, whether or not the conveyance is used for the carriage of persons or goods, and includes a motor vehicle, aircraft, train, ship, or bicycle.

## General principles applying to entry and searches

### Searching people

If your search of a place, vehicle or other thing extends to searching people, observe the general principles applying to searches of people in the [Searching people](#) chapter.

### Entering and searching places, vehicles and other things

These general principles apply equally to searches of places, vehicles and other things, whether conducted under warrant or without a warrant.

	<b>Principle</b>
<b>Lawfulness and reasonableness</b>	All searches must be lawful and reasonable. (See <a href="#">Lawfulness and reasonableness of searches</a> in this chapter for more information).
<b>Implied licence of entry to property</b>	<p>Police employees have the right (implied licence) to enter a property to make enquiries. An occupier or owner has the right to revoke the implied licence of entry to that property at any time. See:</p> <ul style="list-style-type: none"> <li>• <a href="#">Davey v Police</a> [2019] NZHC 2107 that clarifies a casual guest may also have the right to revoke the implied licence of entry, particularly when the tenants are not present or a young person who lives at the property is likely to have the right when the tenants have left them in charge in their absence. The decision in this case also confirmed that asking for a search warrant may be sufficient to revoke the implied licence of entry.</li> <li>• <a href="#">Hall v R</a> [2018] NZCA 279 exemplifies the difficulties that can sometimes arise when relying on implied licence, and the case-by-case approach that should be taken when it comes to assessing the scope of the licence. In the Court's view, there were sufficient grounds in this case to apply for a warrant.</li> </ul>
<b>Search hierarchy</b>	<p>A search for law enforcement purposes should, in the absence of exceptional/urgent circumstances recognised by the Act, be authorised by way of a warrant i.e. the warrant preference rule. See <a href="#">Smith v Police</a> [2019] NZHC 2111 and <a href="#">Lethbridge v New Zealand Police</a> [2018] NZHC 2240.</p> <p>You should always consider obtaining a search warrant first. If this is not practicable, consider using a warrantless search power.</p> <p>If there is a reason to search a place, vehicle or other thing and a warrantless search power exists, then you should use that power instead of asking a relevant person for consent to conduct the search under sections <a href="#">91-96</a> of the Act.</p>
<b>Decision records</b>	You must record your reasonable grounds to suspect and/or believe that were known at the time a warrantless power was used. You may need to rely on this record in court.
<b>Identification and notice</b>	<p>The owner / occupier/ or person in charge of a place, vehicle or thing being searched has the right to know who is searching, the person's authority for searching and the reasons why they are conducting a search, unless there are good reasons for not providing this information.</p> <p>(See "Entry, announcement and identification requirements" in Part 5 <a href="#">Carrying out search powers with or without a warrant</a> for information about your responsibilities to provide information when searches of places, vehicles and things are conducted.</p>
<b>Force used against property must be reasonable</b>	Any force used to gain entry to any place, vehicle or other thing for the purpose of carrying out your search must always be reasonable in the circumstances. (s <a href="#">131(3)</a> )
<b>Search or seizure should be witnessed</b>	Any search of a place, vehicle or other thing, or any removal or seizure of property during the search, should be witnessed (if practicable) by another Police employee, enforcement officer from another agency or person assisting with the search.
<b>Seized property must be documented</b>	All property removed or seized from a place, vehicle and other thing must be appropriately documented and accounted for.

## Health and safety duties

### Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk at work is the responsibility of all Police employees and persons engaged by Police to provide a service including contractors and their employees, trainees, interns and volunteers. It is delivered through meeting the obligations under the [Health and Safety at Work Act 2015](#) and Police safety policies.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

The expectation of the Commissioner and the Act is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given in order to comply with the [Health and Safety at Work Act 2015](#) and regulations under that Act. They will co-operate with any reasonable policy or procedure relating to health or safety at the workplace that has been notified to them and take immediate action to stop any perceived or potential breach of the act or if impractical, immediately report the matter to a supervisor.

Health and safety should be an everyday conversation.

Relevant Police instructions include:

- [Hazard management](#)
- [Health, safety and wellbeing](#)
- this 'Search' chapter in relation to the safe execution of search warrants, exercise of warrantless search powers, consent searches, roadblocks, stopping vehicles for search purposes and searching places, vehicles and people.

# Lawfulness and reasonableness of searches

## Ensuring searches are lawful

For any search to be lawful, you must:

- exercise a warrantless power, or
- execute a warrant power, or
- conduct the search, examination or inspection with the person's consent.

**Note:** When a statutory power exists to search, you should use that power rather than relying on a consensual search, as consent may be withdrawn by the person at any time. (See Part 4- [Consent Searches](#)).

## Inevitable discovery

If evidence obtained as a result of a breach of the New Zealand Bill of Rights Act 1990 would have been obtained even if the breach had not occurred, the fact that it would inevitably have been discovered is a factor to be taken into account in determining whether it is admissible under the balancing test in section 30 of the Evidence Act 2006. (See *R v Williams* [2007] 3NLR 207). However it will not be admissible as a matter of course.

## Search hierarchy

You must observe the [search hierarchy](#). If you conduct a search, or seize evidence without a warrant where you had the opportunity to obtain a warrant, any subsequent court proceedings may deem the search unreasonable and any evidential material obtained as a result of the search or seizure may be deemed inadmissible. You may also lose any evidence you discover about any other offence.

## Ensuring searches are reasonable

Ensure also that the search is reasonable under section [21](#) of the Bill of Rights Act 1990.

If the search is unlawful because it was conducted without a warrant, then it is very likely to be unreasonable as well. However, take note of [R v Jefferies \[1994\] 1 NZLR 290](#)

which states: "Lawfulness is not inevitably determinative of reasonableness, or unlawfulness of unreasonableness". If particular evidence would still have been discovered if the unlawful search had not been conducted, then the evidence may still be deemed admissible.

## Whether bail checks constitute a search

In [Warren v Commissioner of Police](#) [2019] NZHC 1690 the Court concluded that bail checks performed by police were not searches, as they consisted of officers simply meeting the electronically-monitored bailee at the door of his address, to confirm his presence. The level of interference with the bailee's privacy was low; and given he had signed the Notice of Bail with conditions, he had a reduced expectation of privacy. The judge went so far as to opine that generally, bail checks should not *prima facie* be subject to section [21](#) of New Zealand Bill of Rights Act (NZBORA).

Checks which simply assess compliance with bail conditions will usually not constitute a 'search' for the purposes of NZBORA — however, checks performed for the reason of collecting intelligence or which intrude into a bailee's privacy may constitute a search.

## Offences under the Act

### Offences by a subject of a search, examination or production order

[Part 4 subpart 9](#) of the Search and Surveillance Act 2012 provides for these offences by subjects of a search:

Section	Offence	Maximum penalty on conviction
<a href="#">173</a>	<b>Failing to comply with examination order</b> Fails to comply with an examination order without reasonable excuse.	<ul style="list-style-type: none"> <li>• Individual - 1 year imprisonment</li> <li>• Body corporate - \$40,000 fine</li> </ul>
<a href="#">174</a>	<b>Failing to comply with a production order</b> Fails to comply with a production order without reasonable excuse.	<ul style="list-style-type: none"> <li>• Individual - 1 year imprisonment</li> <li>• Body corporate - \$40,000 fine</li> </ul>
<a href="#">176</a>	<b>Fails to comply with directions or leaves search when directed to stay</b> Without reasonable excuse: <ul style="list-style-type: none"> <li>• fails to comply with a direction under section <a href="#">117(1)</a> (special powers where an application for a search warrant is pending), or</li> <li>• leaves any place or vehicle at which the person is detained under section <a href="#">118(1)</a> (powers of detention incidental to powers to search of places and vehicles).</li> </ul>	<ul style="list-style-type: none"> <li>• 3 months imprisonment</li> </ul>
<a href="#">177(1)</a>	<b>Stopping vehicles</b> <ul style="list-style-type: none"> <li>• Fails to stop as soon as practicable when required to do so by an enforcement officer exercising a power to stop or search a vehicle, <b>and</b></li> <li>• knows or ought to know that the person exercising the power is an enforcement officer.</li> </ul> <p><b>Note:</b> A constable may arrest without warrant any person they have reasonable grounds to suspect has committed an offence against this sub-section. (<a href="#">s177(4)</a>)</p>	<ul style="list-style-type: none"> <li>• 3 months imprisonment</li> </ul>
<a href="#">177(2)</a>	<b>Stopping vehicles</b> <ul style="list-style-type: none"> <li>• Fails to comply with a requirement made by a constable to supply particulars (under section <a href="#">10(1)(a)</a> or <a href="#">32(c)</a>; <b>and</b></li> <li>• knows or ought reasonably to know that the person imposing the requirement is a constable.</li> </ul>	<ul style="list-style-type: none"> <li>• 3 months imprisonment</li> </ul>
<a href="#">177(3)</a>	<b>Stopping vehicles</b> <ul style="list-style-type: none"> <li>• Fails to comply with a requirement made by an enforcement officer under section 128 to remain stopped, <b>and</b></li> <li>• knows or ought to know that the person imposing the requirement is an enforcement officer.</li> </ul> <p><b>Note:</b> A constable may arrest without warrant any person they have reasonable grounds to suspect has committed an offence against this sub-section. (<a href="#">s177(4)</a>)</p>	<ul style="list-style-type: none"> <li>• 3 months imprisonment</li> </ul>
<a href="#">178</a>	<b>Computer system searches</b> Fails without reasonable excuse to assist a person exercising a search power under section <a href="#">130(1)</a> when requested to do so (relates to searches of computer systems or data storage devices - a person may be required to assist with access to data).	3 months imprisonment

## Offences by constables

Part 4 subpart 9 of the Search and Surveillance Act 2012 provides for these offences by subjects of a search:

Section	Offence	Maximum penalty on conviction
<a href="#">175</a>	<p>False applications</p> <p>Makes an application containing any assertion or other statement known by the applicant to be false, for:</p> <ul style="list-style-type: none"> <li>• an examination order</li> <li>• a production order</li> <li>• a search warrant</li> <li>• a surveillance device warrant</li> <li>• a declaratory order</li> </ul>	1 year imprisonment
<a href="#">179</a>	<p><b>Disclosing information acquired through search or surveillance</b></p> <p>Knowingly discloses the substance, meaning, or purport of information acquired through:</p> <ul style="list-style-type: none"> <li>• the exercise of a search or surveillance power</li> <li>• an examination order</li> <li>• a production order</li> <li>• the use of a device, technique, or procedure, or the carrying out of an activity specified in a declaratory order otherwise than in the performance of the person's duty.</li> </ul> <p><b>Note:</b> The offence extends to a person assisting a constable or enforcement officer.</p>	<ul style="list-style-type: none"> <li>• Individual - 6 months imprisonment</li> <li>• Body corporate \$100,000 fine</li> </ul>

## Service of orders and notices under the Act

If you are serving an order or notice for the purposes of the Act:

on a...	it may be given ...
person	<ul style="list-style-type: none"> <li>• by delivering it:           <ul style="list-style-type: none"> <li>◦ personally to the person, or</li> <li>◦ at the person's usual or last known place of residence or business, including by fax or by electronic mail, or</li> </ul> </li> <li>• sending it by prepaid post addressed to the person at their usual or last known place of residence or business.</li> </ul> <p><b>Note:</b> Where an order or notice is sent by post to a person, it is deemed, in the absence of proof to the contrary, to have been given on the third day after the day on which it was posted.</p>
corporation	<ul style="list-style-type: none"> <li>• to an officer of the corporation, or</li> <li>• the registered office of the corporation</li> <li>• <b>Note:</b> Service is in the same manner as giving it to a person.</li> </ul>
partnership	<ul style="list-style-type: none"> <li>• to any one of the partners</li> </ul> <p><b>Note:</b> Service is in the same manner as giving it to a person.</p>

(s181)

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## Part 2 - Search warrants

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## Executive summary

Key points to note:

- Unless it is impracticable in the circumstances, you must obtain a search warrant before searching a place, vehicle or other thing.
- You must have reasonable grounds:
  - to suspect an offence punishable by imprisonment has been, is being, or will be committed,**and**
  - to believe that the search will find evidential material in respect of the offence, in the place, vehicle or other thing specified in the application.
- Where practicable, you must obtain written authority from a supervisor (sergeant or above) before applying. Include a completed Planned Action Risk Assessment and CARD prompt (located in WORD> Police Forms> Search and Surveillance> Search warrants> General) when seeking approval.
- Apply for a search warrant using the on-line Search and Surveillance system followed by a personal appearance before the issuing officer.
- Written authority must be obtained from a Detective Senior Sergeant or above to apply for a search warrant that is to be executed covertly. A covert search must be witnessed by a constable of or above sergeant level position or for the time being acting in the position of a sergeant.
- Police employees advised by email of a conflict where more than one document shares the same NIA target (e.g. two search warrants for the same address) must act to resolve the potential conflict by contacting the other document owner/supervisor and agree on a course of action.
- Only an issuing officer may issue a search warrant.
- Search warrants may be executed by any or all of the persons to whom it is directed, or any constable (whether or not it is directed to that constable or to every constable).
- When it is known in advance that Police employees will need to enter onto properties adjoining or near the target property for the safe execution of a warrant or AOS or TSU will be involved in executing a search warrant, you should seek a power of **entry** to those adjoining/nearby properties. Applications and warrants must be worded accordingly.
- The responsibility for retaining and securing a search warrant application once it has been presented for signing remains with the issuing officer. It is not the responsibility of Police to retain and deliver an application for a search warrant to the nearest Court.

## Overview

### Purpose of this chapter

This chapter details:

- who can apply for, issue and execute search warrants
- the [grounds for applying](#) and whose approval is required
- procedures for [making search warrant applications](#)
- what should be [included and avoided](#) in search warrant applications
- what should be included in applications when searches are to be [executed covertly](#) or when [neighbouring properties](#) are likely to be trespassed
- [issuing](#) search warrants
- requirements for retaining documents.

### Warrant preference rule

The High Court in *Lethbridge v New Zealand Police* [2018] NZHC 2240 emphasised the importance of the warrant preference rule, maintaining it would be applicable in circumstances where there is no urgency or compelling practical reason not to obtain a search warrant.

See '[General principles applying to searches](#)' in the '[Part – Search introduction](#)' of the 'Search' chapter in relation to the search hierarchy with searching places, vehicles or things.

### Application of Search and Surveillance Act to search warrants

The [Search and Surveillance Act 2012](#) (the Act) applies in respect of every warrant enabling the entry and search of any place, vehicle or [thing](#) except for search warrants issued under:

- Criminal Proceeds (Recovery) Act 2009 (access the application in Police Forms>Financial Crime>Criminal Proceeds)
- Films, Videos and Publications Classifications Act 2007 (access the application in Police Forms>Search and Surveillance>Search Warrants>Films, Videos, Publications)
- Mutual Assistance in Criminal Matter Act 1992 (access the application in Police Forms>Search and Surveillance>Mutual Assistance).

Search warrants issued under these three Acts are not recorded under the Search and Surveillance system.

### "Thing" defined

In relation to search warrants, "thing" has a broad meaning. It includes anything whether tangible and intangible (e.g. an email address or access information to an Internet data storage facility such as the IP address).

(s97)

### References to "the Act"

All statutory references in this chapter are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

### Related information

See Part 5 - [Carrying out search powers with or without a warrant](#) for information about executing search warrants including:

- entry and identification requirements
- what you can do when exercising search powers
- seizing property and accessing and seizing computer material
- privilege relating to the exercise of search powers.

See also [Part 14 Reporting](#) for information about when search warrant reports are required.

# Applying for search warrants

## When is a search warrant required

Unless it is impracticable in the circumstances, you must obtain a search warrant before searching a place, vehicle or other thing.

Where it is impractical to obtain a search warrant, you may exercise a warrantless power to enter and search under the Search and Surveillance Act 2012, if the statutory requirements are met and the use of the power is reasonable in all the circumstances.

## What does a search warrant authorise

A search warrant may authorise you to enter and search any place, vehicle or other thing, for evidential material in respect of an offence punishable by imprisonment.

## Who may apply for a search warrant

Any constable may apply for a search warrant.

Other persons (e.g. an enforcement officer such as a customs officer) are authorised to apply under other enactments. If those enactments are specified in column 2 of the Act's Schedule, the provisions of the Act governing how search and seizure powers are to be exercised apply to them.

(s97)

**Note:** Private individuals, for example - private investigators, cannot apply for a search warrant. They may instead make a complaint of an offence to you. If you are satisfied that there are sufficient grounds for obtaining a search warrant, then you may apply for the search warrant for Police execution.

## Grounds for applying

You can apply for a search warrant if you have reasonable grounds:

- to suspect an offence punishable by imprisonment has been, is being, or will be committed,**and**
- to believe that the search will find evidential material in respect of the offence, in the place, vehicle or other thing specified in the application.

(s6)

See the definitions in [Part 1: Introduction](#) for the meaning of "reasonable grounds to suspect" and "reasonable grounds to believe" and the difference between the two.

## Supervisor's approval required before applying

Where practicable, you must obtain written (includes electronic) authority from a supervisor of or above the position level of sergeant to make a search warrant application and their approval for the application's content. A 'Planned Action Risk Assessment and CARD prompt' must be submitted to the supervisor at the time of seeking authorisation. See the section 'Planning searches and assessing risk and community impact' in [Part 5: Carrying out search powers with or without warrants](#), for guidance on search warrant risk assessment procedures.

## Remote access search approval

If you intend to apply for and execute a remote access search warrant you must first seek advice from the Cybercrime Unit, Digital Forensics Unit (DFU) or an Digital First Responders (DFR) before it is approved by a supervisor of or above the position level of sergeant.

The execution of the search warrant should be overseen or conducted by staff from Cybercrime Unit, DFU or DFR due to the

complexity of remote searches. An exception applies where delay would result in danger to persons or loss of evidential material.

## Requests from other agencies for Police to make application

Some agencies such as the Ministry of Social Development (MSD) and Ministry of Health (MoH) have investigative functions, but do not have search warrant powers and therefore cannot apply for their own warrant, nor can they execute the warrant.

See Part 15 - [Government agency requests for assistance with search warrants and production orders](#) for guidance on:

- requests from agencies with no power to apply for search warrants or production orders to have Police obtain a search warrant or production order
- assisting law enforcement agencies that can apply for search warrants to execute their search warrants.

# How to apply for a search warrant

## Mode of application

You should apply for a search warrant in writing using the on-line Search and Surveillance system followed by a personal appearance before the issuing officer. (See [Written applications - Search and Surveillance system](#) in this chapter).

However, if this is impracticable in the circumstances, you may, with prior agreement of the issuing officer:

- make an application **orally**, e.g. by telephone or personal appearance, or
- have your written application considered without a personal appearance before and/or without oral communication with the issuing officer.

Written applications may be transmitted to the issuing officer electronically via the Electronic Operating Model. **Note:** This system is not yet operational).

(s100)

## When are oral applications allowed?

An issuing officer may allow an application to be made orally (e.g. in person or by telephone call) and excuse an applicant from putting all or part of the application in writing if satisfied that:

- requiring a written application would result in a delay that would compromise the effectiveness of the search**and**
  - the question of whether the warrant should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
  - all the required information (i.e. that required in a written application) is supplied to the issuing officer.
- (s100(3))

Consider seeking an oral search warrant before conducting a warrantless search. In *R v Taylor* [2019] NZDC 15086 the Court emphasised the warrant preference rule that "If it is possible to obtain a warrant without prejudicing the purpose of a search, a warrant is to be preferred even when a warrantless power is available.

If an oral application is allowed, the Issuing Officer must record the grounds for the application as soon as practicable.

A written search warrant must also be issued. It is not possible to simply rely on the Issuing Officer's agreement to undertake the activities authorised. The Issuing Officer must sign a warrant. For this reason, it will be necessary for the applicant to supply the Issuing Officer with a draft warrant or a template that can be populated.

## Back-capturing oral applications in S&S System

When an oral application is made to the issuing officer, the applicant must enter (i.e. back capture) the application and the outcome(s) of the search warrant(s) as soon as practicable in the online search and surveillance system.

Back capturing oral applications early, enables:

- the target history details to populate on any relevant future applications on the same target;  
and
- compliance with statutory requirements under the Act.

## Applications without personal appearance or oral communication

An issuing officer may allow an application without a personal appearance or oral communication if satisfied that:

- the question of whether the warrant should be issued can be properly determined on the basis of the applicant's written communication, **and**
  - the information required for the application has been supplied to the issuing officer,**and**
  - there is no need to ask questions of, or seek further information from, the applicant.
- (s100)(4))

# Written applications - Search and Surveillance system

## Applications must be made in the Search and Surveillance system

All written search warrant applications **must** be made through the online Search and Surveillance system following the procedures below. (If the system is unavailable for any reason, follow the '[Manual application process](#)' in this chapter).

**Note:** A significant departure from these procedures and guidelines risks the warrant (and therefore the search) being deemed unlawful. This in turn may lead to the exclusion of evidential material under the Shaheed balancing test. See section [30](#) of the Evidence Act 2006.

Step	Action
Obtain initial approval	Where practicable, obtain approval from a supervisor of or above the position level of sergeant before completing a search warrant application.
Set-up NIA case	<p>Set-up a NIA Case reference if one does not already exist.</p> <p><b>Note:</b> Avoid identifying target addresses for forthcoming warrant applications in the narrative of the NIA case as this may compromise the security of subsequent warrant execution.</p>
Assess risks	<p>Consider the risks associated with executing the warrant if it is issued and what will be necessary to mitigate any risk of harm to Police and others. See '<a href="#">Risk assessment when planning searches</a>' in 'Part 5 - Carrying out search powers with or without a warrant'.</p> <p><b>Note:</b> A 'Planned Action Risk Assessment and CARD prompt' must be completed before the search warrant is executed and where practicable, before the application is authorised.</p>
Assess community impact	<p>Assess the impact of executing the search warrant on vulnerable people, community and interest groups. Plan to eliminate or minimise compromising or undermining wider community support, confidence and reassurance.</p> <p>A Community Impact Assessment form (in Police Forms) must be completed before the search warrant is executed, and where practicable, before the application is authorised. Mentally update this as the situation changes during execution of the search warrant.</p> <p>See:</p> <ul style="list-style-type: none"> <li>• '<a href="#">Risk assessment when planning searches</a>' in 'Part 5 - Carrying out search powers with or without a warrant'</li> <li>• the '<a href="#">Community Impact Assessments (CIAs)</a>' chapter.</li> </ul>
Complete application	<p>Complete a search warrant application. Following the guidance on the application form will ensure the information required by sections <a href="#">98</a> and <a href="#">103</a> in all warrant applications and search warrants is provided.</p> <p><b>Note:</b> The Search and Surveillance system permits multiple warrants to be created from a single application.</p> <p>See the 'Search and Surveillance System User Guide' (PDF below) for more information about completing the application.</p>

Complete de-confliction	<p>The Search and Surveillance system manages any de-confliction by sending email messages to owners of applications which share the same NIA target (e.g. two investigators who each have a search warrant for the same address).</p> <p>If you are advised of a conflict, you must act to resolve the potential conflict. Seek advice from your supervisor as necessary. Refer to the '<a href="#">De-confliction</a>' section in this chapter).</p>
Application history	<p>The Search and Surveillance system searches the system for other search warrant applications made during the previous 3 months. The online system will automatically populate the details of previous applications on your target in the last 3 months.</p> <p>If application history exists, but the information is 'closed' the other applicant (document owner) will be notified of the new application and is responsible for determining whether or not to disclose historical information for inclusion. See the '<a href="#">De-confliction</a>' section in this chapter for further guidance.</p>
Complete NIA checks	<p>Check your target in NIA for details of any other previous applications made under these enactments in the previous 3 months, which are not recorded in the Search and Surveillance system:</p> <ul style="list-style-type: none"> <li>• Criminal Proceeds (Recovery) Act 2009</li> <li>• Films, Videos and Publications Classifications Act 2007</li> <li>• Mutual Assistance in Criminal Matters Act 1992.</li> </ul> <p><b>Note:</b> If any previous applications within the 3 month period are relevant to your target, you must comment in the "other information" field of your application, to ensure information provided to the Issuing Officer is complete and accurate.</p>
Record other applications	<p>Record details of any other applications in the previous 3 months that you are aware of that are not recorded in the system (e.g. applications obtained by an agency other than Police).</p> <p>Record the details in the "other information" field of your application.</p>
Seek online approval	<p>Submit your search warrant application online to a sergeant or above (normally your supervisor) for approval of the content of your application.</p> <p>(Your supervisor may seek legal advice if considered necessary).</p> <p>Review and revise the application as required.</p>
Print and sign the warrant /application	Once approved by a supervisor, print out the search warrant and application and sign the application.
Seek issue of warrant	<p>Take your application to an <a href="#">issuing officer</a>.</p> <p>Include these documents with your application:</p> <ul style="list-style-type: none"> <li>• a draft search warrant for the issuing officer's signature</li> <li>• a copy of the draft search warrant and notice to the occupier</li> <li>• all documents tendered in support of the application (annexes).</li> </ul> <p>If making a written application or personal appearance before an issuing officer is impractical, see <a href="#">Mode of application</a>' in this chapter).</p>

## Information that must be included in search warrant applications

Section [98](#) prescribes the particulars that must be included in search warrant applications in reasonable detail.

For more detailed guidance see '[What should be included and avoided in applications](#)' in this chapter.

## Complex warrant applications requiring significant formatting

The online Search and Surveillance system does not accommodate complex and lengthy applications requiring significant formatting involving tables etc. In these circumstances an appendix may be used to better present and clarify a complex application.

The appendix must be referred to within the relevant paragraph of the application and must be attached to the application when submitted to an issuing officer for consideration.

### Manual application process

If the online system is not available, apply for a search warrant by following these steps.

Step	Action
Complete documents	<p>Complete these documents applying Microsoft 'Word' by setting out the format from previously used templates:</p> <ul style="list-style-type: none"> <li>• Planned Action Risk Assessment and CARD prompt</li> <li>• Search Warrant</li> <li>• Search Warrant Application.</li> </ul>
Seek initial approval	Obtain where practicable, written (includes electronic) authority from a supervisor (sergeant level or above) to apply for a warrant and for the application's content.
Check application history	Complete <u>NIA</u> checks to identify any other applications made in the previous 3 months and include details in the "other information" section of your application.
Seek supervisor's approval	Seek your supervisor's approval for the content of the application and warrant. Your supervisor will seek legal advice if necessary.
Print and sign the warrant /application	Once approved by a supervisor, print out the search warrant and application and sign the application.
Seek issue of warrant	<p>Take your application to an <u>issuing officer</u> for issuing.</p> <p>Include these documents with your application:</p> <ul style="list-style-type: none"> <li>• a draft search warrant for the issuing officer's signature</li> <li>• a copy of the draft search warrant and notice to occupier</li> <li>• all documents tendered in support of the application (annexes).</li> </ul> <p><b>Note:</b> Ensure both the warrant and copy are signed by the issuing officer or has their unique identifier. If the copy is overlooked, then photocopy the original with the signature or unique number.</p> <p>If making a written application or personal appearance before an issuing officer is impractical, see <u>Mode of application</u> in this chapter).</p>

## Covert searches

### Rationale for covert searches

The purpose of all searches is to obtain evidential material which it is believed on reasonable grounds will be found in the place, vehicle, thing or facility searched. Normally, with standard searches, every effort must be made to ensure the searches are executed in the presence of occupants.

However, there are exceptional cases, where it is desirable that the search not be revealed at the time the warrant is executed. For example, to advance an investigation it may be necessary for entry to be gained and a search made in the absence of the occupier and without their knowledge. This type of entry and search is referred to as a **covert search**.

### Supervisor's approval required before applying for a covert search warrant

Obtain written (includes electronic) authority from a Detective Senior Sergeant or above to apply for a search warrant that is to be executed covertly. If the proposed search is deemed 'high risk', a Detective Inspector should be consulted.

**Note:** A covert search must be witnessed by a constable:

- of or above sergeant position level, or
- for the time being acting in the position of a sergeant.

### Postponement of notice and inventory requirements

Sections [131](#) and [133](#) of the Act require the provision of a copy of the search warrant or if the search power is exercised without a warrant, a written notice to the occupier of the place or the person in charge of the vehicle or other thing being searched, no later than 7 days after exercising the power.

You may apply to a district court judge under section [134](#) to postpone compliance with these obligations on the grounds that compliance would:

- endanger the safety of any person, or
- prejudice ongoing investigations.

See 'Postponing compliance with notice requirements' in [Part 5 - Carrying out search powers with or without warrants](#)

(ss [134](#) and [135](#))

## Cellphone and computer searches

When searching a cellphone or computer that has been seized through the lawful and successful execution of a search warrant, it is not necessary to obtain a further warrant for each search that is conducted in accordance with the original search warrant. See [\*R v R\* \[2018\] NZCA 341](#).

**Note:** If a search for other purposes is needed, an additional warrant may be required.

### Intangible material sought from cellphones and computers

All that is required when intangible material is sought from cellphones or computers, is that the search warrant expressly allows Police to access data, communications and images.

### Specify intangible material sought from seized cellphones or computers

Specify in applications for search warrants and warrants what type of intangible material is being sought when seizing cellphones or computers. It is insufficient to state that Police wish to seize a particular cellphone. It is necessary to specify in the application and the warrant that intangible material on, or accessible from, the device is also sought.

See [\*Tupoumalohi v R\* \[2020\] NZCA 117](#) to guide you with identifying intangible material sought in warrants from cellphones and computers.

### Include communications sought on a cellphone in search warrants

Material to be searched on a cell phone should be described as specifically as reasonably possible in the search warrant application and search warrant, for example:

- communication applications such as Facebook Messenger or similar type of application
- diary records
- bank account records.

The Court of Appeal in [\*Ruru v R\* \[2020\] NZCA 64](#) accepted that Police may not always be able to anticipate where and how information will be stored on a cellphone and that this should be reflected in the application.

### Related information

See '[Searching for and seizing computer material](#)' in '[Part 5 – Carrying out search powers with or without warrants](#)' of the '[Search](#)' chapter for general guidance about searching cellphones and computers.

## What should be included and avoided in applications

This section contains these topics:

- Information about using surveillance devices for safe execution of warrant
- Wording the search warrant application
- Including informant information in search warrant applications
- Good practice
- Errors commonly made with applying for search warrants

### Information about using surveillance devices for safe execution of warrant

When it is known in advance that Police employees will need to use visual surveillance devices to look through the windows of the target property (e.g. a dwelling) in order to ensure the safe execution of a search warrant, it is good practice to inform the issuing officer who authorises the search warrant.

### Consult specialist groups for safe execution of search warrant

When specialist groups such as AOS or TSU will be involved in the execution of a warrant, and where time allows, they should be consulted about how the warrant may be executed and whether use of surveillance devices will be necessary.

This will not always be possible or practicable, particularly in situations of urgency. It is therefore accepted that employees may need to briefly use surveillance devices, for the safe execution of the warrant, even though no specific authorisation has been obtained.

### Wording the search warrant application

Follow this guide when wording your search warrant application:

Step	Action
1	<p>Be clear in your application that you are not seeking a power to use a surveillance device to obtain evidential material, but rather you are advising the issuing officer of the proposed use of surveillance devices for safety reasons.</p> <p><b>Note:</b> It is important to explain why the use of surveillance devices is necessary and provide the issuing officer with the relevant safety information.</p>
2	<p>Use this example as a guide and vary it according to your specific circumstances:</p> <p><b>9. Additional information</b></p> <p>I provide the following additional information:</p> <p><b>Use of surveillance device required for safe execution of warrant</b></p> <p><b>Section 6(c) Official Information Act 1982</b></p> <p>[Redacted content]</p>
	<p>In terms of section 49 of the Search and Surveillance Act 2012, it is not intended that the use of these or other similar devices will obtain information that is evidential material in respect of the offence(s) for which this warrant is sought.</p> <p>9.2 This use of surveillance devices for the purpose of ensuring the safe execution of the warrant does not amount to an application or an authority to use surveillance devices to obtain evidential material under the Search and Surveillance Act 2012.</p>

## Trespass onto other properties to execute search warrant safely

See the section '[Safe execution of warrants - entry to adjoining/neighbouring properties](#)' for further guidance with wording application and warrant.

## Including informant information in search warrant applications

### Informant defined

Under section 3 of the Act, 'informant' has the same meaning as in section 6(1) of the Criminal Disclosure Act 2008, i.e. any person who provides verbal or written information, whether or not in recorded form, to a law enforcement officer.

'Informant' is not restricted to Covert Human Intelligence Sources (CHIS).

### Revealing identity of informants (not CHIS)

The names and other identifying details of informants who are not registered as CHIS may be withheld but care must be exercised to ensure they are informants rather than witnesses, i.e. that they gave information with an expectation that their identity would be protected (refer *R v Williams* - see Law Notes - [30 May 2007](#) & [R v Kissling](#)).

While the issuing officer may require you to supply further information concerning the grounds on which the warrant is sought, they must **not**, in any circumstances, require you to disclose the name, address, or any other identifying detail of an informant **unless**, and only to the extent that the information is necessary for them to assess:

- the credibility of the informant, and/or
- whether there is a proper basis for issuing the warrant.

(s98(2)(b))

## Including CHIS information

Follow these steps relating to CHIS information.

Step	Action
1	Do not name a CHIS in the search warrant application or include any information that could lead to their identification. Explain to the issuing officer that they have supplied the information on the basis of their identity being kept confidential.
2	If the issuing officer wishes to assess information relied on from a CHIS, then as far as possible, report information received in the CHIS's own words.
3	You can use hearsay evidence to outline the grounds for the application, if it is of high reliability. Indicate its reliability by stating: <ul style="list-style-type: none"> <li>• the CHIS's credibility</li> <li>• the CHIS's reliability and whether they have given reliable information in the past, e.g. "In the past, Covert Human Intelligence Source "A" has supplied Police with information that has proved to be reliable".</li> <li>• whether the information has been confirmed by other means.</li> </ul> <b>Note:</b> Current Police guidance on providing sufficient information to the warrant issuer about a CHIS is contained in Law Notes issued in respect of <i>R v Williams</i> [2007] NZCA 52 (see Law Notes - <a href="#">30 May 2007</a> ) and <i>R v Dunedin District Court</i> , so the warrant issuer can assess reliability. <i>R v Williams</i> [2007] 3 NZLR 207 and <i>R v Kissling</i> [2009] 1 NZLR 641 refer.
4	Be prepared to withdraw any search warrant application if the issuing officer demands details that identify the CHIS.

## Good practice

Follow the steps in this table when applying for a search warrant. It outlines good practice for [written applications](#) and for [orally communicating applications](#) for search warrants.

Step	Action
1	Accurately describe the offence you believe the search relates to.
2	Explain what you expect to find and why, and where you expect to find it and why. Be as specific as possible.  However, if a specific description of the evidential material sought would endanger any person or prejudice ongoing investigations (e.g. assist a suspect to suppress or destroy evidential material), consider seeking a postponement under s <sup>134</sup> from the obligation under s <sup>131</sup> (4) to provide a copy of the search warrant. (See <a href="#">Postponing compliance with notice requirements</a> in 'Part 5 - Carrying out search powers with or without a warrant').
3	Ensure you describe the place where you expect to find the item accurately, such as the correct address of a house or registration number of a car.
4	Include a description of all relevant information held or received (whether favourable or unfavourable) and all relevant inquiries made.
5	When describing the information received, state the date when each piece of information was received, who received the information, and in what circumstances. Provide an assessment (with reasons) of the significance and reliability of the information.
6	Describe the relevant inquiries that have been made. State the date on which each inquiry was made, who made it, how each inquiry was conducted, and the circumstances in which it was conducted. Explain (with reasons) the significance of those inquiries.
7	Explain any delay between the last receipt of information and/or the last inquiry and the application for a warrant. If there has been a delay in applying for a warrant, make any necessary inquiry to ensure everything contained in the application is current and explain why that is so.
8	Follow the guidance on including information about <a href="#">informants</a> above.
9	Explain the reason for every expression of belief in the application. You should never express a conclusion without saying why.
10	Scrutinise the grounds on which you apply for a warrant and consider, taking the role of 'devil's advocate', whether the application meets the statutory criteria.

## Errors commonly made with applying for search warrants

If you are the applicant for a search warrant, **do not**:

- apply for too wide a warrant (i.e. be specific about describing place, vehicle or other thing to be searched, or items to be seized)
- state conclusions without saying why
- include standard form material on the criminal activity being investigated unless it is relevant to the particular application
- leave out relevant information
- include misleading information
- rely on:
  - suspicion, rumour or gossip (in [Alexander v Police \[2019\] NZHC 2920](#) the Court found the warrant was unlawfully issued on those grounds and, consequently, the evidence was unlawfully obtained and ruled inadmissible)
  - anonymous tips, (e.g. from Crimestoppers) will usually not form sufficient basis for obtaining a warrant (the information must be considered sufficiently reliable; either by its nature, or by independent corroboration, see [Schaaf v R](#) [NZHC] 176)
- describe the belief of "the Police" or the belief of another person. Applicants must describe their own personal belief in a state of affairs justifying the issue of a warrant, and the facts that make them hold that belief. If you refer to the belief of another constable, or information received by another constable, that constable should be identified.

Two other common faults can be avoided with your search warrant application by:

- explaining any delay in applying for a warrant
- saying why you believe a CHIS is reliable.

## De-confliction

### De-confliction process outlined

Where more than one active document shares the same NIA target (e.g. two search warrant applications for the same address), the de-confliction process will prevent the interests of one investigation from conflicting with the interests of the other.

The Search and Surveillance system will send a de-confliction email to the owners of documents (and their supervisors) which share the same NIA target. If you are advised of a conflict, you must act to resolve the potential conflict.

This diagram illustrates the document owners or 'users' who will or will not receive de-confliction messages.

Original Document (User 1)	New Application (User 2)	Who is notified by email
Open	Open	Both user 1 and 2
Open	Closed	User 2 only
Close	Open	User 1 only
Closed	Closed	Both user 1 and 2

### "Open" document

A search warrant application prepared in the Search and Surveillance system and entered as an "open" document will result in all document owners making or having made applications in the system to search the same target being notified.

**Note:** Applications that have been made in the system must be current for the document owner to be notified.

### "Closed" document

A search warrant application prepared in the Search and Surveillance system and entered as a "closed" document will prevent other document owners of "open" applications in the system intending to search the same target from being notified of the "closed" document's existence.

#### Open→Open / Closed→Closed

Both document owners and their supervisors receive a message, if both documents are "open" or both are "closed".

### De-confliction action

If you receive a de-confliction email you must contact the other document owner/supervisor and agree a course of action. This will depend on individual circumstances and on the potential that each application has to impact on the other investigation (if executed).

The agreed outcome may involve:

- joint execution of both warrants
- one of the applications being delayed /withdrawn,  
or
- coordination of the execution of both warrants.

#### Closed→Open / and Open→Closed

If one owner has categorised their document as "open" and the other as "closed" (generally by an investigator in the covert area), only the closed document owner (and supervisor) will receive an email while the "open" owner will not.

When a closed document owner (and supervisor) is made aware of another warrant application, the closed document owner

and their supervisor must carefully consider the implications of how the new application and execution of the warrant would affect their investigation and weigh this up against their obligation to inform the new applicant.

Generally, the closed document owner or their supervisor will contact the applicant, the applicant's supervisor or the applicant's manager.

### **De-confliction actions - closed document owner**

These actions may be taken by the closed document owner and their supervisor:

- arrange for the "open" applicant to withdraw or delay their search warrant application, if execution may adversely affect the ongoing covert operation
- allow the proposed application to proceed with the covert application history disclosed in the proposed application, or
- if an application:
  - is in the preparatory stage and has **not been made** by the closed applicant to an issuing officer, not advise the "open" applicant, supervisor or their manager about the covert operation, the covert search warrant application or execution of the warrant
  - has **already been made** by the closed applicant to an issuing officer, then some action must be taken to advise the open applicant, supervisor or their manager of the application to ensure the organisation does not mislead the issuing officer in contravention of the statute when the open applicant presents their application for signing.

## Special powers when warrant applications are pending

### Power to secure scenes

If a search warrant application is about to be made in relation to a place, vehicle or thing, or has been made but not yet granted or refused by an issuing officer:

you may...	if you...
<p>at any time that is reasonable in the circumstances:</p> <ul style="list-style-type: none"> <li>• enter and secure the place, vehicle, or other thing, and</li> <li>• secure any item(s) found there, and</li> <li>• direct any person to assist with the entry and securing of the place, vehicle or other thing, or the securing of items in it</li> </ul>	<p><b>believe</b> that evidential material may be destroyed, concealed, altered, damaged, or removed before a decision is taken to grant or refuse the issue of a search warrant.</p>

You may only exercise these special powers until the first of the following occurs:

- the expiry of six hours from when the power is first exercised
- the warrant is available for execution at that place or vehicle or in respect of that other thing
- the application for a search warrant is refused.  
(s117)

# Issuing search warrants

## Issuing officers

Only an issuing officer may issue a search warrant.

An issuing officer is:

- a District Court or High Court Judge
- a person, such as a Justice of the Peace, Community Magistrate, Registrar, or Deputy Registrar, who is authorised by the Attorney-General to act as an issuing officer (s108)

**Note:** Not all Justices of the Peace, Community Magistrates, Registrars, or Deputy Registrars, are authorised issuing officers.

## Limitation on jurisdiction of certain issuing officers

If an issuing officer is employed or engaged by a law enforcement agency, they must not consider or perform any function in relation to any application made by a law enforcement officer employed or engaged by the same agency.

(s109)

## Which issuing officers should you approach?

You should follow these steps when deciding which issuing officer to use when applying for a search warrant:

Step	Action
1	Always check the current list of authorised issuing officers in your district as they change from time to time.
2	If your application references information from a sensitive source, make it to an issuing officer in the District or High Court. Otherwise use whichever issuing officer is most convenient. During office hours this will usually be an issuing officer in the District Court, however applications made outside court hours or at times of high court demand should be made to another issuing officer.
3	If for the reasons given in step 2 it is more appropriate to take your search warrant application to the court, use an issuing officer from a District or High Court depending on where resultant proceedings are likely to be heard.  <b>Note:</b> There are no issuing officers in the High Court other than High Court Judges.
4	Endeavour to give notice to the issuing officer before applying for a search warrant, unless it is impracticable to do so.

**Note:** The application for search warrant must always be left with the issuing officer to file at the nearest court. Police employees must not deliver the application on behalf of the issuing officer.

## Form and content of search warrants

Every search warrant must be in the prescribed form and be directed to every enforcement officer who has authority to execute the warrant.

Section 103(4) lists the particulars that must be included in every search warrant in reasonable detail. Following the guidance on the search warrant application form and the guidance in this chapter on what should be included and avoided in applications, will ensure the information required by section 103 is provided.

(s103)

## Conditions may be specified in the warrant

An issuing officer may specify in the warrant any conditions they consider to be reasonable including (without limitation):

- any restriction on the time of execution that is reasonable
- a condition that the occupier or person in charge of a place must provide reasonable assistance to a person executing the warrant if, in the absence of such assistance, it would not be practical to execute the warrant without undue delay.  
**Note:** A person is not required by any condition imposed to give any information that may incriminate them ([s103\(7\)](#))
- a condition requiring the Commissioner to provide them with a search warrant report within a specified period. See 'Search warrant reports may be required by issuing officers' in '[Part 14- Reporting](#)'.  
([s103\(3\)\(b\)](#))

**Note:** You must update the search warrant in the Search and Surveillance system with the details of:

- whether or not the search warrant is granted, refused or withdrawn before presenting to an issuing officer; and
- any conditions imposed by an issuing officer.

## **Signing the search warrant**

Ensure the issuing officer signs or uses their unique identifier on the original search warrant and the duplicate copy of the warrant for the occupier of a place or person in charge of a vehicle. If the signing is overlooked on the duplicate copy, then photocopy the original with the signature or unique identifier and leave that photocopy with the occupier or person in charge of the vehicle.

## Application for search warrant refused

Follow these steps if an issuing officer, after considering your application, refuses to sign the accompanying search warrant:

Step	Action
1	Note and record the issuing officer's reasons for refusing to issue a search warrant.
2	<p>Consider the reasons for refusal and if those reasons:</p> <ul style="list-style-type: none"> <li>• can be fixed, then:           <ul style="list-style-type: none"> <li>◦ address all the reasons for the refusal</li> <li>◦ redraft the application and proposed search warrant, ensuring the reasons for refusal are addressed in the appropriate paragraphs of both documents</li> <li>◦ re-submit the application to the <b>same</b> issuing officer who refused to issue the search warrant. If that issuing officer is not available, you <b>must</b> inform the second issuing officer of the reasons why the first issuing officer refused to issue a search warrant</li> </ul> </li> <li>• cannot be fixed, then:           <ul style="list-style-type: none"> <li>◦ re-evaluate whether or not to continue your investigation without the search warrant being issued, or</li> <li>◦ if the reasons do not appear to be justified, prepare a report and submit the file through your supervisor to Legal Services for direction.</li> </ul> </li> </ul>

**Note:** There is no hierarchy of "issuing officers" under the Act. A High Court Judge has the same status as a District Court Judge or Registrar. If for instance, a District Court Judge refuses to issue a search warrant, do not attempt to make the same application to a High Court Judge.

## Who may execute a warrant and when?

### Who may execute a search warrant?

Search warrants may be executed by:

- any or all of the persons to whom it is directed, or
- any constable (whether or not the warrant is directed to that constable or to every constable).  
(s103(3)(a))

If a search warrant is executed covertly, a constable of the position level of sergeant or above, or an employee acting in that capacity must be present.

If a remote access search warrant is executed, the execution must be overseen or conducted by staff from Cybercrime Unit, Digital Forensics Unit or a Digital First Responder (DFR). Exceptions to this are only to be made where delay would result in danger to persons or loss of evidential material.

To execute a search warrant you must be in possession of the original search warrant, or if impractical a copy of a type permitted by s105.

### Period warrant is valid for

The period during which the warrant may be executed may be:

- a period specified by the issuing officer not exceeding 14 days from the date of issue, or
- a period specified by the issuing officer not exceeding 30 days from the date of issue, if you have justified why this is necessary and the issuing officer is satisfied that more time is necessary for execution.  
(s103(4)(h))

### When can search warrants be executed?

Search warrants can be executed at any time that is reasonable in the circumstances, unless the issuing officer has restricted the time of execution as a condition of the warrant (e.g. that it only be executed between the hours of 8.00am and 6.00pm).

### When are search warrants considered executed?

A search warrant is executed when you and any person assisting you:

- have seized all the evidential material specified in the search warrant, or
- leave the place, vehicle or other thing searched and do not return within four hours.

The warrant is not executed if you leave but one of your assistants remains at the place, vehicle or other thing searched.

### Multiple executions

A search warrant may only be executed once, unless execution on more than one occasion is applied for and justified and authorised by the search warrant.

If a warrant authorises execution more than once, it may be executed the number of times specified in the warrant, until:

- all evidential material specified in the warrant is seized, or
- the time limit (14 days or, any longer period specified by the issuing officer not exceeding 30 days from the date of issue) has expired.  
(ss 103(4)(h) and 106)

# Safe execution of warrants - entry to adjoining or neighbouring properties

## Introduction

When it is known in advance that Police employees will need to enter onto properties adjoining or near the target property for the safe execution of a warrant or AOS or TSU will be involved in executing a search warrant, you should seek a power of **entry** to those adjoining/nearby properties.

Where specialist groups such as AOS or TSU will be involved in a warrant's execution and, where time allows, they should be consulted about how the warrant may be executed and whether entry to adjoining properties may be necessary.

This will not always be possible or practicable, particularly in situations of urgency. It is therefore accepted that Police staff may need to briefly enter onto properties adjoining or near the target property, for the safe execution of the warrant, even though no specific authorisation has been obtained.

## Application to include entry to adjoining or neighbouring properties

If a warrant is to be sought to **enter and search** for evidential material located at one address (e.g. 5 East Street), but in the process of executing the warrant, Police need to trespass on adjoining or neighbouring properties (e.g. 3 and 7 East Street), then the warrant application should also seek a warrant to only **enter** the adjoining or neighbouring properties (e.g. 3 and 7 East Street).

The justification for this is within sections [98\(1\)\(d\)](#) and [103\(4\)\(f\)](#) in the case of search warrants.

## Wording application and warrants

Make it clear that you are seeking a power of entry only in respect of the adjoining or neighbouring properties for safe execution of warrant and explain why and provide the Judge or issuing officer with the relevant legal basis. Where appropriate, also make it clear that the entry to dwellings on the adjoining or neighbouring property is not sought.

For the search warrant application form, use 'Additional information' section (search warrants at paragraph 9). For example:

## 9. Additional information

I provide the following additional information:

### Power of entry on other properties required for safe execution of search warrant

9.1 The Armed Offenders Squad will be assisting with execution of this warrant. In order to ensure safe execution of the warrant, the Armed Offenders Squad may need to enter onto the following properties adjoining the property to be searched:

- a. [address].
- b. [address].
- c. [address].

(the "neighbouring properties")

9.2 The reasons why Armed Offenders Squad may need to enter these neighbouring properties are:

- a. [explain why e.g. why is Armed Offenders Squad required in the first place (e.g. risks associated with the particular individual or address), why these particular properties need to be entered. Could be to do with location of property to be searched (e.g. in rear section not easily viewed from street) or need to be able to observe the property from different sides/angles or to maintain cordon around person who could be armed. Should have a paragraph dedicated to each property and why it is necessary to enter that property. Should explain in relation to each property what the entry will involve (e.g. just within the yard - don't need to enter premises).]
- b. etc

9.3 This power to enter the neighbouring properties is sought in reliance on sections 98(1)(d) and 103(4)(f) of the Search and Surveillance Act 2012, which distinguishes between places that may be entered and places that may be entered and searched

**For the warrant form**, insert details of additional properties to be entered at paragraph 6. For example:

6. This warrant also authorises you at any reasonable time, to enter (but not search) the following premises or areas:

- 6.1 the property (but not the dwelling) at [address]
- 6.2 the property (but not the dwelling) at {address} etc.

for the sole purpose of ensuring the safe and effective entry onto, entry into, or search of any place, vehicle or thing specified in paragraph [ ].

**Note:** If practicable seek legal guidance with wording the application and warrant for entry to adjoining or neighbouring properties.

# Retention and security of warrants and copies of applications

## Retention and security of search warrant applications

Occasionally issues arise relating to Police concerns over security of a search warrant (or production order) application before its execution. Those concerns may include:

- safety of Police employees, issuing officers, victims and public
- integrity of the Police operation being compromised
- security of information, and
- sensitivity of the investigation.

The responsibility for retaining and securing a search warrant (or production order) application once it has been presented for signing remains with the issuing officer.

Under section [73](#) (retention of production order application) and section 101 (retention of search warrant application) a written application for a search warrant (or production order) or in the case of an oral application, then the record of the application made to **any** issuing officer must be retained under the control of the Registrar of the District Court closest to the place at which the application is made, whether or not the application is granted or refused.

## Procedure when security of applications may be compromised

Follow these steps whenever the security of search warrant (or production order) applications retained by an issuing officer may be compromised:

Step	Action
1	<ul style="list-style-type: none"> <li>• Assess all security risks relating to the application, issuing of warrant (or order) and retention of application. This risk assessment must be made before approaching the issuing officer.</li> <li>• If there are any concerns about:           <ul style="list-style-type: none"> <li>◦ safety of any persons</li> <li>◦ integrity of the Police operation being compromised</li> <li>◦ security of the information</li> <li>◦ sensitivity of the investigation</li> </ul> </li> </ul> <p>consider having the application issued by a Judge or Registrar of the District Court rather than a Justice of the Peace or other authorised person, as the application can be secured immediately at the court.</p>
2	Fully communicate all security issues to the issuing officer.
3	<p>Remember, it is the issuing officer's role to secure the application once it has been presented for signing. The issuing officer is solely responsible for ensuring that the application is lodged and properly secured at the nearest court.</p> <p><b>Note:</b> It is not the responsibility of Police to retain and deliver an application for a search warrant to the nearest Court.</p>
4	Any issues around security of applications, other documents or the safety and integrity of Police operations relating to issued search warrants (or production orders) must be referred immediately to the O/C CIB for the area and resolution sought through the local Court Manager.

## Filing warrant documents after execution

You must retain these documents in the relevant NIA case file (whether in electronic form or otherwise):

Police policy requirement	<ul style="list-style-type: none"> <li>if applicable, written authority from supervisor authorising application for search warrant</li> </ul>
Legislative requirement (s101)	<ul style="list-style-type: none"> <li>a copy of the search warrant application, if made in written form, otherwise a record of the oral application made (<b>Note:</b> If the application contains sensitive information, consider securing it elsewhere and endorsing the file accordingly);</li> <li>copies of all documents tendered in support of the application</li> <li>the search warrant</li> <li>a copy of any search warrant report required by the issuing officer under section 104.</li> </ul> <p><b>Note:</b> The specified documents must be retained until the later of:</p> <ul style="list-style-type: none"> <li>conclusion of any proceedings</li> <li>destruction of the documents in accordance with policy <a href="#">Retention and disposal of Police records</a>.</li> </ul>

## Disclosure and requests for copies of search warrant applications

Search warrant applications are subject to disclosure under the [Criminal Disclosure Act 2008](#) and as a general rule are disclosed. Applications may also be the subject of a request under the [Official Information Act 1982](#) or the [Privacy Act 2020](#).

Search warrant applications containing sensitive information could be withheld under all three Acts (Criminal Disclosure Act 2008, Official Information 1982 and Privacy Act 2020) if the release would be likely to prejudice the maintenance of the law (this would apply to CHIS information).

**Before any of the contents are released you must:**

- consult the constable who made the search warrant application, and
- if the disclosure may reveal the identity of aCHIS, then also obtain approval from the O/C Human Source Management Unit (HSMU); or
- seek advice from a legal advisor.

For detailed guidance relevant to:

- disclosure of search warrants, see the 'Further restrictions on disclosure' in the [Criminal disclosure](#) chapter
- personal and official information requests, see the [Privacy and official information](#) Police Manual chapter.

## Quick reference guide: search warrants

### Pre-application checks and set-up

Step	Action
1	<p>Set-up a NIA Case reference if one does not already exist.</p> <p><b>Note:</b> Avoid identifying target addresses for forthcoming warrant applications in the narrative of the NIA case as this may compromise the security of subsequent warrant execution.</p>
2	Check NIA for any notings of search warrants issued under other Acts in the previous three months. This information must be included in the application.
3	Complete any other background checks and TENR (Planned Action Risk Assessment and CARD prompt) and <a href="#">Community Impact Assessment</a> as required.

### Apply for search warrant

Step	Action
1	Create the warrant application using the Search and Surveillance (S&S) system.
2	Review and follow-up on any de-confliction notifications advising of other active warrant applications for the same target(s). Contact the other applicant(s) and determine whether or not to proceed.
3	Review any information in the three-month history section of the application and carry out NIA checks to determine if it is relevant to your target or not. Include notes accordingly in the 'Additional Information' section of the application to provide clarity for the issuing officer.

### Approvals

Step	Action
1	Submit the draft application to the approving officer (sergeant or above). Review and revise as required.
2	Finalise the application and recheck the three-month history. Entries in this section will be automatically refreshed prior to printing and may change as time progresses during preparation of the warrant.
3	Print the application and warrants, sign the application and present them for authorisation to an issuing officer.
4	Review/revise the warrant as required, to gain authorisation.
5	Record any conditions specified by the issuing officer in the Search and Surveillance system.

### Execute warrant

Step	Action
1	Execute the search warrant as authorised.
2	Complete an inventory of items seized (POL268) if any.
3	As soon as practicable, provide a copy of the search warrant and inventory to the occupier of the place/person in charge of vehicle, or if not present, leave in a prominent place.

## Search warrant notifications and reporting

Step	Action
1	Record the outcomes and other information in the Search and Surveillance system.
2	Complete and submit the electronic post warrant intelligence noting ('OnDuty Notings') notification on your mobility device.
3	Where applicable, complete a notification using the 'Create Notification' feature on the Microsoft Outlook Bulletin Board to notify relevant groups about drugs, firearms, children, etc.
4	If required by the issuing officer, produce a search warrant report to the issuing officer using the Search and Surveillance system.

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## **Part 3 - Warrantless powers to search places, vehicles and things**

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## Executive summary

Key points to note:

- Police may exercise **warrantless powers** to enter and search places, vehicles and things in a number of situations including:
  - to effect arrest or incidental to arrest
  - in emergency situations
  - to search for evidential material in serious offences
  - to search for arms, drugs or offensive weapons.
- If you have a warrantless power to search places, vehicles and things you may also **seize** anything that is the subject of the search or that may lawfully be seized.
- Warrantless search powers have a number of associated general powers (s110) that can be used when exercising a particular search power, e.g. to enter, request assistance, or use force if necessary (property only).
- Obtain approval from a sergeant or above before exercising any warrantless search powers in relation to arms or drugs, unless impracticable in the circumstances.
- It is normally not necessary for a tracking device warrant to be obtained, when a victim provides tracking information/intelligence on the whereabouts of their stolen property (e.g. mobile phone) to Police. Depending on the circumstances and urgency, a search warrant or warrantless search power may be exercised instead.

See '[Searching people](#)' for when people may be searched without warrant.

# Overview

## Purpose

This part of the '[Search](#)' chapter outlines the powers Police may exercise **without warrant** to enter and search places, vehicles and things under the [Search and Surveillance Act 2012](#).

## Search hierarchy

**Remember**, you should always consider obtaining a search warrant first before exercising a warrantless search power. This may entail posting a guard to secure the scene while obtaining a warrant under section [117](#) of the Act. If this is not practicable, consider using a warrantless search power.

See:

- [Search warrants](#) for guidance on seeking a search warrant authorising the searching of places, vehicles and things
- Law Notes:
  - [R v Bailey](#) [2017] NZCA 211 relating to **direction to stop car so as to identify occupants and warrantless search of vehicle**
  - [McGarrett v R](#) [2017] NZCA 204 relating to **stopping a car on drug run using the Land Transport Act and warrantless search of vehicle**.

## Warrantless powers to search people

Warrantless powers to search people are outlined in Part 8 -[Searching people](#). These include searches of a person:

- in custody and who is or is about to be locked up ([§11](#))
- found in a public place for evidential material ([§16](#))
- for arms ([s18](#))
- in relation to drugs offences ([ss21, 22 & 23](#))
- for knives, offensive weapons and disabling substances ([§27](#))
- after arrest or detention ([ss85 & 88](#)).

## Seizure and other powers incidental to powers of search

All of the powers to search places, vehicles and things outlined in this '[Search](#)' part have:

- the associated power **to seize** anything that is the subject of the search or anything else that may lawfully be seized
- a number of other associated general powers that can be used when exercising a particular search power.

([s110](#))

## Case Law

The [Aranguiz v Police](#) [2019] NZHD 1765 case demonstrates the importance of the timing of seizures when operating under warrantless powers. In this case the officer seized a cell phone in a public toilet to search for intimate visual recordings before the person had been arrested for an offence of making such recordings, despite their being ample evidence to do so.

These other powers are described in 'Powers incidental to search' in [Carrying out search powers \(with or without a warrant\)](#). That part of the 'Search' chapter also outlines procedures for:

- conducting searches of places, vehicles and things
- giving owners / occupiers notices about the search and an inventory of what was seized following a search.

## Warrantless search on CheckPoint

The warrantless search application on CheckPoint application informs constabulary employees of their powers and obligations under the [Search and Surveillance Act 2012](#). The application provides pathways to follow when using warrantless powers in various categories:

- persons
- vehicles
- places.

The application leads the user through a range of potential scenarios to meet the fast-changing frontline situations.

## **Written report to the Commissioner on exercise of warrantless search power**

A written report to the Commissioner must be prepared as soon as practicable whenever a warrantless search power is exercised ([s169](#)). Police policy requires this is completed before the end of shift. Failing to prepare a report will not on its own render a search unlawful but could lead to judicial criticism. Record the use of powers in the 'OnDuty' application for warrantless notifications.

See '[Part 14 – Reporting](#)' in the '[Search](#)' chapter for further guidance with the reporting requirements under the[Search and Surveillance Act 2012](#).

## **References to the Act**

All statutory references in this chapter are to the[Search and Surveillance Act 2012](#) unless otherwise stated.

## Entry and search to effect arrest

### Entry to arrest person unlawfully at large

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> <li>• suspect that a person is <a href="#">unlawfully at large</a>, and</li> <li>• believe that the person is in a place or vehicle</li> </ul>	enter the place or vehicle without warrant to search for and arrest the person.

(s7)

### When entry to premises required to execute warrant to arrest

'[Unlawfully at large](#)' under section 7 includes the situation where an arrest warrant is in force for that person. Section [162](#) of the Criminal Procedures Act 2011 (CPA) sets out the procedures that must be followed when a constable executing a warrant issued under the CPA needs to enter onto premises to make the arrest.

It is sufficient to show a copy of the warrant, which can include a copy on a Police mobility device. This requirement applies regardless of whether the occupier is also the subject of the arrest warrant.

The operational practicalities of showing an electronic copy of an arrest warrant rather than providing a physical copy should be considered. For example, a constable may:

- in the particular circumstances, not be comfortable handing their device over to allow the occupier to view a copy of the warrant
- need to stand with the occupier scrolling through their device, enlarging or reducing parts of the warrant as necessary so that the occupier can read it
- need to take time to explain the contents of the warrant to the occupier, if they have difficulty reading or understanding the on-screen text.

Showing an electronic copy of a warrant to arrest on a device will suffice when executing a warrant under section [162](#) of the CPA. However, it remains best practice for Police to have the original warrant or a copy of the warrant in their physical possession, especially if the matter is not urgent, before entering premises.

**Note:** Section [162](#) of the CPA has more specific requirements than section 7 of the Search and Surveillance Act (S&SA) for warrants issued under the CPA. The legal principle is that the specific (section [162](#) CPA) overrides the general (section 7 S&SA). This means that where an arrest warrant is issued under the CPA, the constable must follow the specific process set out in section [162](#).

See '[Warrants to arrest and 162 of the Criminal Procedure Act – showing an electronic copy to the occupier where entry to premises is required](#)' for further guidance from Legal Services.

### Unlawfully at large defined

"Unlawfully at large" means that the person:

- has an arrest warrant (excluding a fines warrant)
- has escaped from prison or is absent without leave
- has escaped from lawful custody, e.g. Police cells or Police car
- is a special or restricted patient and has escaped or failed to return from leave
- is a care or special care recipient (with an intellectual disability) and has escaped or failed to return from leave
- is a young person who is the subject of a Youth Court "Supervision with residence" order and they are absconding from Oranga Tamariki custody.

(This definition is adapted from the definition in section 3 of the Act).

### Entry to avoid loss of offender or evidential material

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> <li>suspect that a person has committed an offence punishable by imprisonment and for which they may be arrested without warrant, <b>and</b></li> <li><b>believe</b> that the person is in a place or vehicle, <b>and</b></li> <li><b>believe</b> that if entry is not effected immediately, either or both of the following <b>may</b> occur: <ul style="list-style-type: none"> <li>the person will leave the place or vehicle to avoid arrest</li> <li>evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered or damaged</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>enter that place or vehicle without warrant, <b>and</b></li> <li>search for and arrest the person you suspect has committed the offence.</li> </ul> <p><b>Note:</b> You <b>may not</b> search for evidential material unless an arrest is made and a search incidental to that arrest is undertaken under sections <a href="#">83-88</a>.</p> <p>See <i>Round v Police</i> [2020] NZHC in relation to admissibility of evidence obtained under section <a href="#">8</a> in drink driver matter. The findings confirm Police may only enter a property under section <a href="#">8</a> for the purposes to search for and arrest a person.</p>

(s8)

## Applying section 8

Section [8](#) only empowers police to search for and arrest a person. That must be the officer's intention at the time of entry.

Section 8 only applies where:

- Police have reasonable grounds to suspect (i.e. think it is likely) that a suspect has committed an imprisonable offence for which they can be arrested without warrant;
- Police have reasonable grounds to believe (i.e. are confident it is the case - merely thinking it possible or likely is not sufficient) the suspect is in the vehicle or property;
- Police have reasonable grounds to believe if entry is not immediately effected either:
  - the person will leave there to avoid arrest; or
  - evidential material relating to the suspected offence will be destroyed, concealed, altered or damaged.

The observed behaviour of the suspect just before entry, but also their prior behaviour may be relevant to assessing whether they will leave to avoid arrest. For example, it will be relevant if the suspect has failed to stop when legally required; are ignoring Police communication; or are known to be actively trying to evade Police.

The effect of outside forces on evidential material, such as the natural dissipation of alcohol in a person's blood stream, may justify the belief that evidential material will be destroyed etc. – the feared harm need not be harm caused by the suspect or another person.

Because of the warrant preference rule, if it is practicable for Police to obtain a warrant, they must not exercise a warrantless power, even if the requirements for such a search/entry are made out.

If immediate entry is not required because the person is unlikely to leave the address to avoid arrest, but there are reasonable grounds to believe immediate entry is required to prevent the loss of evidential material relating to the offence for which the person is to be arrested, as part of the assessment Police should consider whether:

- the oral application process (section [100](#)) which may enable a warrant to be obtained without a written application, including over the phone, would enable a warrant to be obtained without compromising the entry/search; and/or
- the ability to secure a scene while a warrant is obtained (section [117](#)), thereby preserving evidential material, would enable a warrant to be obtained without compromising the search:
  - factors such as whether it is realistic and practical to place a security guard at a scene given resourcing/ time of day/ court availability will be relevant when determining whether this is a viable option.

Also consider whether it is practicable to seek an arrest warrant (sections [34](#) and [34A](#) of the Criminal Procedure Act refer).

If it is not practicable to obtain an arrest warrant or search warrant (if applicable for evidential material), section [8](#) enables

Police to enter a property or vehicle to arrest the person. Having entered the address it may be possible to also seize evidential material relating to the offence where items are in plain view (section [123](#)); or following arrest to search the arrested person and seize evidential material (section [88](#)); or to search for evidential material that there are reasonable grounds to believe will be destroyed, concealed, altered, or damaged, if entry is delayed (sections [83](#) and [84](#)).

See law note, '[Applying section of the Search and Surveillance Act 2012](#) for further information about:

- warrantless entry to avoid loss of offender or evidential material
- at the time of entry, the intention must be to effect an arrest of the person
- the belief of suspicion required for the exercise of the power
- relationship with drink driving (EBA) offences.

## Case law

See the following case law relevant to section [8](#):

- *Round v R* [2020] NZCA 557 for the Court of Appeal's emphasis that "intention to arrest the suspect is central to the power"
- *Harris v Police* HC Wellington AP18/97, 12 March 1997 in relation to the officer's intention to arrest the person involved in an assault was not negated by the fact that Police spoke to other party-goers to identify the person before arresting them
- for determining the objective standards of reasonable suspicion and the higher standard of reasonable belief:
  - *Wild v Police* [2017] NZHC 1344
  - *Police v Orupe* [2016] NZDC 3984
  - *Hawkes v R* [2015] NZCA 49
  - *R v Sione Malafiu Falala* [2013] NZHC 1686.

## Emergency powers

### Entry to prevent offence or respond to risk to life or safety

If you have reasonable grounds to...	you may...
<b>suspect</b> , in relation to a place or vehicle: <ul style="list-style-type: none"> <li>an offence is being, or is about to be committed, that would be likely to cause injury to any person, or serious loss of or serious damage to any property, <b>or</b></li> <li>there is risk to the life or safety of any person that requires an emergency response</li> </ul>	<ul style="list-style-type: none"> <li>enter the place or vehicle without a warrant, <b>and</b></li> <li>take any action you have reasonable grounds to believe is necessary to:</li> <li>prevent the offending from being committed or continuing, or</li> <li>avert the emergency.</li> </ul>

**Note:** 'Take any action' means any action that is reasonable in the circumstances.

(s14)

### Case law

The scope of powers under sections 10 and 14 of the Act are demonstrated in *R v The Queen* [2020] NZCA 125. The Court found that the persons whose life or safety is at risk so as to require an emergency response under section 14 of the Act may include police officers.

This case possibly broadens the scope of s 14 of the Act; it provides that an officer may take action under that section in order to respond to risks to the safety of police officers engaged in high risk duties.

### No power of detention

Section 14 carries no power of detention. In [Lessons Learnt – Unlawful detentions and arrests: three case studies](#) a case study explains the lesson learnt from detaining and transporting a man to the custody hub with the intention of having a mental health assessment.

## Entry and search for evidential material (serious offences)

### Entry and search of places to find and avoid loss of evidential material

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> <li>• suspect an offence punishable by 14 years imprisonment or more has been, is being, or is about to be committed, <b>and</b></li> <li>• believe that:</li> <li>• evidential material relating to the offence is in a place, <b>and</b></li> <li>• if entry is delayed in order to obtain a search warrant, the evidential material will be destroyed, concealed, altered or damaged</li> </ul>	enter and search the place without a warrant.

(s15)

Section 15 is about urgency. Once that urgency has passed and the scene is secure (assuming it is not a simple case of seizing an exhibit with no further interest in the scene) a warrant should be obtained. The timing will depend on the circumstances.

The ability to secure a search scene when an application for a warrant is pending strengthens the ‘warrant preference rule’. Unless there is some urgency to conduct the search or a concern that the securing of the scene may not be sufficient to preserve the evidential material, it may be appropriate to have to resort to section 117 rather than exercise a warrantless power.

### Searching people in public place for evidential material

If you have reasonable grounds to...	you may...
believe that a person in a public place is in possession of evidential material relating to an offence punishable by 14 years imprisonment or more	search that person without a warrant.  (See ' <a href="#">Searching people</a> ').

(s16)

### Entry and search of vehicles in a public place for evidential material

If you have reasonable grounds to ...	you may...
believe that evidential material relating to an offence punishable by 14 years imprisonment or more is in or on a vehicle in a public place	enter and search that vehicle without a warrant.

(s17)

**Note:** If a vehicle is parked in a place other than a public place, use section 15 to enter and search that vehicle.

## **Warrantless searches associated with arms**

### **Arms in places or vehicles**

If you have reasonable grounds to...	you may...
<b>suspect</b> that there are arms in any place or vehicle: <ul style="list-style-type: none"> <li>• in respect of which a category 3 or 4 offence (means an indictable offence until Criminal Procedure Act 2011 comes into effect) or an offence against the <a href="#">Arms Act 1983</a> has been, is being, or is about to be committed, <b>or</b></li> <li>• that may be evidential material in relation to a category 3 or 4 offence or an offence against the Arms Act 1983</li> </ul>	<b>without a warrant:</b> <ul style="list-style-type: none"> <li>• enter the place or vehicle</li> <li>• search it</li> <li>• seize and detain any arms or licence under the Arms Act 1983 found there.</li> </ul>

(s [18\(3\)](#))

### **Approval for arms-related searches of places and vehicles**

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising any of the warrantless powers outlined above in relation to arms.

### **Searching people associated with arms**

See '[Searching people](#)' for information on the power to search people associated with arms.

## Warrantless searches associated with drugs

### Search of places and vehicles

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> <li>• believe that in or on a place or vehicle:           <ul style="list-style-type: none"> <li>◦ there is a controlled drug specified or described in <a href="#">Schedule 1, Part 1 of Schedule 2, or Part 1 of Schedule 3</a> of the Misuse of Drugs Act 1975, or</li> <li>◦ a precursor substance specified or described in <a href="#">Part 3 of Schedule 4, and</a></li> <li>◦ that it is not practicable to obtain a warrant, <b>and</b></li> </ul> </li> <li>• suspect that in or on that place or vehicle an offence against the Misuse of Drugs Act 1975 has been, is being, or is about to be committed in respect of that controlled drug or precursor substance, <b>and</b></li> <li>• believe that, if entry and search is not carried out immediately, evidential material relating to the suspected offence will be destroyed, concealed, altered, or damage</li> </ul>	without a warrant: <ul style="list-style-type: none"> <li>• enter and search the place or vehicle.</li> </ul>

(s20)

### Approval for drug related searches under sections 20 and 21

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising any of the warrantless powers outlined above in relation to drugs.

### People found in or on places or vehicles

If you are conducting a search of a place or vehicle under section [20](#), you may, without a warrant, search any person found in or on the place or vehicle. (See '[Searching people](#)' for procedures for searching people).

(s21)

### Searches of people associated with drugs

See '[Searching people](#)' for information about warrantless powers to:

- search a person for drugs if an offence is suspected
- conduct an internal search of a person in connection with certain drug related offences and the effect of a refusal to undergo an internal search on an application for bail.

### Police and Customs powers relating to delivery of drugs

This table outlines Police powers when, during a controlled delivery, a Customs Officer has exercised their powers under section 12 of the Misuse of Drugs Amendment Act 1978:

If you or the Customs Officer has reasonable grounds to...	you or the Customs Officer may without a warrant...
<b>believe</b> the person is in possession of, or the <a href="#">place, craft, or vehicle</a> contains, any 1 or more of the following: <ul style="list-style-type: none"> <li>• a <a href="#">controlled drug</a></li> <li>• a <a href="#">precursor substance</a></li> <li>• a package in relation to which the Customs officer has replaced all or a portion of any controlled drug or precursor substance</li> <li>• evidential material in relation to the commission of an offence under section <a href="#">6(1)(a)</a> or <a href="#">12AB</a> of the Misuse of Drugs Act 1975</li> </ul>	<ul style="list-style-type: none"> <li>• search a person involved in a delivery under section 12 of the Misuse of Drugs Amendment Act 1978</li> <li>• enter and search any place, craft, or vehicle</li> <li>• seize anything you or the Customs officer have reasonable grounds to believe is a:           <ul style="list-style-type: none"> <li>◦ a controlled drug</li> <li>◦ a precursor substance</li> <li>◦ a package in relation to which the Customs officer has replaced all or a portion of any controlled drug or precursor substance</li> <li>◦ evidential material.</li> </ul> </li> </ul>

(s81)

## Warrantless searches for offensive weapons

### Searching vehicles for offensive weapons

If you have reasonable grounds to...	you may...
<b>suspect</b> that: <ul style="list-style-type: none"> <li>• a person travelling in a vehicle (or who has alighted from it) is committing an offence in a public place against section <a href="#">202A(4)(a)</a> of the Crimes Act 1961, <b>and</b></li> <li>• the vehicle contains a knife, offensive weapon, or disabling substance</li> </ul>	without a warrant: <ul style="list-style-type: none"> <li>• search the vehicle.</li> </ul>

(s[28](#))

### Definitions

These meanings apply in section 28.

Term	Definition
Disabling substance	'Disabling substance' means any anaesthetising or other substance produced to use for disabling a person or intended for such use by the person who has it with them.
Offensive weapon	'Offensive weapon' means any article made or altered to use for causing bodily injury or intended for such use by the person who has it with them.

(s[26](#))

### Searching people for offensive weapons

See also '[Searching people](#)' for your power under section [27](#) to search a person when you suspect them of committing an offence in a public place against section [202A \(4\)\(a\)](#) of the Crimes Act 1961.

## Searching vehicles for stolen property

### Warrantless search of vehicle for stolen property

If you have reasonable grounds to believe that any stolen property is in or on any vehicle, you may search the vehicle without a warrant.

(29)

**Note:** This section is intended to allow you to search a vehicle in a public place. If the vehicle is on private property, you should seek a search warrant or use an alternative warrantless power.

### Case law

In *Nassery v R* [2020] NZCA 511, the Court of Appeal:

- held it was not a search for Police to observe things that would be visible to any onlooker (looking into a van when the door was opened by the driver)
- reiterated the warrant preference rule:
  - Section 29 can be engaged unreasonably where a warrant could readily have been obtained without jeopardising a successful search. Whether obtaining a warrant is open to police depends on the practicalities in each situation.
  - In this case, the need to search the van arose late in the evening and made it impractical to pursue the availability of an Issuing Officer. The officer was entitled to take the view that it would not be practical to guard the scene or move and store the vehicle while a warrant was sought. The fact a warrant was sought and obtained the next morning for further searches did not negate the validity of this decision.

## **Warrantless searches if offence against s 78 or 78AA of Crimes Act 1961 suspected**

### **Warrantless search of place, vehicle or thing**

If the circumstances are that there are reasonable grounds to suspect that...	you may...
<ul style="list-style-type: none"> <li>• an offence against section 78 (espionage) or 78AA (wrongful communication, retention, or copying of classified information) of the Crimes Act 1961:           <ul style="list-style-type: none"> <li>◦ has been, or</li> <li>◦ is being, or</li> <li>◦ will be</li> </ul> </li> </ul> <p>committed and that the case is one of great urgency and requires immediate action, <b>and</b></p> <ul style="list-style-type: none"> <li>• to believe that there is evidence in any place, or in or on any vehicle or other thing, as to the commission of that offence or evidence of a thing that is intended to be used for the purpose of committing that offence</li> </ul>	<p>without a warrant:</p> <ul style="list-style-type: none"> <li>• carry out a search of the place, vehicle or thing.</li> </ul>

## Entry and search of places and vehicles incidental to arrest

### Entry and search of places after arrest

If you have arrested a person for an offence:

<b>and have reasonable grounds to...</b>	<b>you may...</b>
<b>believe</b> that: <ul style="list-style-type: none"> <li>• evidential material relating to the offence is at a place, <b>and</b></li> <li>• if entry is delayed to obtain a warrant, evidential material will be concealed, altered, damaged or destroyed (CADD)</li> </ul>	enter the place to search for evidential material relating to the offence (whether or not the person was arrested there) without a warrant.

(s83)

### Entry and search of vehicles after arrest

If you have arrested a person:

<b>and have reasonable grounds to ...</b>	<b>you may...</b>
<b>believe</b> that evidential material relating to the offence for which they were arrested is in a vehicle	enter and search that vehicle without warrant.

(s84)

### Case law

In *R v Cameron* [2018] NZDC 16448 the Court considered how long after an arrest a search must commence of a vehicle for evidential material to the offence for which the person was arrested. The Court inferred that a warrantless search should take place as soon as practicable will depend on the circumstances. In this case the circumstances included that the arresting officer was working alone.

## Tracking stolen property

GPS (Global Positioning System) tracking capability and other location services means police can potentially locate stolen property (e.g. devices such as mobile phones, iPads etc) very quickly.

Be aware that the property may not be stolen. It is not uncommon for people to inadvertently leave phones in taxis or at businesses. Therefore, care should be taken in assessing the complaint and deciding what action may be appropriate in the circumstances.

See '[GPS Tracking and the Search & Surveillance Act](#)' for the legal opinion related to tracking stolen property.

### Acting on tracking information

View the information provided by the victim. Typically, devices will show an accuracy measurement around where the device may be located. This is normally done with a circle which means that the device may be anywhere within that radius.

**Note:** The circle indicates the device is somewhere within the circle and not in the centre.

### Powers under the Search and Surveillance Act

The main powers under the Act that apply are:

- section 6 – Issuing officer may issue search warrant
- section 8 – Entry without warrant to avoid loss of offender or evidential material
- section 15 – Entry without warrant to find and avoid loss of evidential material relating to certain offences
- section 16 – Searching people in public place without warrant for evidential material relating to certain offences
- section 17 – Warrantless entry and search of vehicle for evidential material relating to certain offences
- section 29 – Power to search vehicles without warrant for stolen property
- section 46 and 53 – Activities for which a surveillance device warrant required and who may issue a surveillance device warrant
- section 83 – Entry without warrant after arrest
- section 84 – Warrantless entry and search of vehicle after arrest
- section 88 – Warrantless search of arrested or detained person
- section 117 – Special powers where application for search warrant pending.

### Is tracking stolen property surveillance or search?

Section 46(1)(b) of the Act requires a surveillance device warrant to be obtained before police use a tracking device. A tracking device includes any device that may be used to help ascertain the location of a thing or person. However, the same restrictions do not apply to a victim, and they may provide tracking information/intelligence. Where this occurs, it is normally not necessary for a tracking device warrant to be obtained, but an assessment is always required of the information provided. In particular, an assessment is required of how accurate the information is in the circumstances.

### Warrant or warrantless power?

While it is always preferable to obtain a search warrant, it is recognised that even large items of property can be easily moved or disposed of and signalling information may only be available for a short period of time. For this reason, consideration should be given to all the circumstances in determining whether a with/without warrant power under the Act should be exercised. If a without warrant power is used, the reasons for this should be well documented in notebook form as you may be required to justify that decision in Court.

### Determining time and delay for tracking stolen property

Take the following procedural steps with determining time and delay for tracking stolen property.

Step	Action
1	Satisfy yourself that the property has been stolen.
2	<p>Obtain location information from the victim. Find out:</p> <ul style="list-style-type: none"> <li>• when the last signal from the stolen property occurred</li> <li>• whether the property was moving or stationary at the time.</li> </ul> <p><b>Note:</b> Be aware that at the time of the last signal, or perhaps prior to the battery going flat or the device being powered off, the stolen property may have been on the move. An impression that it is/was located at the nearest address at the time of the last signal may be misleading.</p>
3	If there has been a delay between the provision of signal information and police acting on it, updated information should be sought.
4	<p>If the stolen property is on the move, then:</p> <ul style="list-style-type: none"> <li>• check with the victim how often the location is being refreshed (some devices refresh every few minutes, other devices may only refresh every 10-30 minutes)</li> <li>• updates should be manually done by the victim to ensure that the most accurate data is being obtained</li> <li>• location information should be acted upon urgently, as it is likely the person in possession of the property is either the thief or receiver and the signal could cease transmitting at any time.</li> </ul>

## **Reporting warrantless searches of places, vehicles and things**

### **Reporting warrantless searches to the Commissioner**

See '[Reporting](#)' for details of when you must report warrantless searches of places vehicles and things.

## Quick reference guide: warrantless use of powers notifications and reporting

Step	Action
1	Obtain prior approval from a sergeant or above where applicable (e.g. arms search under section <a href="#">18</a> ).
2	Provide a written notice to the person present during execution of the warrantless power (POL1275) and an inventory if items are seized. If no-one was present complete form POL1275 and leave in a prominent place.  <b>Note:</b> To locate written notice forms go to Police Forms > Search and Surveillance > Warrantless: <ul style="list-style-type: none"> <li>• Notice to person present during warrantless search</li> <li>• Notice to person not present during warrantless search.</li> </ul>
3	Make a record of your decision to use a warrantless power and the reasons for it (i.e. reasonable grounds to suspect / reasonable grounds to believe) in your notebook.
4	Record the use of powers in the 'OnDuty' application for warrantless notifications.
5	Where applicable, complete a notification Ten One> Home> <a href="#">Notifications</a> to notify relevant groups about drugs, firearms, children, etc.

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## Part 4 - Consent searches

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## Executive summary

Key points to note:

- Before using a consent search, first consider using a search warrant, or if that's not practicable, a warrantless search power.
- You must have a reason to justify asking a person to consent to a search and the search must not be used to go on 'a fishing expedition'.
- You must advise the reason for the search and that they can refuse consent or withdraw it at any time.
- A person under 14 years of age cannot consent to the search of a place, vehicle, or other thing — unless they are found driving a vehicle and there is no passenger 14 years or over with authority to consent to the vehicle's search.
- Exceptions to consent search rules include:
  - search conducted as a condition of entry to any public or private place
  - search conducted under a power conferred by an enactment
  - entry to property under an [implied licence](#).

## Search hierarchy

If you are considering a consent search, observe the general principle relating to **Search hierarchy** – i.e. first consider using a search warrant and if that isn't practicable, a warrantless search power. See "[General principles applying to searches](#)" in the Search introduction chapter.

## Application of rules about consent searches

### Under the 'Act'

Section [91](#) codifies the rules and restrictions applying to consent search by an enforcement officer, where a warrant or warrantless power would have been available if the officer held a particular belief or suspicion of one of the purposes outlined in section [92](#). See '[Purposes for which consent may be undertaken](#)'.

### Common law

At common law a consent search in other circumstances (that is, where the search is being undertaken for a purpose for which a power would not have been available even with a reasonable suspicion or belief) will be lawful whenever voluntary and informed consent is provided by a person with the capacity and authority to give it. See [Wanoa v R](#) NZCA 33 at [25] and [R v Rodgers](#) CA65/06, 29 May 2006 at [19]-[21]. The consent will be ineffective and the search unlawful, if the consent is obtained by deception or misrepresentation. See [R v Hjelmstrom](#) (2003) 20 CRNZ 208 (CA) at [15] and [R v Anderson](#) (1997) 4 HRNZ 165(CA).

### Implied licence to enter not affected

If an enforcement officer, having entered property under an [implied licence](#), then wishes to undertake a consent search in circumstances that fall within the ambit of subpart [2](#) of Part 4, the restrictions in sections 92-95 apply.

## Purposes for which consent search may be undertaken

You may ask a person to consent to undergo a search, or a search being made of a place, vehicle, or other thing apparently in the person's control for one or more of these purposes:

- to prevent the commission of an offence
- to protect life or property, or to prevent injury or harm
- to investigate whether an offence has been committed
- any purpose in respect of which you could exercise a power of search conferred by an enactment, if you held a particular belief or suspicion specified in the enactment.  
([s92](#))

You must have a reason to justify asking for the person's consent to a search in any of the above situations. You cannot randomly conduct a consent search and must not use a consent search to go on a 'fishing expedition' to see what might be

located.

## Advice that must be given before searching

Before conducting a search by consent, you must:

- determine that the search is for a purpose listed in section 92
  - advise the person from whom consent is sought:
    - of the reason for the proposed search
    - that they may consent or refuse to consent to the search.
- (s93)

See [Wilkie v R](#) [2019] NZCA 62 for commentary about consent searches undertaken under section 93 requiring officers to advise the person that they may withhold consent to a search. A failure to comply with this requirement is likely to render the search unlawful. The case also demonstrates, there is likely to be flow on consequences for any evidence obtained in relation to the admissibility of text messages obtained via unlawful search of third party.

You are not exercising a search power when searching by consent so [subpart 4](#) of Part 4 does not apply. Good practice is to identify yourself by name, give the reason for your search and if not in Police uniform produce evidence of your identity.

## Withdrawal of consent

A person who consents to a search of themselves or a place, vehicle or thing in their control may withdraw their consent at any time. In this situation, stop the search immediately, unless a warrantless search power can be invoked to continue the search.

See [Warrantless powers to search places, vehicles and things](#) and [Searching people](#) for your warrantless powers to search people.

## Circumstances where search by consent is unlawful

A search by consent is unlawful if:

- it is not for a [purpose](#) set out in section 92, or
  - you fail to give the [required advice](#) set out in section 93, or
  - you undertake a search relying on consent given by a person who does not have authority to give that consent.
- (s94)

## Restrictions on persons under 14 years to consent

A person under 14 years of age cannot consent to the search of a place, vehicle, or other thing. An exception is when they are found driving a vehicle and there is no passenger of or over the age of 14 years with authority to consent to the vehicle's search.

(s95)

Section 95 does not prevent a person under 14 years from consenting to a search of themselves or anything in their immediate possession or control. (See [Extent of consent searches of persons](#) for what can be included in a search).

## Exceptions to consent search rules

Consent search rules do not:

- apply to a search conducted:
    - as a condition of entry to any public or private place (e.g. a condition of entry to a sporting fixture or concert), or
    - in accordance with a power conferred by an enactment, or
  - affect the rule of law relating to the [implied licence](#) to enter property.
- (s96)

## Implied licence

It is assumed that members of the public, including police officers, can enter private property (e.g. go to the door of private

premises) so far as is necessary to make an inquiry of an occupier, for any reasonable purpose or in the course of any lawful enquiry. Such an implied licence can be revoked by the occupier at any time.

## Carrying out consent searches

When carrying out a consent search, you should carry it out in the same manner as when using a search power.

See [Carrying out search powers \(with or without a warrant\)](#) for procedures relating to searches of places, vehicles and things and [Searching people](#).

## Extent of consent searches of persons

If a person consents to a search of themselves, you may extend the search to any item that:

- the person is wearing or carrying, (e.g. a bag), or
- is in the person's physical possession or **immediate** control

**provided** the person consents to these items being searched.

## Disadvantages of using consent searches

If you have a particular belief or suspicion that is sufficient to exercise a warrantless power or to obtain a search warrant, you must exercise the power or obtain a warrant rather than rely on a consent search.

The disadvantages of using a consent searches are:

- the person being searched by consent can withdraw their consent at any time, which means the search must stop immediately, unless a search power can be invoked to continue the search
- if a search power is invoked after withdrawal of consent, the initial request may be seen to be token and meaningless
- the existence or validity of any consent given may be challenged in court.

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## **Part 5 - Carrying out search powers with or without warrants**

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# Policy statement and principles

## What

The [Search and Surveillance Act 2012](#) brings together most Police and law enforcement search, seizure, surveillance and related powers. The Act sets out detailed rights, powers and obligations in relation to exercising those powers. The powers in the Act are designed to make it easier to detect and apprehend offenders committing serious criminal offences.

This part of the [Search](#) chapter details procedures for Police employees carrying out search powers with or without warrant and provides guidance on associated rights, powers and obligations that arise when searching places, vehicles or things.

Searches by way of warrant or warrantless powers have inherent safety risks and because of their intrusive nature have the potential to cause harm to Police employees and the public. Police employees planning and undertaking searches must therefore mitigate these risks as much as possible while enforcing the law.

## Why

Key functions of the Police are law enforcement, crime prevention and the maintenance of public safety. As an employer, Police has a responsibility to ensure that its employees are safe when they undertake their duties.

Compliance with the guidance and procedures in this chapter when carrying out search powers will:

- ensure compliance with the [Search and Surveillance Act](#), and other enactments like the New Zealand Bill of Rights Act 1990
- maximise safety and eliminate or minimise the potential harm that executing a search warrant or exercising a search power may have
- increase the chance of successful prosecutions.

## How

To meet its objectives and obligations when carrying out searches with or without warrants, Police will:

- ensure it has a lawful authority to search and exercise any other incidental power in relation to that search, including the use of force
- conduct risk assessments when planning searches and take action to mitigate risks to protect the safety of the public and of staff carrying out the search
- only seize what it is lawfully entitled to seize
- provide appropriate announcements and identification on entry
- satisfy the notice and inventory requirements detailed in the Act after search or seizure.

**Note:** Searches of persons subsequent to arrest, are not covered in this chapter.

## Powers incidental to search

### Police actions authorised by search powers

Every search power (with or without a warrant) authorises you to:

Action	You may...
Enter and search	Enter and search the place, vehicle, or other thing you are authorised to enter and search, and any item(s) found in that place, vehicle or other thing.  You can do this at any reasonable time.
Request assistance	Request assistance from any person with the entry and search (including a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi).
Use reasonable force in respect of property only	Use reasonable force on property only to carry out the search and lawful seizure.  <b>Note:</b> This power does <b>not</b> authorise the application of force to any person ( <a href="#">s115(3)</a> ). (Section <a href="#">125</a> covers use of force against a person for search purposes - see <a href="#">Searching people</a> ).
Seize	Seize anything that is the subject of the search or anything else that may be lawfully seized.  See <a href="#">What can be searched and seized</a> in this chapter for more information.
Bring and use equipment	Bring and use any equipment or use any equipment found on the place, vehicle or other thing.  You may also use electricity from the place, vehicle, or other thing to operate equipment that it is reasonable to use in the circumstances for the entry and search.
Bring and use dog	Bring and use a trained law enforcement dog and its handler in or on the place, vehicle, or other thing being searched.
Copy documents	Copy any document, or part of a document, that may lawfully be seized.
Access a computer system or other data storage device	Use reasonable measures to access a computer system or other data storage device located (wholly or in part) at the place, vehicle or other thing if any intangible material that is the subject of the search may be in that computer system or device.
Copy intangible material	Copy intangible material accessed as above or which may otherwise be lawfully seized. This includes previewing, cloning, or using other forensic methods before or after removal for examination. See <a href="#">Searching for and seizing computer material</a> in this chapter for more information.
Take photographs, and recordings	Take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing being searched and anything found there, <b>if</b> you have reasonable grounds to believe they may be relevant to the purposes of the entry and search.

([s110](#))

### Powers when conducting remote access searches

If you are executing a search warrant authorising a remote access search, you may:

- use reasonable measures to gain access to the thing to be searched
- copy intangible material in the thing being searched or that may otherwise be lawfully seized (this includes previewing, cloning, or other forensic methods).

([s111](#))

### Limitations on exercising search powers

The search powers listed [above](#) are subject to:

- any conditions imposed by an issuing officer when issuing a search warrant
- the privilege and confidentiality provisions in the Act.  
(s115)

They are also subject the requirements of "reasonableness" under section 21 New Zealand Bill of Rights Act 1990.

## Using assistants during searches

If you call on a person to assist you to exercise a search power, or a person has been required to assist you as a condition of a warrant, they are subject to your control and the overall responsibility for exercising the power rests with you.

You must, (unless they are another constable):

- accompany them when they first enter the place, vehicle, or other thing to be searched, and
- provide reasonable supervision of them.  
(s113)

## Powers of persons called to assist

Any person called to assist you exercise a search power may enter the place, vehicle or other thing to be searched, but can only exercise the power of assistance and other powers listed in the table [above](#) as directed by you. For example, an assistant can only search places you determine are lawful to search, take photographs, or bring in and use equipment or electricity that you determine may lawfully be taken or used.

(s113)

## Powers of persons called to assist remote access search

A person called to assist you execute a search warrant authorising a remote access search, has the same powers as you to:

- use reasonable measures to access the thing to be searched
- copy intangible material that is the subject of the search or that can be lawfully seized.

However, they can only exercise these powers under your control and supervision.

(s114)

## Powers of constables who assist

Other constables assisting you with searches may exercise any power ordinarily exercisable by them, without direction or supervision from you.

## Special powers when an application for search warrant is pending

See Part 2- [Search warrants](#) for information about your power to enter and secure a place, vehicle or other thing when a search warrant application is about to be made or is awaiting the issuing officer's decision.

## Powers of detention incidental to searches of places and vehicles

If you are exercising a search power in relation to a place or vehicle, you (or a person assisting you) may **drown** any person to determine whether there is a connection between them and the object of the search if the person:

- was there at the start of the search, or
- arrives at the place or stops at, or enters, or tries to enter, the vehicle while the search is being carried out.

You may use reasonable force (e.g. handcuffing) to effect and continue the detention.

The detention:

- may be for any **reasonable period** but no longer than the duration of the search
- starts when you direct the person to remain and ends when you tell them they are free to go.

(s118)

## Determining a connection

As soon as you have detained a person under section 118, you must take active steps to determine whether there is a connection between them and the search. The detention can only be for the shortest period practicable in the circumstances to determine this.

You cannot simply detain the person for the duration of the search and then on completion, consider the matter of connection. In essence, once people have been excluded and cleared of suspicion, they should be informed that they are free to go about their business.

## Detention for the shortest period practicable

Endeavour to allow occupants back into a place or vehicle as soon as it has been secured and where it is physically practicable (e.g. sufficient room available) for them to be present and where they are not likely to hinder or obstruct the search.

If it is not practicable, you should assist the occupants to find alternative locations such as relatives' or friends' houses to stay while the search is completed.

## Powers to search persons at a place or vehicle

If you are searching a place or vehicle, you may:

search any person...	if you have reasonable grounds to ...
<ul style="list-style-type: none"> <li>• found at the place or in or on the vehicle, <b>or</b></li> <li>• who arrives at the place, <b>or</b></li> <li>• who stops at, or enters, or tries to enter or get into or onto the vehicle</li> </ul>	<ul style="list-style-type: none"> <li>• believe that evidential material that is the object of the search is on that person, <b>or</b></li> <li>• suspect the person is in possession of a dangerous item that poses a threat to safety <b>and you believe</b> that immediate action is needed to address that threat.</li> </ul> <p><b>Exception:</b> An exception to the above is when the search is for drugs - you can then search any person at the scene as a matter of course under section <a href="#">19</a> or <a href="#">21</a>.</p>

(s119)

**Note:** If you **seize** any item posing a threat to safety, then it must, **unless** possession constitutes an offence, be returned to the person:

- once your search has been completed, or
- when you are satisfied there is no longer any threat to safety.

## Powers of search when suspect pursued

If you intend to search a person or vehicle, but that person or vehicle leaves before you are able to start or complete the search:

you may...	if you have...
<ul style="list-style-type: none"> <li>• apprehend the person or</li> <li>• enter any place to apprehend the person or vehicle</li> </ul>	<ul style="list-style-type: none"> <li>• been freshly pursuing the person from the intended search location until apprehended, <b>and</b></li> <li>• you have reasonable grounds to <b>believe</b> that relevant evidential material is still on the person or in or on the vehicle.</li> </ul>

(s120)

**Note:** You can effect the apprehension or undertake the search **only** if you are the officer in fresh pursuit, **unless** you are acting as that officer's assistant under section [113](#) and under their direct supervision and control.

# Risk assessment when planning searches

## Maximising safety and minimising risk

Maximising safety and eliminating or minimising risk when searching is the responsibility of all Police employees and those requested to assist with the search. Safety and risk reduction is met by adherence to police policies designed to manage safety and comply with obligations under the [Health and Safety at Work Act 2015](#). A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

Persons planning and conducting searches must take reasonable care to ensure their acts or omissions do not adversely affect the health and safety of other persons. Searchers must comply as far as practicable with any reasonable instruction given to enhance the safety and well-being of those involved in the search and with the [Health and Safety at Work Act 2015](#) or associated regulations. Investigative considerations are secondary to the safe execution of a search.

## Planning searches of places, vehicles or things

All searches of a place, vehicle or thing by way of warrant or warrantless power must be treated as a critical incident involving risk with the potential to cause harm. Planning must be undertaken to:

- assess any threats arising, manage exposure, determine the necessity to intervene and decide the proportionate response
- identify issues that may impact on community trust and confidence in Police
- problem solve and apply decision-making.

Obtain a search warrant unless it is impracticable to do so (e.g. due to the fluidity and urgency of the situation) and apply contingency management and response arrangements into your operational planning and prepare operation orders.

## Required risk assessments for searches

When planning and executing **any** search you should undertake:

- an [Operational threat assessment \(TENR\)](#)
- a Planned Action Risk Assessment and CARD prompt
- a [critical incident appreciation](#).

## Conducting your risk assessments

When conducting your assessments, follow detailed guidelines in:

- the '[TENR-Operational threat assessment](#)', and '[Community Impact Assessments \(CIAs\)](#)' chapters
- 'Community impact assessment for establishing road blocks', in [Search Part 6 – Roadblocks and stopping vehicles for search purposes](#)
- 'Critical incident appreciation process' in '[Control and command overview](#)'

## Additional risk assessments for search warrants

Before any search warrant is executed, use the [Planned Action Risk Assessment and CARD Prompt](#) to guide your TENR assessment. The CARD prompt then provides a template for the information that must be entered as a CARD event (via iNet—using a mobility device) before the search warrant is executed. (The CARD event should be entered between five and 30 minutes before the search warrant is executed.)

## Urgent situations and re-assessing change

If the situation is urgent, requiring a warrantless search power to be exercised, you may carry out a mental TENR (rather than formal) assessment, and a mental community impact assessment. (The [Planned Action Risk Assessment and CARD Prompt](#) provides a useful aid to assist this). You should also carry out ongoing mental TENR and community impact assessments as the situation changes during execution of the search.

## Planned Action Risk Assessment and CARD Prompt, and 'OnDuty Noting'

Pre-search warrant risk and community impact assessments must be made using the [Planned Action Risk Assessment and CARD Prompt](#) for guidance.

After executing a search warrant, use a mobility device to submit an [OnDuty Noting](#) to provide intelligence information (related to either the subject/s or location) that might be useful to inform future activities.

### **Do not disclose planned action risk assessment without advice**

Do not disclose the planned action risk assessment or [OnDuty Notings](#) without legal advice. A refusal to disclose the assessment can be made under section [16\(1\)\(a\)](#) and [\(c\)\(iii\)](#) of the Criminal Disclosure Act 2008.

## Procedure for planning searches

### Planning for searches

Use this table as a guide when planning searches of places, vehicles and things prior to execution.

Step	Action
1.	<p>Unless circumstances make it impractical, avoid using warrantless powers. Take time to obtain a search warrant.</p> <p><b>Note:</b> If a search requires access via adjoining properties, ensure this information is included in the search warrant application.</p>

## Section 6(c) Official Information Act 1982

3.	<p>Undertake thorough risk and community impact assessments applying <a href="#">TENR</a>.</p> <p><b>Note:</b> Use the <a href="#">Planned Action Risk Assessment and CARD Prompt</a> to provide a helpful guide to TENR, risk and community impact assessment thinking.</p> <p>See <a href="#">Examples of risks associated with searches</a> (list is not exhaustive) below.</p>
4.	Undertake a critical incident <a href="#">appreciation</a>
5.	Apply for search warrant using the online Search and Surveillance system, followed by an appearance before an issuing officer.
6.	<p>O/C Search Warrant assesses the <b>response level</b> and <a href="#">assesses the safety options</a> associated with the response level. (Refer to the <a href="#">Planned Action Risk Assessment and CARD Prompt</a> to help guide decision-making).</p> <p>Response level may include deployment of specialist groups such as: <a href="#">AOS</a> (see steps 7 to 9), <a href="#">Dogs</a>, <a href="#">Clan Lab</a>, <a href="#">SSG</a>, <a href="#">STG</a>.</p>
7.	<p>If AOS is to be involved, have the AOS supervisor check the OC search warrant's risk assessment, safety options and recommended response level. If the risk justifies using AOS, they may need to undertake a reconnaissance to develop:</p> <ul style="list-style-type: none"> <li>• a concept of operations</li> <li>• detailed pre-deployment briefing.</li> </ul> <p>AOS will advise if the operation is beyond their capability.</p> <p>See the <a href="#">AOS – Pre-planned operation guide</a> to assist with planning if AOS is to be involved and the information the AOS supervisor requires.</p>

8.	<p>The O/C AOS:</p> <ul style="list-style-type: none"> <li>• <b>reviews</b> the risk assessments and, if prepared, any concept of operations and pre-deployment briefing document</li> <li>• <b>approves</b> any deployment of AOS members (partial or full) and signs off the documents.</li> </ul> <p><b>Note:</b> This includes identification and consideration of principal tactics to be adopted and assets to be used (weapons, breaching, less lethal options, dogs, impact rounds etc.) within the context of identifiable operational limitations.</p>
9.	<p>If AOS is to be used to execute the search warrant, execution is commanded by the AOS O/C.</p> <p><b>Note:</b> The timing and tactical approach is AOS's responsibility. Investigative considerations are secondary to the AOS mission of 'safe execution of the search warrant'.</p>
10.	<p>Execution team conducts pre-execution briefing. The <a href="#">Planned Action Risk Assessment and CARD Prompt</a> provides helpful guidance for final pre-execution risk and community impact assessments.</p>
11.	<p>O/C Search Warrant or a designate enters a CARD event via iNet Viewer between 5–30 minutes before executing the search warrant.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• This provides essential information for Comms and DCCs to support the safety of executing staff.</li> <li>• The <a href="#">Planned Action Risk Assessment and CARD prompt</a> provides a template for the information required in the CARD event.</li> </ul>

**Note:** These same instructions apply to a warrant to arrest assessed when a search of a place is required to locate the suspect. See the '[Arrest and detention](#)' chapter for further information.

## Examples of risks associated with searches

All searches have inherent risks for employees, those being searched and the community to be factored into planning. Some examples are:

<b>Occupier(s):</b>	<ul style="list-style-type: none"> <li>• May be armed with (or access to) firearms, weapons, explosives, disabling substances</li> <li>• Involved in manufacture or supply of firearms</li> <li>• Have history of violence, disorderly behaviour, resisting arrest, assaults Police, escaping and/or showing signs of aggression</li> <li>• Have aggressive pet(s)</li> <li>• Have history of growing, manufacturing, selling, supplying, consuming or believed to be under the influence of alcohol, drugs and/or psychoactive substances</li> <li>• Are gang members or have association with gangs</li> <li>• Suffering from psychological disorders, depression, suicidal symptoms and medical conditions (e.g. deafness)</li> <li>• Persons being searched may resist.</li> </ul>
<b>Place/vehicle:</b>	<ul style="list-style-type: none"> <li>• Fortified (e.g. gang premises), booby trapped or has security features (e.g. alarms, surveillance cameras)</li> <li>• Occupied by gang members</li> <li>• Dangerous and hazardous substances present or in immediate vicinity (e.g. petrol, chemicals)</li> <li>• Premises with potential hazards (e.g. internal access to adjoining premises, renovations without electrical, plumbing or building consent, open fire operating)</li> <li>• Equipment/machinery present that could be used as a weapon.</li> </ul>

## Section 6(c) Official Information Act 1982

<b>Other factors</b>	<ul style="list-style-type: none"> <li>• Children, vulnerable people and public are present or nearby</li> <li>• Supporters of occupier(s) may intervene and be obstructive</li> <li>• Neighbours placed at risk of harm/retaliation.</li> </ul>
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### Safety options to mitigate search risks

Safety options to mitigate risk include:

Option	Description / consideration
Surveillance of the target before execution	Can be with or without a surveillance device. If a device is required, the surveillance regime in the <a href="#">Search and Surveillance Act 2012</a> applies – see the ' <a href="#">Surveillance</a> ' chapter

## Section 6(c) Official Information Act 1982

Covert search	Conducting a covert search (approval required from a Detective Senior Sergeant or above – see 'Covert searches' in the ' <a href="#">Search warrants</a> ' chapter)
Entry to other properties	Entry to adjoining or neighbouring properties to the place being searched (see 'Safe execution of warrants – entry to adjoining or neighbouring properties' in ' <a href="#">Search warrants</a> ' chapter)
Risk mitigation strategies	<p>Other options to mitigate risk may include:</p> <ul style="list-style-type: none"> <li>• employees being clearly identifiable as police and Police labelling well displayed</li> <li>• use of uniform patrol vehicles, flashing lights and sirens</li> <li>• path of approach to be taken</li> <li>• having ambulance/medics available near search scene.</li> </ul>

**Note:** See the [Community Impact Assessments \(CIAs\)](#) chapter for generic community impact considerations to mitigate community risks.

# Separating individuals posing risk from premises to be searched

## Tactical arrest or interception in public place

One tactical option available in some circumstances, is separating an extreme risk individual from the premises to be searched. This is commonly referred to as a tactical arrest or interception. This tactical option needs to be lawfully undertaken and if detention or search of any kind is involved, it must be based on a specific power.

If an occupant of the address to be searched is an extreme safety risk (e.g. thought to have access to firearms or other weapons and/or be prepared to use them against Police), consideration must be given to separating that individual from their environment. This may involve:

- surveillance of the individual to ensure absence from the target address
- intercepting (searching/arresting) the individual in a safer location (e.g. public place).

## Planning to separate individuals from premises

Careful consideration is required before separating an individual posing a risk from premises to be searched. Consider these key factors in relation to planning a tactical arrest or interception.

Factors	Description
1	<p>Conduct a comprehensive <a href="#">TENR</a> assessment.</p> <p><b>Note:</b> The overriding principle of TENR is “Safety is Success”. The safety of Police employees, the public, occupiers and suspects must take priority over other matters (even, if necessary, including potential loss of evidence).</p>
2	Contemplate arresting the person before executing the search warrant (if there is sufficient evidence to arrest prior to the search).
3	<p>Consider applying for both a warrant to arrest and for a search warrant if there is sufficient evidence available.</p> <p><b>Note:</b> A warrant to arrest issued in conjunction with a search warrant better enables the interception and arrest in a public place; and at the same time execution of the search warrant.</p>
4	<p>In the absence of grounds to arrest the person, determine:</p> <ul style="list-style-type: none"> <li>• Are there grounds for a warrantless search (particularly if the warrant is for drugs or weapons that could be concealed on the person)?</li> <li>• Does the warrant include the individual's mode of transportation and power to search his vehicle away from the target address?</li> </ul>
5	Effect a traffic stop or interception away from premises to be searched and obtain individual's cooperation to voluntarily attend search premises.
6	Consider advice from Legal Advisor on the viability/justification/legality of a tactical arrest or interception type operation.
7	In some circumstances the tactical arrest or interception maybe considered a safer option, but may also potentially introduce significant risk to the public, police or suspect. <a href="#">CIA</a> assessment may be necessary for the tactical arrest or interception phase of the search warrant operation.
8	A tactical arrest or interception should never be considered a default option but rather a tactic for consideration.

## Execution of searches and mandatory notifications to COMMS and DCCs

All searches carry inherent dangers and risks for Police employees and others. Notification must be done in a prescribed 4X CARD event.

### Notification procedures to COMMS and DCCs

#### Warrantless searches

If you are exercising a **warrantless search** on a place, vehicle, or thing you **must** notify COMMS, **unless:**

- impracticable in the circumstances (e.g. out of radio and phone contact);
- your safety or the public's safety, or evidential considerations requires that the search be conducted immediately.

Using your radio (consider who might be scanning the Police radio) or mobile phone advise COMMS:

- your call sign(s), identity and the number of colleagues accompanying you
- event location where search is to be conducted
- time and date search are to commence
- units attending and units carrying firearms
- occupants' details
- contact information for O/C
- target(s) / occupant(s) (PRN / DOB if known)
- of threats, exposure, necessity/authorisation, response/tactics from **TENR** mental assessment
- any tactical/additional information relevant to potential escalated response from COMMS.

**Note:** Ensure a 4X CARD event has been notified.

#### Executing search warrants

If you are executing a search warrant:

Step	Action
1	Review the ' <a href="#">Planned Action Risk Assessment and CARD Prompt</a> ' risk assessment. Give special attention to <a href="#">TENR</a> , community impact and staff safety.
2	Ensure all employees are involved in securing a safe environment and those conducting the search are briefed before effecting entry/search
3	<p>Notify COMMS and DCCs of impending search through a 4X CARD event via:</p> <ul style="list-style-type: none"> <li>• INet Viewer</li> <li>• Mobile Responder</li> </ul> <p>The CARD event should contain the following information:</p> <ul style="list-style-type: none"> <li>• 4X –Search Warrant</li> <li>• event location</li> <li>• time and date to be executed</li> <li>• your identity and the number of colleagues accompanying you</li> <li>• units attending</li> <li>• units carrying firearms</li> <li>• target(s)/occupant(s) details (PRN/DOB if known)</li> <li>• contact information for O/C</li> <li>• any <a href="#">TENR</a> (threat, exposure, necessity/authorisation, response/tactics and additional information and also for exercising warrantless search powers when risks have been identified relevant to potential escalated response from COMMS).</li> </ul> <p><b>Note:</b> The 4X CARD event ensures the (mandatory) notification of pending searches authorised by search warrant to both COMMS and DCCs. Remember, this must be carried out between 5–30 minutes before executing the search warrant.</p>

## Covert searches

If you are **executing a covert search** approved by a supervisor (sergeant or above) instead of carrying out the notification procedures for search warrants generally, notify the Shift Commanders at COMMS and DCCs by phone with the confidential details of the pending search covering the points identified for advising [warrantless searches](#).

## COMMS and DCCs responsibilities

Shift commanders at COMMS and shift supervisors at DCCs are responsible for:

- advising only those subordinates on a 'needs to know' basis for safety to monitor the execution of overt search warrants
- keeping sensitive information, particularly involving covert searches, confidential, but still maintain a monitoring role
- responding to and taking command of any emergency that may arise from the execution of the search warrant **Note:** Comms shift commander will take command of any emergency that may arise from the execution of the search warrant until such time as the District has appropriate resource and people in place to take command of the emergency.
- ensuring risks that are not mitigated are identified and acted upon.

**Note:** Planning, command and control of the execution phase remains with officer in charge executing the search warrant.

## Steps to follow after execution phase

Follow these steps after executing a search warrant:

Step	Action
1	<p>As soon as possible after the warrant is executed, the <b>executing officer</b> (or designate) completes and submits the electronic '<a href="#">OnDuty Notings</a>' notification on their mobility device. Note in the Police file that the noting has been done.</p>
2	<p><b>Learning for the future</b></p> <p>Notings should provide information obtained while executing searches that might be relevant to future risk assessments. This will improve our ability to assess risks to the safety of employees executing future responses, and identify measures to reduce the risk of harm to police and others.</p> <p>If you think there might be a potential risk to other staff conducting search warrants not necessarily connected to your warrant (e.g. through criminals sharing man-trap ideas), notify Comms of the issue so they can pass on emerging trends to other staff in the field and notify <a href="#">Lessons Learnt</a> to ensure the knowledge can be shared.</p>

# Entry, announcement and identification requirements

## Powers of entry

Every search power authorises the person exercising it, to enter and search the place, vehicle or other thing they are authorised to enter and search, and any item(s) found in that place, vehicle or thing, at any reasonable time.

(s110)

## Search warrants to enter and search vehicles

If a search warrant authorises the search and entry of a vehicle, you may enter any place where you have reasonable grounds to believe the vehicle is to locate and search it.

(s127)

## Identification and announcement requirements on entry

If you exercise a search power, you must **before your initial entry**:

- announce your intention to enter and search the place, vehicle, or other thing under a statutory power
- identify yourself (by name or ID)
- if not in Police uniform produce evidence of your identity.

You must also, either **before or on initial entry** provide the occupier of the place or the person in charge of the vehicle or other thing:

- a copy of the search warrant, (if it is not possible or practicable to have this in your possession, you may execute:
  - a facsimile or a printout of an electronically generated copy of the warrant, or
  - a copy which is endorsed to that effect)

or

- for a warrantless search or securing a scene under section 117 when a warrant is pending, (if requested by any person affected) state the name of the enactment under which you are searching or propose to search and the reason for the search, unless impracticable to do so in the circumstances.

(s117)

**Note:** Where a warrant covers separate units of occupancy, an occupier of each unit searched should be provided with a copy of the warrant. If in doubt, take multiple copies of a warrant to a search scene to distribute if necessary. See [Law Note - Copies of search warrants to be given to all occupiers at properties with multiple dwellings](#)

See [Notice and inventory requirements](#) after search or seizure in this chapter for information about what to do if the occupier or person in charge of the vehicle is not present during the search.

## Exceptions to announcing entry and giving reasons for the search

You do not have to announce your entry, identify yourself and give a copy of the warrant or notice of the reasons for a warrantless search if you have reasonable grounds to believe that:

- no person is lawfully present in, or on the place, vehicle, or other thing to be searched, or
- compliance with the requirements would:
  - endanger the safety of any person, or
  - prejudice the successful exercise of the entry and search power, or
  - prejudice ongoing investigations.

(s131(2))

## Securing the scene to be searched

If you are carrying out a search, you may, in a manner and for a duration that is reasonable to carry out the search:

- secure the place, vehicle, or other thing searched (scene), or any area within that scene, or any thing found within that scene
- exclude any person from the scene or area, or give them any other reasonable direction, if you have reasonable grounds to believe they will obstruct or hinder you.

If requested by any person affected by the search, you must:

- identify yourself by name or ID
- state the name of the enactment under which the search is taking place and the reason for the search, unless it is impracticable in the circumstances
- if not in Police uniform, produce evidence of your identity.  
(s116)

## Case Law

Securing the scene to be searched was considered by the Court in [Mahmand v R](#) [2019] NZCA 307. In terms of section [116](#) powers, what is a reasonable manner and duration to secure a place being searched will depend on all the circumstances. The Court noted that even if their view that the application of section [7](#) of the Act allowed police officers to invoke the section 116 provisions is wrong, they were satisfied that the common law provides adequate authority for police officers to maintain the security of a property being searched.

Further the Court of Appeal has previously held that the section [117](#) powers where the application for a search warrant is pending do not preclude authority to take any steps necessary to secure the property and ensure the safety of searchers.

Consideration of section [117](#) when exercising warrantless powers was given by the Court of Appeal in [Mehrtens v R](#) [2018] NZCA 446. The Court stated that in some situations, it would be appropriate for an officer to use the less intrusive powers of section 117, instead of resorting to a warrantless search. However, the Court held that it was not practicable in this case for the officer to obtain a warrant and exercising the powers of section [117](#). The powers in section 117 do not extend to securing a person.

[G & B v R](#) [2019] NZCA 32 deals with a collateral purpose and safety concerns/procedures when executing a search warrant on an address linked to gang activity. In this case the Court considered the safety measures taken were genuine and reasonable. The property had connections with a gang and there were multiple connections of the gang to the particular road. In respect of this, the Court stated: "This context justifies the police taking extra steps when carrying out enforcement tasks on a property."

Having a dual purpose for executing a search warrant does not invalidate the search, provided that any actions taken in the pursuit of either purpose do not exceed the scope of the warrant.

## Using force on entry and detaining people at the scene

See [Use of force against persons or property](#) in this chapter.

## Being "in uniform"

Uniform is "distinctive clothing or equipment issued by the Commissioner to be worn by Police employees while on duty and having a colour scheme, pattern or style that enables the person wearing it to be readily identifiable as a Police employee". (s4 Policing Act 2008)

The wearing of SRBA as the only uniform item by plain clothed employees conducting searches is not sufficient to meet the criteria for being "in uniform". They must produce identification when exercising search powers.

## Use of force against persons and property

See also [Entry, announcement and identification requirements](#) in this chapter in association with this section.

### Using reasonable force to enter property

When exercising any search power, you (and any assistant under your direction) may use any reasonable force in respect of any property to carry out the search and any lawful seizure.

(s[110](#)(c) and s[113](#)(2)(b))

You may also use reasonable force against any property or person to effect entry where this is justified under section 131(3), e.g. when entry is resisted or refused.

When deciding whether to force entry, you must consider the possibility that such entry may present a danger to:

- the Police party
- the occupants of the premises, including children or other vulnerable people present
- members of the public.

## Section 6(c) Official Information Act 1982

## Detaining people at searches of places or vehicles

See [Powers of detention incidental to searches of places and vehicles](#)(s118) in the "Powers incidental to search" section of this chapter.

### Options prior to using force on a person

If a person obstructs or resists you exercising an entry, search, stopping, detention or seizure power, consider these options.

Option	Action
1	Explain that their continued resistance or obstruction is an offence of resisting/obstructing Police against section 23 of the Summary Offences Act 1981.
2	Warn them, if practicable, that they will be arrested for the offence of resisting/obstructing Police if they do not desist immediately.
3	Arrest them for resisting/obstructing Police if: <ul style="list-style-type: none"><li>• impracticable to warn the person, or</li><li>• they continue to resist or obstruct you.</li></ul>
4	For further information, see the <a href="#">Arrest and detention</a> or <a href="#">Use of force</a> chapter.

# What can be searched and seized?

## What can you search?

You can only search for items specified in a search warrant or which are permitted under a warrantless power, and only in places that could contain them. For example, you could not search a drawer for a large television set - although you could for documents relating to it.

A vehicle can be searched if it is on the premises, but a vehicle parked on the street must be specified in the warrant.

## Searching people at the scene

If you are searching a place or vehicle, you may search any person found there, or who arrives at the place or stops at, enters or tries to enter the vehicle, if you have reasonable grounds to believe:

- evidential material that is the object of the search, is on the person, or
- the person is in possession of a dangerous item that poses a threat to safety, and that immediate action is necessary to address that threat.

You can seize any such evidential material or dangerous item from the person.

(s<sup>119</sup>)

**Note:** In the case of searches for drugs, you may search any person at the scene as a matter of course under section<sup>19</sup> or <sup>21</sup>.

## What can you seize during the search?

Every search power authorises you to seize anything that is the subject of the search or that may lawfully be seized.

(s<sup>110(d)</sup>)

If you find evidence of an offence other than the one specified in the warrant or covered by your warrantless power, you cannot seize it unless:

- you obtain another warrant, or
- you exercise plain view seizure under section <sup>123</sup>.

## Items of uncertain status

If you are not certain if something can lawfully be seized and it is not reasonably practicable to determine that where the search takes place, you may remove the item for examination or analysis to determine whether it may be lawfully seized.

(s<sup>112</sup>)

This removal power is limited to when you are exercising a search power to find an item but are not sure if the item found is the actual item you are searching for and therefore whether it may lawfully be seized. For example, if you are exercising a search power to locate cocaine and find a package containing white powder, you may remove the package under section 112 for the purpose of examination or analysis to determine whether or not the powder is cocaine and can then lawfully be seized.

The section 112 removal power could not be used, if for example, the purpose of your search is to find cannabis, but you find a television and are uncertain whether it is stolen or not. You would need to consider whether the circumstances are appropriate to exercise a plain view seizure under section <sup>123</sup> or to secure the place, vehicle or other thing being searched while an application for a search warrant is pending under section 117. (See 'Special powers when search warrants are pending' in '[Search warrants](#)' for more information).

## Case law

The case [Police v Topia](#) [2018] NZDC 20607 considered sections <sup>112</sup> (items of uncertain status) and <sup>123</sup> (seizure of items in plain view) with the seizure of a laptop found during a search warrant for other items and examination of an open Facebook account without warrant.

The Court's findings confirmed that items cannot be seized without warrant simply for convenience, where it is practicable to make basic enquiries about them on the spot. Further, the opportunistic searching of a laptop and the contents of a Facebook

page represent a significant intrusion into the owner's privacy—which, if not well-justified, will likely be unreasonable and may result in the exclusion of evidence.

## Seizure of items in plain view

If you are exercising a search power or are lawfully in a place as part of your duties, you may seize any item(s) you find in the course of carrying out the search or as a result of observations at that place, if you have reasonable grounds to believe you could have seized the item(s) under:

- any search warrant obtained under the Search and Surveillance Act or another enactment, or
- any other search power exercisable by you under the Search and Surveillance Act or another enactment.

If you seize an item(s) in circumstances where you are not already exercising a search power, you may exercise any applicable power conferred by s<sub>110</sub> in relation to the seizure of the items. (See [Powers incidental to search](#) in this chapter). (s<sub>123(3)</sub>)

### Case Law Roskam v R [2019] NZCA

In [Roskam v R](#) [2019] NZCA items were seized under section [123](#) of the Act after items subject to the warrant had been seized. In the Court's view it was sufficient that the officers saw the basket containing the electronic equipment and formed a view that its contents may include stolen items and could legitimately be the subject of an application for a second search warrant. Seizure of those items did not overreach into an illicit invasion of privacy, and unlawfully extended search, because the existence of the basket and contents had already been noted. Section 123(2) does not require the police to form an instant view as to criminality. The items were therefore capable of being seized, and fell within the purview of section 123(2).

Section 123 would not have entitled the officers to take a renewed or extended search of the room itself, for example the entering of closed spaces such as wardrobes. The basket and the bags were discrete, portable items. They were capable of being seized, and therefore fell within the scope of section 123(2).

The Court noted that the scene could have been further secured against interference in the meantime under section 117. However, ultimately this second warrant was not needed as the items could be legitimately seized pursuant to section 123.

### Case law: Smith v Police [2019] NZHC 2111

The case [Smith v Police](#) [2019] NZHC 2111 highlights the importance of obtaining a further warrant where evidential material not covered by the warrant authorising entry/search is identified and further searches are required. In particular, s 123 (seizure of items in plain view) of the SSA is a seizure power, not a search power. The officers in this case were not able to satisfactorily address/explain the prerequisite in s [20\(c\)](#) that if the "search is not carried out immediately, evidential material relating to the suspected offence will be destroyed, concealed, altered, or damaged."

## Seizing privileged materials

Special rules apply in relation to the search and seizure of privileged or confidential materials held by lawyers, ministers of religion, medical practitioners, or clinical psychologists relating to clients or journalists relating to their sources. See '[Privilege and immunities under the Act](#)'.

## Searching for and seizing computer material

### What computer material can be searched and seized?

The Search and Surveillance Act 2012 explicitly provides for the search and seizure of "intangible data" held in data storage devices such as computers and cell phones. See [Ruru v R](#) [2020] NZCA 64 where a search warrant authorises the search of devices, Police may search communications found on that device (assuming such searches are within scope of the warrant or search power), even if the information at issue was downloaded from an internet server located overseas.

A search of a place, vehicle or thing also extends to the search of any computer system or data storage device located in whole or in part at the place, vehicle or thing.

A search of a business' computer network is therefore permitted even though the server is at premises other than those being searched. A search of any internet data accessible by the computer's user on the premises being searched is also permitted. Thus emails on Gmail or Hotmail or data held in the "Cloud" may be accessible, whether or not the data is downloaded, and whether or not the computer automatically logs on to the internet site when it is switched on. In the event that a password is required, the user may be required to provide the password under section [130](#).

You are not permitted to obtain the password, by way of example, to a Gmail account from the user of the computer that is located in a place being searched and then to conduct a subsequent search of that account from the enforcement agency's computer. That may only be done by way of a [warrant to conduct a remote access search](#)

See [Cloud computing](#) in this chapter for information about cloud computing and how to get information out of "the cloud".

### Intangible material on, or accessible from cell phones or computers

Make sure to identify what intangible material is being sought in warrants for cell phones and computers.

[Tupoumalohi v R](#) [2020] NZCA 117 is an important reminder about specifying in warrants what type of intangible material they are seeking when seizing cell phones or computers. It is insufficient to state that Police wish to seize a particular cell phone. It is necessary to specify in the warrant that intangible material on, or accessible from, the device is also sought. All that was required here was for the search warrant to be issued in terms that expressly allowed the Police to access data, communications and images from the cell phone.

Searching a cell phone after a search warrant has been obtained

When searching a cell phone that has been seized through the lawful and successful execution of a search warrant, it is not necessary to obtain a further warrant for each search that is conducted in accordance with the original search warrant. In order to preserve data, police should adhere to standard practices when seizing cell phones. If a search for other purposes is needed, an additional warrant may be required. See [R v R](#) [2018] NZCA 341 for searching a cell phone after a search warrant has been obtained.

### Definitions related to computers

These meanings of terms relating to computers apply in relation to search powers unless the context otherwise requires.

Term	Definition
<b>Access</b>	Access in relation to any computer system means instruct, communicate with, store data in, receive data from, or otherwise make use of any of the resources of the computer system (s3).
<b>Access information</b>	Access information includes codes, passwords, and encryption keys, and any related information that enables access to a computer system or any other data storage device (s3).
<b>Computer system</b>	<p>Computer system:</p> <ul style="list-style-type: none"> <li>• means:           <ul style="list-style-type: none"> <li>◦ a computer, or</li> <li>◦ 2 or more interconnected computers, or</li> <li>◦ any communication links between computers or to remote terminals or another device, or</li> <li>◦ 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device, and</li> </ul> </li> <li>• includes any part of the items described above and all related input, output, processing, storage, software, or communication facilities, and stored data (s3).</li> </ul>
<b>Remote access search</b>	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 (s3).
<b>User</b>	<p>A user is a person who</p> <ul style="list-style-type: none"> <li>• owns, leases, possesses, or controls the system, device, or site, or</li> <li>• is entitled, by reason of an account or other arrangement, to access data on an Internet site, or</li> <li>• is an employee of one of the above (s130(5)).</li> </ul>
<b>Specified person</b>	<p>A specified person is:</p> <ul style="list-style-type: none"> <li>• a user of a computer system or other data device or an Internet site who has relevant knowledge of that system, device or site</li> <li>• a person who provides an Internet service or maintains an Internet site and who holds access information (s130(5)).</li> </ul>

## Search of a computer under warrant

If you are obtaining a warrant and know at the time of application that the search is likely to include the search of a computer, you should:

- be as specific as possible in the application about the material that you are looking for
- where practicable, specify the procedures you will adopt to locate the material (e.g. use keywords to identify relevant files or locate the required material), although it is important to do this in a way that maintains the flexibility to undertake the search effectively.

A warrant that is too general and does not adequately spell out what is being looked for may subsequently be held to be invalid.

## Search of a computer without warrant

If you are searching a computer under a warrantless power, you should:

- conduct the search in a way that most effectively targets the material you are looking for
- distinguish between material that may come within the scope of the search and material which is clearly irrelevant information.

You must not conduct a "fishing expedition" and should avoid appearing to others you are.

## Carrying out a search of a computer

If you are authorised to search a computer (or other data storage device), you may:

- use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing if intangible material that is the subject of the search may be on that computer system or device (s 110(h))
- remove the computer for further examination if it is not practicable to search it on the premises (s12)
- take a forensic copy of the hard drive to preserve the evidential integrity of the material (s10(i)) and if you find the material that you are looking for, maintain possession of that data
- require a person who owns, leases, possesses or controls the computer device or system, or an employee of such a person, to provide access information (e.g. password) or other information (e.g. de-encryption information) that is reasonable and necessary to allow you to access the data (s130). (Any person who fails, without reasonable excuse, to assist you exercising the search power when requested to do so, commits an offence (s178)).

## Carrying out a search of a cell phone

The following is general guidance about searching cell phones:

- If a cell phone is seized pursuant to arrest in reliance upon section 88 of the S&S Act or some other without warrant search power, and there is no urgency in respect of its examination, apply for a search warrant to retain and search the cell phone and relevant contents. Urgency may arise where evidential material on the phone or accessible from the phone may be erased or no longer accessible if there is a delay in conducting the search e.g. some applications can be deleted or inactivated remotely. A delay in accessing information may also hinder a Police investigation. The reason for the search and what was searched on the cell phone should be documented.
- When seeking a warrant to seize and search a cell phone, it is necessary to specify in the warrant that intangible material on, or accessible from, the cell phone is also sought ([Tupoumalohi v R \[2020\] NZCA 117](#)). If possible, the type of intangible material that needs to be searched should be listed. For example, text messages, emails, communications in applications such as Facebook Messenger or similar types of applications and photographs/videos. Likewise, date ranges could be identified in appropriate cases. Remember, intangible material that is accessible from the cell phone should be captured (synchronised) during the termination of the warrant or execution of the search power.
- Although it may be impossible to anticipate the exact nature and location of data held on a cell phone, it does not follow, however, that it is always impossible to limit the scope of the warrant to data/information/communications of a specified type and/or to named applications or classes of applications, instead of simply authorising the search of a cell phone for a specified purpose ([Ruru v R \[2020\] NZCA 64](#)).
- When a cell phone application is lawfully connected to a remote server or the internet, the cell phone becomes part of the computer system. Therefore, if Police are authorised to search the cell phone pursuant to a with or without warrant power, this extends to searching apps if they are within the lawful purpose of the search. A search of internet applications on a seized cell phone does not require a remote access warrant ([Ruru v R \[2020\] NZCA 64](#)).

## Section 6(c) Official Information Act 1982

- Subject to the parameters of a warrant or search being conducted, any search of a phone should extend only so far as is necessary to investigate the offence for which it was seized. If evidence of other/unexpected offending is identified in plain sight and searches are specifically required for the purpose of investigating that new offending, a new search warrant should be obtained. Section 123 (seizure of items in plain view) of the Search and Surveillance Act may apply, but this section is not a search power. For example, if objectionable publications are identified during a search of a cell phone for drug offending and additional searches of the phone are required to investigate the objectionable publication offending, a new warrant should be obtained.

See [Douglas v Police \[2019\]](#) NZHC 2672 for case law guidance on cell phone (computer) searches.

## Section 6(c) Official Information Act 1982

# Section 6(c) Official Information Act 1982

## Remote access searches authorised by warrants

A search warrant may authorise a "remote access search", of a thing such as an internet data storage facility. The issuing officer must be satisfied that the thing is not situated at a physical address that is capable of being entered and searched ([s103\(6\)](#)).

# Section 6(c) Official Information Act 1982

The warrant application should specify why the applicant believes that the data is not held at an accessible location. The warrant must specify with sufficient particularity the access information that identifies the thing to be searched remotely, such as the email address or the logon information relating to the site to be searched.

### Note:

You **can not** obtain a remote access search warrant merely because a server with web-based material is inaccessible in that particular circumstance, e.g. because it is overseas or its location has not been researched. In this event, you should:

- seek the cooperation of the organisation that hosts the server, or
- obtain a production order under s74, or
- seek mutual assistance through the Mutual Assistance in Criminal Matters Act 1992.

## Additional powers when conducting remote access searches

If you are executing a search warrant authorising a remote access search, you may:

- use reasonable measures to access the thing to be searched, and
- copy any intangible material from the thing searched if it is the subject of the search or may otherwise be lawfully seized.

([s111](#))

**Note:** There are technical and cross border issues that may arise with "remote access searches" and both the Electronic Crime Laboratories and Legal Services must be involved in the preparation of these search warrants. The applications will require careful scrutiny by both groups.

## Principles for data evidence gathering

The general principles of gathering data as evidence are:

Step	Principle description
1	No action taken by law enforcement agencies or their agents should change data held on a computer or storage media which may subsequently be relied upon in court.
2	Any person accessing original data held on a computer or on storage media must be competent to do so and able to give evidence explaining the relevance and the implications of their actions.
3	An audit trail or other record of all processes applied to computer-based electronic evidence should be created and preserved. An independent third party should be able to examine those processes and achieve the same result.
4	The person in charge of the investigation (O/C case) has overall responsibility for ensuring that the law and these principles are adhered to.

## Procedures for accessing computers, securing evidence and creating forensic copies

Follow the procedures in [Preservation and recovery of electronic evidence](#) in the 'Crime scenes and forensics' section of the Police Manual when accessing computer systems and making copies of any intangible material found there to ensure the integrity of the evidence is preserved.

See [Cloud computing](#) in this chapter for information about cloud computing and how to get information out of "the cloud".

Note: All remote access search warrant applications and searches must be forwarded to the [ECL](#). Specialist knowledge with remote access searches in this process is required to ensure national and international laws are observed.

### Securing evidence

## Section 6(c) Official Information Act 1982

### Disposal of forensic copies

If you make a forensic copy, deal with it as follows:

If the copy...	you...
does not contain any "evidential material" (i.e. material that may be seized)	must ensure that the forensic copy is "deleted, erased or otherwise destroyed in a way that prevents retrieval" ( <a href="#">s161(1)</a> ). In practical terms, this means that you must delete it so that it is not normally accessible on the hard drive.
contains a mixture of evidential material and non-evidential material	may retain the forensic copy in its entirety ( <a href="#">s161(2)</a> ).

## Information tending to incriminate

A specified person may not be required to give any information tending to incriminate themselves. However, this does not prevent you from requiring them to provide information or assistance that is reasonable and necessary to allow you to access data held in, or accessible from, a computer system or other data storage device that contains or may contain information tending to incriminate the person.

## Privilege and confidentiality

Powers requiring a person to provide access, information or assistance are subject to the privilege and confidentiality provisions of the Act. (See Part 13 - [Privilege and immunities under the Act](#) for more information).

## Cloud computing

### Information in the cloud

Cloud computing has been around for a long time, but the term is relatively new. Applications, such as Hotmail, Facebook, Gmail and Dropbox are cloud based applications, because they reside in the cloud, i.e. not on your computer.

## Section 6(c) Official Information Act 1982

## Section 6(c) Official Information Act 1982

# Section 6(c) Official Information Act 1982

# Notice and inventory requirements after search or seizure

## Notice requirements

There are strict notice requirements under sections [131](#) and [132](#) of the Act to be followed by persons exercising a search power or who conduct a remote access search.

## Form of written notice when exercising a search power

The form of notice given before or after a search and seizure varies depending on whether the search was conducted with or without a warrant and whether or not the occupier or person in charge of the vehicle was present during the search.

For	you must:
searches conducted when occupier or person in charge of vehicle or thing is <b>lawfully present</b>	<p>give that person before or on initial entry:</p> <ul style="list-style-type: none"> <li>• copy of the warrant and attached privilege information contained in the 'Notice to occupier, or the person in charge of vehicle or other thing present during search', or</li> <li>• if a warrantless search, a copy of the 'Notice to person present during warrantless search' (POL1275).</li> </ul>
	<p><b>Note:</b></p> <p>The exception to this requirement is when you have reasonable grounds to believe an unannounced forced entry is justified in the following circumstances:</p> <ul style="list-style-type: none"> <li>• a person is not lawfully present (e.g. a burglar), or</li> <li>• compliance would: <ul style="list-style-type: none"> <li>◦ endanger the safety of any person</li> <li>◦ prejudice the successful exercise of the entry and search power, or</li> <li>◦ prejudice ongoing investigations.</li> </ul> (s131(1)) </li> </ul>
searches conducted when occupier or person in charge of vehicle or thing is <b>not present</b>	<p>on completion of the search, leave in a prominent position at the place, or in or on the vehicle or other thing:</p> <ul style="list-style-type: none"> <li>• a copy of the warrant and attached privilege information contained in the 'Notice to occupier, or the person in charge of vehicle or other thing not present during search', or</li> <li>• if a warrantless search, a copy of the 'Notice to person not present during warrantless search' (POL1275).</li> </ul> (s131(4))
searches resulting in things seized	<p>at the time the thing is seized, or as soon as practicable after the seizure and no later than 7 days after that seizure, provide:</p> <ul style="list-style-type: none"> <li>• to the occupier of the place, or the person in charge of the vehicle or other thing, and</li> <li>• to every other person you have reason to believe is the owner of the thing seized</li> </ul> <p>the following:</p> <ul style="list-style-type: none"> <li>• an inventory of items seized (POL 268) and the accompanying 'Notice to owners and others in relation to things seized, <b>and</b></li> <li>• a copy of the authority (i.e. a copy of the warrant, POL1275) if the owner is different from the occupier or person in charge and has not previously received the relevant form</li> </ul> (s133)

**Note:**

When a search warrant prints off the Search and Surveillance System it will have two attachments, one to be used if the owner is present, the other when they are not. Both attachments have appropriate headings to distinguish them.

## Case Law

Section [131\(1\)\(b\)](#) of the Search and Surveillance Act provides mandatory requirements of identification and notice for a warrantless search. *R v Norling [2018] NZDC 3979* is a reminder to constabulary employees that the notification requirements in section 131(1) of the Act must be complied with. A failure to do so may result in a finding that the search is unlawful.

## Postponing compliance with notice and inventory requirements of items seized

See [Application to postpone compliance](#) for information about when compliance with the requirements to provide written notices about the exercise of a search power and of things seized during the search may be deferred.

## Procedure for recording seized items and providing required notice

Follow these steps if you execute a search warrant or exercise any warrantless search power resulting in the seizure of items.

Step	Action
1	Distinguish whether the search is conducted with or without a warrant and whether or not the occupier or person in charge of the vehicle is present or not present during the search. Then follow the appropriate guidelines in the table ' <a href="#">Form of written notice when exercising a search power</a> ' above.
2	Complete a property record sheet (POL 268), sometimes referred to as an <b>inventory</b> of items, in triplicate including: <ul style="list-style-type: none"> <li>• from whom the things were seized and the location</li> <li>• a full description of what was seized</li> <li>• whether seized under a search warrant or warrantless search power.</li> </ul> <p>Ensure the chain of custody of seized items is properly recorded on the reverse side of the POL 268. (If no items were seized, this will have been noted on the warrant or the POL1275 in a warrantless search).</p>
3	Give the original of the completed POL 268 to the occupier of the place, or person in charge of the vehicle or other thing. The second page of the POL 268 contains the information required under section <a href="#">133(1)</a> about the authority for the seizure and rights of access to the items and to <a href="#">claim privilege</a> .  If it is not practicable to complete and leave the POL 268 and a copy of the authority for the search at the time of seizure, you must provide them to the occupier of the place or the person in charge of the vehicle or other thing <b>within 7 days</b> or seek <a href="#">postponement</a> under section 134.  <b>Note:</b> You <b>do not</b> have to provide this information to the occupier of the place or person in charge of the vehicle or other thing from which the seizure took place, if you are satisfied that none of the items seized are owned by that person. ( <a href="#">s133(2)</a> )
4	If the owner, occupier of the place, or person in charge of vehicle or other thing is <b>not present</b> when things are seized, leave the: <ul style="list-style-type: none"> <li>• completed POL 268 (i.e. the inventory of items seized and notice to owners and others)), <b>and</b></li> <li>• the search warrant and appropriate attached notice <b>or</b> POL1275 'Notice to person not present during warrantless search'</li> </ul> at the address or in the vehicle in a prominent place.  If it is not practicable to complete and leave the documentation, you must provide it to the occupier of the place or the person in charge of the vehicle or other thing <b>within 7 days</b> or seek <a href="#">postponement</a> under section 134. ( <a href="#">s131(4)</a> )
5	If you have conducted a remote access search, e.g. of an internet data storage facility, follow the <a href="#">notice requirements for remote access searches</a> below.
6	Retain the duplicate copy of the POL 268 on the file and the triplicate copy remains with the seized property.

## Limits on who can be treated as occupiers or people in charge

No person:

- under 14 years of age (unless found driving a vehicle with no passenger or over the age of 14 years with authority to consent to the vehicle's search), or
- who you have reasonable grounds to believe is not the occupier of the place or person in charge of the vehicle or other thing.

can be treated as the occupier of the place or the person in charge of a vehicle or other thing for the purposes of section [131](#) and sections [133](#) to [135](#).  
([s131\(6\)](#))

## Notice requirements for remote access search

After completing a remote access search, you must send an electronic message to the email address of the thing searched:

- attaching a copy of the search warrant, and
- setting out:
  - a description of the thing remotely accessed during the search
  - the date and time of the commencement and completion of the search
  - the name and ID of the person who had overall responsibility for the search
  - the address of the office to which inquiries should be made.

If you are unable to deliver the required electronic message (or it is returned undelivered), you must take all reasonable steps to identify the user of the thing searched and to send the required information to them.

(s132)

## Duty to give notice to owners of things that are seized

In addition to providing the occupier of a place or the person in charge of the vehicle or other thing notice of what is seized, section 133(1) requires you to provide to **any person you have reason to believe is the owner of the thing seized**

- written notice specifying what was seized and information about the person's right to have access to the thing or claim privilege in respect of the thing seized, **and**
- a copy of the authority for the search (i.e. the search warrant or for warrantless searches, the name of the enactment under which the search took place).

The section also provides that this information must be provided as soon as practicable after the seizure and, in any case, within 7 days.

You must take care when providing this information to owners following seizure. Search warrants or advice of the exercise of a warrantless power and inventory of items seized (POL 268) all contain details of the location from where the items were seized and except for notices following warrantless searches, the identity of the person from whom they were seized. A POL 268 may also contain details of property belonging to a number of owners. Providing this personal information to the owner(s) of stolen property which is recovered, may pose a threat to the safety of the person from whom it was seized, e.g. the owner of a stolen item may be a gang member wanting retribution.

There are two courses of action available to you if you have concerns about the disclosure of identity information when complying with section 133:

Option	Action
1	<p>Delete or mark out the identity and location on the inventory POL 268) copy and the location of the search on the search warrant copy or the warrantless search power notice copy before providing to the owner.</p> <p>Seek advice from Legal Services if the owner disputes the deletions from the documents.</p>
2	<p>Apply to a Judge for postponement of notice and inventory requirements under section 134.</p> <p>This option has limitations in that the application must be made within 7 days after the warrant is finally executed or the warrantless search power is exercised.</p>

## Notice and inventory requirements relating to production orders

Use the POL 268 to record items produced pursuant to a production order with appropriate amendments. However, do not give the Notice to Owners and Others in Relation to Things Seized on the back of the POL 268 to the person producing the items(s) and others who may have a legal or equitable interest in the item(s). The relevant notice information is contained in the Production order itself and a copy of this must be provided.

## Procedure when seizing items for non-payment of fines

After seizing items, you must immediately deliver to the defendant, or leave in a conspicuous place on the premises:

- a list identifying the items seized, and
- a notice directing the defendant or the substitute for the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the defendant or the substitute owns or has an interest in the property and to give the Registrar the name and address of any other person who owns or has an interest (including a lease or security interest) in the property.

**Note:** If you use the 'Property Sheet' (POL 268) to list the item(s) seized, then the 'Notice to Owners and Others in Relation to Things Seized' accompanying the form is not appropriate for use in these circumstances. Seek guidance from a Legal adviser with preparing an appropriate notice.

Deliver all seized items to the registrar.

(s99(5)&(6) Summary Proceedings Act)

## Further information

For further information about seizing property, see also:

- [Accessing and seizing computer material](#) in this chapter
- [Postponing compliance with notice requirements](#) in this chapter
- the [Procedures applying to seized and produced things](#) chapter
- the [Privilege and immunities under the Act](#) chapter.

## Postponing compliance with notice requirements

### Application to postpone compliance with providing notices

If you exercise a search power, you may apply to a judge under section [134](#) for a postponement of the obligation to comply with providing a copy of the search warrant or other authority or a written notice about the search and seizure on the grounds that compliance would:

- endanger the safety of any person, or
- prejudice ongoing investigations.

If the judge is satisfied these conditions exist, they may postpone the obligation to provide a copy of the search warrant, authority or written notice for a specified period not exceeding 12 months.

### Timeframes

An application must be made in the case of:

- a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed, or
- any other entry and search power, until the expiry of 7 days after the search power is exercised.

### Application for further postponement or dispensation

If you obtained a postponement order under section [134\(3\)](#) of the Act, you may, before the expiry of that order, apply to a District Court for a further postponement or dispensation on the grounds that compliance would:

- endanger the safety of any person, or
- prejudice ongoing investigations.

If the judge is satisfied these conditions exist, they may grant a further postponement for a further specified period not exceeding 12 months, or order a permanent dispensation from the obligation to comply.

**Note:** An application for a further postponement may only be made once.

### Restrictions on postponing compliance relating to seized things

A district court judge may not grant any postponement of or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is:

- a copy or clone of any information taken or made, or
- possession of a thing by the person from whom it was seized is unlawful under New Zealand law (e.g. a controlled drug found in the possession of a member of the public in circumstances in which possession is an offence against the [Misuse of Drugs Act 1975](#)).

(s135)

# Search warrants, production orders and examination orders involving media organisations

## Background

From time to time, news media organisations have information about or record the commission of offences on film, tape, photographs or sound recordings while they are covering newsworthy events. Such media material can be important to subsequent Police enquiries or in judicial proceedings and the Police may be duty bound to obtain:

- an examination order for the purpose of seeking information, or
- a search warrant or production order for the purpose of seizing or having produced such film, tape, photographs, sound or digital recordings.

However, news media organisations are very sensitive to the Police having recourse to their information or material for any reason and consider such access to be a potential threat to media freedom. Their principal concern is that reporters, film crews and photographers may be at risk if they are ever perceived by offenders as being gatherers of evidence for Police.

To minimise the risk of complaints when the Police execute search warrants on the premises of media organisations or serve production orders or examination orders, and to ensure compliance with the Search and Surveillance Act 2012 you must follow the procedures below.

## Procedural guidelines (search warrants, production orders and examination orders)

Act **only** where the offence is serious enough to warrant the obtaining of:

- a search warrant, or production order and cannot be otherwise resolved without the seizure of any film, photographs, tape, sound or digital recordings, or
- an examination order and cannot be otherwise resolved without obtaining the information.

Follow these general steps (not necessarily in order) in addition to other requirements detailed in the Search chapter for exercising search, production and examination powers generally.

Step	Action
1	<p>Before you apply for a search warrant or production order obtain the authority of:</p> <ul style="list-style-type: none"> <li>• a Police Executive member in the case of Police National Headquarters, or</li> <li>• a District Commander in the case of a district matter.</li> </ul> <p>If you wish to apply for an examination order you must have the approval of:</p> <ul style="list-style-type: none"> <li>• a Deputy Commissioner, or</li> <li>• an Assistant Commissioner, or</li> <li>• the District Commander (other than an acting District Commander) of the Police district in which the constable is stationed.</li> </ul>
2	Make an application to a Judge unless in the circumstances this is impractical.
3	<p>Maintain close liaison with the "manager" of the particular news media premises prior to the execution of the search warrant, production order or examination order.</p> <p>Note:</p> <ul style="list-style-type: none"> <li>• The exception being where the manager is a suspect or is otherwise involved in the subject matter of the search warrant.</li> <li>• If the manager is a suspect, seek a search warrant rather than a production order.</li> </ul> <p>The reasons for the execution of a search warrant, production order or examination order should always be explained where it is reasonably practical to do so.</p>

Step	Action
4	<p>Be aware that journalists have rights conferred on them under section <a href="#">68</a> of the Evidence Act 2006 to protect certain sources.</p> <p>If you are serving a production or examination order, or intend to exercise a search power under a search warrant on the manager of a news media outlet and you believe they may be able to claim rights to protect certain sources or other privilege, then you:</p> <ul style="list-style-type: none"> <li>• <b>must</b> give the manager or their lawyer, a reasonable opportunity to claim a privilege recognised under <a href="#">Subpart 5 of Part 4</a> of the Search and Surveillance Act 2012, <b>and</b></li> <li>• <b>may</b>, if you are unable to identify or contact the manager or their lawyer, within a reasonable period: <ul style="list-style-type: none"> <li>◦ apply to a Judge of the High Court (in relation to journalist's rights to protect certain sources) or to a Judge of the District Court (in respect of all other privileges) for a determination as to the status of the thing, and</li> <li>◦ do any thing necessary to enable the court to make that determination.</li> </ul> (s<a href="#">145</a>) </li> </ul>
5	<p>If you receive or expect to receive a claim of privilege and are unable to search a thing pending resolution of the privilege claim, then follow the 'Procedures when searches involve privileged material' (steps 4 to 9) in the chapter "Part 13 - <a href="#">Privilege and immunities under the Act</a>".</p> <p><b>Note:</b> You may still secure the thing to be searched, but must not search it, and deliver the thing or copy of it to the court to enable a determination of a privilege claim.</p>
6	Where you use any seized material to facilitate interviews of suspects, you should not disclose the source of the material to the persons being interviewed.
7	Avoid calling news media personnel, such as reporters, film crews or photographers as witnesses. If this is not practicable, serve a witness summons that describes the seized material being produced in evidence, to preserve the impartiality of the witness.
8	In accordance with normal Police practices of evidential disclosure, provide defence counsel with access to seized film, photographs, tape, sound or digital recordings prior to any judicial hearing.
9	You should notify an authorised person who represents the particular news media organisation involved of any film, tape, sound or digital recording or photograph that is copied. The notification should include the reasons and the authorisation for doing so, either under the Search and Surveillance Act 2012 or with consent from that authorised person.
10	Advise the Manager: Brand and Media at PNHQ as soon as possible where a search warrant is executed on the premises of a media organisation or a production order or examination order is undertaken, so that any media questions directed to the Commissioner can be quickly dealt with.

## Notice to Crown Prosecutor

The [procedural guidelines](#) must be brought to the notice of the Crown Prosecutor in any case where it is intended to call a member of the news media to give evidence relating to any film, photograph, tape, sound or digital recording seized by Police.

## Protection of journalists' sources

Note the provision under section [68](#) and [69](#) of the Evidence Act 2006. The privilege conferred on journalists under section 68 is recognised for the purposes of the Search and Surveillance Act 2012 (see section [136](#)). See the section '[Procedural guidelines \(search warrants, production orders and examination orders involving media organisations\)](#)' in this chapter.

## **Part 6 - Road blocks and stopping vehicles for search purposes**

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## Summary

### Introduction

This chapter outlines powers under the [Search and Surveillance Act 2012](#) to stop and move vehicles and to establish road blocks **for the purpose of search and/or to effect arrest**

Powers to stop and move vehicles or to close roads under the [Land Transport Act 1998](#) or under other legislation for emergency purposes (e.g. in a civil defence emergency) **must not** be used for the purpose of search.

### Definition

Curtilage means an area attached to a dwelling house and forming one enclosure with it. In an urban area it would include the area within a dwelling's fenced boundary.

### Related information

See:

- these [Road Policing](#) chapters for information about stopping and moving vehicles in relation to traffic enforcement and management:
  - ‘[Power to stop vehicles and powers once stopped](#)’ in the ‘[Traffic Patrol Techniques](#)’ chapter
  - ‘[Policing Outlaw Motorcycle Gang Runs](#)’
- the [Perimeter control](#) chapter for information about:
  - Police powers to close roads, stop vehicles and establish road blocks in response to critical incidents under other enactments; and
  - good practice for:
    - selecting the location for the road block or checkpoint
    - setting up a road block or checkpoint
    - operating a roadblock or checkpoint
    - stopping vehicles at roadblocks/checkpoints.
- the [Community Impact Assessments \(CIAs\)](#) chapter for information about community impact assessments.

## Stopping and moving vehicles to search

### Stopping vehicles with or without warrant to search

You may stop a vehicle to conduct a search:

under a power to search...	if you are satisfied that...
without a warrant	grounds exist to search the vehicle
with a warrant	the warrant has been issued and is in force.

On the request of any person (includes not only the driver, but also any passenger) affected by the exercise of a power to stop a vehicle for the purpose of search under section 121, you must:

- identify yourself either by name or by unique identifier
- state the name of the enactment under which the search is taking place and the reason for the search, unless it is impracticable in the circumstances
- if not in Police uniform, produce evidence of your identity.

(s121)

### Stopping vehicles under the Land Transport Act 1998

The [Land Transport Act 1998](#) (LTA) cannot be used as an excuse to stop a vehicle for an unrelated purpose.

**Note:** If police are interested in a vehicle or its occupants for some non-LTA purpose, this will not disqualify police from stopping the vehicle for a legitimate LTA reason should one arise. Once the legitimate purpose is spent, however, the vehicle is free to go as a matter of law. To delay the vehicle longer than is necessary may amount to unlawful detention.

See the following case law for further guidance:

- Tahapehi v Police [2018] NZHC 2666*: Section 114 of the Land Transport Act 1998 (LTA) – Vehicle stop for genuine LTA purpose was lawful though police's initial interest in vehicle was for non-LTA reasons.
- McGarrett v R [2017] NZCA 204*: Stopping a car on drug run using the Land Transport Act and warrantless search of vehicle.
- Baylis v R [2018] NZCA 271*: Incorrect exercise of powers when stopping a vehicle under the Land Transport Act 1998.

### Moving vehicle for purpose of search or safekeeping

You may move a vehicle to another place:

if...	and you have...
you find or stop the vehicle	<ul style="list-style-type: none"> <li>lawful authority to search the vehicle, but it is impracticable to do so at that place, or</li> <li>reasonable grounds to believe it is necessary to move the vehicle for safekeeping.</li> </ul>

(s122)

### Duty to remain stopped

You may require the vehicle to remain stopped for as long as is reasonably necessary for the exercise of any powers in respect of:

- the vehicle, or
- the occupants of the vehicle.

(s128)

## Duty to provide information to vehicle's driver

Immediately after stopping the vehicle, you must:

- identify yourself to the driver
- state the name of the enactment under which the search is taking place and the reason for the search, unless it is impracticable in the circumstances
- if not in Police uniform, produce evidence of your identity.  
(s129)

## Stopping vehicles without warrant to effect arrest

You may stop a vehicle without warrant to arrest a person if you have reasonable grounds:

- to suspect that a person:
  - is unlawfully at large, or
  - has committed an offence punishable by imprisonment, and
- to believe the person is in or on the vehicle.  
(s9)

**Note:** "Unlawfully at large" includes:

- a person for whose arrest a warrant is in force, except when it is a fines warrant issued under Part 3 of the Summary Proceedings Act 1957
- anyone who has escaped from lawful custody
- a special or restricted mental health patient who is absent without leave.

## Powers and duties after vehicle stopped

If you stop a vehicle under section 9 you may:

- require any person in or on the vehicle who you have reasonable grounds to suspect is unlawfully at large or has committed an offence punishable by imprisonment to supply their name, address, other contact details and date of birth
- search the vehicle to locate the person, if you have reasonable grounds to believe they are in or on the vehicle
- search the vehicle to locate property that is evidential material in relation to any offence in respect of which the vehicle was stopped, if the person:
  - has been arrested, or
  - is seen fleeing from the vehicle before they can be arrested.

Before searching, you must tell the driver the object of the proposed search if they are not the person suspected of being unlawfully at large or of committing an offence.

(s10)

## Procedures for stopping vehicles

Follow the procedures for stopping vehicles in the [Traffic patrol techniques](#) Police Manual chapter.

Note in particular that Police policy requires that when stopping a vehicle you **must**:

- be wearing a Police uniform or distinctive cap, hat or helmet with a badge of authority affixed to that cap, hat or helmet, or
- be following immediately behind the vehicle, and displaying flashing blue lights or flashing blue and red lights and/or sounding a siren.

## Power of arrest

If you are exercising a power to stop and search a vehicle, you may arrest the person if they fail to stop when required or to comply with a requirement under section 128 to remain stopped.

(s177)

## Establishing a road block for purpose of arrest

### Obtaining authorisation for a warrantless road block

If you are a **senior** constable (holding or acting in a position level of sergeant or above) you may authorise the establishment of a road block (orally or in writing) if you have reasonable grounds to:

- believe that in or on a vehicle there is a person who you have reasonable grounds to suspect:
  - has committed an offence punishable by a term of imprisonment or
  - is unlawfully at large, and
- suspect the vehicle will travel past the place where it is proposed the road block be established.

You must be satisfied that, as far as is reasonably practicable, the safety of all road users will be ensured in the area where the road block will be established.

(s30)

### Duration and record of warrantless road block authorisation

An authorisation to establish a road block:

- is valid for an initial period not exceeding 24 hours specified by the person giving the authorisation, and
- may be renewed from time to time by a district court judge for a single further period not exceeding 24 hours specified in writing by the judge.

If you authorise a road block, you must keep a written record of:

- the location
- the period(s) for and grounds on which authorisation was granted or renewed.

(s31)

### Powers under authorised road blocks implemented without warrant

Any constable may do any or all of these things when a road block is authorised.

	<b>Powers</b>
Establish road block	Establish a road block at the place specified in the authorisation.
Stop vehicles	Stop vehicles at or in the vicinity of the road block.
Require particulars	Require any person in or on any vehicle stopped by the road block who you have reasonable grounds to suspect has committed an offence punishable by imprisonment to state their name, address, and date of birth.
Search vehicle	Search the vehicle for the purpose of locating a person who has committed an offence (punishable by imprisonment) or is unlawfully at large (excluding non-payment of fines warrant), if you or any other constable has reasonable grounds to believe the person is in or on the vehicle.

(s32)

You may also require that a vehicle **remain stopped** for as long as is reasonably necessary to enable you to exercise any of the powers above in respect of the vehicle or its occupants.

(s128)

### Power of arrest

You may arrest the person if they fail to stop when required or to comply with a requirement under section 128 to remain stopped.

(s<sup>177</sup>)

## Procedures for establishing road blocks

Follow the procedures for establishing road blocks and checkpoints in the [Perimeter control](#) chapter.

## Community impact assessment for establishing road blocks

Road blocks can be intimidating to vulnerable people and innocent members of the community, particularly if carried out by armed Police in full operational uniform. Executing road blocks for the purpose of searches should avoid compromising or undermining wider community support, confidence and reassurance.

The rationale for establishing a road block must be lawful and reasonable. To assist with gauging reasonableness, a [community impact assessment](#) (CIA) must be undertaken of the adverse impact of establishing road blocks:

- where vulnerable people are present
- on the community and interest groups.

Community impact assessments must be a routine part of all risk assessments and should be conducted in writing during the planning stage before establishing a road block. Use the Community Impact Assessment form on Police Forms for this purpose. Be prepared to carry out an ongoing mental CIA as the situation changes during execution of the road block.

Community impact assessments may be done mentally, if it is impracticable due to situations of emergency or urgency. In these circumstances, record the considerations and decisions later in a notebook or a CIA form.

See the [Community Impact Assessments \(CIAs\)](#) chapter for guidance about how to carry out a community impact assessment.

## Use of Police checkpoints and conducting traffic stops

### Primary purpose of checkpoints and traffic stops

Police cannot establish a checkpoint outside of a particular location, or undertake stopping a vehicle, for the purpose of obtaining identifying details, unless the primary purpose is to enforce transport legislation.

The use of Police checkpoints or conducting traffic stops under the [Land Transport Act](#) must be for genuine and proper Land Transport Act enforcement purposes.

## Taking photographs of people at road blocks

A person must not be detained at a roadblock for the purpose of having their photograph taken without a lawful ground for doing so.

### Lawful grounds to photograph people

Police can take photographs lawfully in public when people are not detained, consent is given or when authorised by legislation. The common law power to photograph citizens is subject to strict limits. In particular, photographs can only be taken by Police for proper law enforcement purposes, such as the prevention and detection of crime, the investigation of alleged offences and the apprehension of suspects or persons unlawfully at large. The common law power must also be considered alongside legislation governing the taking of photographs of people.

### Legislation regulating the taking of photographs of people

The legal basis and justification for Police taking photographs of people is regulated by the:

- [Search and Surveillance Act 2012](#)
- [Policing Act 2008](#)
- [Privacy Act 2020](#).

### Search and Surveillance Act 2012

Taking photographs involves the use of a camera which is a "visual surveillance device" under the Act. It may be lawful without warrant to use a visual surveillance device to take photographs at a road block if the activity does not involve:

- a trespass on land or goods, or
- the observation of private activity on private premises or the [curtilage](#) of private premises for a period longer than 3 hours in a 24 hour period, or 8 hours in total.

### Policing Act 2008

Section [32](#) of the Policing Act 2008 provides Police with the power to take identifying particulars of a person at a place (road block) being used for Police purposes who is in lawful custody of the Police and is detained for committing an offence.

Identifying particulars include the person's photograph. Identifying particulars must be taken in a manner that is reasonable in the circumstances, for example, consider the suitability of the location in terms of privacy and potential risks to the safety of the person and Police.

### Privacy Act 2020

The Privacy Act 2020 governs the way in which Police collect, use and disclose personal information about identifiable individuals. The taking of photographs is a collection of personal information. Accordingly, Police employees must ensure that their actions comply with these relevant privacy principles.

Privacy Principle	Explanation
<a href="#">Principle 1</a>	Personal information must not be collected unless the information, connected with a function or activity of the agency (in the case of Police), is collected for a lawful purpose, and necessary for that purpose.
<a href="#">Principle 3</a>	Requires that Police take reasonable steps to ensure that the individual is aware they are being photographed, of the purpose of Police taking the photograph, and whether it is authorised, required by law, or voluntary.

## Rules and obligations on Police photographing people at road blocks

### Rules and obligations with obtaining consent

If a person gives their consent to being photographed, you should record the consent in writing or on a Police mobility device.

**Note:** The rules and obligations for consent searches under Subpart 2 of Part 4 of the Search and Surveillance Act 2012 do not apply but provide a useful reference for obtaining informed consent in accordance with the Privacy Act.

See [Part 4 - Consent searches](#) for information about:

- purposes for which a consent search may be undertaken
- advice that must be given before searching
- withdrawal of consent
- circumstances where search by consent is unlawful
- restrictions on persons under 14 years to consent
- disadvantages of using consent searches.

## Rules and obligations under the Privacy Act 2020

Under Privacy [Principle 3](#) of the Privacy Act 2020, Police must take reasonable steps when photographing a person to ensure that the person is aware:

- that the photograph is being taken
- of the purpose for which the photograph is being taken
- whether taking the photograph is authorised, required by law or voluntary
- of who will receive and hold the photograph
- their rights of access, and
- of where the photograph will be held.

## How can photographs of people be used

If photographs of people have been lawfully and reasonably obtained, they may be used for the following purposes:

- the maintenance of the law, or
- prevention, detection, investigation, and prosecution of offences, or
- preventing or lessening a serious threat to public safety.

([Privacy Principle 10, Privacy Act 2020](#))

## Storage and destruction of photographs

Photographs must be stored and destroyed under these relevant instructions:

- Search chapter, [Part 12 - Procedures applying to seized and produced things](#) in relation to evidential material
- [Photography \(Forensic imaging\)](#) in relation to prisoners' photographs and photographs for Police operations.

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## **Part 7 - Methods for searching places and vehicles**

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## Executive summary

Key things to note:

- When planning searches, define the objective(s) and consider all known factors to decide on the best course of action.
- Be careful, methodical and tidy, so that you do not overlook items or make mistakes in recording and labelling them.
- Have respect for the premises and property - remember that you are dealing with someone else's personal possessions.
- If you have to search at night, make a further examination in daylight.
- When appropriate, (e.g. when the search may change or damage the appearance of the area) photograph / video the area before beginning the search. Photograph the scene again when the search is complete.
- Clearly mark or sign areas that have been properly searched.
- Accurately mark the position of seized things on a map (sketch plan) and label the item with identifying details.

## Overview

### Purpose

This part of the '[Search](#)' chapter describes various methods that can be used for carrying out searches of:

- outdoor spaces, including open areas, roadsides, water
- the interior and exterior of premises
- vehicles and transport facilities.

It also outlines general procedures for planning searches (mainly outdoor searches) including:

- defining objectives
- making a reconnaissance and/ or appreciation
- briefing searchers.

See related information below for links to more specific procedures involving search powers and evidential searches.

### Examples of when the search methods can be applied

The methods described can be used for any type of search and for any purpose, including searches:

- carried out by way of search warrant or warrantless search powers under the [Search and Surveillance Act 2012](#)
- of crime scenes and other evidential searches
- for missing persons, suspects etc.

### Related information

More specific information and procedures is found in these chapters:

- [Carrying out search powers with or without warrant](#) includes information about:
  - risk assessment when planning searches
  - separating individuals posing risk from premises to be searched
  - procedure for planning searches
  - mandatory notifications
  - entry procedures
- [Crime scene examination](#) (covers such things as preserving evidence and evidence integrity and decontamination zones)
- [Searching people](#)
- [Improvised explosive devices and bomb threats](#)
- [Control and command](#)
- ['Search \(for bodies of homicide victims\)'](#) in the '[Homicide and serious crime investigations](#)' chapter.

# Planning and conducting a search

## General search processes outlined

The process outlined in this table applies generally to all searches. However, some modifications may be required depending on the nature and purpose of the search, e.g. when search powers (with or without warrant) are being exercised, or the search is to locate evidential material at crime scenes or a missing person.

Step	Action
1	<a href="#">Define the objective</a> when assigning the task.
2	<a href="#">Make a reconnaissance</a> unless time is critical. If there is no time for a reconnaissance, obtain advice and guidance from a person familiar with the area.
3	<a href="#">Make an appreciation</a> considering all known factors to decide on the best course of action.
4	<p>Make a plan which must include an organisation chart. It must also specify the method of search. See <a href="#">Search methods (mainly outdoors)</a>.</p> <p>If the search involves the exercise of search powers, see <a href="#">Carrying out search powers with or without warrant</a> for information about:</p> <ul style="list-style-type: none"> <li>• risk assessment when planning searches</li> <li>• separating individuals posing risk from premises to be searched</li> <li>• procedure for planning searches</li> <li>• mandatory notifications</li> <li>• entry procedures.</li> </ul>
5	Ensure that you have sufficient tools and equipment.
6	<p><a href="#">Brief</a> searchers and support staff. They must know the background to the search, what is happening, and what is required of them.</p> <p>See 'Operations Orders' in <a href="#">'Part 2 – Planning, control and command'</a> of the 'Control and command' chapter.</p> <p><b>Note:</b> Except during searches for dangerous escapees or offenders, formal Orders Groups are seldom held.</p>
7	When the team leaders arrive at the search scene, brief them on the search area, topography and boundaries. Team leaders then assemble their sections, draw the necessary equipment and move to their search areas.
8	<p>Depending on the method of search, the team may, on reaching its position, start searching, lay out boundary markers or await the search controller's instructions.</p> <p>As each team searches, the team leader must record the areas searched, and who has searched them.</p>
9	If necessary, consider whether the services of the <a href="#">Specialist Search Group</a> should be deployed.

## Defining the objective

When assigning the task, tell the operation commander or O/C scene:

- the reason for the search
- exactly what things or people are sought
- the time-lapse, and any causes of delay
- the location, area and boundaries of the search
- limitations in human resources, time, security or logistics.

## Making a reconnaissance

Unless time is critical, make a reconnaissance to establish:

- size of the area
- type of terrain
- obstacles or features requiring specialist personnel or equipment, such as cliffs, rivers, swamps or caves
- hazards requiring safety precautions
- possible sites for observation points, search headquarters and base
- access for transport
- any security problems.

Establishing a radio listening post will enable you to act quickly on information gained.

The reconnaissance can be on foot, or in a vehicle or aircraft. [Helicopters](#) are especially useful because they can hover, carry out low-level reconnaissance and land almost anywhere. If you are working on foot, you can use dogs. They may rapidly find evidence that will remove the need for a full-scale search. Choose the method that best meets the needs of the operation and the availability of time.

## Making an appreciation

Consider:

- the location
- the thing or person sought
- terrain and any hazards
- priorities
- time factors, such as:
  - if you are searching for a person, how long they have been in the open
  - daylight hours available
  - whether temporary lighting is possible
  - the time available for the search
  - travel time to the scene
  - the time required for briefings and Orders Groups(See 'Operations Orders' in '[Part 2 – Planning control and command](#)' of the '[Control and command](#)' chapter)
- climatic conditions and weather forecast
- human resources required, and their level of expertise
- water and toilet facilities
- safety and security
- morale
- administration and logistics, including:
  - communications
  - accommodation
  - catering
  - transport
  - maps
  - equipment
- any other operational requirements.

## Briefing

The briefing provides an opportunity for the search controller to motivate the search teams and should include:

- reason for the search
- the item or person sought

- search method
- what to do on finding the item or person
- degree of confidentiality
- expected duration of the search
- composition of the search teams
- command structure
- hours of duty
- what to wear
- logistics, such as catering, accommodation and transport.

## Ensuring evidence is not overlooked

This table provides guiding principles for searches generally to ensure evidence is not overlooked.

Step	Action
1	Be careful, methodical and tidy, so that you do not overlook items or make mistakes in recording and labelling them. Have respect for the premises and property - remember that you are dealing with someone else's personal possessions.
2	For more effective control and results, use a minimum number of enforcement officers or assistants. This will minimise distractions and help to prevent evidence being overlooked.
3	Do not search at night. If this is unavoidable, make a further examination in daylight.
4	In appropriate situations, consider photographing the area before beginning the search. This is particularly important when the search may change or damage the appearance of the area. Ensure that everything is photographed, and consider using a video camera. When the search is complete, photograph the scene again.
5	Once the search is finished, consider repeating it, allocating different areas to different enforcement officers or assistants.
6	When supervisors are satisfied that an area has been properly searched, they should withdraw their team, mark the area with a sign or other mark such as emergency tape or chalk, and advise the assigned officer in charge of 'Search Control'.
7	When a thing is found and is to be seized, mark its position on a map (sketch plan) by recording its distance from a fixed point. The thing can then be accurately re-placed for any reconstruction. When it is moved or seized, it must be labelled with: <ul style="list-style-type: none"> <li>• its description</li> <li>• where it was found</li> <li>• who found it</li> <li>• the date and time of discovery.</li> </ul>

## Specialist Search Group

Specialist Search Teams forming part of the Specialist Search Group (SSG) have been established in Auckland, Wellington and Christchurch to provide specialist support to general police.

The teams' primary role is to search for improvised explosive devices and other dangerous items or substances. However, their training and equipment enable them to be deployed in other contexts, such as crime scene examinations, exhibit recovery and 'booby-trapped' cannabis plantations. They are experienced in searching vehicles, aircraft and vessels.

To achieve maximum efficiency, ordinary Police employees must first, where practical, follow the procedures in this chapter. For detailed information about when specialist search teams may be deployed and the services they can provide, refer to the [Specialist Search Group](#) chapter.

## Search methods (mainly outdoors)

### Introduction

The information in this topic focuses mainly on outdoor searches. See also the [Crime scene examination](#) chapter, particularly for indoor searches.

## Section 6(c) Official Information Act 1982

## Section 6(c) Official Information Act 1982

# Section 6(c) Official Information Act 1982

## **Searching premises**

### **Preparing to search**

Obtain information about the layout of the premises. If you are searching a large building, ask maintenance personnel, janitors and supervisors. Also obtain building and utilities plans, and keys to locked areas, rooms and facilities.

For crime scene searches:

- When a detailed search of a total area is not required, consider starting the search from the outside boundary of the property, and following the offender's route, working systematically and methodically towards the point of entry.
- Remember that searching for evidence can destroy other evidence. Set priorities and determine the sequence that the search will take.

### **Searching for items**

## **Section 6(c) Official Information Act 1982**

# Section 6(c) Official Information Act 1982

## The exterior

Follow these steps when searching the exterior.

## Section 6(c) Official Information Act 1982

## Section 6(c) Official Information Act 1982

## Searching open areas

Searching for items

# Section 6(c) Official Information Act 1982

Searching water

# Section 6(c) Official Information Act 1982

Searching for suspects

# Section 6(c) Official Information Act 1982

## Searching for missing persons

Conduct a [reconnaissance search](#) in the area where the missing person might be found, including main tracks and routes, peaks, ridges, valleys, rivers, camp sites and huts. Any evidence of the person's whereabouts will indicate an "area of probability" for a general search.

## Section 6(c) Official Information Act 1982

# Searching motor vehicles, ships and aircraft

## Searching motor vehicles

This topic applies the same meaning of 'motor vehicles' as in section<sup>2</sup> of the Land Transport Act 1998, namely it means:

- a vehicle drawn or propelled by mechanical power; and
- includes a trailer; but
- does not include a:
  - vehicle running on rails; or
  - trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or
  - trailer running on one wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or
  - vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or
  - pedestrian-controlled machine; or
  - vehicle that the LTA has declared under section [168A](#) is not a motor vehicle; or
  - mobility device.

### Search areas

## Section 6(c) Official Information Act 1982

### Searching procedures

Follow these steps to search a motor vehicle.

## Section 6(c) Official Information Act 1982

Searching ships

## Section 6(c) Official Information Act 1982

Searching aircraft

# Section 6(c) Official Information Act 1982

## **Part 8 - Searching people**

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# Policy statement and principles

## What

Searching people may be necessary to:

- locate and preserve evidence
- remove weapons or means of escape
- remove and care for a prisoner's property
- locate and remove articles or substances that could impact on the safety of that prisoner or that of other prisoners, members of the public or Police employees
- ensure the safety of a prisoner considered to be at risk of attempting suicide or self harm.

There are three main types of personal searches which have increasing levels of justification and requirements:

- rub-down searches
- strip searches
- internal searches.

This chapter outlines Police powers under the Search and Surveillance Act 2012 to search people, and the statutory rules that apply. It also details Police policies and procedures relating to searches of people including who can conduct and be present at searches; planning searches and assessing risks; and for conducting searches of people.

**The chapter applies to all Police searches of people, wherever they are conducted.**

## Why

Searches must be both lawful and reasonable.

Section [21](#) of the New Zealand Bill of Rights Act 1990 provides that *'Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise'*. If the search complies with section [125](#) of the Search and Surveillance Act 2012, it is likely to be reasonable under section 21 of the New Zealand Bill of Rights Act. However, there is still an overriding requirement of reasonableness such that if the search is carried out in a manner unreasonable in the circumstances, it may breach section 21 even if authorised by the provisions of the Search and Surveillance Act 2012.

## How

Police will apply these general principles to all searches:

- The search must be lawful, i.e. you must be authorised by the Search and Surveillance Act 2012 or another enactment to conduct a search, or conduct it with the person's informed consent.
- People being searched must be treated with such dignity, privacy, respect and sensitivity that the individual situation and the safety of employees dealing with them will permit.
- Any force or restraint used on a person being searched must always be reasonable in the circumstances.
- Generally searches should be carried out by constables, authorised officers or searchers of the same gender identity as the person being searched. Some exceptions apply when employees of the same gender identity as the person being searched are not available.
- Where practicable, any search and/or removal of property from the person being searched must be witnessed by another Police employee.
- All property removed or seized from a person searched must be appropriately documented and accounted for.

## Powers for searching people

### When can people be searched?

Police can search people when they are authorised by legislation to do so.

You must search a person lawfully by always:

- exercising a warrantless power, or
- executing a warrant power, or
- conducting a search with the person's consent.

**Note:** When a statutory power exists to search a person, you should use that power rather than relying on a consensual search, as consent may be withdrawn by the person at any time. (See the '[Consent Searches](#)' Police Manual chapter).

When making a decision to search, you must consider your tactical options and work within the principles of [TENR](#) (Threat, Exposure, Necessity, Response).

### Warrantless search powers

The statutory powers to search people are contained in the [Search and Surveillance Act 2012](#). They include warrantless powers to search a person:

- in custody and who is or is about to be [locked up](#) (s11)
- found in a public place for [evidential material](#) (s16)
- for [arms](#) (s18)
- in relation to [drug offences](#) (ss21, 22 & 23)
- for [offensive weapons](#) (s27)
- after [arrest or detention](#) (ss85 & 88).

### Searching items under a person's control

Searching people can include searching anything:

- they are wearing or carrying, or
- that is in their physical possession or immediate control - this could include a place, vehicle, wig, prosthetic limb, or false teeth.

Under section [86](#) of the Search & Surveillance Act 2012, a prosthetic limb may be considered as "an item carried by the person" and may be removed for the purpose of the search. Section [125](#) of the Act broadly lays out the legal procedure about searching a person. A prosthetic limb may be considered as something the person is wearing under section 125(1)(i). Particular care should be taken when removing a prosthetic device (125(3)). If a person is wearing a prosthetic limb that needs to be searched, they may require assistance from a medical practitioner or a personal attendant (s125(1)(g)).

### Warrantless searches of people in public places for evidential material

You may search a person in a public place without a warrant if you have reasonable grounds to **believe** that they are in possession of evidential material relating to an offence punishable by 14 years imprisonment or more.

(s[16](#))

### Warrantless searches of people in possession of arms

If you have reasonable grounds to...	you may...
<p><b>suspect</b> a person is carrying <a href="#">arms</a>, or is in possession of them, or has them under their control, <b>and</b>:</p> <ul style="list-style-type: none"> <li>- the person is in breach of the <a href="#">Arms Act 1983</a>, <b>or</b></li> <li>- the person, by reason of their physical or mental condition: <ul style="list-style-type: none"> <li>- is incapable of having proper control of the arms, <b>or</b></li> <li>- may kill or cause bodily injury to any person, <b>or</b></li> </ul> </li> <li>- that, under the <a href="#">Domestic Violence Act 1995</a>: <ul style="list-style-type: none"> <li>- a protection order or Police safety order is in force against that person, <b>or</b></li> <li>- there are grounds to apply for a protection order against them</li> </ul> </li> </ul>	<p>do <b>any or all</b> of the following without a warrant:</p> <ul style="list-style-type: none"> <li>- search the person</li> <li>- search any thing in their possession or under their control (including a vehicle)</li> <li>- enter a place or vehicle to carry out one of the above</li> <li>- seize and detain:</li> <li>- any arms found</li> <li>- any licence under the Arms Act 1983 that is found.</li> </ul> <p><b>Note:</b> Arms are "in a person's possession or under their control" if they have access to them. They do not need to be in the person's immediate possession.</p>

(s[18\(1\)&\(2\)](#))

## Approval for arms related searches

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising any of the warrantless powers outlined above in relation to arms.

## Warrantless searches of people in relation to drugs

### People found in or on places or vehicles

If you are conducting a search of a place or vehicle under section 20 (relates to some Misuse of Drugs offences -see the [Warrantless powers to search places, vehicles and things](#) chapter) you may, without a warrant, search any person found in or on the place or vehicle.

(s[21](#))

### Warrantless searches of people suspected of drug offences

You may search a person without a warrant if you have reasonable grounds to:

- **believe** a person is in possession of:
  - a controlled drug specified or described in [Schedule 1](#), [Part 1 of Schedule 2](#), or [Part 1 of Schedule 3](#) of the Misuse of Drugs Act 1975, or
  - a precursor substance specified or described in [Part 3 of Schedule 4](#), **and**
- **suspect** that an offence against the Misuse of Drugs Act 1975 has been, is being, or is about to be committed in respect of that controlled drug or precursor substance.

(s[22](#))

## Approval for drug related searches

Unless impracticable in the circumstances, obtain approval from a sergeant or above before exercising this warrantless search power.

## Internal search of a person arrested for certain drug offences

If a person is under arrest for an offence against section [6](#) or [7](#) or [11](#) of the Misuse of Drugs Act 1975 and:

you have reasonable grounds to...	you may...
<p><b>believe</b> that they have secreted within their body any property:</p> <ul style="list-style-type: none"> <li>- that may be evidence of the offence with which they are charged, or</li> <li>- the possession of which by the person constitutes any other offence against section <a href="#">6</a> or <a href="#">7</a> or <a href="#">11</a> of the Misuse of Drugs Act 1975</li> </ul>	<p>require the person to permit a medical practitioner nominated by you, to conduct an internal examination of any part of the person's body by means of:</p> <ul style="list-style-type: none"> <li>- an X-ray machine or other similar device, or</li> <li>- a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.</li> </ul>

(s[23](#))

See "Internal searches" in this chapter for more information about:

- the [restrictions on a medical practitioner](#) conducting an internal search
- the [effect of not permitting an internal search](#) on a bail application.

## Police and Customs powers relating to delivery of drugs

See Warrantless powers associated with drugs in Part 3 - [Warrantless powers to search places, vehicles and things](#) for your power to search a person involved in a delivery under section 12 of the Misuse of Drugs Amendment Act 1978.

## Warrantless searches of people for offensive weapons

You may search a person without a warrant if you have reasonable grounds to **suspect** the person is committing an offence against section 202A(4)(a) of the Crimes Act 1961 (which relates to possession of knives, offensive weapons, and disabling substances).

(s[27](#))

## Searches of arrested or detained people

### Which power should be used for searching arrested or detained persons

There are two alternative search powers that might be appropriately exercised immediately upon arrest or when detained under a statutory power of detention. These are:

- a rubdown search, under sections [85](#)-[87](#), and
- a warrantless search under section [88](#).

A search may be carried out under one of these provisions before the search conducted under section [11](#) when [people are locked up](#).

Any search undertaken pursuant to section [11\(1\)](#) & [\(2\)](#), should only be completed by custodial or watchhouse staff before the person is placed into a cell, unless the circumstances are such that an urgent search under section 11 is required. The primary purpose of the section 11 search is not to look for or seize evidential material but to protect the detained person's property and remove items that might be used to harm themselves or others.

### Searching people who are, or are to be, locked up in Police custody

You may search a person who has been taken into lawful custody and is:

- at a Police station, or
- in other premises, or in, or about to be placed in a vehicle being used for Police purposes,  
**and**
- **is, or is to be, locked up**(pending a decision on bail or for any other reason).

You may take any money or other property found during the search.

(s[11\(4\)](#))

This power may be exercised **before** the person is locked up.

(s[11\(2\)](#))

### What does "locked up" mean?

"Locked up" means a person taken into lawful custody and being placed behind a closed or locked door that prevents them from leaving. Examples are a cell or charge room at a Police station or a vehicle used for Police purposes (other than being placed in a Police vehicle only for the immediate purposes of transport).

### Searching people after they are locked up

**After** a person has been locked up they can**only** be searched if:

- they were not searched before being locked up, or
- since being searched before being locked up, they have been in, or are reasonably suspected of having been in, close proximity to:
- a person who was not locked up in Police custody (other than an enforcement officer or a searcher), or
- another person who was eligible to be searched after being locked up but was not, or

there are reasonable grounds to believe the person is in possession of anything that may be used to harm themselves or others.

(s[11\(3\)](#))

### Timing of searches under section 11

Apart from an immediate [rub-down search of an arrested or detained person](#) under section [85](#), or a warrantless search under section [88](#), avoid searching people under section 11 immediately after their arrest. If you do so, a further search under section [11](#) cannot be conducted after the person arrives at the police station unless one of the situations in section 11(3) exists (see above).

If it is necessary to search a person in transit to remove valuable items to prevent the property from being stolen or to prevent an assault, then you should remove all property from the person.

### Subsequent searches when prisoners are moved to another station

If a prisoner undergoes a section [11](#) custodial search and is locked up, a further section 11 search can only be conducted if the exceptions in section 11(3) apply.

If a prisoner has undergone a section 11 custodial search at one station and is later transported to another station (having previously been "locked up"), a further section 11 search can only be conducted if the exceptions in section 11(3) apply. If you are certain that another search is required, you should undertake that search under sections 85 or 88 (e.g. to ensure the prisoner is not carrying anything that may be used harm any person, or facilitate their escape). The rationale for using the section 85 or 88 search power is the power of detention that is being exercised at the destination station.

If not practicable to conduct the search under section 85 or 88 you may consider a second search under s11 on the grounds that while the prisoner was in transit they are no longer considered to be "locked up" until they reach the next place of detention where they are to be again "locked up". However, be aware that this rationale has not been tested in court and there is therefore a risk of the search being found to be unlawful.

Any search must be reasonable in the circumstances.

## Rub-down searches of arrested or detained people

You may carry out a [rub-down search](#) of a person who is arrested or detained under any enactment, to ensure the person is not carrying anything that may be used to:

- harm any person (including themselves),  
or
- facilitate the person's escape.  
(s85)

This power may be used on every person who is arrested or detained.

## Warrantless searches for evidential material

If you have arrested, or detained a person under a statutory power of detention you may search the person if you have reasonable grounds to **believe** that there is any thing on or carried by the person that:

- may be used to harm any person (including themselves), or
- may be used to facilitate the person's escape, or
- is evidential material relating to the offence for which the arrest was made or the person detained.  
(s88)

**Note:** The grounds authorising a search under this section will not apply to every person who is arrested or detained. [Rub-down](#) or [strip searches](#) may be used under section 88 depending on the circumstances.

## Seizing samples as evidential material from a person's external body under section 88

The definition of evidential material is broad and under section [3](#), means evidence of the offence, or any other item, tangible or intangible, of relevance to the investigation of the offence.

Only where there are reasonable grounds to believe that evidential material is on a person's body does section 88(2)(c) authorise a search and seizure of evidence from the external body of an arrested or detained person. The scope of the power to seize samples is uncertain as the reasonableness of a specific search depends on the circumstances of the search assessed against an individual's reasonable expectation of privacy from State intrusion in a law enforcement context protected by section [21](#) of the New Zealand Bill of Rights Act 1990 (unreasonable search and seizure).

The more intrusive the search, the higher standard of justification that police will be required to meet. For example, a penile swab may link the arrested person to the victim by DNA. However, where the person does not consent, the use of force could render the search and seizure unreasonable, not because of the unreasonable manner in which it was carried out but because it occurred at all. This has

yet to be tested in court.

The power to seize a sample as evidential material from the external body of the person under section 88 is independent of the powers to take samples under the Criminal Investigations (Bodily Samples) Act 1995. Nevertheless, evidence should not be seized under section 88 for the purpose of obtaining a suspect's DNA profile. See these chapters in the Police Manual:

- [DNA Sampling](#) for information about DNA sampling powers
- [DNA at crime scenes](#) for information about sources, preservation, recovery, packaging and storage of specimens.

## **Examples of when samples from a person's external body may be seized**

Examples where samples may be seized from the external body of an arrested or detained person as evidential material include:

- a swab to remove blood from the victim of an assault on the arrested person's neck
- fingernail scrapings from the fingers of an arrested rape suspect that may link the offender to the victim by DNA
- a swab of an arrested person's skin for gunshot residue
- penile swabs as detailed below.

The Court of Appeal in *M v R* [2019] NZCA 203 found that there is no power under the SSA to authorise the seizure of bodily specimens where a person is neither detained nor arrested and does not provide informed consent. The taking of the accused's finger nail clippings in this case was therefore not lawful.

## **Penile swabs**

A swab of the arrested person's external genitalia may link that person to the victim by DNA or other biological material (e.g. blood, saliva, hair or foreign material). The penile swab:

- must be taken within 24 hours of the alleged offence
- must be taken by a medical practitioner or nurse
- should be undertaken with the informed consent of the arrested person.

If consent is not given, then the justification for using force to obtain a penile swab would have to be of a high standard. The taking of the penile swab must be conducted in a reasonable manner in the circumstances affording the degree of privacy and dignity consistent with achieving the purpose of the search.

The power of Police to require a respondent to give a penile swab where the person does not consent is yet to be tested in the New Zealand courts. The Canadian Supreme Court dealt with this issue in *R v Saeed* [2016] 1 SCR 518. The accused here was subject to the search pursuant to arrest for sexual assault and was permitted to conduct the penile swab himself.

The majority of the Court found that a penile swab was less invasive than taking a bodily sample, as it was intended to seize the DNA of the complainant, not the accused. It was therefore held that police in Canada have the power to compel suspects to give a penile swab, provided that certain procedural safeguards are adhered to. Included in these procedural safeguards was giving the accused the option to conduct the swab themselves.

Seek guidance from a Police legal adviser where necessary to appropriately assess the circumstances in any individual case.

## **Searches must be lawful, reasonable and approved**

Searches under section 88 for the purpose of seizing samples as evidential material from the external body of an arrested or detained person must be lawful, reasonable and **approved** by a constable who is of or above the level position of sergeant.

**Note:** The Court of Appeal, in *R v Williams* [2007] 3 NZLR 207, (2007) 23 CRNZ 1 (CA), confirmed that the concepts of lawfulness and unreasonableness were distinct. Searches that are lawful may nevertheless be unreasonable taking into account the manner, time and place of the search.

## **Restrictions on the application of sections 85-88**

Powers to search a person under sections 85-88 may be used by any person who has exercised a power of arrest or detention, or both, under any enactment except:

- Armed Forces Discipline Act 1971, or
  - Defence Act 1990, or
  - any regulations made under either of those Acts.
- (s82)

## Rules and obligations when searching people

When exercising a power to search a person you **must**:

- identify yourself
- state the name of the Act under which the search is taking place and the reasons for it unless it is impracticable to do so in the circumstances
- produce evidence of your identity if you are not in Police uniform
- promptly provide the person with a copy of an inventory of any items seized during the search.  
(s 125(1)&(4))

## Other general powers associated with the power to search people

When exercising a power to search a person, you **may**:

<b>detrain</b>	the person for as long as necessary to enable the search to be carried out
<b>use reasonable force</b>	for the purposes of the search  (You should first arrest for obstruction and then use force to complete the search)
<b>use any equipment or aids, e.g. torch</b>	to facilitate the search (while conducting it), if it is used in a way that:  - involves no or minimal contact, and - is reasonable in the circumstances
<b>ask for assistance from</b>	- a medical practitioner or nurse, and /or - a parent, guardian, or other person responsible for the day-to-day care of the person to be searched  <b>if</b> you think it is in the interests of the person to be searched.  (See procedures for conducting <a href="#">rub-down</a> and <a href="#">strip searches</a> in this chapter for more information)
<b>ask for assistance from</b>	another officer (from any law enforcement agency) who is also authorised to conduct a strip search and is of the same gender identity as the person being searched, if you are undertaking a strip search.
<b>search</b>	any item:  - the person is wearing or carrying, or - is in their physical possession or immediate control
<b>seize</b>	anything carried by the person or in their immediate possession or control <b>if</b> :  - it is the subject of your search, or - may otherwise lawfully be seized.
<b>copy</b>	all or part of a document carried by the person being searched or in their physical possession or immediate control if that document is the subject of your search or may otherwise be lawfully seized
<b>access using reasonable measures</b>	a computer system or other data storage device carried by the person being searched or that is in their physical possession or immediate control, if any intangible material that is the subject of your search may be in that computer system or other device.
<b>copy intangible material</b>	accessed as above that is the subject of your search or may otherwise be lawfully seized, (including by means of previewing, cloning, or other forensic methods before or after removal for examination).
<b>take photographs</b>	or make sound or video recordings, or drawings of any thing being carried or in the physical possession or immediate control of the person being searched <b>if</b> you have reasonable grounds to <b>believe</b> that the photographs or sound or video recordings or drawings may be relevant to the purposes of the search

(s [125\(1\)](#))

## Complying with the New Zealand Bill of Rights Act 1990

Searches must be reasonable under section [21](#) of the New Zealand Bill of Rights Act 1990. If the search complies with section [125](#) of the Search and Surveillance Act 2012, it is likely to be reasonable under section 21 of the New Zealand Bill of Rights Act. However, there is still an overriding requirement of reasonableness such that if the search is carried out in a manner unreasonable in the circumstances, it may breach section 21 even if authorised by the provisions of the Search and Surveillance Act 2012.

## Planning and assessing risk

### Dignity and privacy versus safe police work

People being searched must be treated with such dignity, privacy, respect and sensitivity that the individual situation and the safety of employees dealing with them will permit.

There will be situations when it is necessary to search a person immediately they are apprehended and/or detained, which may be in public view. Many people will be uncomfortable with this, but your primary consideration must be the safety of Police employees and the need to preserve evidence.

Use your search powers in a manner appropriate to the place and circumstances. Remember that the search may be contested in court and the court will apply the "unreasonableness" test in terms of the New Zealand Bill of Rights Act 1990.

### Search risk assessment

Always conduct a search risk assessment, taking into account the factors below, before searching a person. In most cases (unless the search is authorised by search warrant) this will be a quick mental assessment. Apply TENR as part of your planning (for more information, see the [TENR - Operational Threat Assessment](#) chapter).

	<b>Factors</b>
<b>When</b>	<p>Timing of search. Can the search safely wait until the person is taken to another safe and private place (e.g. private premises out of view of public, Police station)?</p> <p>Consider:</p> <ul style="list-style-type: none"> <li>- risk of weapons and firearms that may be carried and used</li> <li>- risk of violence</li> <li>- the person's demeanour (e.g. are they affected by drugs and/or alcohol, poor mental health)</li> <li>- securing of evidential material</li> </ul>
<b>Where</b>	<p>Location and environmental factors:</p> <ul style="list-style-type: none"> <li>- lighting available to conduct the search</li> <li>- hazards that may exist at location (e.g. dangerous chemicals present at a clan lab)</li> <li>- presence of accomplices, gang members, intoxicated people, protesters or other potentially aggressive people who may interfere with the search</li> </ul>
<b>How</b>	<p>Type of search:</p> <ul style="list-style-type: none"> <li>- <a href="#">Rub-down search</a></li> <li>- <a href="#">Strip search</a></li> <li>- <a href="#">Internal search</a></li> </ul>
<b>Who</b>	<p>Consider:</p> <ul style="list-style-type: none"> <li>- appropriate gender for searchers and number of employees of that gender available to conduct search - for example, are there special considerations required as a consequence of transgender status of the person to be searched or of Police employee searchers?</li> <li>- whether reasonable force may be required and the impact that may have on the location of the search.</li> </ul>

See also 'Risk assessment when planning searches', in Part 5: [Carrying out search powers with or without a warrant](#)

### Mobility device / notebook records

Your mobility device/notebook records on the exercise of warrantless powers should, except for custody searches, include your reasons for searching people.

## Who can conduct and be present at searches?

### Who can search people in Police custody?

People in Police custody can only be searched by:

- Police employees:
  - holding the office of constable
  - authorised by warrant under section 24 Policing Act 2008 (authorised officers) to perform one of the policing roles set out in Schedule 1 giving them the powers of a constable to search a person (i.e. Police jailers, escorts, guards or specialist crime investigators)
  - **searchers** requested by the Police employee in charge of the place or vehicle where the person is detained, to search a specific person.

### Assistants during a search

If it is in the interests of the person to be searched, these people may provide assistance during a search:

- medical practitioner or nurse, and / or
- parent, guardian, or other person responsible for the day-to-day care of the person to be searched

If the search is a strip search, you may also request the assistance of another officer (from any law enforcement agency) who is:

- authorised under any other enactment to conduct strip searches, and
  - of the same gender identity as the person to be searched.
- (s125(1)(g)&(h))

### Searchers

You may use a searcher to conduct a search of a person who is to be locked in Police custody:

if...	and you...
<ul style="list-style-type: none"> <li>- the searcher is someone of the same gender identity as the person to be searched, or</li> <li>- the search must be carried out within a reasonable time of the person being taken into custody</li> </ul>	are satisfied the searcher has received <b>appropriate training</b> before being used to conduct a search.

The searcher **must** carry out the search as if they were a Police employee.

(s12)

**Note:** Searchers can only be used to conduct a search under section 11 (when a person is, or is about to be, locked up). Searchers **cannot** conduct searches for evidential material.

### Selecting searchers

Examples of suitable searchers include respected citizens in the community, medical practitioners, nurses, existing community based volunteers who assist Police with search and rescue, victim support etc.

Searchers must be people who:

- are mature, confident, reliable and trustworthy
- will maintain confidentiality
- have no conflict of interest with the person to be searched
- have no criminal convictions / adverse or suspect intelligence recorded.

The need to use searchers who are not Police employees is more likely to occur at smaller Police stations servicing remote rural areas. Stations should consider maintaining a short list of trained searchers of both gender identities rather than relying on one person of each gender identity.

## What type of searches are searchers permitted to conduct?

Searchers may only carry out rub-down and strip searches.

## Gender identity of people conducting searches

In general, searches should be carried out by constables, authorised officers or searchers of the same gender identity as the person to be searched and any person not of the same gender identity should not be present during a search. (Note that gender identity is not about sexual orientation but the gender (male or female) that a person being searched, or the searcher, identifies with).

## Exceptions to same sex people conducting searches

Type of search	Exceptions				
<u>Rub-down search</u>	If a constable, authorised officer or searcher of the same gender identity is not available within a reasonable time and there is no practicable alternative, a constable, authorised officer or searcher of the opposite gender identity may conduct or assist in the search.  A medical practitioner, nurse, parent or guardian who provides assistance during a search under section <a href="#">125(1)(g)</a> does not have to be of the same gender identity as the person being searched.				
<u>Strip search</u>	A strip search may <b>only</b> be carried out by a person of the same gender identity as the person to be searched, and no strip search may be carried out in view of any person who is not of the same gender identity as the person to be searched. (s <a href="#">126(4)</a> )  In extreme and urgent situations where sufficient same gender identity constables, authorised officers or searchers are not available, a constable, authorised officer or searcher not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.				
<u>Internal search</u>	If a person voluntarily consents to an internal search by a medical practitioner, but not in the presence of a constable, authorised officer or searcher of the same gender identity as them:  <table border="1"> <thead> <tr> <th>then ...</th> <th>if...</th> </tr> </thead> <tbody> <tr> <td>a constable, authorised officer or searcher of the same gender identity may be out of view, but within immediate call (e.g. behind a screen) to:             - protect the medical practitioner from violence, and            - restrain the person if they become violent</td> <td>- the medical practitioner does not feel safe to be left alone with the person to be searched, or             - there is an assessed risk that the person to be searched may become violent.</td> </tr> </tbody> </table>	then ...	if...	a constable, authorised officer or searcher of the same gender identity may be out of view, but within immediate call (e.g. behind a screen) to:  - protect the medical practitioner from violence, and - restrain the person if they become violent	- the medical practitioner does not feel safe to be left alone with the person to be searched, or  - there is an assessed risk that the person to be searched may become violent.
then ...	if...				
a constable, authorised officer or searcher of the same gender identity may be out of view, but within immediate call (e.g. behind a screen) to:  - protect the medical practitioner from violence, and - restrain the person if they become violent	- the medical practitioner does not feel safe to be left alone with the person to be searched, or  - there is an assessed risk that the person to be searched may become violent.				

In cases where you are required to search a transgender person of the same gender identity and are concerned about conducting the search, bring the matter to the attention of your supervisor.

## Transgender people

See the [Searching transgender and intersex people](#) section in this chapter for information on determining the appropriate gender for the person conducting the search.

## Sexual orientation and gender identity of Police employees conducting searches

A Police employee's sexual orientation has no bearing on their suitability or otherwise to conduct a search of any person. Only their gender identity (male or female) must be considered in determining suitability.

It should be remembered that in all cases of intrusive searching we take a detainee centric approach in respect of rights. Should an objection be made to the search in respect of the use of a transgender Police employee, then the senior officer present should consider

the continued appropriateness of using the transgender employee to conduct the search.

## Rub-down searches

### What is a rub-down search?

A rub-down search is a search of a clothed person in which you may:

- run or pat your hand over the body of the person being searched, whether outside or inside their clothing (other than the underclothing)
  - insert your hand inside any pocket or pouch in their clothing (other than the underclothing)
  - for the purpose of permitting a visual inspection, require the person being searched to:
    - open their mouth
    - display the palms of their hands or the soles of their feet
    - lift or rub their hair.
- (s85(2))

### Rubdown search may include visual examination

A rubdown search may include a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but must not include the insertion of any instrument, device, or thing into any of those orifices. (s87)

### Things that can be done to facilitate a rub-down search

To facilitate a rub-down search you may require the person being searched to:

- remove, raise, lower, or open any outer clothing (including, without limitation, any coat, jacket, jumper, or cardigan) being worn by them, except when they have no other clothing, or only underclothing, under that outer clothing, and
- remove any head covering, gloves, or footwear (including socks or stockings) being worn.

You may also search:

- any item carried by or in their possession, and
  - any outer clothing removed, raised, lowered, or opened for the purposes of the search, and
  - any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.
- (s86)

### Rub-down searches of arrested or detained persons

You may carry out a rub-down search when a person is arrested or detained under a statutory power of detention, to ensure that they are not carrying anything that may be used to:

- harm any person, or
  - facilitate the person's escape.
- (s85(1))

### Searches after arrest or detention to be conducted as soon as practicable

Conduct a rub-down search for weapons or easily disposed of items as soon as practicable after a person's arrest or detention and before placing them in a vehicle or secure area. If possible, do this out of the public's view to give the person privacy and avoid interference from sympathisers and adverse public reaction.

If it is not practicable to complete a full rub-down search immediately after arrest or detention:

- conduct a visual examination of their head, torso, arms and legs as a preliminary check for weapons and evidential material, and
- remain with them and closely observe them to prevent them from:
  - using anything they may be carrying or have concealed to harm any person or facilitate their escape
  - hiding or disposing of any evidence.

If the suspect is transported in a vehicle, check the seat and surrounding area (e.g. floor, door etc) of that vehicle afterwards.

### Rub-down search of all prisoners unless unjustified in circumstances

All prisoners must undergo a rub-down search as soon as they arrive at the custody area or station unless:

- it would be unjustifiable to search the person because, for example:
  - it is a minor charge
  - all evidence is located
- the prisoner is:
  - not placed into a cell or left unsupervised and is being immediately bailed, or
  - not at risk of harming any person or escaping before they are bailed, or
- there is justification in the circumstances to conduct a [strip search](#) instead.

## Using metal detectors

If available, all searches must include the use of metal detectors immediately upon arrival in the cell block, regardless of where the detainee has come from.

## Prisoners taken into custody at court

Follow these steps when people are taken into custody at court.

If the person is...	then...
waiting for a bail bond to be completed	<ul style="list-style-type: none"> <li>- keep them separate from prisoners in custody being transferred to a custodial or health facility</li> <li>- carry out a risk assessment to decide whether they need to be searched (rub-down search) to remove weapons, cigarettes, lighters or other material that may cause damage to a cell or injury to another person.</li> </ul> <p><b>Note:</b> If the person is unable to be kept separate from custodial prisoners, they must be rub-down searched as if they were a custodial prisoner.</p>
remanded into custody for transfer to a custodial or health facility	<ul style="list-style-type: none"> <li>- rub-down search them before placing them into a cell (if possible, the search should be witnessed by another constable, authorised officer or searcher), unless there is <a href="#">justification for a strip search</a> instead</li> <li>- record any articles removed (use POL48 or your notebook)</li> <li>- complete subsequent processing and documentation after the prisoner is returned to the Police station.</li> </ul>

## Conducting a rub-down search

### Preparing for the search

Follow these steps to prepare for the rub-down search and to satisfy the requirements of section [125\(1\)](#).

Step	Action
1	Identify yourself to the person being searched.
2	<p>Advise the person of the name of the Act under which the search is taking place and the reason for it unless it is impracticable to do so in the circumstances.</p> <p>You may detain the person to enable the search to be carried out (at the place of initial detention or while they are travelling to or at any other place where the search is carried out), but only for as long as necessary to conduct the search.</p>
3	<p>Obtain the assistance of:</p> <ul style="list-style-type: none"> <li>- a medical practitioner or nurse</li> <li>- a parent, guardian or other person for the time being responsible for the day-to-day care of the person to be searched if you consider that is in the interests of the person being searched.</li> </ul>
4	<p>If practicable, conduct the rub-down search and removal of any property:</p> <ul style="list-style-type: none"> <li>- in the presence of another constable, authorised officer, searcher</li> <li>- in view of any surveillance cameras or video monitoring systems.</li> </ul>

## Carrying out the search

Follow these steps to conduct the rub-down search. (See also [Searching trans \(transgender\) and intersex people](#) when applicable).

# Section 6(c) Official Information Act 1982

## **Completing the search**

On completion of the search follow these steps.

Step	Action
1	<p>Label and secure any property seized. Issue a Property Record Sheet (POL 268). If the person is placed in custody, follow the procedures for receiving prisoners' property in the '<a href="#">People in Police detention</a>' Police Manual chapter.</p> <p>If any property is seized as an exhibit:</p> <ul style="list-style-type: none"><li>- label and secure the exhibit and record it on a<a href="#">POL 268</a></li><li>- process it appropriately, e.g. by photography, fingerprinting, or scientific examination by ESR, a document examiner etc.</li></ul>
2	<p>Consider whether you are required to report the rub-down search to the Commissioner. This is <b>not required</b> if the search is in conjunction with the person's arrest, detention or being locked up in lawful Police custody. (See 'Notifying when people are searched' in Part 14: <a href="#">Reporting</a> for more information about when reports to the Commissioner are required by section <a href="#">169</a>).</p>

## Strip searches

### What is a strip search?

'Strip search' means a search where the person conducting the search may require the person being searched to undress, or to remove, raise, lower, or open any item(s) of clothing so that the genitals, buttocks, or (in the case of a female) breasts are:

- uncovered, or
  - covered only by underclothing.
- (s3)

### When can strip searches be conducted?

A strip search may be carried out when there is a search power under the Search and Surveillance Act 2012 authorising a search for:

- arms
- offensive weapons
- drugs
- evidential material relating to offences punishable by imprisonment of 14 years or more
- evidential material in the course of an authorised search of a place or vehicle, when any person:
  - is found at the place or in or on the vehicle, or
  - who arrives at the place, or
  - stops at, or enters, or tries to enter or get onto the vehicle
- thing(s) incidental to arrest or detention that may be used to harm any person, facilitate the person's escape or that is evidential material relating to the offence in respect of which the arrest is made or the person is detained
- money or other property after a person is locked up.

### All strip searches must be justified

The safety of the person to be searched and those conducting the search is of paramount importance. Strip searches must be justified by either necessity or risk assessment.

#### Justification by necessity

Strip searches may be justified by necessity when you have reasonable grounds to believe:

- evidential material may be concealed on the person, or
- any thing is on the person who is arrested or detained that may be used to:
  - harm any person
  - facilitate the person's escape

and a less intrusive search may not be sufficient to locate the evidential material or thing that may be used to harm any person or facilitate escape.

#### Justification by risk assessment

Strip searches may also be justified by an assessment of risk using principles of TENR (Threat, Exposure, Necessity and Response). This includes the risk assessment required for everyone locked up in Police custody that is used to identify risks such as suicidal tendencies, so that the care and safety of the person in custody can be appropriately managed.

A strip search may be carried out when a risk assessment gives you reasonable grounds to believe:

- things such as weapons may be concealed on the person, or
- any thing is on the person that may be used to:
  - facilitate their escape, or
  - harm any person

and a less intrusive search may not sufficiently reduce or remove that risk.

A strip search may also be undertaken following a formal risk assessment of someone to be locked up in police custody where their

behaviour or previous incidents indicate that there is a risk of:

- harm to any person, or
- intentional damage to property

In this instance there need not be a reasonable belief that any item that may be used to injure themselves or others is on them. A strip search may be undertaken.

## **Customary strip searching must not be authorised**

Each case must be considered on its own merits. No general policy to strip search a certain person or class of person can be authorised or adopted and there must be good reason(s) for such a search.

## **Conducting a strip search**

You must carry out a strip search with decency and sensitivity and in a manner that affords to the person being searched the degree of privacy and dignity that is consistent with achieving the purpose of the search.

## **Preparing to conduct a strip search**

After deciding a strip search is justified, follow these steps to prepare for the search and comply with section [125](#).

Step	Action
1	Obtain authority to conduct a strip search from a supervisor with the position level of sergeant or above. If a supervisor is not available, contact your Communications Centre to obtain authority from a supervisor with the appropriate position level.
2	Plan who should be present during and conduct the search. It should be conducted if possible, in the presence of another constable, authorised officer or searcher. You can also use an enforcement officer from another agency authorised under an enactment to conduct strip searches (e.g. a prison or customs officer).
3	<p>Note:</p> <ul style="list-style-type: none"> <li>- The person conducting the search <b>must</b> be of the same gender identity as the person being searched.</li> <li>- Avoid having more than two people present at the search (though this may be unavoidable if the person being searched is violently resisting - see step 1 in the table "<a href="#">Carrying out the search</a>" below).</li> </ul> <p>In extreme and urgent situations where sufficient same gender identity constables, authorised officers or searchers are not available, a constable, authorised officer or searcher not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.</p>
4	Identify yourself and the witness to the person to be searched. Advise them of the name of the Act under which the search is taking place and the reason for it, unless it is impracticable to do so in the circumstances.
5	<p>If you consider that it is in the interests of the person being searched, you may obtain the assistance of:</p> <ul style="list-style-type: none"> <li>- a medical practitioner or nurse and/or</li> <li>- a parent, guardian or other person for the time being responsible for the day-to-day care of the person to be searched.</li> </ul> <p>You may also seek assistance from an officer from another law enforcement agency who is authorised to conduct searches.</p>
6	<p>Ensure the search place is out of view of:</p> <ul style="list-style-type: none"> <li>- the public and Police employees (other than those involved in the search)</li> <li>- any surveillance cameras or video monitoring systems.</li> </ul>

## **Carrying out the search**

Continue with these steps to conduct the strip search.

Step	Action
1	<p>You may use reasonable force when necessary to conduct the search or take any money or property found on the person or in their possession.</p> <p><b>Do not</b> attempt a strip search with only one person of the appropriate gender identity if the person to be searched is likely to resist or be violent. Keep the person under observation until others of the same gender identity authorised to search are available to assist. In extreme and urgent situations a second person not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.</p>
2	<p>If you intend to use any equipment or aid to facilitate the search, use it in a way that:</p> <ul style="list-style-type: none"> <li>- involves no or minimal contact, and</li> <li>- is reasonable in the circumstances</li> </ul> <p>e.g. metal detectors.</p>
3	Conduct the search in as seemly a manner as is consistent with the necessity of discovering any concealed item. The extent of the search required, especially regarding the exposure of private parts, is a matter of careful judgement.
4	<p>In most cases, where it is necessary to conduct a search which exposes the bare skin of breasts, genitals or buttocks, the search should be carried out in sections. The upper part of the body should be stripped and re-clothed before the lower part of the body is examined or vice versa as appropriate.</p> <p>A person should only be required to strip completely naked in exceptional circumstances.</p>
5	<p>Use the wall position to search the person thoroughly but<b>do not</b>:</p> <ul style="list-style-type: none"> <li>- deliberately touch the bare skin of breasts, genitals or buttocks</li> <li>- require them to bend over, lie down or adopt any other position for a visual examination of lower body orifices. The person may be required to squat so that any object clenched or hidden between the buttocks is released.</li> </ul>
6	Search anything carried, worn or in the person's immediate possession.
7	<p>If circumstances arise requiring a person of the opposite gender identity who is present but not in view of the search to intervene to protect the person conducting the search, you must:</p> <ul style="list-style-type: none"> <li>- stop the search, and</li> <li>- before resuming, keep the person under observation until other authorised persons of the same gender identity are available to assist with the search using reasonable force.</li> </ul>
8	<p>If the person is placed in custody, follow the procedures for receiving prisoners' property in the '<a href="#">People in Police custody</a>' Police Manual chapter.</p> <p>If any property is seized as an exhibit:</p> <ul style="list-style-type: none"> <li>- label and secure the exhibit and record it on a POL 268</li> <li>- process it appropriately, e.g. by photography, fingerprinting, or scientific examination by<a href="#">ESR</a>, a document examiner etc.</li> </ul>

## Reporting strip searches of people who are in Police custody

If you exercise a warrantless search power involving a strip search of a person, you must report it unless the search was conducted under section 11.

(s[169](#))

See the '[Reporting](#)' chapter for more guidance on when strip searches must be reported, and how.

## Police guidelines about strip searching to be publicly available

The guidelines in this chapter concerning the circumstances under which a strip search may be conducted must be made publicly available on the Police website.

A search of the person is not unlawful by reason only of failure by the person conducting the search to comply with a guideline issued by the Commissioner.

(s [126](#))

**Note:** Any changes made to this strip searching topic **must be immediately notified to Media & Communications** by the **Police Instructions Team** and **Director: Capability** to ensure the guidelines published on the Police website are up to date.

## Internal searches

### What is an internal search?

An internal search is an internal examination of any part of the person's body by means of:

- an X-ray machine or other similar device, or
  - a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.
- (s23)

### What is not an internal search?

A constable, authorised officer or searcher may conduct a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but must **not** insert any instrument, device, or thing into any of those orifices.

A visual examination in these circumstances is not an "internal search" and is permitted as part of a [rub-down](#) search.

(s87)

### Who may conduct an internal search?

An internal search must be conducted by a registered medical practitioner.

### When can an internal search be required?

A constable can only require a person to permit a medical practitioner to conduct an internal examination in circumstances listed in section [23](#) of the Act. They relate to people under arrest for some offences against the [Misuse of Drugs ct 1975](#) and when the constable has reasonable grounds to believe the person has certain property secreted within their body.

Section [23](#) does not limit or affect sections [13A to 13M](#) of the Misuse of Drugs Amendment Act 1978. (See the '[Drugs](#)' Police Manual chapter for information about your powers under these sections).

### Restrictions on internal searching

A medical practitioner must not conduct an internal examination if they:

- consider that to do so may be prejudicial to the person's health, or
  - are satisfied that the person is not prepared to permit an internal examination to be conducted. The person being searched must **voluntarily consent** to an internal examination.
- (s23(3))

The examination must be immediately discontinued if the person being searched changes their mind and withdraws their consent or becomes violent.

### Effect of not permitting internal search on bail application

If...	a court may...
<ul style="list-style-type: none"> <li>- a person fails to permit an internal examination to be conducted, and</li> <li>- the court is satisfied the requirement to permit an internal examination by a medical practitioner was properly made on reasonable grounds</li> </ul>	<ul style="list-style-type: none"> <li>- decline to consider the person's bail application, and</li> <li>- order that the person continue to be detained in Police custody, until the earlier of the following occurs:</li> <li>- the expiry of 2 days after the day on which they were required to permit an internal examination by a medical practitioner</li> <li>- they permit the examination to be conducted.</li> </ul>

(s24)

**Note:** The effect of a person not permitting an internal search:

- does not limit a court's discretion to refuse bail

- overrides any contrary provisions about bail in:
  - the [Bail Act 2000](#)
  - the [Misuse of Drugs Act 1975](#)
  - the [Summary Proceedings Act 1957](#).  
(s24(3) & (4))

## **Police employee presence at internal search**

A constable or authorised officer of the same gender identity as the person to be internally examined may be present if both the medical practitioner and the person agree. Police employees not of the same gender identity, must **not** be present during the search.

## **Reporting exercise of power to require internal search**

The exercise of a warrantless power requiring a person to permit a medical practitioner to conduct an internal search must be reported. See the '[Reporting](#)' chapter for guidance about how to report the exercise of the power to require internal search.

## Searching transgender and intersex people

### Who are trans (transgender) and intersex people?

A **trans** person is someone whose gender identity (their sense of being male or female) differs from their physical body at birth. Many, but not all, trans people take hormones or have surgeries to physically change their bodies. Some of the terms trans people use to describe themselves include transgender, transsexual, MtF (male to female), FtM (female to male), whakawahine, fa'afafine or Queen.

In these guidelines, the term "**transgender**" is used to cover all trans people.

An **intersex** person is someone who is born with, or naturally develops, a body that does not fit typical biological definitions of male or female. There is a wide range of differing intersex medical conditions and physical variations. The term 'hermaphrodite' was historically used to describe intersex people. It should not be used by police as it is considered to be derogatory.

Transgender and intersex people often, but not always, have bodies that are different in some ways from other men and women. For this reason:

- Respect the name, pronoun and sex / gender a transgender or intersex person uses to describe themselves. If you are not sure whether someone prefers to be called 'he' or 'she', politely and discreetly ask.
- Do not automatically assume someone's sex / gender identity based on their genitals, breast / chest, or other physical features. (Note also in this regard, that some transgender women wear breast implants, and some transgender men bind their chest or wear a prosthetic in their pants. These might be felt during a rub-down search).

### Who should search transgender and intersex people?

In general, searches should be carried out by persons of the same gender identity as the person to be searched. In the case of strip searches, they may **only** be carried out by a person of the same gender identity and no strip search may be carried out in view of any person who is not of the same gender identity as the person being searched.

These requirements can cause difficulty when the gender identity of the person to be searched is unclear.

### Establishing who should conduct a search when gender is unclear

Follow these steps if you are aware that someone is transgender or intersex.

Step	Action
1	<p>Ask the person which gender identity they prefer. Most transgender and intersex people will identify simply as male or female and will probably ask to be searched by someone of the same gender identity. For example, a trans woman (MtF) is likely to ask to be searched by a female Police employee.</p> <p>Have the person's expression of preference witnessed by more than one Police employee (if practicable) and record their preference in your notebook.</p>
2	<p>If the transgender or intersex person <b>does</b> state their gender identity :</p> <ul style="list-style-type: none"> <li>- select searchers of that gender identity to conduct the search. (Strip searches must be conducted by a person of the same gender identity but if a searcher of the same gender identity is not available for a rub-down search within a reasonable time and there is no practicable alternative, a person of the opposite gender identity may conduct the search)</li> <li>- follow standard procedures for conducting <b>rub-down</b> and <b>strip searches</b>.</li> </ul>

3	<p>If a <b>transgender person</b> will <b>not</b> state a preferred gender identity:</p> <ul style="list-style-type: none"> <li>- make an assessment of their gender identity based on their gender presentation (e.g. preferred name, clothing)</li> <li>- use a searcher of the same gender identity as you have determined for a rubdown search unless there is no practicable alternative, or</li> <li>- in the case of a strip search, explain that based on the information available to you, the strip search will be conducted by two Police employees of the gender identity that the person presents.</li> </ul> <p>Record your assessment and decision in the electronic custody module or custody/charge sheet, or if not available, in your notebook.</p>
4	<p>If only one person of the <b>transgender person's</b> preferred gender identity (or if they've not stated a preference, the gender identity you've determined best matches their gender presentation) is available for a strip search, consider options where the person is cooperative, for:</p> <ul style="list-style-type: none"> <li>- conducting the search with a second searcher not of the same gender identity being within hearing but out of view of the person being searched (the person conducting the search <b>must</b> be of the preferred gender identity), or</li> <li>- requesting the assistance of a: <ul style="list-style-type: none"> <li>- medical practitioner or nurse, or</li> <li>- parent, guardian, or other person for the time being responsible for the day-to-day care of the person to be searched.</li> </ul> </li> </ul>
5	<p>If an <b>intersex person</b> will <b>not</b> state a preference for their gender identity, try to have a male <b>and</b> a female constable, authorised officer or searcher conduct the search. Note however, that one searcher will have to become the primary searcher, as it is never appropriate to have a female search one half of a transgender or intersex person, and a male the other.</p>
6	<p>If searchers of both gender identities are not readily available for an <b>intersex person's</b> search, choose what appears to be the most appropriate gender identity to you (e.g. based on the person's name, clothing etc) and consider requesting the assistance of a:</p> <ul style="list-style-type: none"> <li>- medical practitioner or nurse</li> <li>- parent, guardian, or other person for the time being responsible for the day-to-day care of the person to be searched.</li> </ul>
7	<p>Note when assistants are used for transgender and intersex person searches:</p> <ul style="list-style-type: none"> <li>- their role is to assist with and witness the search, not to medically examine the person or to ascertain their gender identity or whether they have had surgeries</li> <li>- the medical practitioner, nurse or parent etc does not have to be of the same gender identity as a transgender person.</li> </ul>
8	<p>Follow standard procedures for:</p> <ul style="list-style-type: none"> <li>- conducting searches once the gender of the person(s) to conduct the search is decided. Be mindful that many transgender or intersex people will be particularly uncomfortable about having their body touched or viewed and may have previously been ridiculed because of their body or gender identity</li> <li>- reporting strip or internal searches of people in custody. (See the "<a href="#">Reporting</a>" chapter for further information).</li> </ul>

## Surprises during searches

If you only become aware that someone is transgender or intersex in the course of conducting a search:

Step	Action
1	Stop a strip search and ask the person which gender identity they prefer. The appropriate gender person should then conduct the search. Follow the guidance in the table above depending on whether the person states a preference or not.
2	In the case of a rub-down search, complete the search limiting it to the extent necessary to eliminate danger or preserve evidence.
3	Record what has occurred in the electronic custody module, custody / charge sheet or your notebook and any steps taken to rectify any possible breaches of section 126(4) (i.e. strip searches must be carried out by someone of the same gender identity as the person being searched and may not be carried out in view of any person not of the same gender identity).

## Internal searches

Internal searches are only conducted by medical practitioners. They do not have to be of the same gender identity as the person being searched.

Standard procedures and guidance in this chapter apply when considering [internal searches](#) of transgender and intersex people.

## Search positions and personal safety

### Deciding on a search position

The type of search position used depends on the person's compliance. Always make a [risk assessment](#) before conducting a search. When deciding which position to use, consider:

- how much space you have
- potential danger from the person being searched
- whether mechanical restraints should be used to mitigate any risk of assault or escape during the search
- amount of help you have
- number of suspects or people to be searched.

### Standing position

Step	Action
1	Have the person face you, with hands open over the head. This ensures that no weapon or evidence is concealed in them.
2	Tell the person to turn around and: <ul style="list-style-type: none"> <li>- interlock their fingers on top of the head</li> <li>- spread their feet wide enough to ensure an uncomfortable position. The toes should be pointing outward, so that the person is off balance.</li> </ul>
3	Conduct the search.

### Wall position

Step	Action
1	Have the person face you, with hands open over their head. This ensures that no weapon or evidence is concealed in them.
2	Tell the person to stand against the nearest wall or vehicle with: <ul style="list-style-type: none"> <li>- hands above their head and spread apart</li> <li>- feet back from the wall, and spread apart</li> <li>- toes pointing outward, so they are off balance.</li> </ul> Make sure their hands and feet are sufficiently spread to prevent them making any sudden moves.
3	Conduct the search.
4	If the person makes an aggressive move, counter by kicking a leg out from under them, or knocking an arm down from the wall.

### Kneeling position

The kneeling position offers a reasonable degree of safety to the searcher and is more practical than the [prone](#) position. Use the kneeling position if you are in an open area, and there is more than one suspect.

Step	Action
1	Ensure the person is not holding a weapon.
2	Have the person face away from you, kneel, cross the legs and interlock the fingers on top of the head. This places the person in a very uncomfortable position.
3	Conduct the search in a squatting position, keeping your eye on the person's neck at all times.

## Prone position

The prone position offers a degree of safety to the searcher.

Step	Action
1	<p>Have the person lie face down on the ground with:</p> <ul style="list-style-type: none"> <li>- feet spread apart</li> <li>- arms straight out to the sides</li> <li>- palms facing up.</li> </ul> <p>In this position it is very difficult for a person to get up or throw dirt or debris at you.</p>
2	Search the person on the opposite side to which the face is turned. Place your foot on the person's elbow to restrict movement.
3	When moving to the other side, walk around the person's body. Do not step between their legs, because you may be tripped.

## Keeping yourself safe during searches

All searches are potentially dangerous. Follow these general guidelines to keep yourself safe:

- Take every precaution to protect yourself, e.g. get help from another employee.
- Remain behind the person, so they don't know where you are. Never turn your back on the person being searched.
- Squat instead of bending over, so you are in a more balanced position and not facing the ground.
- Be thorough, so you can confidently pass the person on to another employee. Conduct the search as quickly as possible.
- Be aware of any attempts by the person to stall the search.
- Always remain alert. Keep your attention on the person to prevent any attempt to dispose of evidence or escape. Watch their shoulder, because this will move first.

## Protecting your health

Always use safe searching practices to prevent your exposure to HIV or hepatitis B or C infections.

## Property removed or seized during a search

If you search a person under any provision in the Search and Surveillance Act 2012 or any other enactment, and remove or seize any property from them, you must promptly prepare an inventory of what was removed or seized and provide the person with a copy. (s [125\(4\)](#))

When people are in custody, follow the procedures for receiving and recording 'detainees property' in the [People in Police custody](#) chapter. Note that if you take property and retain it as an exhibit for further investigation, you must complete a POL 268.

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## **Part 9 - Production orders**

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## Executive summary

Key points to note:

- You have the choice whether a standard search warrant or production order should be sought in any given case. Businesses can offset the costs of complying with a production order against the avoidance of the disruption that would otherwise occur by physical entry and search of the premises under a search warrant.
- Using a production order should be an effective investigative tool and the offence(s) under investigation be sufficiently serious to justify the resource.
- The information sought should not make unreasonable or unnecessary demands on a provider of information, whom the order is against. Stipulate a reasonable delivery period (not less than a week). Otherwise in the case of a telecommunications provider apply for a surveillance device warrant.
- Your [district approver](#) must approve applications for production orders directed at a telecommunications provider for obtaining call data information.
- A Police Executive member or District Commander must approve production order applications relating to news media organisations.

# Overview

## Purpose

This part of the 'Search' chapter provides information about production orders including:

- the effect of the orders and how they relate to other powers
- who may apply
- whose authorisation is required before applying
- the conditions to be met before applications can be made and orders issued or made
- the procedures for making applications
- the form and content of orders
- what can be done with documents seized under a production order
- requirements for reporting and document retention.

## Definitions

This table details the meanings of terms used in this chapter.

Term	Meaning
Call associated data	Call associated data has the same meaning as in section <a href="#">3(1)</a> of the Telecommunication (Interception Capability and Security) Act 2013.
Document	Document includes call associated data and the content of telecommunications in respect of which, at the time an application is made under section <a href="#">71</a> for a production order against a network operator, the network operator has storage capability for, and stores in the normal course of its business, that data and content.
Network operator	Network operator has the same meaning as in section <a href="#">3(1)</a> of the Telecommunication (Interception Capability and Security) Act 2013.

(s[70](#))

## Related information

See also:

- 'Offences relating to orders' in Part 1: [Search introduction](#)
- Part 10 - [Examination orders](#).

## About production orders

### What are production orders?

Production orders are orders made under section [74](#) of the Search and Surveillance Act 2012 requiring a person or organisation (such as a business) to produce documents to enforcement agencies as evidential material of a specified offence.

Production orders are issued by issuing officers. (These are the same people as for search warrants).

### Production order versus search warrant

You have the choice whether a standard search warrant or production order should be sought for use in any given case. While compliance costs are incurred by a business issued with a production order, these costs are offset against the avoidance of the disruption that would otherwise occur by physical entry and search of the premises under a search warrant. Very often production order powers will be less intrusive and involve less cost, than using search warrants as an alternative.

### Duration of production order

A production order is in force for the period specified in the order (not exceeding 30 days after the date on which the order is made).  
(s[76](#))

### Setting duration of production order

Ensure application time periods under section [76](#) are reasonable when seeking a production order.

In *Makaea v R* [2018] NZCA 284 the Court of Appeal found a high level of care is required by enforcement officers when determining whether the duration of a production order can be justified, particularly with the intrusion of privacy associated with cell phones.

**Note:** A shorter period may be desirable, with the option of obtaining a further order if circumstances warrant it.

## Applying for a production order

### Who may apply?

Any constable may apply to an issuing officer for a production order. (See further information about [making applications](#) in this chapter).

(s71(1))

### Approval to apply for production order directed at telecommunications provider

You must seek prior approval from your [district approver](#) before making an application directed to a telecommunications provider seeking information such as call associated data, or content.

### Matters to consider before granting approval

Before granting approval to apply for production orders, the district approver must take these matters into account and be satisfied:

- the grounds for applying for a production order are met
- the resource benefit of making an application is advantageous to Police and the investigation (i.e. the use of a production order is an effective investigative tool and the offence(s) under investigation are sufficiently serious to justify the resource)
- the information sought does not make unreasonable or unnecessary demands on the telecommunications provider, whom the order is against, particularly if those documents sought are forward looking (i.e. documents and call associated data coming into the control of the person etc whom the order is against while the order is in force). See the '[Issues for corporate recipients of production orders](#)' below for further information about the issues confronting individuals and organisations.

See '[Issues for corporate recipients of production orders](#)' for further information about the issues confronting individuals and organisations.

**Note:** The issuing officer will also apply external oversight of the grounds, reasonableness and necessity of the application when deciding whether or not to issue a production order.

### Approval to apply for production order directed at media organisation

If your application relates to a news media organisation, you must:

- obtain approval from a Police Executive member in the case of PNHQ or a district commander for a district matter, and
- follow the guidance on '[Search warrants, production orders and examination orders involving media organisations](#)' in '[Carrying out search powers with or without a warrant](#)'.

### Approval to apply for production order (other than media organisation and telecommunications provider)

Where practicable obtain written authority to make an application for a production order from a constable of or above the position level of sergeant where practicable.

### Issues for corporate recipients of production orders

All corporate organisations are confronted with these issues when they receive production orders:

- Rejecting production orders for want of accuracy and form.
- Seek an order for the full 14 days or 30 days where appropriate as the recipient needs time to action your request.
- Stipulating an unreasonable time period. Do not seek an order requiring delivery of the results within a short period of time. For example, delivery in 2 days. The delivery of the response should be every seven days, unless the circumstances dictate that it is important for a shorter time to be requested. See '[Stipulate reasonable delivery period for forward looking orders for Telco data](#)' for [call associated data](#) (CAD) from Telco agency teams for information about what is reasonable, alternative action and situations of urgency or emergency.

- The production order should be addressed to the corporate name of the organisation e.g. '2 Degrees Mobile Limited' etc. and not a named employee at that organisation unless there are special reasons to depart from this standard. Note that named employees will be concerned about their legal risks should they not comply within the required timeframes.
- In relation to telecommunication providers, requests for call associated data, content, subscriber details etc. that cannot be covered by an information request should be sought using a production order not a search warrant. **Note:** Should an information request form be acceptable for the type of information sought, then they are available on Police Forms > Reports.

**Note:** Seek advice, if you have not previously made application for a production order.

## **Stipulate reasonable delivery period for forward looking orders for Telco data**

When seeking forward looking production orders for [call associated data](#) (CAD) from a telecommunications provider (e.g. Spark, Vodafone) ensure you stipulate a reasonable delivery period.

The period that you want the data delivered to you should be at least every week and not less. Shorter delivery periods cause considerable pressures for stretched Telco agency teams. If you seek daily data extractions, then apply for a surveillance device warrant. See the ['Surveillance'](#) chapter for making application for a surveillance device warrant.

If your case involves urgency or an emergency, then consult with the agency team who will endeavour to comply with your need.

## **Requests from other agencies for Police to apply**

Other agencies with investigative functions but without enforcement powers may request Police to obtain and execute a production order on their behalf. In these cases, follow the procedures in '[Government agency requests for assistance with search warrants and production orders](#)'.

## **Grounds for applying for a production order**

You may apply for a production order if you have reasonable grounds to:

- **suspect** that an offence has been, is being, or will be committed (it must be an offence for which you could apply for a search warrant), and
  - **believe** that the documents sought by the proposed order:
    - constitute evidential material in respect of the offence, and
    - are in the possession or under the control of the person against whom the order is sought, or will come into their possession, or under their control while the order is in force.
- (s72)

## **How to apply**

You must apply for a production order in writing along with a personal appearance before, or communication orally with, the issuing officer unless it is impracticable to do so in the circumstances. In this situation you may apply to:

- make an application [orally](#), e.g. by telephone or personal appearance, **or**
- have your application considered [without a personal appearance or oral communication](#).  
(ss73) & 100)

All applications for production orders **must** be made using prescribed forms available in Police Forms > Search and Surveillance > Production Orders.

## **Oral applications for a production order**

An issuing officer may allow an application for a production order to be made orally (e.g. by telephone or by personal appearance) and excuse the applicant from putting all or part of the application in writing if satisfied that:

- requiring a written application would result in a delay that would compromise the effectiveness of the search,**and**
- the question of whether the order should be issued can be properly determined on the basis of an oral communication or

personal appearance, **and**

- all required information is supplied to them (orally, or partly orally and partly in writing).  
(s100(3))

If an oral application is allowed:

- the issuing officer must record the grounds for the application as soon as practicable
- the applicant must complete:
- the application form capturing the information conveyed to the issuing officer as soon as practicable and in any event within 24 hours, and
- the order.  
(s100(4))

## **Applications without personal appearance or oral communication**

An issuing officer may allow an application for a production order without a personal appearance or oral communication if satisfied that:

- the question of whether the order should be issued can be properly determined on the basis of the applicant's written communication, and
- the information required for the application has been supplied to the issuing officer, and
- there is no need to ask any questions of, or seek any further information from, the applicant.  
(ss73 & 100)

## **Information required in production order applications**

Applications for a production order must include:

- the applicant's name
- the provision authorising the making of an application for a search warrant in respect of the suspected offence
- a description of the offence that it is suspected has been, is being or will be committed
- the facts relied on to show reasonable grounds to suspect an offence has been, is being or will be committed
- a description of the documents for which production is sought
- the facts relied on to show reasonable grounds to believe the documents sought are in the possession or under the control of the person against whom the order is sought
- whether the person should be required to produce those documents that are in their possession or under their control when the order is made:
  - on one occasion only, or
  - on an ongoing basis (i.e. at the time the order is made **and** which come into their possession or under their control at any time while the order is in force).

(s71(2))

## **Using hearsay evidence**

Hearsay evidence can be used to outline the grounds on which the application is made, if it is highly reliable. Indicate its reliability by stating:

- sufficient information to prove the reliability of what has been stated
- the informant's reliability and whether they have given reliable information in the past. An appropriate way to say this is: "In the past, Informant A has supplied Police with information that has proved to be reliable."
- whether the information has been confirmed by other means.

## **If further information about an informant is required**

See 'What should be included and avoided in applications' in [Search warrants](#) for the definition of 'informant', and the restrictions on revealing identity of informants and including Covert Human Intelligence Sources (CHIS) information in your production order application.

## Which issuing officers should you approach?

Always check the current list of authorised issuing officers in your district as they will change from time to time.

It is recommended that an issuing officer from a District or High Court is selected depending on where resultant proceedings are likely to be heard. If outside court hours or no court is available, take the application to another issuing officer.

## Application procedure for production orders

Preparation of the ‘Application for a Production Order’, ‘Production Order’, ‘Production Order Cover Sheet’, obtaining internal approval and submission of issued order and cover sheet are completed electronically.

### Requestor’s procedure

A requestor for a production order must complete the following steps:

Step	Action
1	<p>Conduct pre-application checks:</p> <ul style="list-style-type: none"> <li>- Set-up a NIA Case reference (file number) if one does not already exist.</li> <li>- Complete background checks.</li> </ul>
2	<p>Prepare and print the application and order:</p> <ul style="list-style-type: none"> <li>- Ensure file number is included on the application and order.</li> <li>- Sign the application.</li> </ul> <p><b>Note:</b> ‘Applications for Production Orders’ and ‘Production Orders’ <b>must</b> be made using prescribed forms available in Police Forms &gt; Search and Surveillance &gt; Production Orders.</p>
3	<p>Seek prior <b>approval</b> to apply for production order. If order is directed:</p> <ul style="list-style-type: none"> <li>- at telecommunications provider obtain approval from <b>district approver</b></li> <li>- at a media organisation obtain approval from Police Executive member in the case of PNHQ or District Commander for a district matter</li> <li>- at other than a media organisation and telecommunications provider obtain approval from the position level of sergeant or above where practicable.</li> </ul>
4	<p>If approved, present application to an issuing officer to issue order.</p> <p><b>Note:</b> A production order does not require the issuing officer’s signature. All that is required is the name or other individual designation of the issuing officer (i.e. a number or a code).</p>
5	<p>Prepare ‘Production Order Cover Sheet’. The form can be located in Police Forms (via Microsoft Word) in two folders (each folder is identical to the other).</p> <p><b>Go to</b> Police Forms (I-Z):</p> <ul style="list-style-type: none"> <li>-&gt; Information Requests, or Search and Surveillance &gt; Production Orders</li> <li>-&gt; Information Request Form / Production Order Cover Sheet (wait 3 seconds and ‘Information Request Form - Page 1’ information box will appear on the screen) &gt; complete details in the box, select ‘Production Order Cover Sheet’ and click on ‘Next Page’ to finalise details.</li> </ul> <p>The ‘Production Order Cover Sheet’ is fully populated from the details you have entered and is to be saved and printed.</p> <p><b>Note:</b> Once the cover sheet is completed and saved, it cannot be altered. If it is incorrect, it can be disposed of and a new one created.</p>
6	<p>Attach the ‘Production Order Cover Sheet’ and ‘Production Order’ in an email and send to the agency providing the information. The agency will provide the information directly to the requestor.</p>

## Issuing production orders

### Who issues production orders?

An [issuing officer](#) (as for search warrants) may make a production order against a person if satisfied on application that the [grounds for making a production order](#) are met.

(s[74](#))

### Is issuing officer's signature required?

A production order does not require the issuing officer's signature. All that is required is the name or other individual designation of the issuing officer (i.e. a number or a code). Section [89\(1\)](#) of the Act sets out the application of Part [4](#). It is reasonable to assume that the same issuing requirements apply as for search warrants in the absence of further guidance. Part [4](#) applies to production orders (section [89\(1\)\(d\)](#) and (e) refers) and section [103\(4\)\(a\)](#) is in Part 4.

### Form and content of production orders

A production order must be in the prescribed form and require the person against whom it is made (**person A**):

- to give the applicant, or a person identified in the order, any documents described in the order that are in their possession or under their control when the order is made or at any time while it is in force, **and**
- if any of those documents are not, or are no longer, in the possession or under the control of person A, to disclose, to the best of their knowledge or belief, the documents' location to the applicant or person identified in the order.

The production order **must** set out:

- the name of person A
- the grounds on which the order is made
- the documents required to be given
- whether the documents must be produced on one occasion only, or on an ongoing basis for the duration of the entire order
- the time by which, and the way in which, the documents must be produced.

The production order may describe the documents required to be given by reference to a class or category of document.

**Note:** If the production order is made against a body corporate or an unincorporated body, the order may specify an individual (by name or by reference to a position held in the body) who is to comply with the order as the body's representative.

(s[75](#))

## Executing production orders

### Execution without being in possession of the order

If it is not possible or practicable for the person executing the production order to have the order in their possession when executing it, one of the following may be executed:

- a facsimile or a printout of an electronically generated copy of the order
- a copy made by the person to whom the order is directed, at the direction of the issuing officer and endorsed to that effect.

(ss [77](#) and [105](#))

### Documents produced under production order

If any document is produced in compliance with an order, you may do one or more of the following:

- retain the original document if it is relevant to the investigation. In this situation you must, as soon as practicable, give a copy to the person who produced it
- take copies of the document, or of extracts from it
- if necessary, require the person producing the document to reproduce, or to assist any person nominated by the Commissioner or their delegate to reproduce, in usable form, any information recorded or stored in the document.

(s [78](#))

### Copy of retained document to be given

When you decide to retain a document that has been produced in compliance with a production order, you must as soon as practicable after the document is produced, take a copy of the document and give the copy to the person who produced the original document.

(s [79](#))

### Custody of produced things

See '[Procedures applying to seized and produced things](#)' chapter for information about:

- the custody of produced things
- obtaining access to or the release of produced things
- when ownership is disputed
- return and disposal of produced things.

### Responding to an assertion of privilege

See '[Privilege relating to production and examination orders](#)' in 'Privilege and immunities under the Act'.

### When are orders invalid?

A production order is invalid if:

- having regard to the information in the application, the grounds for lawful issue of the order were not satisfied at the time of issue
- the order contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the order as to its purpose or scope.

If an order is invalid, neither section [204](#) of the Summary Proceedings Act 1957 nor section [379](#) of the Criminal Procedure Act 2011 applies to that order.

(s [107](#))

## Document retention and reporting

### Retention and security of production order documents

The responsibility for retaining and securing a production order application once it has been presented for signing, remains with the issuing officer.

When a production order is issued, **the applicant**:

<b>must retain...</b>	<b>until the later of the following...</b>
in electronic form or otherwise:  - the order - a copy of the application (if made in written form) - copies all documents tendered in support of the application	- the date of completion of any proceedings in which the validity of the order may be in issue, <b>or</b> - the date of destruction or transfer of the order and other documents under the Public Records Act 2005 or any other enactment or rule of law.

(ss [73\(2\)\(d\)](#) & [101](#))

For further information, see 'Retention and security of warrants and applications' in the '[Search warrants](#)' chapter. The guidance for search warrant documents also applies to production order documents.

### Reporting of production orders

There are no reporting requirements for production orders.

## **Part 10 - Examination orders**

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## Part 10 - Examination orders

## Executive summary

Key points to note:

- Examination orders are only to be used to investigate organised crime or serious financial crime.
- Only Police Inspectors or above can apply for an examination order.
- All applications **must** first be approved by a Deputy or Assistant Commissioner, or the District Commander (not an acting District Commander) of the applicant's Police district.
- Conditions for making (and applying for) orders vary depending on whether the application is made in a business or non-business context.
- Do not name a confidential informant in the application or include any information that could lead to their identification.
- The subject of an order must be given a reasonable opportunity to arrange for a lawyer to accompany them, before appearing for the examination.
- The judge making an examination order must be provided with a report following execution or expiry of the order.

# Overview

## Purpose

This part of the '[Search](#)' chapter provides information about examination orders including:

- who may apply
- whose authorisation is required before applying
- the conditions to be met before applications can be made
- procedures for applying
- the form and content of orders.

## Definitions

This table details the meanings of terms used in this chapter.

Term	Meaning
<b>Business context</b>	Business context, in relation to the acquisition of any information by a person, means the acquisition of the information in the person's capacity as: <ul style="list-style-type: none"> <li>- a provider of professional services or advice in relation to a person who is being investigated, or one or more of whose transactions are being investigated, in respect of an offence; or</li> <li>- a director, manager, officer, trustee, or employee of an entity that is being investigated, or one or more of whose transactions are being investigated, in respect of an offence.</li> </ul>
<b>Non-business context</b>	Non-business context means a context other than a business context.
<b>Organised criminal group</b>	Organised criminal group in this section has the same meaning as in section <a href="#">98A</a> of the Crimes Act 1961.

## Related information

See also:

- [Offences relating to orders](#) in Search - Introduction
- [Part 9 - Production orders](#)

## About examination orders

### What are examination orders?

Examination orders are court orders made under section [38](#) requiring a person to answer questions when they have previously refused to do so.

Examination orders are only to be used to investigate organised crime or serious financial crime. An examination order allows professionals to assist Police without any risk of breaching professional standards or regulations.

Examination orders are one of the most contentious aspects of the Search and Surveillance Act 2012 due to public concerns that they remove an individual's right to silence and the privilege against self-incrimination.

### Duration of examination order

An examination order is in force for the period specified in the order (this cannot exceed 30 days after the date the order is made).  
(s[41](#))

# Applying for examination orders

## Who may apply for an examination order?

A constable of or above the position level of Inspector may, if given [approval](#), apply to a District or High Court judge for an examination order if satisfied that the [conditions](#) for making an order are met in respect of the person to be examined in a:

- business context ([s33](#)) or
- non-business context ([s35](#)).

## Approval to apply

All applications for an examination order **must** first be approved by:

- a Deputy Commissioner, or
- an Assistant Commissioner, or
- the District Commander (other than an acting District Commander) of the Police district in which the constable is stationed.

([s33\(1\)](#) & [s35\(1\)](#))

## Conditions for making examination orders

The conditions for making (and applying for) an examination order vary depending on whether the application is made in a business or non-business context.

### Conditions for making order in business context

The conditions for making an examination order in a [business context](#) against a person are that:

- there are reasonable grounds to suspect an offence punishable by imprisonment for a term of 5 years or more has been, is being, or will be committed, and
- there are reasonable grounds to believe the person sought to be examined:
  - has information that is evidential material in respect of the offence, and
  - acquired the information in respect of which the order is sought in a business context, and
- the person has been given a reasonable opportunity to provide that information and has not done so.

([s34](#))

### Conditions for making order in non-business context

The conditions for making an examination order in a [non-business context](#) against a person are that:

- there are reasonable grounds to suspect that an offence punishable by imprisonment has been, is being, or will be committed, and the offence:
  - involves serious or complex fraud punishable by imprisonment for a term of 7 years or more, or
  - has been, is being, or will be committed wholly or partly by an organised criminal group (as defined in section [98A\(2\)](#) of the Crimes Act 1961), and
- there are reasonable grounds to believe that the person sought to be examined:
  - has information that is evidential material in respect of the offence, and
  - acquired the information in respect of which the order is sought in a non-business context, and
- the person has been given a reasonable opportunity to provide that information and has not done so.

([s36](#))

## How to apply

You must apply for an examination order in writing along with a personal appearance before, or oral communication with, the judge unless it is impracticable to do so in the circumstances. In this situation you may apply to the judge to:

- make an application [orally](#), e.g. by telephone or personal appearance, or
- have your application considered without a personal appearance or oral communication

(ss37(2) and [100](#))

Applications must be made using the prescribed forms available in Police Forms > Search and Surveillance > Examination Orders.

## Oral applications for an examination order

A judge may allow an application for an examination order to be made orally (e.g. by telephone or by personal appearance) and excuse the applicant from putting all or part of the application in writing if satisfied that:

- requiring a written application would result in a delay that would compromise the effectiveness of the examination,**and**
- the question of whether the order should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
- all required information is supplied to them (orally, or partly orally and partly in writing).

(s[100](#))

If an oral application is allowed:

- the judge must record the grounds for the application as soon as practicable
- the applicant must complete:
  - the application form capturing the information conveyed to the judge as soon as practicable and in any event within 24 hours, and
  - the order.

## Information required in applications

Applications for an examination order must include:

- the applicant's name
- a description of the offence that it is suspected has been, is being or will be committed
- the facts relied on to show reasonable grounds to suspect that an offence has been, is being or will be committed
- a description of the information sought to be obtained by the examination order
- the facts relied on to show reasonable grounds to believe that the person against whom the order is sought has the information
- the facts that indicate that the person against whom the order is sought:
  - acquired the information in respect of which the order is sought in a business or non-business context
  - has been given a reasonable opportunity by a constable to provide the information but has not done so.

(ss[33](#)(2) and [35](#)(2))

The application must also specify and confirm that all the [conditions required](#) for making an examination order in the business or non-business context are met.

## Using hearsay evidence

Hearsay evidence can be used to outline the grounds on which the application is made, if it is highly reliable. Indicate its reliability by stating:

- the informant's credibility
- the informant's reliability and whether they have given reliable information in the past. An appropriate way to say this is: "In the past, Informant A has supplied Police with information that has proved to be reliable."
- whether the information has been confirmed by other means.

## If further information about an informant is required

Follow these steps relating to informant information if you are required to supply further information concerning the grounds on which the order is sought.

Step	Action
1	Do not name a confidential informant in the application or include any information that could lead to their identification.
2	Explain to the judge that you do not want the identity of the informant revealed.
3	While a judge may require you to supply further information concerning the grounds on which the order is sought, they must <b>not</b> , in any circumstances, require you to disclose the name, address, or other identifying detail of an informant <b>unless</b> , and only to the extent, that such information is necessary for them to assess: <ul style="list-style-type: none"> <li>- the credibility of the informant, and/or</li> <li>- whether there is a proper basis for issuing the order.</li> </ul>
4	Note current Police guidance on providing sufficient information to judges issuing warrants about informants is contained in Law Notes issued in respect of R v Williams [2007] NZCA 52 (see <a href="#">Law Notes - 30 May 2007</a> ) and R v Dunedin District Court, so the warrant issuer can assess reliability.
5	Be prepared to withdraw any examination order application if the judge demands details that identify the informant.

## Which Court should you approach with your application?

It is recommended that your selection of a Judge from a District or High Court should be decided on where resultant proceedings are likely to be heard.

## Making examination orders

### When can an examination order be made?

A District or High Court Judge may make an examination order if they are satisfied:

- the [conditions](#) for making an order are met, **and**
- it is reasonable to subject the person to compulsory examination having regard to:
  - the nature and seriousness of the suspected offending
  - the nature of the information sought
  - the relationship between the person to be examined and the suspect, and
  - any alternative ways of obtaining the information.

(s38)

### Form and content of examination orders

An examination order made must be in the prescribed form and must require the person against whom it is made:

- to attend before the Commissioner or the Commissioner's delegate, and
- to answer any questions relevant to the information in respect of which the order was made.

The examination order must set out:

- the name of the person required to comply with the order
- the grounds on which the order is made
- the nature of the questions that the person is to be asked (questions must be relevant to the information in respect of which the order was made)
- if the examination is to be conducted by a delegate of the Commissioner, the delegate's name
- a condition that, in accordance with section [43](#), an examination order report must be provided within 1 month after the completion of the examination conducted under the order to the judge who made the order or, if that judge is unable to act, to another judge of the same court
- any requirement that the judge making the order considers reasonable for inclusion of specified information in the examination order report provided under section [43](#):
- where the examination is to take place
- when it is to take place or how a time for it is to be fixed.

(s39)

Note: The Judge issuing the order must be named.

## Executing examination orders

### Presence of lawyer

A person subject to an examination order must be given a reasonable opportunity to arrange for a lawyer to accompany them, before being required to appear before the Commissioner or the Commissioner's delegate.

(s<sup>40</sup>)

### Examination orders involving media organisations

Follow the guidance on **Search warrants, production orders and examination orders involving media organisations** in "[Carrying out search powers with or without a warrant](#)".

### Execution without being in possession of the order

If it is not possible or practicable to have the examination order in your possession when executing the order, one of these may be executed instead:

- a facsimile or a printout of an electronically generated copy of the order
- a copy made by the person to whom the order is directed, at the direction of the judge and endorsed to that effect.

(ss<sup>42</sup>, and <sup>105</sup>)

### Responding to an assertion of privilege

See [Privilege relating to production and examination orders](#) in the "Search - Privilege and immunities under the Act" chapter.

### When are orders invalid?

An examination order is invalid if:

- having regard to the information in the application, the grounds or conditions for lawful issue of the order were not satisfied at the time of issue
- the order contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the order as to its purpose or scope.

If an order is invalid, neither section [204](#) of the Summary Proceedings Act 1957 nor section [379](#) of the Criminal Procedure Act 2011 applies to that order.

(s<sup>107</sup>)

## Document retention and reporting

### Retention of documents

When an examination order is made **the applicant**:

<b>must retain...</b>	<b>until the later of the following...</b>
whether in electronic form or otherwise:  - the order - a copy of the application (if made in written form) - copies all documents tendered in support of the application	- the date of completion of any proceedings in which the validity of the order may be in issue, <b>or</b> - the date of destruction or transfer of the order and other documents under the <a href="#">Public Records Act 2005</a> or any other enactment or rule of law.

### Reporting of examination orders

Examination orders give Police significant powers over individuals and because of this the Act provides a robust legislative oversight process. For information about reporting requirements for examination orders see **Production and examination orders** in the '[Reporting](#)' chapter.

## **Part 11 - Declaratory Orders**

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## Executive summary

Key points to note:

- Declaratory orders provide judicial clarification that an intended device (other than a surveillance device), technique, procedure or activity is lawful and reasonable.
- Orders do not confer any special status on evidence collected using the authorised device, technique, procedure or activity - the evidence, and the way it is collected, must still comply with the New Zealand Bill of Rights Act and is subject to normal evidential tests at trial.
- Any constable may apply for a declaratory order. Their application must be approved by an Inspector or above and by the Director: Legal Services.
- There does not always have to be a reasonable suspicion of an offence or a reasonable belief that evidential material relevant to a current investigation will be collected when applying for a declaratory order - In some circumstances a new technology or procedure may legitimately be used for general intelligence gathering.

## Overview

### Purpose

This part of the '[Search](#)' chapter:

- describes declaratory orders and their purpose
- outlines [application procedures](#).

Requirements for reporting declaratory order applications are detailed in the [Reporting](#) chapter.

### What is a declaratory order?

A declaratory order is a statement by a judge that they are satisfied that the use of a device, technique, or procedure, or the carrying out of an activity, specified in the order is, in the circumstances of the use or the carrying out of the activity specified in the order, reasonable and lawful.

A declaratory order is advisory in character and does not affect the jurisdiction of any court to determine whether the activity that was the subject of the order was reasonable and lawful.

### Background and likely use

The declaratory order regime under sections [65](#) to [69](#) of the Search and Surveillance Act 2012 simply provides judicial clarification that the intended device (other than a surveillance device), technique, procedure or activity is lawful and reasonable.

A declaratory order is not a power as it does not authorise an enforcement officer to do anything that is unlawful. Rather it provides a mechanism by which an enforcement officer may test the reasonableness of a novel investigative device, technique, procedure or activity prior to employing that investigative tool to obtain evidence. Declaratory orders are likely to be used for surveillance purposes rather than for search activities. For example surveillance using heat or smell detectors may possibly be covered under declaratory orders.

### Compliance with the New Zealand Bill of Rights Act

Declaratory orders facilitate a regime under which enforcement agencies can undertake the investigation of crime in the modern era and keep pace with technological advancement, whilst ensuring novel technologies are employed in a way that is reasonable and appropriately respects those civil liberties and human rights codified in the [New Zealand Bill of Rights Act 1990](#).

The granting of a declaratory order does not confer any special status on evidence collected using the device, technique, procedure or activity authorised under the order. The evidence, and the way it is collected, must still comply with the New Zealand Bill of Rights Act and is subject to normal evidential tests at trial.

## Applications for declaratory orders

### Who may apply for a declaratory order?

Any constable may apply for a declaratory order.

### Approval to apply

The application must be approved by a constable with the position level of Inspector or above and by the Director: Legal Services.

### When to apply for a declaratory order

You may apply for a declaratory order when:

- you wish to use a device, technique, or procedure, or to carry out an activity, that is not specifically authorised by another statutory regime, and
- the use of the device, technique, or procedure, or the carrying out of the activity, may constitute an intrusion into the reasonable expectation of privacy of any other person.

(s66(2))

Unlike applications for search warrants or surveillance device warrants, there will not always be a need to have any reasonable suspicion as to an offence or any reasonable belief that evidential material relevant to a current investigation will be collected. Whether this is required will depend entirely on the nature of the circumstances. Many activities that involve the use of a new technology or procedure may legitimately be used for general intelligence gathering if they do not involve an unjustified intrusion on a reasonable expectation of privacy.

### Who may make declaratory order?

A judge may make a declaratory order if satisfied that the use of a device, technique, or procedure, or the carrying out of an activity, in the circumstances of the proposed use or carrying out of the activity, is reasonable and lawful.

(s68)

### Application procedures for a declaratory order

The following procedures reflect those agreed between Police and the Chief High Court Judge and the Chief District Court Judge for declaratory order applications. (These are recorded in the 2012 Practice note: Procedures for processing surveillance device warrant applications):

[2012\\_Practice\\_Note\\_\(SS\\_Act\\_2012\).pdf](#)

288.03 KB

Step	Action
1	Obtain the appropriate approval to apply for a declaratory order.
2	The application must be made in writing using the declaratory order application and order forms available in Police Forms > Search and Surveillance > Declaratory Orders.  Ensure the <a href="#">information required</a> by section 67 is adequately covered in the application. However, <b>keep the amount of evidence "within reasonable bounds"</b> - this is part of the Police agreement with the judiciary.
3	The application must be checked and authorised by a Police legal adviser. <b>Note:</b> The legal adviser will record the application in a central repository for declaratory orders at Legal Services.
4	Notify the designated registry contact person at the relevant High Court Registry or District Court of the impending application and any degree of urgency associated with it.
5	Provide the written application for the order, along with two copies of the declaratory order to the designated registry contact person at the relevant court in a secure envelope. (See <a href="#">Form and content of declaratory orders</a> below).
6	All applications for declaratory orders will be determined on the papers. If having considered the written application, the judge requires further information or clarification on any matter, a minute should be issued to that effect.
7	If the judge is prepared to make the declaratory order, the judge will sign the order and advise the nominated contact person.
8	If the application is successful, one signed copy of the order will be returned to the applicant and the other retained with the application.
9	All application documents, including any notes made by the judge, will be kept in a secure envelope, sealed, dated and signed by the judge before being returned for safe-keeping in secure storage in the court registry.

**Note:** There is no:

- requirement to provide history of previous applications within 3 months of search and surveillance device warrants or declaratory orders
- time limit set for undertaking the use of the device, technique, procedure or activity from the issuing of the order
- requirement to confirm truth and accuracy of the contents of the application

## Information required in declaratory order applications

The application must be made in writing and set out in reasonable detail:

- the applicant's name
- a description of the device, technique, procedure, or activity with enough detail to enable the judge to understand what is proposed to be used or undertaken
- the name, address, or other description of the person, place, vehicle, or other thing that is the object of the proposed use of the device, technique, procedure, or activity
- the circumstances in which the device, technique, or procedure is proposed to be used or the activity undertaken
- the purpose for which the device, technique, or procedure is to be used or the activity undertaken.

(s67)

## Information about informants

See the section titled, '[Including informant information in search warrant applications](#)' in '[Search warrants](#)' for information about the definition of informant, revealing identity of informants and including Covert Human Intelligence Sources (CHIS) information in your declaratory order application.

## Form and content of declaratory order

Every declaratory order must be in the prescribed form and contain, in reasonable detail, these particulars:

- the name of the judge making the order and the date it is made
- a description of the device, technique, procedure, or activity that the order relates to, with enough detail to enable the enforcement officer using the device, technique, or procedure, or carrying out the activity, to understand what is covered by the order
- the name, address, or other description of the person, place, vehicle, or other thing that is the object of the use of the device, technique, procedure, or activity (if available)
- the circumstances in which the device, technique, or procedure is to be used or the activity undertaken
- the purpose for which the device, technique, procedure, or activity is to be used, or for which the activity is to be undertaken.

(s<sup>69</sup>)

Note: The Judge making the order must be named.

## Reporting

### Reporting to the Commissioner and in annual reports

See the [Reporting](#) chapter for information about the requirements for reporting declaratory orders to the Commissioner and in Annual Reports.

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## **Part 12 - Procedures applying to seized and produced things**

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# Policy statement and principles

## What

This chapter contains procedures that apply to things that are seized or produced, apart from property taken from persons locked up in Police custody and privileged material, which are both dealt with elsewhere in the '[Search](#)' chapter ('[Searching people](#)' and '[Privilege and immunities under the Act](#)').

The chapter outlines what must be done with seized and produced items and when they must be returned to the owner.

## Why

To deliver services in relation to seized and produced items that the public expect, deserve and want from their Police.

## How

Police will:

- comply with subpart 6 of part 4 (sections 149-163) of the Search and Surveillance Act 2012
- provide an inventory of all things seized no later than 7 days after the seizure
- return, transfer, retain, allow access or release things seized or produced according to law
- manage disputed ownership, forfeiture, disposal and requests for copies of seized or produced things.

## Overview

### Purpose of this chapter

This chapter outlines the procedures in the Act applying to things **after** their initial seizure or production including:

- the rights of owners and others in relation to things seized or produced
- the return and custody of seized or produced things
- applications for access to or release of seized or produced things
- disputed ownership and forfeiture of seized or produced things
- disposal of seized or produced things.

Information about:

- what can be seized during a search
- the requirements for recording items seized during a search and for providing notice (an inventory) about what is seized is contained in '[Carrying out search powers with or without a warrant](#)'.

### Dealing with other than seized and produced things

See the '[Exhibit and property management](#)' chapter for information about dealing with other than seized and produced things, e.g. found property and property taken possession of as an exhibit or for safe keeping.

### References to the "Act"

References to "the Act" or to sections of an Act in the above chapters are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

## Recording and storing seized and produced things

### Procedures for recording seized and produced things

At the completion of a search, Police must give the occupier of a place or person in charge of the vehicle ~~written notice~~ about the search including the reasons for it, and how enquiries about the search can be made. This notice must also include advice about whether or not items were seized.

(s131)

If anything was seized, the person must be given an **inventory** of the things seized no later than 7 days after the seizure, including information about rights to access the seized items and to bring claims of privilege. These obligations extend also to the owners of seized items, when they are identified.

(s133)

See [Notice and inventory requirements](#) in the ['Carrying out search powers with or without a warrant'](#) chapter for detailed procedures on recording seized items and providing the required notice following a search.

### Seized and produced things to be stored in property /exhibit stores

As a general principle, all seized and produced property, with the exception of cash, must be stored in a common property store. However, in exceptional circumstances the District Commander / National Manager may authorise storage in alternative premises.

# Return, transfer, and custody of seized or produced things

## Certain things must be returned

Any thing seized or produced:

which is ...	must be...
<ul style="list-style-type: none"> <li>• not required for investigative or evidential purposes, or</li> <li>• not liable to forfeiture to the Crown or any other person (by law, court order or otherwise)</li> </ul>	<ul style="list-style-type: none"> <li>• returned to its owner or the person entitled to possession, or</li> <li>• made the subject of an application for <a href="#">disputed ownership</a> (<a href="#">s154</a>), or</li> <li>• disposed of as an unlawful item (<a href="#">s160</a>), or</li> <li>• disposed of as <a href="#">forensic copies of computer data</a> if it does not contain evidential material (<a href="#">s161</a>), or</li> <li>• destroyed if it: <ul style="list-style-type: none"> <li>◦ is perishable and has become rotten or deteriorated, or</li> <li>◦ is likely to become rotten or perish before a court orders its disposal, or</li> <li>◦ is likely to pose a risk to public health.</li> </ul> </li> </ul>

([s150](#))

## Transfer of things between law enforcement agencies

Things seized or produced to Police may be transferred to another law enforcement agency. A document for the transfer of things between law enforcement agencies must be prepared. Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ.

### Notes:

- The obligations under [Part 4](#) of the Search and Surveillance Act 2012 are transferred to the law enforcement agency after the transfer of the thing is carried out ([s90](#)).
- You may set conditions of the transfer on the transfer document.

## Custody of seized or produced things

Any thing seized or produced:

which is...	may be ...
<ul style="list-style-type: none"> <li>• required for investigative or evidential purposes, or</li> <li>• liable to forfeiture to the Crown or any other person (by law, court order or otherwise)</li> </ul>	<p>held in Police custody or by a person acting on behalf of Police <b>until the first of the following occurs:</b></p> <ul style="list-style-type: none"> <li>• a decision is made not to bring proceedings</li> <li>• the thing is forfeited to the Crown or any other person</li> <li>• the thing is released following a District Court order (<a href="#">s158</a> or <a href="#">s159</a>)</li> <li>• proceedings for an offence have not started within six months of the seizure or production <b>and</b> the person from whom it was seized has requested its return (unless an application for an extension has been made) (<a href="#">s153</a>)</li> <li>• proceedings are withdrawn or dismissed, or completed</li> <li>• the thing is disposed of as an unlawful item (<a href="#">s160</a>).</li> </ul>

([s151\(1\)](#))

## Custody when things are held by other agencies

Things held by other agencies for examination are still in Police custody as long as they are under the direction and control of

Police. However things transferred to another law enforcement agency for the purposes of investigation, prosecution or forfeiture become the responsibility and custody of that agency.

(s<sup>90</sup>)

## Immediate release of things when events occur

Once the relevant event occurs (see [custody table](#) above), the thing must be immediately released:

- to the owner or a person entitled to possession, **unless** it is an unlawful thing for disposal, or
- in the case of things forfeited to the Crown or another person or subject to court orders requiring access or release, in the manner required under the Act.

## When things relate to more than one offence

If the thing is seized or produced in relation to more than one alleged offence, the thing does not need to be released until the first of the events described in the tables above has occurred in relation to each and every alleged offence.

(s<sup>151(2) & (3)</sup>)

## Extension of time for holding things

You may apply to the district court for an extension of time to hold a seized or produced thing if:

- a request has been made for its return, and
- you wish to hold it for longer than six months in circumstances where no proceedings for an offence involving that thing have been brought.

(s<sup>153</sup>)

'Application for an extension of time for holding thing(s) seized or produced' form SZ3 and the 'Extension of order' form SZ4 are not available on Police Forms because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

## Returning things when copies adequate

The O/C case may use discretion and return the thing to the owner or to a person entitled to possession if a photograph or copy of a seized or produced thing will be adequate for investigative or evidential purposes.

(s<sup>152</sup>)

## Returning exhibits

Where the thing is an exhibit in criminal proceedings or civil proceedings under the Criminal Proceeds (Recovery) Act 2009, the court may, during or after the hearing, make an order about the thing's disposal. If an order is not made, you may:

- return the thing to the person who produced it, or from whom it was seized as soon as practicable,
- or
- apply to a district court judge for an order about its disposal.

Do not hold things on the off-chance that you can use them as evidence in a subsequent, unrelated offence.

## Applications for access to or release of things

### Who can apply for access or release?

Applications to Police for access to or the release of seized or produced things before proceedings are brought can be made by:

- the person who produced the thing or from whom it was seized
- the owner or person entitled to possession
- any person with a legal or equitable interest in the thing.

The application to Police must be made in writing.

### Making the decision

The O/C case may:

- release the thing, or
- provide reasonable access to it, or
- refuse the application on the ground that release of the thing or, as the case requires, access to it, is likely to prejudice the maintenance of the law.

A release or provision of access to a thing may be:

- unconditional, or
- under Police bond for a sum (with or without sureties), and on conditions, acceptable to the person in whose custody the thing is.

(s156)

### Decision to be in writing

The applicant **must** be informed of the Police decision in writing.

Use the 'Letter of reply to applicant requesting release of or access to thing seized or produced' form (SZ11) located in Police Forms > Search and Surveillance > Seizure, when responding to an application.

**Note:** The letter must also advise the applicant that they may apply to the District Court for a review of:

- any refusal relating to their request, or
- the conditions set by Police relating to the thing(s) release or access.

(s156)

### Unconditional and conditional release or access under Police bond

Whether the decision is for the unconditional or conditional release of or access to the thing, the decision letter must name a Police employee (and state their business address) who is to be contacted to arrange for the release of or access to the thing.

If the release or access is conditional, the decision letter must advise that a bond is to be signed in order to arrange release or access.

(s156)

### Police bond

Use the 'Police bond' form (SZ12 - located in Police Forms > Search and Surveillance > Seizure) for the conditional release of or access to a thing seized or produced.

Prepare sufficient copies of the Police bond for:

- court (original, if application for estreat of bond is required)
- applicant

- each surety
- file.

## Application to district court for access to things

A person can apply to the District Court for access to a seized or produced thing if their application to Police under section [156](#) for access was refused or granted subject to conditions they do not accept.

### Powers of court

The district court may:

- grant the application and may require sureties and impose conditions, or
- refuse it on the ground that allowing access or varying or cancelling the conditions concerned is likely to prejudice the maintenance of the law.

(s[158](#))

## Application to district court for release of things

A district court may, on an application, release a seized or produced thing, if it is satisfied that it would be contrary to the interests of justice for the thing to be retained in custody having regard to:

- the gravity of the alleged offence
- any loss or damage to the applicant that is caused or likely to be caused by not returning the thing
- the likely evidential value of the thing, having regard to any other evidence held by Police
- whether its evidential value can be adequately preserved by means other than by keeping it.

The court may require sureties and impose conditions on a release.

(s[159](#))

## Failure to comply with bond or conditions

Follow this table if a person fails to comply with any bond, surety, or condition imposed by Police on the release of or access to a thing.

Who	Actions
Police response	<p>The O/C case may:</p> <ul style="list-style-type: none"> <li>• seize the thing again, or</li> <li>• require it to be produced, or</li> <li>• direct that access to the thing be ended, <b>and</b></li> <li>• apply to the district court for an order for estreat of the bond.</li> </ul> <p>'Application for estreat of bond' form (SZ9) and 'Estreat of bond order' (SZ10) are not available on Police Forms because they involve a civil process and must comply with the format requirements set in the <a href="#">District Court Rules 2014</a>. Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.</p>
District court response	<p>On an application for an order for estreat of the bond, the registrar of the district court must:</p> <ul style="list-style-type: none"> <li>• fix a time and place for the hearing of the application, and</li> <li>• not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place for the hearing.</li> </ul>
Court order	<p>If the court is satisfied that a condition of the bond has not been complied with, it may make an order to estreat the bond:</p> <ul style="list-style-type: none"> <li>• in the amount it thinks fit, and</li> <li>• to any person bound by the bond on whom notice of the hearing is proved to have been served as required above.</li> </ul> <p>The amount payable under the bond is recoverable as if it were a fine.</p>

(s157)

# Disputed ownership and forfeiture

## Disputed ownership

If a seized or produced thing is not to be produced in evidence but there is a dispute about its ownership or you are not sure who to return it to (e.g. because it is unclaimed) you may apply to the district court for directions as to the ownership or holding of the property.

The district court may order that the thing be:

- destroyed
- **forfeited to the Crown** (if authorised by another enactment)
- delivered to the person appearing to be the owner and entitled to possession of it, or
- if the owner or person entitled to possession cannot be found, make any order with respect to its possession or sale as the court thinks fit.

When seeking directions as to ownership or holding of the property, the 'Application for directions as to ownership or holding of seized or produced thing' form (SZ5) and 'Ownership or holding order' form (SZ6) are not available on Police Forms, because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

## Effect of a court order

If, after a court order is made, an action is commenced for the recovery of the thing or its value, the order and the delivery of the thing in accordance with the order may be given and must be received in evidence in bar of the action.

No such order or delivery affects the right of any person entitled by law to possession of the thing to recover the thing from any person or body (other than from a constable, other enforcement officer or the Crown).

(s154)

## Forfeiture to Crown if ownership is not established

A thing that is seized or produced is forfeited to the Crown if:

- the owner or person entitled to its possession is not established within 60 days of seizure or production, and
- the thing:
- is not, after 60 days, still required for investigative or evidential purposes, and
- has not been disposed of or sold by court order within that 60 days.

To try and establish ownership of a thing in Police custody, you must (unless it is impossible or impracticable to make contact):

advise...	that...
<ul style="list-style-type: none"> <li>• the person who produced the thing or from whom it was seized</li> <li>• the occupier or owner of the place or vehicle where the thing was before it was produced or seized</li> <li>• any other person who you believe may be affected by the forfeiture</li> </ul>	the thing will be forfeited to the Crown if ownership is not established.

(s155)

# Disposal of seized or produced things

## Disposal of unlawful things

You may destroy a seized or produced thing:

If...	and if...
<ul style="list-style-type: none"> <li>it was unlawful under New Zealand law for a person to be in possession of it (e.g. a controlled drug found in circumstances in which possession is an offence against the <a href="#">Misuse of Drugs Act 1975</a>), <b>and</b></li> <li>there is no mechanism provided for disposing of the thing or it has not been disposed of under any other enactment, <b>and</b></li> <li>no order has been made by a court as to its disposal...</li> </ul>	<ul style="list-style-type: none"> <li>you have given notice to the person from whom it was seized or produced, and they: <ul style="list-style-type: none"> <li>consent to its destruction, or</li> <li>do not within 30 working days object to its destruction, <b>or</b></li> </ul> </li> <li>the person to whom notice should be given cannot be located after reasonable inquiries have been made, <b>or</b></li> <li>the person objects to the destruction within 30 working days of receiving the notice, <b>and</b> on an application to determine the thing's status, the court is satisfied that possession by the person is unlawful.</li> </ul>

Use the 'Notice to person of disposal by destruction of seized or produced unlawful thing' form, located in Police Forms > Search and Surveillance > Seizure, when giving notice to the person from whom the thing was seized or produced.

(s[160](#))

## Disposal of forensic copies

### Copies of computer or other storage data

If you make a forensic copy of any data held in a computer or other data storage device and the...

data contains...	then you...
no evidential material	<b>must</b> ensure the forensic copy and copies made are: <ul style="list-style-type: none"> <li>deleted</li> <li>erased,</li> <li>or</li> <li>otherwise destroyed in a way that prevents retrieval of the copy or copies by any method.</li> </ul>
a mixture evidential and not evidential material	<b>may</b> : <ul style="list-style-type: none"> <li>retain the forensic copy and any copies made of that copy in their entirety, and</li> <li>continue to search that forensic copy and any copies made of it, if such a search was authorised by the search power under which it was seized.</li> </ul>

(s[161](#))

### Other copies and generated material may be retained

Any thing made or generated by Police exercising a search power (e.g. photographs or audio or video recordings or copies of things) may be retained as part of permanent Police records.

The exception may be when a privilege under section [136](#) and any other enactment or rule of law exists.

(s[162](#))

## Application to district court to dispose of seized property

You may apply to a district court for an order that a thing seized, produced or transferred by another enforcement agency be disposed of (by sale or otherwise):

if...	and...
<p>you believe the thing:</p> <ul style="list-style-type: none"> <li>• is perishable or likely to deteriorate, or</li> <li>• the cost of holding the thing is unreasonable having regard to its market value</li> </ul>	<p>you have made reasonable efforts to advise these people of your intended application:</p> <ul style="list-style-type: none"> <li>• the person who produced the thing or from whom it was seized</li> <li>• the owner or person entitled to possession of the thing</li> <li>• any person with a legal or equitable interest in the thing.</li> </ul>

(s163)

Note: 'Application for disposal of seized/produced property' form (SZ7) and the 'disposal order' form (SZ8) are not available on Police Forms because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

### Court refusal to grant an order

If the court refuses the order, Police must continue to hold the thing until it is released in accordance with section 151(2). (See [Custody of things seized or produced](#) in this chapter).

### Sale or disposal of seized and produced things

If seized and produced things are to be sold or otherwise disposed of following a court order, you should follow the disposal procedures applying to found property in the '[Exhibit and property management](#)' chapter as far as practicable. See these parts in particular:

- '[Custody and disposal of exhibits](#)'
- '[Disposal of found property](#)'.

### Application of proceeds

Police must hold in custody any proceeds received from carrying out the court order (less costs of sale and any sums required to be paid to a security holder or other person as a condition of the order for sale) as if the proceeds were the seized property. (Section [151\(1\)](#) applies with any necessary modifications).

(s163(3) & (4))

### Drugs

Follow the additional procedures in the '[Exhibit and property management](#)' chapter for the receipt and destruction of drugs.

# Court related documentation relating to seized and/or produced things

## "Person with an interest" defined

'Person with an interest', in this section, means:

- the person who produced the thing or from whom it was seized
- the owner or the person entitled to possession of the thing
- any person with a legal or equitable interest in the thing.

## Documentation for Court

Both the application and order relating to seized and/or produced things must be presented to a Judge when Police request:

- an extension of time (s 153 - SZ3 and SZ4 forms for District Court only)
- ownership holding (s 154 - SZ5 and SZ6 forms for District Court only)
- disposal of property (s 163 - SZ7 and SZ8 forms for District Court only)
- estreat of bond (s 157 - SZ9 and SZ10 forms for District Court only)
- retention of raw data (s 63 - SZ13 and SZ14 forms for District Court or High Court)
- retention of raw data excerpts (s 63 - SZ16 and SZ17 forms for District Court or High Court).

**Note:** Forms SZ13, SZ14, SZ16 and SZ17 are available on Police Forms > Search and Surveillance > Seizure. Forms SZ3 to SZ10 are not available on Police Forms, because they involve a civil process and must comply with the format requirements set in the [District Court Rules 2014](#). Contact your District Legal Adviser for assistance with preparing the documentation. The District Legal Adviser may also seek assistance from Legal Services at PNHQ. These applications must be lodged by a lawyer who holds a current practising certificate as a barrister or as a barrister and solicitor.

## Description of seized or produced things on documentation

Ensure the description of seized or produced things on the application and order align with the description of those seized or produced things entered on the POL268, Property record sheet inventory.

## Copies of documentation

Three copies of both the application and order relating to seized and/or produced things must be prepared for presenting to the Judge.

## Application

Copies of the application are required for these purposes:

- original retained by Court
- duplicate and triplicate for Police file (may attach to POL268, Property record sheet inventory).

## Order

Copies of the order are required for these purposes:

- original (signed by Judge) for Police file
- duplicate copy retained by Court
- triplicate copy for Police (to retain with POL268 - Property record sheet inventory).

As a matter of courtesy and good practice you should notify persons with an interest in a seized or produced thing either personally or by phone, fax, email or letter of the existence of the Court order and what the order directs.

**Note:** Notifying persons with an interest in a seized or produced thing **does not** apply to ex parte (involving one party to an application and no respondents) applications for an order (e.g. application for order for postponement of notice and inventory requirements under section [134](#)).

## Person requesting copies of application or order relating to seized and/or produced things

There is no requirement under the Act for Police to provide a copy of the application or an order to a person with an interest in seized and/or produced things. Any request for copies of the application or order from the person should be dealt with as follows:

- If criminal proceedings have **not** been commenced against the person requesting a copy of the application, then respond to the request under the [Official Information Act 1982](#). There may be conclusive reasons for refusing the disclosure of the application or for redacting of parts of the application under section 6 of the Official Information Act 1982. Good reasons for Police to withhold official information include the likelihood of:
  - prejudicing the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
  - endangering the safety of any person.

**Note:** In some circumstances the request will be dealt with under the [Privacy Act 2020](#), but similar considerations about disclosure of the applications may apply.

- If criminal proceedings have commenced against the person requesting a copy of the application, then respond to the request under the [Criminal Disclosure Act 2008](#).

For further guidance, see:

- the section, '[Applications for access to or release of things](#)' in this chapter for information about:
  - the person with an interest making application to Police for access to and release of things
  - Police providing a decision regarding unconditional or conditional access to or release of things in writing
  - the person with an interest making application to District Court for access to or release of things
- these chapters, [Privacy and official information](#) and [Criminal disclosure](#) for information about disclosure.

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## **Part 13 - Privilege and immunities under the Act**

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# Policy statement and principles

## What

The [Evidence Act 2006](#) sets out various privileges. Section [136](#) of the Search and Surveillance Act 2012 recognises those privileges that are subject to the rules and obligations in subpart [5](#) of Part 4 of the Act. The Act restricts the privilege against self-incrimination to examination orders and production orders.

This part of the '[Search](#)' chapter details procedures for Police employees to comply with the Act and enable a claim of privilege to be made and determined in respect of material that is the subject of search, examination or production powers.

## Why

Compliance with the guidance and procedures in this chapter when carrying out search, examination and production powers will ensure privilege is appropriately preserved and mitigate against future challenges to the search.

## How

When carrying out search, examination and production powers, Police will:

- before applying for a search warrant, or a production/examination order, consider whether recognised privileges might apply, e.g.:
  - is it likely that the premises may contain correspondence from a lawyer?
  - is the person whose premises are being searched someone whose communications may be privileged, e.g. a lawyer, doctor, journalist or minister of religion?
- if privilege may be an issue when executing a warrant or order include information in the application to:
  - identify the privilege that may apply and the nature of the potentially privileged information/communications
  - explain what will be done to prevent the search of privileged material, to facilitate a claim of privilege and to protect material seized.
- **before** conducting a search when privilege may apply, give the person or their representative a reasonable opportunity to claim privilege, or make an interim claim if they need further instructions. Usually this involves the person being present (and their presence is a statutory requirement in some cases).
- if there are reasonable grounds to believe that any thing discovered **during** a search may be privileged, give the person reasonable opportunity to claim privilege and if unable to identify or contact that person:
  - apply to a Judge to determine the status of the thing; and
  - do anything necessary to enable the court to make that determination.
- if receiving or expecting to receive a claim of privilege secure the thing subject to privilege but not continue to search it and should not undertake any other investigations in reliance on it unless no claim of privilege is made, or a claim is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege.

**Note:** It is the Court's function to independently determine whether a privilege claim is valid.

## Overview

### Purpose of this chapter

This chapter details:

- what are [recognised as privileges](#) under section [136](#) of the Search and Surveillance Act 2012 and when they apply
- [what to include in an application](#) for a search warrant or production/examination order when privilege may apply
- [procedures when executing search warrants and other search powers where privilege claim anticipated](#)
- what to do if privileged material is unexpectedly discovered during a search
- privileges applying in the context of production and examination orders
- [your immunities](#) from civil or criminal liability when obtaining or executing orders and warrants or exercising entry and search powers under the Act.

### Related information

See also these Police Manual chapters:

- [Search chapter:](#)
  - [Carrying out search powers with or without a warrant](#)
  - [Production orders](#)
  - [Examination orders](#)
- [Surveillance chapter:](#)
  - [Surveillance device warrants](#)

### References to "the Act"

All statutory references in this chapter are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

# What are recognised privileges?

## Recognised privileges

These privileges are recognised under section [136](#) of the Search and Surveillance Act 2012.

Description	Evidence Act 2006 (section)	Applicability to power exercised	Appropriate court for determining claims of privilege (s <a href="#">136</a> (3))
Legal professional privilege, to the extent that it forms part of the general law	<a href="#">53</a> (5)	Search, examination and production	District Court
Privilege for communication with legal advisers	<a href="#">54</a>	Search, examination and production	District Court
Privilege for preparatory material to proceedings	<a href="#">56</a>	Search, examination and production	District Court
Privilege for settlement negotiations or mediation	<a href="#">57</a>	Search, examination and production	District Court
Privilege for communication with ministers of religion	<a href="#">58</a>	Search, examination and production	District Court
Privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists	<a href="#">59</a>	Search, examination and production	District Court
Privilege against self-incrimination, but only to the extent provided in section <a href="#">138</a> of the Search and Surveillance Act	<a href="#">60</a>	Examination and production only  <b>Note:</b> This privilege does <b>not</b> apply to thing(s) seized under a search power (s136(1)(g))	District Court
Privilege for informers	<a href="#">64</a>	Search, examination and production	District Court
The rights conferred on a journalist to protect certain sources	<a href="#">68</a>	Search, examination and production	<b>High Court</b>

## Identifying privilege

Before applying for a search warrant, a production order, or an examination order, (or undertaking a warrantless search), consider whether any of the [recognised privileges](#) might reasonably apply in the circumstances. For example:

- is it likely that the premises may contain correspondence from a lawyer?
- is the person whose premises are being searched someone whose communications may be privileged, such as a lawyer, a doctor, a journalist or a minister of religion?

## Lawyers' trust account records not privileged

The privilege for communications with legal advisers (s[54](#) of the Evidence Act 2006) does not extend to books of account or accounting records kept:

- by a solicitor in relation to any trust account money that is subject to section [112](#) of the Lawyers and Conveyancers Act 2006; or
- by a nominee company that:
  - is subject to practice rules made by the Council of the New Zealand Law Society under section [96](#) of the Lawyers and Conveyancers Act 2006; and
  - is operated by a barrister and solicitor or an incorporated law firm as a nominee in respect of securities and documents of title held for clients.

That privilege does not prevent, limit or affect:

- the making of a production order, issuing of a search warrant, or exercise of any other search power in respect of those books of account or accounting records, or
- the obligation to comply with that production order, search warrant, or other search power in respect of those books of account or accounting records, or
- the admissibility, in a criminal proceeding for an offence described in the production order, search warrant or for an offence in respect of which any other search power was exercised, of any evidence that relates to the contents of a document obtained under the production order or search warrant, or as the result of the exercise of any other search power.

(s<sup>137</sup>)

## **Appropriate court**

The **appropriate court** for the purposes of Subpart 5, Part 4 of the Act (Privilege and confidentiality) when privileged material has to be delivered to the court; or an application is to be made to the court for determination of a privilege claim is:

- the High Court in any case that involves the applicability of the rights of journalists under section 68 of the Evidence Act 2006 to protect sources
- in any other case, the District Court.

## Effect of privilege claim on search warrant and other search powers

A person who claims privilege in respect of anything that is seized or sought to be seized has the right to:

- prevent the search under the Act of any communication or information to which the privilege would apply if it were sought to be disclosed in a proceeding, pending determination of the claim to privilege and later, if the claim is upheld
- require the return of a copy of, or access to, any such communication or information to the person if it is seized or secured by a person exercising a search power pending determination of the claim to privilege.

(s[142](#))

Once privilege has been claimed, you cannot search the material that is the subject of that claim further and it is for a court to determine the privilege claim.

Further details on how to manage a privilege claim follow, including guidance on how to provide a copy to the material (see, for example, **Secure and copy the material for which privilege is claimed; Determination of privilege claim**)

**Note:** A person cannot claim privilege against self-incrimination for a thing seized under a search power. That privilege only applies when an examination order or production order is being executed. (s[136](#)(1)(g) and 138)

## What to include in an application for a search warrant or production/examination order

### Duty of candour

Applicants for search warrants and other orders made without notice owe the court a duty of candour. The issuing officer is entitled to expect full and candid disclosure of all facts and circumstances relevant to whether the warrant or order should be issued, including whether the material covered by the warrant or order may reasonably be anticipated to be the subject of a claim of privilege and, if so, proposed processes for dealing with that.

The issuing officer needs to be satisfied that:

- Police are aware of the privilege issue; and
- there are appropriate procedures in place to facilitate any anticipated claim of privilege and to ensure protection of materials seized.

### Consider what you may find executing the warrant or other order

Think about what information/communications you may find while executing the warrant or other order, and whether any of the information/communications may be subject to a claim of privilege. For example whether the premises being searched are occupied by a person who is a lawyer, minister of religion, journalist or other person referred to in section [136](#) of the Search and Surveillance Act.

**Note:** Particular care is also required when seeking call associated data or the content of telecommunications where one of the parties to those communications may have a claim of privilege. It is possible that some of this information may be privileged and the organisation complying with the warrant or order may not be aware of that. As below, the Judge will need to be informed of the potential for a claim of privilege and what processes will be followed to ensure that any privilege issues are appropriately addressed, with particular reference to the relevant provisions of the Search and Surveillance Act. For example, for a production order seeking text communications of a journalist from the telco, you will need to plan a process for sorting the data (without searching it) or perhaps have an independent person conducting the sorting process, before the potentially privileged material is delivered to the court and tell the court about that plan.

### Paragraphs to include in application when privilege may be an issue

If you reasonably believe that privilege may be an issue, include paragraphs in the application addressing the following:

Step	Action
1	<p><b>Identify privilege</b></p> <p>Identify the privilege that may be an issue (preferably by reference to the relevant paragraph of section <a href="#">136</a> of the Search and Surveillance Act and any corresponding Evidence Act 2006 provision) and the potentially privileged information/communications that may be discovered in the course of the search etc. For example:</p> <ul style="list-style-type: none"> <li>- “J Bloggs is a minister of religion. As well as the evidence of fraud, I suspect we will find at her home, communications between her and individuals made in confidence and for the purpose of the person obtaining from J Bloggs religious or spiritual advice, benefit or comfort. I am aware that this material may be the subject of a claim of privilege under sections <a href="#">136(1)(e)</a> of the Search and Surveillance Act and section <a href="#">58</a> of the Evidence Act 2006.”</li> </ul>
2	<p><b>Special requirements - Lawyers</b></p> <p>For warrants where you are wanting to seize communications held by a lawyer that are of a kind to which legal professional privilege normally applies, you also need to satisfy the issuing officer that there is a <i>prima facie</i> case that the thing you want to seize was made, or received, or compiled, or prepared-</p> <ul style="list-style-type: none"> <li>- for a dishonest purpose; or</li> <li>- for the purpose of planning to commit or committing an offence. (<a href="#">s 102</a> - Restrictions on issue of search warrant)</li> </ul>
3	<p><b>Special requirements - Journalists</b></p> <p>For warrants/orders involving journalists, the five general guidelines recorded in <a href="#">Television New Zealand Ltd v Attorney General [1995] 2 NZLR 641</a>, at 647-648 that affirmed the importance of media freedom and the correlative caution as regards media warrants should also be referred to, namely:</p> <ul style="list-style-type: none"> <li>- “...in a case where there is no suggestion that the media organisation has committed any offence and it has done no more than record events which include the commission of offences by others, ... the intrusive procedure of a search warrant should not be used for trivial or truly minor cases ...”</li> <li>- “...as far as practicable, a warrant should not be granted or executed so as to impair the public dissemination of news. ...”</li> <li>- “...only in exceptional circumstances where it is truly essential in the interests of justice should a warrant be granted or executed if there is a substantial risk that it will result in the “drying-up” of confidential sources of information for the media. ...”</li> <li>- “... a warrant should be executed considerately and so as to cause the least practicable disruption to the business of the media organisation. ...”</li> <li>- “...the relative importance of the [material sought] for the purposes of a prosecution ...”</li> </ul>
4	<p><b>Explain procedures to prevent search of privileged material and facilitate privilege claim</b></p> <p>Explain:</p> <ul style="list-style-type: none"> <li>- what procedure you will follow on execution to prevent the search of privileged material [see <a href="#">Procedures when carrying out searches involving privileged material</a> below]. For example: <ul style="list-style-type: none"> <li>- “I anticipate that there may be privileged material on the computer that we expect to find. The computer will be seized and cloned by a forensic expert assisting Police. The computer will be returned to J Bloggs and the forensic clone delivered to the court. Neither the computer nor the clone will be searched until J Bloggs has an opportunity to claim privilege.”</li> </ul> </li> <li>- what procedures will be taken to facilitate a claim of privilege and to ensure protection of materials seized. For example: <ul style="list-style-type: none"> <li>- “As required by <a href="#">s144</a>, after securing the scene, I will contact J Bloggs. I will arrange to search the property when J Bloggs or her representative is present. Before commencing the search I will ask her whether she wants to claim privilege or interim privilege in respect of any material that is covered by the warrant. If she claims privilege or interim privilege in respect of any material, it will not be searched. Instead, it will be seized. She will be given an opportunity to make a copy of the material for which she has claimed privilege and the privileged material will be secured in an envelope or suitable container, and sealed with tape. The material will then be delivered to the District Court Registrar at X Court to enable a claim of privilege to be determined by a Judge.”</li> </ul> </li> </ul>

**Before a warrant is obtained in respect of material that may reasonably be the subject of a privilege claim, it is recommended that you obtain legal advice.**

## Conditions

Consider whether it would be appropriate to propose conditions that the issuing officer could impose on the warrant.

**Note:** The Search and Surveillance Act has specific requirements in relation to the procedures when executing search warrants that Police must be aware of and ought to reflect in the application, particularly where it relates to searching the offices, mobile devices or documents of lawyers and the professional material of ministers of religion, medical practitioners and clinical psychologists. See '[Procedures when executing search warrants and other search powers where privilege claim anticipated](#)'.

## Covert warrants

If a covert warrant may involve privilege material, legal advice should be sought on the application and the procedure to be followed.

# Procedures when executing search warrants and other search powers where privilege claim anticipated

## Overview

When executing a search warrant or other search power involving privileged material, comply with any conditions specified in the warrant or order, any processes you have set out in your application (see '[What to include in an application for a search warrant or production/examination order](#)') as well as the Search and Surveillance Act requirements to:

- give the person an opportunity to claim privilege (usually this will involve the person or their representative being present and showing you what material is privileged)
- seize and secure (but not search) the material for which privilege is being claimed
- supply a copy for the person claiming privilege or give them access to the material
- deliver the material to the court to enable determination of the privilege claim.

Searchers should be familiar with the requirements of sections [142](#) to [147](#) of the Search and Surveillance Act.

## Planning before the search

When planning execution of the warrant, consider how (after you have secured the scene and before you commence the search) you will:

- make reasonable efforts to contact the person; and
- give them a reasonable opportunity to claim privilege.

These requirements will probably mean there is a time delay between securing the scene and commencing the search.

## Reasonable efforts to contact the person

If the person is not already at the search location, make reasonable efforts to contact them and invite them to come to the search location to point out where there is any privileged material, or to send a representative to do that on their behalf.

## Contacting lawyers, ministers of religion, medical practitioners and clinical psychologists

For search warrants authorising search and seizure of materials held by lawyers, ministers of religion, medical practitioners or clinical psychologists the search warrant must not be executed unless the lawyer, minister of religion, medical practitioner, or clinical psychologist, or a representative of them is present ([s143\(2\)](#) and [s144\(2\)](#)).

If unable to contact the lawyer, minister of religion, medical practitioner, or clinical psychologist or their representative prior to starting the search, you must instead contact:

- the New Zealand Law Society, in the case of lawyers, or
- the church or professional body to which the person belongs

and ask them to appoint a person to represent the interests of their clients, parishioners or patients in relation to the search ([s143\(3\)](#) and [s144\(3\)](#)). Given this ability of the church or professional body to appoint someone, it is unlikely there will be an occasion when you cannot contact someone who can claim privilege within a reasonable time if for some reason the lawyer, minister of religion, medical practitioner or clinical psychologist cannot personally be there.

## Contacting other privilege holders (including journalists) in searches involving privileged material.

For warranted or warrantless searches where you have reasonable grounds to believe that any thing discovered in the search may be the subject of another type of privilege, you still need to provide any person (or their lawyer) who you believe may be able to claim a privilege a reasonable opportunity to claim it ([s145](#)). While the Act does not specifically require the person to be present, giving them an opportunity to claim privilege will mean you will need to make reasonable attempts to get in contact with the person and ask them to identify material they claim privilege for. The easiest way for them to do that will usually be for them to be present.

If you are unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period then you can:

- secure the thing (but not search it) and deliver it to the court - see '[Secure and copy the material for which privilege material is claimed](#)' for an outline of section [146](#); and
- apply to a Judge for determination of the status of the thing.

## Treatment of legally privileged documents viewed during a search

In conducting a search, material which attracts privilege must be treated with care so that the integrity of the privilege is upheld as far as possible. The person entitled to claim privilege must be afforded the opportunity to do so. In *Bayliss v R* [209] NZCA 141 upon seeing documents were privileged, the investigator should have stopped reading immediately and quarantined them in order to preserve the privilege.

## Reasonable opportunity to claim privilege

Continue to preserve the scene while waiting for the person to arrive. Do not start to conduct the search or begin to look at material to assess relevance.

When the person or their representative arrives, or if they want to deal with you over the telephone, give the person (or their representative) a reasonable opportunity to claim privilege on behalf of the privilege holder or make an interim claim if unable to contact their client, patient or parishioner.

What is a reasonable opportunity to claim privilege will depend on the circumstances. For example, if the person is away in another New Zealand city at the time you secure the scene but when you contact them by telephone they indicate they intend to get the next flight back so they can point the privileged material out to you later that day it would likely be reasonable to wait until they return.

Invite them to tell you what material they claim privilege over. For example, they might be able to describe where the material is (all documents in a particular room or cabinet; all documents contained in particular files) or it might be more straight forward for them to locate and assemble the material for you.

The person may claim privilege over **all** documents and computer files that the search warrant entitles you to seize. They are entitled to claim privilege in respect of any and all material if they believe there is a valid privilege claim and it is not Police's role to assess whether that claim has any merit or validity. The claim will be independently determined later by a court.

## Dealing with material not covered by privilege claim

For material not included in the claim of privilege, you can search, assess for relevance, and seize in the usual way.

## When you cannot contact the person or their representative

If you are unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period then section [145](#) of the Act provides that, where you have reasonable grounds to believe any thing discovered in the search may be the subject of a privilege recognised by the Act, you can:

- secure the thing (but not search it) and deliver it to the court - see '[Secure and copy the material for which privilege material is claimed](#)' for an outline of section [146](#); and
- apply to a Judge for determination of the status of the thing.

In the absence of the person or their lawyer, in order to form reasonable grounds to believe that something you discover in the search may be the subject of a privilege, you will need to start sifting through the material to make a preliminary assessment of whether any of it may reasonably be privileged. Once you form the belief that the material may reasonably be privileged (for example, there is a folder entitled "Legal advice"), then secure it but do not search that material further.

**Note:** Given the ability of the church or professional body to appoint someone to make the privilege claim, it is unlikely there will be an occasion when you cannot contact someone who can claim privilege within a reasonable time if a lawyer, minister of religion, medical practitioner or clinical psychologist cannot personally be there to claim privilege with respect to material held by them.

## If the person or their representative refuses or neglects to identify privileged material

The person or their representative may refuse to say what material is or isn't privileged or they may neglect to do so after being given a reasonable opportunity (e.g., they haven't kept promises to come to the search address in order to identify privileged material and have stopped taking your calls).

Section [145](#) of the Act provides that, where you have reasonable grounds to believe any thing discovered in the search may be the subject of a privilege recognised by the Act, you can:

- secure the thing (but not search it) and deliver it to the court - see section [146](#) below under '**Secure the material**'; and
- apply to a Judge for determination of the status of the thing.

When the person has refused or neglected to make a privilege claim despite being given a reasonable opportunity to do so, in order to form reasonable grounds to believe something you discover in the search may be the subject of a privilege, then you will need to start sifting through the material to make a preliminary assessment of whether any of it may reasonably be privileged. Once you form the belief that the material may reasonably be privileged (for example, there is a folder entitled "Legal advice" or a letter headed up "Confidential settlement proposal"), then secure it but do not search that material further.

## **Secure and copy the material for which privilege is claimed**

If you receive or expect to receive a claim of privilege and are unable to search a thing because of the privilege, you:

- may secure the thing (if the thing is intangible, e.g. computer data, do this by making a forensic copy) - [s146\(a\)\(i\)](#) and (ii) - but must not search the thing secured, unless no claim of privilege is made, or a claim is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege - [s146\(c\)](#)
- must supply the person who may or does claim privilege with a copy of, or access to, the secured thing - [s146\(b\)](#)
- may deliver the thing or a copy of it to the appropriate court to enable determination of the privilege claim- [s146\(a\)\(iii\)](#). You should preserve the privilege and evidential integrity of the material, for example, by sealing it before delivering it to the court.

Complete a POL 268 inventory as soon as practicable - preferably before leaving the premises but in any case not later than 7 days after the seizure and record which items privilege has been claimed over.

**Note:** Where you are not able to list details of some materials seized because the privilege claim prevents you from searching (reading) those documents, consider referring to the documents over which privilege is claimed as a group - for example, "One eastlight folder identified by XXX as containing privileged documents - sealed". Where possible, show this to the person or their representative who is present and invite them to check the accuracy of the inventory. Leave the original POL 268 form with the lawyer, minister of religion, medical practitioner, or clinical psychologist or other person claiming privilege or their representative.

If the person has claimed privilege for some items being seized:

- Supply the person with a copy of the material or make arrangements for them to receive a copy or have access to the material. For example, the person could make a copy at the search site (if that is possible and the amount of material is reasonable). For larger amounts of material, the copy may need to be made off site and copied in a manner that ensures the privilege is preserved and the material is not being searched by Police. For example, an external provider might be engaged. Having a copy of or access to the material enables the person to particularise their privilege claim (see '**Determination of privilege claim**').
- Place the documents for which privilege is claimed in an envelope (in the person's presence if possible); seal it; and deliver it as soon as practicable to the appropriate court (High Court where privilege claim relates to protection of journalist sources; or the District Court in other cases).

## Carrying out searches where privileged material is discovered during a search

Even if you don't reasonably anticipate a privilege claim when planning for a search and before carrying out the search, you may still unexpectedly come across material that could be privileged during a search.

If you are executing a search warrant or another search power and form reasonable grounds to believe that any thing you discover during the search may be privileged material, then under section [145](#), you still need to provide any person who you believe may be able to claim a privilege a reasonable opportunity to claim it. See '[Treatment of legally privileged documents viewed during a search](#)' and [Bayliss v R](#) [209] NZCA 141.

If you are unable to identify or contact a person who may be able to claim a privilege, or that person's lawyer, within a reasonable period then you can:

- secure the thing (but not search it) and deliver it to the court - see [Secure and copy the material for which privilege is claimed](#); and
- apply to a Judge for determination of the status of the thing.

Refer to these sections for more guidance:

- '[Reasonable efforts to contact the person](#)'
- '[Reasonable opportunity to claim privilege](#)'
- '[Secure and copy the material for which privilege is claimed](#)'
- '[Determination of privilege claim](#)'.

## Determination of privilege claim

### Initiating a privilege claim

Court determination of the privilege claim may be initiated by:

- the person claiming privilege; or
- Police.

### Application by the person claiming the privilege

The person claiming the privilege may:

- provide Police with a particularised list of the things for which privilege is claimed, as soon as practicable after being:
  - given the opportunity to claim privilege, or
  - advised that a search is to be, is being, or has been conducted ([s147\(a\)](#))

or

- if the thing/s cannot be adequately particularised, apply to a Judge of the appropriate court (with a copy of the material) for directions ([s 147\(b\)](#))

They can then apply to the appropriate court for determination of their privilege claim. ([s142\(b\)](#))

### Police application

If a detailed list of things for which privilege is claimed is not forthcoming and the person has not made an application to the court for determination of the privilege, then you may instigate an application to a Judge of the appropriate court for determination of the privilege under section [146\(a\)\(iii\)](#) by using:

- in the case of privilege arising from rights conferred on journalists to protect sources, Police Form PR4 - Application for determination of claim of privilege ('Journalists - High Court') form located in Police Forms > Search and Surveillance > Privilege. Note this application is to be made to the High Court ([s136\(3\)\(a\)](#))
- for other types of privilege claims, Police Form PR3 - Application for determination of claim of privilege ('District Court') form located in Police Forms > Search and Surveillance > Privilege. Note this application is to be made to the District Court ([s136\(3\)\(b\)](#))

If you secured potentially privileged material but were unable to identify a contact person who may be able to claim a privilege or their lawyer (refer '[Contacting other privilege holders \(including journalists\) in searches involving privileged material](#)' and section [145](#)), apply to the court for determination of the status of the thing using:

- Police Form PR2 (where the privilege may arise from rights conferred on journalists to protect sources (application is to the High Court))
- for other types of privilege, Police Form PR1 (application is to the District Court).

### Dishonest purpose or enabling an offence relevant to privilege determination

The court may determine that no privilege applies in respect of any communication or information if there is a *prima facie* case that the communication of information is made or received, or compiled or prepared:

- for a dishonest purpose, or
- to enable or aid any person to commit or plan to commit what the person claiming the privilege knew, or ought reasonably to have known, to be an offence.

Evidence of this nature will be relevant to the Judge's determination of whether the claimed privilege applies.

([s136 \(2\)](#))

### Admission of evidence when privilege claims are upheld

If a Judge upholds a claim to privilege, the communication or information to which the privilege applies is not admissible in any proceedings arising from, or related to the:

- execution of the search warrant, or

- exercise of another search or surveillance power, or
- carrying out of an examination or production order.

(s [148](#))

# Privilege in the context of production and examination orders

## Privilege against self-incrimination

### Privilege against self-incrimination applies in production and examination context

A production or an examination order does not affect the privilege against self-incrimination that a person may have under section [60](#) of the Evidence Act 2006.

A person may assert the privilege against self-incrimination as a ground for refusing to produce any document under a production order or to answer any question under an examination order. Any assertion of a privilege against self-incrimination must be based on section 60.

## Privilege claim and application to court

If a person refuses to produce any information or document under a production order or to answer any question under an examination order on the ground that it is a privileged communication under section [60](#) of the Evidence Act 2006, the Commissioner or other enforcement officer (which includes a constable) may apply to a District Court Judge for an order determining whether or not the claim is valid.

Use Police Form POL PR5 'Application for determination of claim of privilege' form located in Police Forms > Search and Surveillance > Privilege, when making an application.

## Determination by court

When the court is determining the privilege claim, the person claiming privilege against self-incrimination must offer sufficient evidence to enable the judge to assess whether self-incrimination is reasonably likely if the person produced the information or document or answered the question.

**Note:** Section [63](#) of the Evidence Act 2006 does not apply to production or examination orders under the Act.

(s[138](#))

# Other privileges in production and examination context

## Privilege claim and application to court

Any privilege recognised under section 136 that could be asserted in criminal proceedings may also be asserted in respect of the material covered by a production order or an examination order. If a person refuses to disclose information sought under a production order or examination order on the grounds that it is privileged, the Commissioner or other enforcement officer (which includes a constable) concerned may apply to a Judge of the appropriate court for an order determining whether or not the privilege claim is valid.

**Note:** If the privilege claimed involves the rights of journalists to protect certain sources, then use the application form addressed to a Judge of the High Court of New Zealand - Police Form PR6. In all other privilege cases use Police Form PR5, the application form addressed to the District Court Judge.

## Determination by court

For the purpose of determining any application for privilege, the judge may require the information or document to be produced.

A judge must, on an application, disallow a privilege claim if they are satisfied that the claim to privilege would, under section [67\(1\)](#) of the Evidence Act 2006, be disallowed in a proceeding. Section [67\(1\)](#) of the Evidence Act provides that a Judge must disallow a claim of privilege if satisfied there is a *prima facie* case that the communication concerned was made or received or the information compiled or prepared for a dishonest purposes or to enable or aid anyone to commit (or plan to commit) what the person claiming the privilege knew (or reasonably should have known) to be an offence. Evidence of such matters is therefore relevant to the privilege determination.

(s[139](#))

## Immunities under the Act

### Immunities when obtaining or executing orders and warrants

You are immune from civil or criminal liability for any act done in good faith:

- to obtain:
  - an examination order
  - a production order
  - a search warrant
  - a surveillance device warrant
  - a declaratory order, or
  - other order referred to in the Act
- that is covered by a declaratory order
- in relation to the execution of all orders and warrants referred to in the Act, if the execution is carried out in a reasonable manner.

(s [165](#))

### Immunities when exercising entry, search and surveillance powers

You are immune from civil and criminal liability for any act done in good faith in order to exercise an entry, search, or a surveillance power if you:

- exercise the power in a reasonable manner, and
- believe on reasonable grounds that the pre-conditions for the exercise of that power have been satisfied.

Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist you to exercise an entry, search, or a surveillance power, or in order to examine or analyse any thing that is seized.

**Note:** The onus is on the person asserting immunity in any civil proceeding to prove the facts necessary to establish the claim.

(s [166](#))

### Crown immunity

Section [167](#) clarifies that if any person is immune from civil liability with obtaining or executing orders and warrants, exercising entry, search and surveillance powers in respect of anything done or omitted to be done, then the Crown is also immune from civil liability in tort in respect of that person's conduct.

## **Part 14 - Reporting**

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## Executive summary

Key points to note in this chapter:

- In relation to searches of places, vehicles and things, the Commissioner must be notified whenever:
  - a search warrant, or examination or declaratory order application is made
  - a warrantless entry or search power is exercised (unless an [exception](#) applies)
  - a warrantless road block is exercised
  - a drug search or seizure with or without warrant occurs (this includes drugs located or handed in)
  - an arms search or seizure with or without warrant occurs
  - a biosecurity search occurs
  - searching for a child or young person to effect their removal under the Oranga Tamariki Act 1989.
- In relation to people, you must notify the Commissioner when a drugs or arms search or seizure with or without warrant occurs. You must also notify when a person permits an internal examination under the Misuse of Drugs Act.
- You do not need to notify rub-down searches associated with an arrest or detention under any enactment or when a person is being locked up in custody - but strip searches must be notified.
- A warrantless power notification report **must** be:
  - completed by the officer who exercised the search power, that is, the officer who physically initiated the search and determined the legality of initiating the search
  - submitted before the end of the shift in which the event occurred.
- If an issuing officer imposes a condition in a search warrant requiring a search warrant report, the applicant must provide it within the specified period of time.
- Examination order reports must be provided to Judges within 1 month of the examination's completion
- There are no reporting or notification requirements for production orders.
- The Commissioner's Annual Report must include certain information relating to warrantless entry or search powers exercised and applications for examination or declaratory orders

## Overview

### Purpose of this chapter

This part of the 'Search' Police Manual chapter outlines the reporting requirements under the [Search and Surveillance Act 2012](#) and the Commissioner's directions for internal notification on:

- the warrantless exercise of entry and search powers relating to places, vehicles or things
- the warrantless exercise of search powers in relation to people
- the seizure of drugs
- arms searches
- any application made for a search warrant (whether or not a warrant is issued, executed, or an issuing officer has required a search warrant report)
- [examination order applications](#) and reports back to the judge making the order
- [declaratory order applications](#).

This part of the 'Search' chapter also:

- describes [search warrant reports](#) required by issuing officers and how they are completed
- outlines the Commissioner's obligations for the [annual reporting](#) of search powers.

# Notifying the Commissioner (places, vehicles, things and facilities)

## Summary of what must be notified

You must (because of a [statutory](#) or [internal](#) Police requirement) complete a search power notification in relation to search powers of places, vehicles, things and facilities whenever:

- a search warrant, examination order, or declaratory order application is made
- a warrantless entry or search power is exercised (unless an [exception](#) applies)
- a warrantless road block is exercised
- a drug search or seizure with or without warrant occurs (seizure here includes drugs located or handed in)
- an arms search or seizure with or without warrant occurs
- a biosecurity search
- searching for a child or young person to effect their removal under sections [39](#), [40](#) & [386](#) of the Oranga Tamariki Act 1989.

See also [Notifying when people are searched](#) in this chapter.

## Statutory notification on the exercise of warrantless powers

Under section [169](#) if you exercise a warrantless entry power, search power or surveillance power under Part [2](#) or [3](#) of the Act in relation to places, vehicles, things or facilities:

<b>you must...</b>	<b>by written report (notification) that...</b>
notify the Commissioner of the exercise of the power as 'soon as practicable' - <b>Note:</b> Police policy requires this notification to be completed no later than the end of shift.	<ul style="list-style-type: none"> <li>- contains a short summary of the circumstances surrounding the exercise of the power, and the reason(s) why the power needed to be exercised</li> <li>- states whether any evidential material was seized or obtained as a result of the exercise of the power</li> <li>- states whether any criminal proceedings have been brought or are being considered as a consequence of the seizure of that evidential material.</li> </ul>

## Exceptions

You are not required to notify to the Commissioner of:

- the exercise of any power of entry in relation to places or vehicles that does not also confer a power of search (e.g. warrantless entry to prevent offence or respond to risk to life or safety ([s 14](#)))
- a search undertaken by consent.

([s 169\(4\)](#))

## Other matters must be notified to the Commissioner

Although not required under section 169 or any other enactment, the Commissioner also requires the notification of all:

- search warrant applications
- drug seizures (this includes drugs located or handed in)
- arms seizures
- warrantless road blocks.

The internal (rather than statutory) requirement to notify the Commissioner of search warrant applications, the seizure of drugs and arms, and warrantless road blocks is to ensure:

- [search warrant reports](#) are coordinated nationally and provided to issuing officers in a consistent way within the statutory timeframe
- data in relation to all search warrant applications, drug and arms seizures, and warrantless road blocks made under the Act are

recorded for Police purposes.

## Procedure for notifying the Commissioner

Follow these steps to notify the Commissioner.

Step	Action
1	<p>When required to complete a search power notification, access the relevant notification through:</p> <ul style="list-style-type: none"> <li>- the Search and Surveillance System for search warrant applications; or</li> <li>- On Duty; or</li> <li>- the 'Create Notification' feature on the Microsoft Outlook Bulletin Board for all other notifications.</li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- Prompts and relevant drop down boxes will assist you complete the notification.</li> <li>- See the <a href="#">Search and Surveillance System User Guide</a> for further guidance with completing your notification</li> </ul>
2	Ensure the search power notification to the Commissioner is completed before the end of shift.
3	Submit the completed search power notification before the end of shift on the day the:
	<ul style="list-style-type: none"> <li>- warrant, examination order and declaratory order application is made,</li> <li>or</li> <li>- search power is exercised.</li> </ul>
4	<p>Print and retain a hard copy of the notification for your investigation file.</p> <p><b>Note:</b> Record on the notification or your file the time and date the notification was sent.</p>
5	If the notification involves a search warrant application, update the notification on the day the warrant is executed.

### Note:

The information provided in the notification is used to compile the Commissioner's Annual Report to Parliament.

## Warrantless power notifications

When a warrantless search power notification is submitted, the system will send an e-mail to the supervisor of the officer who created the notification. Supervisors should review notification e-mails to ensure that:

- the decision to invoke the power was appropriate
- the grounds and decisions are adequately recorded
- the staff member sought prior approval where required.

A warrantless power notification report **must** be completed by the officer who exercised the search power, that is, the officer who physically initiated the search and determined the legality of initiating the search. The purpose of a section [169](#) report is to provide a safeguard and checking mechanism of the lawfulness of such warrantless searches. A copy of the section [169](#) report should be included in any resultant file to comply with disclosure obligations.

## Delegations to receive search power notifications

This table lists the Commissioner's delegations for receiving search power notifications and compiling information in relation to them.

<b>Notification</b>	<b>Manager delegated</b>
- Drug searches or seizures including drugs located or handed in - Search warrant applications - Warrantless entry or search powers exercised - Warrantless road block powers exercise	National Criminal Investigations Group (Director: NCIG)
- Arms searches - Biosecurity searches	Director: Capability
- Examination order applications	Director: Financial Crime Group (Director: FCG)
- Declaratory order applications	Director: Legal Services (Director: Legal)
- Child or young person's arrests, searches or removals	Manager: Youth

## Search warrant reports

### Search warrant reports may be required by issuing officers

The issuing officer may impose a condition in the search warrant requiring a search warrant report within a specified period of time. Under the Act if the warrant is issued to a constable, the Commissioner must provide a search warrant report within the specified period. This function is designated to every constable who is the applicant for the search warrant. The applicant must prepare the search warrant report on the Search and Surveillance system.

(s [103\(3\)\(b\)](#) & [104\(1\)](#))

### Content of search warrant reports

The search warrant report must state whether:

- the warrant was executed
- the execution resulted in the seizure of evidential material, and, if so, whether that material was:
  - specified in the warrant, or
  - seized under section [123](#) (seizure of items in plain view), or
  - some specified in the warrant and some seized under section [123](#) (items in plain view)
- any other powers exercised in conjunction with the execution of the warrant resulted in the seizure of evidential material
- any criminal proceedings have been brought, or are under consideration, relating to any evidential material seized.

### Procedure for preparing search warrant reports to issuing officers or Judges

Follow these steps to prepare search warrant reports to issuing officers or Judges.

Step	Action
1	<p>Complete the search warrant report for an issuing officer or a Judge on the Search and Surveillance System.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- Prompts and relevant drop down boxes will assist you complete the notification.</li> <li>- See the Search and Surveillance System User Guide(<i>no longer in use</i>) for further guidance with completing your search warrant report.</li> </ul>
2	Print the report for the manually sending to the issuing officer or Judge who requested the report.
3	Ensure the report is completed within the time period specified by the issuing officer or Judge and if not specified, then within 1 month of the warrant being executed or 1 month of the expiry period for an unexecuted warrant.
4	<p>Print and retain a hard copy of the report for your investigation file.</p> <p><b>Note:</b> Record on the report or your file the time and date the report was sent.</p>

## Notifying when people are searched

### When must you notify searches of people to the Commissioner?

You must (because of a statutory or an internal Police requirement) complete a search power notification in relation to searching people whenever:

- a warrantless search power of any person is exercised, unless an [exception](#) applies
- a drug search or seizure with or without warrant occurs (seizure for the purposes of this notification includes drugs located or handed in)
- an arms search or seizure with or without warrant occurs.

Follow the same procedures as for [notifying searches of places, vehicles, things and facilities to the Commissioner](#).

**Note:** Notifications must be made no later than the end of shift after the search power is exercised.

### Exceptions

You do not have to notify the Commissioner of:

- a **rubdown search** of a person under sections 85 or 88 undertaken in conjunction with their arrest or detention under any enactment (examples include persons detained under section 128 of the Immigration Act 1987 or for testing alcohol impaired drivers ([EBA](#) procedures) under the [Land Transport Act 1998](#)) (note that strip searches under section 88 must be notified)
- any search of a person in lawful custody carried out under section 11 (search of people who are to be locked up in Police custody) or under the [Corrections Act 2004](#)
- a search undertaken by consent.

### Internal searches

Every time you exercise a power under section [23](#) requiring a person under arrest for an offence against section [6](#) or [7](#) or [11](#) of the Misuse of Drugs Act 1975 to permit a medical practitioner to conduct an internal examination of them, you must:

- advise the Commissioner by way of a search power notification no later than the end of shift after the search power has been exercised
- record the search in the electronic custody module.

### Notification contents

The notification to the Commissioner in relation to searches of people (search power notification) must:

- contain a short summary of the circumstances surrounding the exercise of the power, and the reason(s) the power needed to be exercised
- state whether any evidential material was seized or obtained as a result of the exercise of the power
- state whether any criminal proceedings have been brought or are being considered as a consequence of the seizure of that evidential material.

(s [169](#))

### Recording searches when Commissioner's notification not required

#### Rub down searches

Although a notification to the Commissioner is not required for a person received into lawful Police custody, you must make an entry in the electronic custody module confirming the rub-down search.

#### Strip searches of people locked in Police custody

Follow these recording procedures when a strip search is conducted of people who are locked up in Police custody.

<b>Person responsible</b>	<b>must...</b>
The person instigating the strip search...	<p>record in the electronic custody module brief details of the:</p> <ul style="list-style-type: none"> <li>- fact that such a search was conducted</li> <li>- justification for it</li> <li>- people conducting the search</li> <li>- supervisor authorising it.</li> </ul> <p><b>Note:</b> Strip searches in custody undertaken under s88 must be notified to the Commissioner.</p>
The supervisor who authorised a strip search...	<ul style="list-style-type: none"> <li>- confirm the authorisation in the electronic custody module (Emergency Communications Centre supervisors should send the person instigating the search an email to confirm their authorisation)</li> <li>- consider whether in the circumstances a detailed report should be submitted by the instigating person to the District Commander. For example: <ul style="list-style-type: none"> <li>- the demeanour and reactions of the person being searched</li> <li>- a transgender or intersex person declining or refusing to state their preferred sex of searcher to conduct the strip search and it is not apparent by their details or appearance.</li> </ul> </li> </ul>

Note: See '[Searching people](#)' in the 'Search' chapter for information about when a strip search can be conducted

### Strip searches when people not locked in Police custody

If you exercise a warrantless search power involving a strip search of a person **not** locked up in Police custody, you must notify the Commissioner by submitting a search power notification.

## Declaratory orders

### Applications must be notified to the Commissioner

This table details notification requirements for declaratory orders to the Commissioner.

Step	Action
1	You must complete a 'Declaratory order application notification' for every declaratory order application that is made.
2	Use the 'Declaratory order application notification' form located in Police Forms > Search and Surveillance > Declaratory Orders, when making notification.
3	Print and retain a hard copy of the notification for your investigation file. <b>Note:</b> Record on the notification or your file the time and date the notification was submitted.
4	Update the notification on the day the order is executed.

### Annual reporting of declaratory orders

The information provided in the 'Declaratory order application notification' is used to compile the Commissioner's Annual Report to Parliament. (See [Commissioner's annual reporting of search powers](#) for requirements relating to declaratory orders).

## Production and examination orders

### No reporting or notification requirements for production orders

There are no statutory requirements under the Search and Surveillance Act 2012 for:

- an issuing officer to require a report on the execution or otherwise of a production order
- a Police employee to notify the Commissioner on applications made for a production order, their execution or outcomes
- the Commissioner to include information pertaining to production order applications, their execution or outcomes in the Annual Report to Parliament.

### Examination order notifications and reports

Two regimes exist:

- All examination order applications must be notified to the Commissioner.
- A report must be sent to the judge making the order within 1 month after the completion of the examination or the expiry of the order if no examination is carried out.

### Notifying the Commissioner

This table details notification requirements to the Commissioner.

Step	Action
1	You must complete an 'Examination order notification' on every examination order application made under the Search and Surveillance Act 2012.  The information in these notifications is used to compile the Commissioner's Annual Report to Parliament.
2	Use the 'Examination order notification' form located in Police Forms > Search and Surveillance > Examination Orders, when making notification.
3	Submit the notification when the examination order application has been made.
4	Print and retain a hard copy of the notification for your investigation file.  <b>Note:</b> Record on the notification or your file the time and date the notification was submitted.
5	Update the notification on the day the order is executed.

### Examination order reports to Judges

The person conducting an examination authorised by an examination order must provide an Examination Order Report within 1 month of the examination's completion to the Judge who made the order, or, if that Judge is unable to act, to a judge of the same court.

The report must contain this information:

- whether the examination resulted in obtaining evidential material
- whether any criminal proceedings have been brought or are under consideration as a result of evidential material obtained by means of the examination
- any other information stated in the order as being required for inclusion in the Examination Order Report.

(s43)

**Note:** If the examination is not carried out, provide the report to the Judge within 1 month of the order expiring.

# Commissioner's annual reporting of search powers

## Commissioner's Annual Report

The Commissioner must include in every Annual Report prepared for the purposes of section [39](#) of the Public Finance Act 1989, the number of:

- occasions when entry or search powers under Part [2](#) or [3](#) of the Act were exercised without a warrant
- applications for an examination order that were granted or refused
- persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by the exercise of a warrantless search or surveillance power or by an examination conducted under an examination order.

(s[170](#))

## Annual reporting of declaratory order applications

The Commissioner must also include this information about declaratory order applications in the Annual Report:

- the number of applications that were granted or refused
- the number of declaratory orders relating to the use of a device, technique, procedure or activity, and the number in respect of each device, technique, procedure or activity
- in respect of each declaratory order made, a general description of the nature of the device, technique, procedure, or activity covered by the order
- the number of persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by carrying out activities covered by a declaratory order made in the period covered by the report.

(s[170](#) & [164](#))

## What is not required to be included in the Annual Report

The Commissioner is not required to include in any Annual Report, information about:

- a rubdown search undertaken in conjunction with a person's arrest or detention
- any search of a person in lawful custody undertaken under section 11 (i.e. when locked up in Police custody) or under the Corrections Act 2004
- the exercise of any power of entry that does not also confer a power of search (e.g. warrantless entry to prevent offence or respond to risk to life or safety ([s14](#)))
- a search undertaken by consent
- any prescribed search or surveillance, or search or surveillance of a prescribed kind, in any prescribed area or an area of a prescribed kind.

(s[169\(4\)](#))

There is no statutory requirement for the Commissioner to include in any Annual Report search information about:

- search warrant reports, search warrant applications or their execution
- searches of people that are not required to be notified to the Commissioner (e.g. rub-down search of person incidental to their arrest or detention([s169](#))).

Production orders are not required to be included in the annual report.

## **Part 15 - Government agency requests for assistance with search warrants and production orders**

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## Overview

### Purpose of this chapter

This chapter details procedures for:

- requests from agencies having no power to apply for search warrants or production orders to have Police obtain either a search warrant or production order
- assisting law enforcement agencies that can apply for search warrants to execute their search warrants.

### Principles of cooperation

Agencies with investigative and prosecution functions, but no statutory search and production powers (e.g. Ministry of Social Development) work closely with Police. The way in which Police and each agency works together is to be detailed in a schedule titled 'Agency requests for assistance with search warrants and production orders' to the Memorandum of Understanding between Police and the agency concerned.

These guiding principles apply to the agency making the request and Police:

- The agency concerned has the lead for the investigation and prosecution of suspected breaches of legislation under their responsibility and control
- If Police apply for a search warrant or production order, Police is the lead agency for:
  - applying for and executing search warrants and production orders
  - seizure of evidential material, receiving produced documents, custody and disposal of evidential material
- Police and the agency:
  - will work cooperatively to ensure appropriate and authorised information is provided in a timely manner
  - coordinate internal procedures to ensure efficient information flows
  - will incur their own personnel costs, but when extensive hardware costs are incurred by Police (e.g. considerable number of documents to be photocopied, electronic hardware associated with forensic copying etc.), then the agency will reimburse Police for the agreed costs
- Police and the agency will actively seek to exchange information and research where such exchange is likely to inform the:
  - investigation into suspected offences
  - application and execution of search warrants
  - application for production orders and receipt of produced documents
  - management of seizure, production, custody and disposal of evidential material
  - prosecution of suspects
- Police and the agency will ensure that the requirements of the:
  - [Privacy Act 2020](#) are met when exchanging personal information about individuals
  - [Search and Surveillance Act 2012](#) are complied with when applying for and executing search warrants and seizing evidential material; applying for production orders and receiving produced documents; and custody and disposal of evidential material

### Potential risk of litigation

As with any power Police exercise, search and seizure powers must be exercised both lawfully and reasonably. A failure to take care in this area not only jeopardises prosecutions by exclusion of evidence, it also exposes Police to significant civil liability. When another agency is involved, particular care should be taken.

For example, in [Van Essen v A-G](#) [2013] NZAR 917 (HC), Police were required to pay damages to Mr Van Essen arising from a Police search of his home on behalf of ACC. Among other things:

- Police did a poor job of drafting the search warrant applications which didn't meet the minimum standards required. The Judge observed that the almost rote adoption of affidavits drafted by ACC raised serious doubts about the independence of police in the mind of an objective observer;
- Police failed to actively manage the actual and apparent conflict of interest by allowing the son-in-law of the ACC informant to be the O/C preparing the application;
- Personal information and some information that was irrelevant to the alleged criminal activity was seized;

- Police didn't directly supervise a private investigator engaged by ACC who assisted with the search;
- Police improperly handed over seized items to a private investigator engaged by ACC and some of the seized items were lost or unaccounted for.

## Conflicts of interest

Police employees must avoid situations that might compromise, directly or indirectly, their impartiality or otherwise call into question their ability to deal with an agency's request for assistance with a search warrant or a production order in a fair and unbiased manner. For example, where the employee is related to the investigator of an agency requesting assistance, or related to a person who is the subject of the investigation.

The employee must inform their manager where any actual or perceived conflict of interest could arise and arrangements made for another constable to be assigned. **Note:** See the [Managing conflicts of interest](#) chapter and the references to conflicts of interest in the [Code of Conduct](#).

## Related information

See also these Search chapters:

- [Part 2 - Search warrants](#)
- [Part 5 - Carrying out search powers with or without a warrant](#)
- [Part 9 - Production orders](#)
- [Part 12 - Procedures applying to seized and produced things](#)
- [Part 13 - Privilege and immunities under the Act](#)
- [Part 14 - Reporting](#)

## References to "the Act"

All statutory references in this chapter are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

## Meaning of acronyms

This table provides the meaning of acronyms used in this chapter.

<b>Acronym</b>	<b>Meaning</b>
ACC	Accident Compensation Corporation
CIB	Criminal Investigation Branch
DFR	Digital First Responders are Districts' key contacts with the DFU.
DFU	Digital Forensic Unit
Director: NCIG	Director: National Criminal Investigations Group
DMCI	District Manager: Criminal Investigations
DFR	Digital First Responders - these are Districts' key contacts with the DFU
FMC	File Management Centre
HTCG	<u>High Tech Crime Group</u>
MoH	Ministry of Health
MOU	Memorandum of Understanding
MSD	Ministry of Social Development
NIA	National Intelligence Application
NCIG	National Criminal Investigations Group
NLO	Nominated Liaison Officer ( <i>nominated by DMCI</i> )
PROP	Police Register of Property
O/C	Officer in Charge
SW	Search warrant

## Requests from government agencies with no power to apply for a search warrant or production order

### Assisting government agencies without statutory search and production powers

Some agencies such as the Ministry of Social Development (MSD), Ministry of Health (MoH) and Accident Compensation Corporation (ACC) have investigative functions, but cannot apply for their own search warrant or production order under the Act.

### Requests made to districts

Requests from such agencies for Police to apply for and execute a search warrant or production order on their behalf, must be made to either:

- the District Manager: Criminal Investigations (DMCI), or
- a nominated liaison officer (NLO) in each district.

It is expected that the agency will initially contact the DMCI or NLO to discuss the proposed search warrant or production order. That will be followed by the agency sending an electronic search warrant or production order request. See [documents required for all requests](#).

**Note:** If the request is accepted, Police will apply for the search warrant or production order on behalf of the agency, command the execution, and manage the seizure or production and custody of evidential material. If items are not transferred to the agency under section [90](#) because it is not a "law enforcement agency", Police will be responsible for the ongoing custody and subsequent disposal of those seized items.

### Considering requests

Requests from other agencies for Police to make an application must be carefully considered.

### Criteria to be met before provisionally approving requests

Before making a decision on the request, the DMCI or NLO must be satisfied these criteria are met:

- the application is justified and meets all legislative requirements
- the request and the making of an application are in accordance with any [MOU](#), letter of agreement or other protocol that may exist between that agency and Police
- the assessed risk of execution can be safely managed
- the workload involved with the application (making the application, the number of warrants or orders and their execution, seizure, receipt of produced documents, storage, management and disposal of seized or produced items) is manageable with other law enforcement commitments
- operational priorities impacting on Police at the time are not compromised.

### Decision and timeframes for reply

The decision whether to provisionally approve, delay or decline the request must be given in writing as soon as practicable to the agency making the request. Reason(s) must be given if the decision is to delay or decline the request. The decision and reply should not exceed 14 days from receipt of initial request. Requests not actioned within 30 days and subject to further delay must be notified to the agency investigator in writing.

**Note:** Provisional approval is always subject to the applicant (constable who signs the application) being satisfied that the grounds for applying for the search warrant have been established.

### Urgent requests

If the request from the agency is "urgent", there must be supporting information explaining why an application for and the execution of a search warrant or production order is required urgently.

The process for urgent requests is the same as a standard request, except that the decision to provisionally approve, delay or decline the request must be made and advised orally to the agency as soon as practicable and no later than 3 days from the receipt of the initial request. Any decision advised orally to the agency must be followed-up in writing immediately.

## Dispute resolution

Where a decision made at a district level remains in dispute between that district and the agency, the matter must be resolved as agreed in a Memorandum of Understanding ([MOU](#)) and any accompanying schedule between Police and the agency. If no MOU or Letter of Agreement exists, the dispute may be elevated by the district or agency to the Director: National Criminal Investigations Group and the agency's equivalent level manager for resolution.

## Case Management

The DMCI or NLO must ensure the initial request is:

- the trigger which leads to the creation of a [NIA](#) case
- correctly assigned in [NIA](#):
  - to the constable responsible for the application phase, or their supervisor if provisional approval is given, or
  - if the decision is to delay or decline the request, to themselves while the case pre-closure requirements before inactivation or filing are met.

Refer "[Guidance for completing NIA entry](#)".

See the [Case management](#) chapter for more information about recording, managing, monitoring and disposal of [NIA](#) cases.

## Request, decision and managing assignment

(Applies to searches being undertaken with government agencies that have no power to apply for search warrants or production orders)

### Decision outcomes

Term	Meaning
<b>(Provisionally Approved)</b>	The application and execution will be arranged as soon as resources and logistics can be organised between the agency and Police and subject to the officer who is assigned the matter being personally satisfied that the application is appropriate.
<b>Deferred ("Deferred, resubmit your request after ...")</b>	The request and application meet the legislative and protocol requirements, but cannot be accepted at this time because of factors such as risk, resource availability, and/or other operational priorities and commitments. Agency to resubmit request after a given time period.
<b>Declined</b>	The request and application fail to meet the legislative, protocol, risk, workload or operational criteria set by Police.

### Process for submitting and considering requests

Follow this process for considering requests from agencies to have Police apply for a search warrant or production order and managing assignments.

Step	Action (DMCI or NLO unless otherwise stated)						
1	The agency prepares the request and all accompanying documents. (See <a href="#">required request details</a> below).						
2	The agency's investigator and the DMCI or NLO in the geographical area where the intended search warrant is to be executed or in the case of multiple warrants or production order, the area from where the search or production coordination is to be managed, meet to discuss: <ul style="list-style-type: none"> <li>- the request for Police assistance</li> <li>- operational implications arising from the request</li> <li>- cost recovery in relation to:               <ul style="list-style-type: none"> <li>- resources to be used</li> <li>- photographing evidential material, copying documents or creating forensic copies of electronic data.</li> </ul> </li> </ul>						
3	Consider the request and determine whether the <a href="#">criteria to be met before provisionally approving requests</a> are satisfied.						
4	Notify the agency's investigator of the <a href="#">decision</a> to provisionally approve, defer or decline. The decision and reply to: <ul style="list-style-type: none"> <li>- a standard request should be made in writing within 14 days of receipt of the request</li> <li>- an urgent request should be made orally within 3 days of receipt of the request and followed-up in writing.</li> </ul> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; padding: 5px;"><b>If the decision is:</b></td> <td style="width: 90%; padding: 5px;"><b>then:</b></td> </tr> <tr> <td style="padding: 5px;">Deferred</td> <td style="padding: 5px;">a reason and an approximate time period for the deferral must be given, so the agency can review their investigation/request, make changes if necessary, update the documentation as circumstances change during the intervening period, and resubmit their request for further consideration after the deferral period expires.</td> </tr> <tr> <td style="padding: 5px;">Declined</td> <td style="padding: 5px;">a reason must be provided to the agency for the decision.</td> </tr> </table>	<b>If the decision is:</b>	<b>then:</b>	Deferred	a reason and an approximate time period for the deferral must be given, so the agency can review their investigation/request, make changes if necessary, update the documentation as circumstances change during the intervening period, and resubmit their request for further consideration after the deferral period expires.	Declined	a reason must be provided to the agency for the decision.
<b>If the decision is:</b>	<b>then:</b>						
Deferred	a reason and an approximate time period for the deferral must be given, so the agency can review their investigation/request, make changes if necessary, update the documentation as circumstances change during the intervening period, and resubmit their request for further consideration after the deferral period expires.						
Declined	a reason must be provided to the agency for the decision.						
5	<a href="#">Record the agency's request</a> and application as an electronic <a href="#">NIA</a> docloc case (follow the link to the guidance below). <p><b>Note:</b> If the investigation is of a confidential nature, the identity of the person being investigated and the location or identity of the place, vehicle or thing to be searched must not be disclosed on the file or recorded in NIA. It must be recorded by the DMCI or NLO in a secure folder.</p>						
6	<b>If the decision is:</b> <a href="#">the DMCI or NLO...</a> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 5px;">(provisionally) approved</td> <td style="width: 80%; padding: 5px;">assigns and submits the file to the O/C <a href="#">CIB</a> Area where the application is to be made and the warrant executed</td> </tr> <tr> <td style="padding: 5px;">deferred</td> <td style="padding: 5px;">submits the file to the <a href="#">FMC</a> for inactivating, so the file can be reactivated later if the status changes.</td> </tr> <tr> <td style="padding: 5px;">declined</td> <td style="padding: 5px;">submits the file to the <a href="#">FMC</a> for filing.</td> </tr> </table>	(provisionally) approved	assigns and submits the file to the O/C <a href="#">CIB</a> Area where the application is to be made and the warrant executed	deferred	submits the file to the <a href="#">FMC</a> for inactivating, so the file can be reactivated later if the status changes.	declined	submits the file to the <a href="#">FMC</a> for filing.
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deferred	submits the file to the <a href="#">FMC</a> for inactivating, so the file can be reactivated later if the status changes.						
declined	submits the file to the <a href="#">FMC</a> for filing.						

## Guidance for completing the NIA entry

When recording an agency's request and application as an electronic [NIA](#) docloc case:

- on the first Occurrence detail entry screen:
  - Subject must = "Non-enforcement agency [SW](#) request" or "Non-enforcement agency [PO](#) request"
  - Description must = "[SW](#) request from *name of agency/location of agency*" e.g. SW request from MSD Napier office, or "[PO](#) request from *name of agency/location of agency*" e.g. PO request from MSD Napier office

- Occurrence narrative - ensure that the name and contact details of the agencies' investigator is entered in this field.
- Occurrence address = Police DHQ address where the request is received
- Inc/Off code = "2Z - Other service request"
- Link to the NIA occurrence:
  - the person/s, places, vehicles etc in the agency's investigation
- Attach documents received with the request to the NIA occurrence as appropriate.

**Note:** Subject, Description and Inc/Off code must be entered as above to assist with national monitoring/reporting on these types of requests.

## Managing the assignment

The O/C CIB Area is responsible for managing the assignment of the agency's request from receipt of approval given by the DMCI or NLO.

Step	Action (O/C <u>CIB</u> Area)
1	<p>Arrange for a suitable officer(s) to:</p> <ul style="list-style-type: none"> <li>- be assigned the request file</li> <li>- conduct the planning and risk assessment</li> <li>- apply for a search warrant or production order</li> <li>- carry out the execution and reporting of the search warrant or production order</li> <li>- take responsibility for the seizure, production, storage, custody and disposal of exhibits (evidential material).</li> </ul> <p>Note: Be aware of actual or potential conflicts of interest before assigning the request file. See also:</p> <ul style="list-style-type: none"> <li>- paragraph titled '<a href="#">Conflicts of interest</a>' in this chapter; and</li> <li>- the '<a href="#">Managing conflicts of interest</a>' chapter and information on conflicts of interest in the <a href="#">Code of Conduct</a>.</li> </ul>
2	Ensure the above tasks are progressed in a timely manner.

## Documents required for all requests

Requests for Police to apply for and execute search warrants or production orders on an agency's behalf must be emailed with the following documents attached:

- draft agency affidavit that includes information under the following headings:
  - the suspect(s)' identity (including date of birth if known)
  - the alleged offending (including statutory references for each offence) and relevant information to support the allegation
  - in relation to search warrants:
    - the place, vehicle, thing or facility to be searched and its location
    - a description of evidential material being searched for and why it is evidential material in relation to the alleged offending
    - facts or information indicating that the evidential material will be found in the proposed search
  - in relation to production orders:
    - the name and address of the person, (including body corporate or, unincorporated body) it is proposed should be subject to production
    - a description of the documents to be produced and why they are evidential material in relation to the alleged offence
    - facts or information that show the documents are in the possession of the person or under their control
    - how it is proposed that the production occurs
  - additional information in relation to both types of proposed applications:
    - any information relevant to whether any material to be searched, seized or produced could be protected by any of the privileges recognised by section [136](#) of the Act.

- all other relevant information, whether helpful or not.
- covering report that includes information about:
  - contact details of the agency and agency's investigator
  - the facts established by the agency's investigation to date, without reference to any suspicions or beliefs held by the investigator
- in relation to search warrants; profile of target address, vehicles, or things to be searched including occupiers or other persons who may be present
- in relation to production orders; profile of target person, body corporate, or unincorporated body
- agency's pre-search risk assessment of:
  - **threat** - includes intent, capability, opportunity and the physical environment
  - **exposure** - includes safety of agency staff, Police and the public and security of the operation
  - **necessity** - whether to act now, later or not at all
- any other documents containing information that may assist the application and execution phases.

**Notes:**

- The assigned constable must consider whether they can form the required levels of suspicion/belief from the information supplied by the agency and other information obtained when considering the request (e.g. information from NIA, other Police sources etc.). If any shortfalls cannot be rectified after discussion with the agency, the assigned constable must not make the application. Assigned constable to advise supervisor and other agency that there is insufficient evidence to proceed with an application to an issuing officer and therefore the request is **declined**.

See:

- **Appendix 1 - Information required by Police for search warrant** for further guidance about what information is required from the requesting agency
- **Appendix 2 - Information required by Police for production order** for further guidance about what information is required from the requesting agency.

# Application, planning and risk assessment

(Applies to government agencies that have no ability to apply for search warrants or production orders)

## Application process

The assigned constables must follow these steps:

Step	Action (assigned constable(s))
1	<p>Discuss with the agency's investigator their investigation, search or production planning, resource impact, application for and execution of the search warrant or production order, and subsequent seizure, production, storage, and disposal of evidential material. Have them finalise and swear their draft affidavit.</p> <p><b>Note:</b> You must personally be satisfied that the grounds for the warrant or order application are justified and other legislative requirements for the warrant or order are met. If you are not and the agency is unable to provide additional material to meet any shortfalls, do not make the application. Instead, advise the agency's investigator and your supervisor.</p>
2	<p>Be aware of recognised privileges under section <a href="#">136</a> of the Search and Surveillance Act 2012. Privileged communications or information may not be searched. Consult with your legal adviser in the usual way over any privilege issues.</p>
3	<p>Complete an application for search warrant or production order in the usual way.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- remember the application is yours and it should contain all relevant information and your suspicions of an offence and belief that evidential material is obtainable, not simply the suspicions of the agency's investigator</li> <li>- do not simply cut and paste the entire contents of the agency's affidavit to your application for warrant or order. You can of course cut and paste selected information that is relevant.</li> </ul>
4	<p>In relation to a search warrant application disclose:</p> <ul style="list-style-type: none"> <li>- functions and responsibilities of constables and assistants from the agency relating to entry, containment, search, seizure, and securing the scene and evidential material</li> <li>- how the search warrant is to be executed</li> <li>- if the search warrant is to be executed covertly, indicate this at paragraph 8 on the application and at the same time apply to postpone the notice and inventory requirements. (Use form <a href="#">POL SZ1</a> for application and order in Police Forms&gt; Search and Surveillance&gt; Seizure Forms).</li> </ul> <p><b>Note:</b> If to be executed covertly both the search warrant application and the postponement application must be made to a District Court Judge.</p>
5	<p>Print the search warrant or production order application, attach the agency's finalised and sworn affidavit as an annex and apply to an issuing officer.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>- The applicant must be a constable and the warrant or order made out to every constable.</li> <li>- The agency's investigator should be contactable when the application is lodged, so you can contact them about any queries raised by the issuing officer about the investigation.</li> </ul>
6	<p>See these parts of the Search chapter relevant to applying for and the issuing of search warrants and production orders:</p> <ul style="list-style-type: none"> <li>- <a href="#">Part 2 - Search warrants</a></li> <li>- <a href="#">Part 9 - Production orders</a>.</li> </ul>

## Planning and risk assessment process

Assigned constables must plan the search or production and take into account:

- **In relation to both search warrant and production order planning** decide/consider:

- whether a search warrant or production order should be sought for use in the given case
- a **community impact assessment** to:
  - avoid compromising or undermining wider community support, confidence and reassurance, and
  - eliminate or minimise the adverse impact on vulnerable people, community and interest groups
- assistant(s), case information and any equipment required from investigative agency to assist with planning and conducting the search or production
- appropriate timing with executing the search warrant or receiving produced documents
- operational and human resources required
- any Police interest in the same target that may involve dual investigation.

- **In relation to search planning:**

- - prepare the 'Planned Action Risk Assessment and CARD Prompt'. See '[Risk assessment when planning searches](#)' in 'Search Part 5 - Carrying out search powers with or without warrants' for risk assessment procedures when planning searches
  - consider tactical approach regarding entry (announced/unannounced), use of force, identification requirements, detaining people at the scene, securing scene, search method, seizing and securing evidential material, notice and inventory requirements).

**Note:** There must be at least one investigator from the requesting agency present during the search.

## Related information

See also:

- 'About production orders' in [Part 9 - Production orders](#)
- '[Procedure for planning searches](#)' in [Part 5 - Carrying out search powers with or without a warrant](#)
- [Community Impact Assessments \(CIAs\)](#) for information about completing a community impact assessment.

## Minimise resource impact on Police

When planning the application for and execution of the warrants or orders for other agency investigations, and the storage, custody, management and disposal of evidential material, you must minimise the resource impact on Police. Where practicable, the agency's resources must be used (under Police supervision) ahead of Police resources. For example:

- use agency staff as assistants to assist with the search, rather than deploying constables for this function
- ensure sufficient agency staff assist so that the search is completed more quickly and enables the early release of Police resources.

## Executing search warrant and receiving produced documents

(Applies to government agencies that do not have the ability to apply for a search warrant or production order)

### Executing search warrant

The assigned officer exercising the search power must follow these steps:

Step	Action
1	Request the agency investigator and any other person from the agency to assist with undertaking the search.
2	Hold a combined briefing for agency staff and police before executing the search warrant.  <b>Notes:</b> <ul style="list-style-type: none"> <li>- Under the Act Police are responsible for the execution of the warrant and subsequent seizure, custody and disposal of evidential material</li> <li>- The agency retains responsibility for the ongoing investigation (interviews etc.) and any subsequent prosecution.</li> </ul>
3	Execute search warrant at a time agreed with the requesting agency.
4	Ensure statutory obligations under sections <a href="#">131</a> and <a href="#">133</a> are met by following standard Police procedures for: <ul style="list-style-type: none"> <li>- entry, announcement and identification (before or on initial entry)</li> <li>- giving notice and providing an inventory after search or seizure.</li> <li>- See Part 5 - <a href="#">Carrying out search powers with or without warrants</a> in the Police Manual.</li> </ul>
5	Use the agency staff as assistants under section <a href="#">113</a> . In that capacity, they are subject to the control of the person in charge of the search and may: <ul style="list-style-type: none"> <li>- enter and search the place, vehicle or thing specified in the warrant</li> <li>- seize specified evidential material</li> <li>- while under direction of the assigned officer exercising the search power, use force in respect of property that is reasonable in the circumstances to enter and break open or access any area.</li> </ul> <b>Note:</b> The assigned officer exercising the power must accompany any assistant on the first occasion when the assistant enters the place, vehicle or other thing to be searched and provide supervision as is reasonable in the circumstances ( <a href="#">s113</a> ).
6	Any person found or who arrives at the place, or stops at, or enters, or tries to enter or get into or onto the vehicle being searched may: <ul style="list-style-type: none"> <li>- be detained by police for the purposes of determining their connection with the object of the search while the search is being carried out (<a href="#">s118</a>)</li> <li>- be searched by a constable who has reasonable grounds to believe that the specified evidential material is on that person (<a href="#">s119</a>).</li> </ul>

Step	Action
7	<p>Ensure that all activity undertaken during the search is reasonable and can withstand judicial scrutiny. For example, if offences other than those being investigated by the agency and specified in the warrant are discovered, use your discretion when deciding whether or not to exercise other search powers, e.g. seizure of items in plain view (s123) during the agency's search and to initiate a separate Police investigation.</p> <p>Do not:</p> <ul style="list-style-type: none"> <li>- use the agency's search to circumvent the rules or obligations required for Police searches under the Search and Surveillance Act 2012</li> <li>- extend Police enforcement practices to the point where the activity may be considered as being unreasonable.</li> </ul>
8	<p>If a plain view seizure is undertaken by Police during the search under the warrant (i.e. outside of the specified scope of the warrant) you must:</p> <ul style="list-style-type: none"> <li>- appoint a separate O/C Exhibits if more than one Police officer is present</li> <li>- notify the occupier, owner or person present of the reason for the seizure and your authority for exercising the seizure power</li> <li>- make it clear to that occupier, owner or person present that a separate Police investigation is underway as a result of the plain view seizure.</li> </ul>
9	Update the search and surveillance system with the outcome of executed search warrant and of any warrantless search powers exercised during the search (e.g. plain view seizure).
10	Submit a search warrant report if required by issuing officer.
11	<p>Debrief the execution of the search warrant with the agency, with a particular focus towards lessons learned for future search warrant operations.</p> <p><b>Note:</b> Provide feedback to the District Manager Criminal Investigations about any issues identified at the debrief. Issues of national significance must be notified to the Director: National Criminal Investigations Group.</p>

**Note:** Be aware of conflicts of interest of Police staff and agency staff assisting before executing the search warrant. See the [Managing conflicts of interest](#) chapter and references to conflicts of interest in the [Code of Conduct](#).

## Executing production order

The assigned officer exercising the production power must follow these steps:

Step	Action
1	See ' <a href="#">Executing production orders</a> ' in Part 9 - Production orders and follow the guidance for execution.
2	<p>Debrief the execution of the production order with the agency, with a particular focus towards lessons learned for future production order operations.</p> <p><b>Note:</b> Provide feedback to the District Manager Criminal Investigations about any issues identified at the debrief. Issues of national significance must be notified to the Director: National Criminal Investigations Group.</p>

## Procedures applying to seized or produced things

(Applies to searches being undertaken with government agencies that do not have the ability to apply for a search warrant or production order)

### Introduction

The Act imposes obligations on Police in relation to things seized or produced, including in relation to custody ([s150](#)), retention and return (ss[150 & 153](#)), and disposal (ss[149, 160 & 161, 163](#)). In addition, Police have to deal with privilege claims (ss[142 - 147](#)), applications for access or release (ss[156 - 159](#)), or disputes over ownership ([s154](#)).

If an item that has been seized or produced is transferred to a law enforcement agency or officer engaged by that agency, those obligations must then be carried out by the agency or officer the items were transferred to ([s90](#)).

The position is different if seized or produced items are transferred to an agency that is **not** a law enforcement agency. If seized or produced items were to be transferred to an agency that is not a law enforcement agency, Police would still be subject to the same obligations in respect of those items. For this reason, original exhibits will remain with Police and only copies will be provided to the other agency for investigative purposes.

### Law enforcement agencies

A “law enforcement agency” is defined by the Act as a department of State, Crown entity, local authority, or other body that employs or engages enforcement officers as part of its functions.

An “enforcement officer” is a constable or any person authorised by an enactment specified in column 2 of the Act’s[Schedule](#), or by any other enactment that expressly applies any provision in Part [4](#) of the Act, to exercise a power of entry, search, inspection, examination, or seizure.

An example of a law enforcement agency is Customs which employs Customs officers who have a number of powers listed in the Schedule.

An example of an agency that is not a law enforcement agency is ACC.

### Uncertain status of some agencies

These section 3 definitions of “law enforcement agency” and “enforcement officer” raise doubt whether MSD and MoH, both agencies with investigative and prosecutorial functions, are law enforcement agencies. While those agencies might have enforcement officers, they are enforcement officers for unrelated purposes. For example, Medical Officers of Health appointed under the Health Act 1956 have a variety of special enforcement powers that do not appear to extend to making application for and executing search warrants for matters that Police might be asked to seek a search warrant for.

Until the legislation is amended or a court judgement clarifies the narrow definitions in the Act, those agencies will not be treated as law enforcement agencies when they request assistance with search warrants and production orders. The practice will be that Police will carry out the functions of seizure, production, forensic copying in the case of electronic data, custody, storage and disposal of seized things.

### O/C Exhibits

The O/C Exhibits must follow these steps when seizing or receiving produced evidential material for non-law enforcement agencies:

Step	Action
1	<p>Liaise with the agency's investigator to establish:</p> <ul style="list-style-type: none"> <li>- contact point</li> <li>- ongoing progress of investigation</li> <li>- when seized or produced things should be disposed of.</li> </ul>
2	<p>Record what was seized or produced (inventory of items) in the Police Register of Property (PROP). See the '<a href="#">Exhibit and property management</a>' chapter for procedures for handling and managing exhibits coming into Police possession.</p> <p>If a substantial number of items are seized or produced, use an assistant from the agency to assist with labelling, PROP recording and subsequent securing of exhibits into Police custody.</p>
3	<p>In the case of executed search warrants:</p> <ul style="list-style-type: none"> <li>- See 'Procedure when exhibit is received' in the part '<a href="#">Receiving property and exhibits</a>' of the '<a href="#">Exhibit and property management</a>' chapter</li> <li>- Prepare '2Z' file with reference to PROP and exhibits</li> <li>- If required, apply to the District Court to further postpone notice and inventory requirements, using POL SZ2 (includes application and order) located on Police Forms. (<a href="#">s135</a>)</li> </ul>
4	<p>Receive claims of privilege in relation to any thing seized or produced and inform the agency of the claim.</p> <p>Apply to the court for determination of the claim using the appropriate application for determination of status or claim of privilege under section <a href="#">145</a> or <a href="#">146</a> liaising with the agency. (Forms located in Police Forms POL PR1, PR2, PR3 and PR4)</p>
5	<p>Secure and retain custody of seized or produced evidential material (exhibits).</p> <p>See also procedures for <a href="#">evidential material that includes electronic data</a> below.</p>
6	<p>With the assistance of the agency, review the evidential material seized or produced and supply copies of documents and photographs of evidential material that will enable the agency to continue their investigation, decide the outcome and if required, prepare their prosecution case.</p> <p>Keep a record of all copies provided to whom and why by following the POL SZ19 (form) request process (see steps 5 and 6 in the <a href="#">table below</a>).</p> <p>The original evidential material including forensic copies of electronic data must remain with Police.</p>
7	<p>Organise expert examination of retained evidential material on behalf of the agency if required, e.g.:</p> <ul style="list-style-type: none"> <li>- document examination for handwriting etc.</li> <li>- fingerprint examination</li> <li>- electronic searches and forensic copying data (see <a href="#">evidential material that includes electronic data</a> below).</li> </ul>
8	<p>Ensure inventory of items, receipts, storage, chain of custody and disposal are fully documented.</p> <p><b>Note:</b> The O/C Exhibits will be required as a witness for the agency's prosecution.</p>
9	<p>Communicate with and consider advice from the agency's investigator if any application for access to or release of seized or produced thing(s) is made.</p> <p><b>Note:</b> Police are responsible for dealing with the application and corresponding with the applicant, not the agency.</p>
10	If required, apply for extensions of time for holding thing(s) seized or produced and directions as to ownership or holding of seized things.
11	Instigate PROP record and "2Z" file closure when final disposal of seized or produced thing(s) has been effected.

## Evidential material that includes electronic data

In addition to following the steps outlined in the table under [O/C Exhibits](#), follow these steps if the warrant or order applies to evidential material that includes electronic data.

Step	Action
1	<p>See the ‘Searching for and seizing computer material’ in the <a href="#">‘Carrying out search powers with or without warrants’</a> Search chapter for information about:</p> <ul style="list-style-type: none"> <li>- what computer material can be searched for and seized under the Act</li> <li>- requirements when searching computers with or without a warrant</li> <li>- procedures for remote access searches</li> <li>- the principles that must be applied to all data evidence gathering.</li> </ul> <p><b>Note:</b> All remote access search warrant applications and searches must be forwarded to the Police Digital Forensic Unit (DFU) within the <a href="#">High Tech Crime Group at PNHQ</a>. Specialist knowledge with remote access searches in this process is required to ensure national and international laws are observed.</p>
2	<p>Use the digital first responder (DFR) from your district as an assistant to identify and search for the electronic data. The DFR may provide an onsite (search warrant) or station (search warrant or production order) preview (if achievable) with the agency’s investigator and preserve electronic evidence.</p>
3	<p>The DFR may arrange an achievable preview (to view and determine what is to be copied into a master and working copy) of electronic data by the agency’s investigator to:</p> <ul style="list-style-type: none"> <li>- copy only data believed to be evidential material of the suspected offence for which the warrant was issued:           <ul style="list-style-type: none"> <li>- at the scene, or</li> <li>- at station, or</li> </ul> </li> <li>- seize (under search warrant) the electronic device for submitting to the DFU to have electronic data copied.</li> </ul>
4	<p>If the DFR arranges a preview and forensic copying of electronic data either at the scene or at the station, then the master copy and working copy(s) of electronic data are to be sent to the O/C Exhibits for:</p> <ul style="list-style-type: none"> <li>- storage</li> <li>- responding to any requests (POL SZ19, see steps 5 and 6 below) for a working copy from the requesting agency</li> <li>- evidential purposes</li> <li>- subsequent disposal.</li> </ul>
5	<p>Requesting agency must prepare original and two copies, and sign Police form ‘Request to transfer things from Police to other agencies’ (POL SZ19) for working copies of electronic evidence. (POL SZ19 located in Police Forms&gt; Search and Surveillance&gt; Seizure Forms)</p>
6	<p>O/C Exhibits:</p> <ul style="list-style-type: none"> <li>- ensures the form is correctly completed</li> <li>- checks those conditions listed in POL SZ19, and those that are not:           <ul style="list-style-type: none"> <li>- applicable, identified for deletion</li> <li>- shown on the form, but in the circumstances are required to be added under paragraph 4</li> </ul> </li> <li>- signs the original and two copies of the POL SZ19 with the decision:           <ul style="list-style-type: none"> <li>- ‘approved’ - (arrange secure delivery of working copy to requesting agency)</li> <li>- ‘returned’ (must outline what needs to be amended and/or conditions acceptable to Police in writing)</li> <li>- ‘declined’ (must outline the reasons for declining the request in writing).</li> </ul> </li> </ul> <p><b>Note:</b> Original signed POL SZ19 to file, one copy to property record sheet exhibit records and a second copy returned to the requesting agency advising the decision of the request.</p>

7	<p>If the DFR or O/C Exhibits seizes an electronic device for forensic copying by the DFU, then follow the steps in the <a href="#">Preservation and recovery of electronic evidence</a> chapter for locating, securing, packaging and submitting electronic evidence from:</p> <ul style="list-style-type: none"> <li>- stand-alone computers</li> <li>- networked or business computers</li> <li>- cell phones</li> <li>- other electronic devices</li> <li>- non-electronic devices.</li> </ul> <p><b>Note:</b> Using the DFR will ensure the procedures outlined in the <a href="#">Preservation and recovery of electronic evidence</a> chapter are satisfied.</p>
8	<p>Send the electronic devices (e.g. computer systems, data storage facilities, USB sticks, I-pads, smart phones) after being suitably packaged to the DFU at Auckland, Wellington or Dunedin for forensic copying evidential material.</p> <p><b>Note:</b> Ensure a copy of the search warrant and contact details of the DFR, O/C Exhibits and agency's investigator are forwarded with the electronic device to the DFU.</p>
9	<p>Upon receipt of the electronic devices, an employee at the DFU may contact the O/C Exhibits or DFR to arrange a preview (if achievable) of electronic data contained in the electronic device with the agency's investigator. The preview is to:</p> <ul style="list-style-type: none"> <li>- be conducted in a private viewing room at the DFU to determine what is evidential material</li> <li>- determine what is to be copied (note, only data believed to be evidential material of the suspected offence for which the warrant or order was issued is to be copied).</li> </ul>
10	<p>DFU supervisor to ensure the master and working forensic copies of the electronic data is sent to the O/C Exhibits for:</p> <ul style="list-style-type: none"> <li>- storage</li> <li>- responding to any requests (POL SZ19, see step 6) for a working copy from the requesting agency</li> <li>- evidential purposes</li> <li>- subsequent disposal.</li> </ul>

## Related information specific to O/C Exhibits

For more detailed procedures:

- applying to seized things, see [Part 12 - Procedures applying to seized and produced things](#)
- when searches involve privileged material, see [Part 13 - Privilege and immunities under the Act](#).

## Assisting law enforcement agencies execute search powers

(Applies to searches and transfer of things being undertaken with law enforcement agencies that HAVE statutory search powers)

### Law enforcement agencies with statutory search powers

Law enforcement agencies other than Police have statutory powers under various Acts permitting their enforcement officers to apply for and execute search warrants or to exercise warrantless search powers.

These agencies are responsible for providing the personnel and resources required for searches. However, where there is reasonable concern for the safety of those undertaking the search, or Police have a common interest in the process, you may be called on to assist. Do so only if operational requirements permit unless the search provision expressly requires a Police presence.

### Approval of requests for assistance

A copy of the application for a search warrant and the actual signed search warrant must be attached to requests for Police assistance with searches.

The request must be considered and approved by a CIB supervisor of or above the position level of sergeant.

Before approving requests to assist with the execution of a search warrant, the supervisor must be satisfied that:

- the form and content of the warrant meets the requirements of section [103](#) (e.g. the warrant is signed and has not expired)
- risks associated with executing the search warrant have been assessed and measures necessary to mitigate the risk of harm to police and others identified. See [Risk assessment when planning searches](#) in “Part 5 - Carrying out search powers with or without warrants”.

### Roles and responsibilities during searches

If the assessment reveals no risk with executing the warrant, the agency seeking assistance will take the lead with executing the search. Your primary role will be to maintain a presence and prevent any breach of the peace.

Should the assessment reveal a risk and unarmed tactical groups, AOS or STG be required to enter, secure and contain the scene for the search to be safely conducted, these tasks must be commanded by Police. When the search scene is secured and contained, the agency will take charge of the search and seizure elements.

The search warrants will have been issued under an enactment other than section [6](#) of the Search and Surveillance Act 2012, so police assisting the agency must familiarise themselves with

- the search powers that exist under that other enactment, and
- the limitations of search powers that may be specified in column 4 of the [Schedule](#) to the Search and Surveillance Act 2012 or the empowering enactment itself.

### Plain view seizures by police during agency searches

If you undertake a plain view seizure, ensure:

- a constable is appointed as O/C Exhibits, being separate to the requesting agency's appointment
- notify the occupier, owner or person present of the nature of the search power being exercised and the authority for it
- make it clear to that occupier, owner or person present that a separate Police investigation is underway as a result of the plain view seizure.

### Transfer of things between law enforcement agencies

Things seized or produced to Police may be transferred to another [law enforcement agency](#). Use the ‘Transfer of things between law enforcement agencies’ form POL SZ18 found in Police Forms> Search and Surveillance> Seizure Forms.

**Notes:**

- The obligations under [Part 4](#) of the Search and Surveillance Act 2012 are transferred to the law enforcement agency after the transfer of the thing is carried out (s90).
- You may set conditions of the transfer on the POL SZ18.

## Criminal disclosure and requests for information

### Responsibility for criminal disclosure

The requesting agency is responsible for criminal disclosure under the [Criminal Disclosure Act 2008](#) during criminal proceedings brought by the agency.

### Requests for official and personal information

Responding to requests for official information under the [Official Information Act 1982](#) and personal information under the [Privacy Act 2020](#) is the responsibility of:

	<b>when the requested information relates to:</b>
<b>Police</b>	<ul style="list-style-type: none"> <li>- an application for a search warrant or production order made by Police</li> <li>- the briefing and execution of the search warrant or production order conducted by Police</li> <li>- the debrief of the Police execution of the search warrant or production order</li> <li>- the security and custody of seized or produced evidential material.</li> </ul>
<b>Requesting agency</b>	<ul style="list-style-type: none"> <li>- an application for a search warrant made by the agency</li> <li>- the briefing and execution of the search warrant, if led by the agency (limited to the execution, but does not include any investigation instigated by Police or any incident requiring a Police response during the execution)</li> <li>- the debrief, if the agency led the execution of the search warrant</li> <li>- the security and custody of seized evidential material by the agency</li> <li>- agency's investigation</li> <li>- agency's prosecution.</li> </ul>

## Managing media relating to agency requests for assistance

### Releasing information about the agency's investigation

Enquiries from the media for information about the agency's investigation must be directed to that lead agency for reply.

Police employees must not comment on the agency's investigation, nor on matters that are sub-judice.

### Releasing information about applications for and execution of search warrants

This table identifies the lead agency for responding to media requests for information in joint Police and agency operations.

<b>Releasing information to the media about...</b>	<b>is the responsibility of:</b>
applications for search warrants or production orders	<p><b>Police</b>- when the application is signed by a constable</p> <p><b>Requesting agency</b>- when the application is signed by a law enforcement officer from that requesting agency</p>
execution of search warrants	<p><b>Police</b> -</p> <p>when a request has been made for police assistance to execute the warrant involving 1 or more of these activities:</p> <ul style="list-style-type: none"> <li>- the application is signed by a constable</li> <li>- the place, vehicle or thing to be searched requires securing by police before the search can start (limited solely to securing and containing the search scene, when application is signed by requesting agency')</li> <li>- police presence is solely to prevent a breach of the peace, but an incident occurs involving police intervention (limited solely to the incident requiring police response when the application is signed by the requesting agency's investigator)</li> <li>- police instigating separate search powers from that authorised in the warrant and commencing a criminal investigation</li> </ul> <p><b>Requesting agency</b>-</p> <p>when a request has been made for police assistance to execute the warrant, and the search warrant application is signed by a law enforcement officer from that requesting agency, in which case, the agency will deal with the search of the place, vehicle or thing, except for that portion of the execution involving Police, which may have been, for example:</p> <ul style="list-style-type: none"> <li>- being required to secure and contain the search scene</li> <li>- being present to prevent any breach of the peace and intervening to keep the peace</li> <li>- instigating separate search powers from that authorised in the warrant and commencing a criminal investigation.</li> </ul>

**Note:** Never comment to the media before consulting with the agency. The same principle is expected to apply with the requesting agency.

## Related information

For further guidance about the media, see:

- [Dealing with the media](#)
- [Releasing information to the media](#)

For further information about requests for official and personal information or about criminal disclosure, see these chapters in the Police Manual:

- [Privacy and official information](#)
- [Criminal disclosure](#)

## Appendix 1 - Information required by Police for search warrant

Download the information to be included in the **draft agency affidavit to be provided to Police with request to apply for search warrant:**

 [Draft agency affidavit for search warrants \(1\).doc](#)

62 KB

## Appendix 2 - Information required by Police for production order

Download the information to be included in a **draft agency affidavit to be provided to Police with a request to apply for production order**.

 [Draft agency affidavits for production orders \(1\).doc](#)

55 KB

## **Part 16 - Property damage incurred during searches or exercise of statutory powers**

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## Overview

### Introduction

This chapter provides guidance on the approach that should be adopted when damage is caused by Police during the execution of [search warrants or statutory powers](#), or as a consequence of [warrantless entry in emergencies](#) where Police employees' actions could give rise to a claim against Police. It includes guidance on what should be done to [make damaged premises secure](#) without incurring Police liability for additional costs.

### Background

Occasionally the Police execution of search warrants or other statutory powers results in damage to property. This is usually as a result of the need to force entry to a privately owned building or space.

Such damage may result in claims being made against Police for the cost of repairs to the building, or for loss suffered as a result of the damage, for example, if premises are left unoccupied and insecure.

It is important that decisions around such claims are made in a consistent and principled way.

### Statement of principle

The method of entry and the manner which the search is conducted must be reasonable in all the circumstances, e.g. if the door is unlocked there is no justification in breaking it down. In cases where unjustified damage is caused in the execution of a search warrant or statutory power, compensation may be available. If damage caused is unreasonable in the circumstances it cannot be justified.

Such claims will be considered by the District Commander or National Manager on a case by case basis.

### Background

Occasionally the execution of search warrants or use of other statutory powers results in damage to property, usually as a result of forced entry to a privately-owned building or space.

Such damage may result in claims being made against Police for the cost of building repairs, or for loss suffered as a result of the damage, for example, if premises are left unoccupied and insecure and for example a burglary occurs.

It is important that Police responses to such claims are consistent and principled.

### Application

This chapter applies to any situation where damage is caused to property or loss is suffered as a result of the execution of a search warrant or use of some other statutory power.

The chapter is intended as a guide to employees. It does not prescribe the criteria by which claims will be determined.

### Immunity

To be immune from civil liability, Police employees need to conduct searches in a reasonable manner. ([§165](#))

### Related information

Further guidance on searches and financial delegations is available in these documents:

- Cabinet Office Circular [CO\(18\)2 – Proposals with Financial Implications and Financial Authorities](#) for information about departments seeking approval of proposals with financial implications such as expenses for compensation claims and ex gratia expenses
- [Financial delegations](#) chapter for information about the framework of financial delegated authority and financial restrictions within Police
- [Insurances](#) chapter for information about general/public liability insurance
- [Search](#) chapter for information about entry, search and seizure powers.

## Execution of search warrant or other statutory power

This topic provides guidance on the approach that should generally be applied to the consideration of claims for property damage resulting from the execution of search warrants and use of other statutory powers.

### General principle

Compensation will seldom be paid where access to a property to be searched is not possible without significant force, e.g. a heavily fortified gang pad that cannot be entered, except by forcing doors in. In such a case use of force and resulting property damage is necessary and reasonable. Any claims for property damage are consequential on a case by case basis.

### Damage caused to rental properties

Landlords and homeowners who have boarders generally carry the risk of damage to their properties as a result of Police actions responding to a tenant's activities.

Generally, the landlord or homeowner should mitigate against such risks by taking a bond or deposit and with appropriate insurance cover.

Police should refer the landlord or homeowner to their insurer or the Tenancy Tribunal.

### Damage to vehicles not being used by the owner

As for damage in rental properties [above](#), a vehicle owner generally carries the risk associated with the vehicle's use. Police may damage a vehicle in order to rescue an occupant. If damage was necessary to achieve the purpose, compensation will not be paid. The vehicle owner should be referred to their insurer.

### Mistakes when search warrants or powers are executed

In cases where a mistake is made in the execution of a search warrant or statutory power, for example where a search warrant is executed at a wrong address, then the default position is that compensation will be available in respect of any claim.

Such claims will be considered by the District Commander or National Manager on a case by case basis.

## Warrantless entry in emergencies

### Entry to prevent offence or respond to risk to life or safety

Under section [14](#) of the Search and Surveillance Act 2012 -

If you have reasonable grounds to...	you may...
<b>suspect</b> , in relation to a place or vehicle: <ul style="list-style-type: none"> <li>an offence is being, or is about to be committed, that would be likely to cause injury to any person, or serious damage to or serious loss of, any property, <b>or</b></li> <li>there is risk to the life or safety of any person that requires an emergency response</li> </ul>	<ul style="list-style-type: none"> <li>enter the place or vehicle without a warrant, <b>and</b></li> <li>take any action you have reasonable grounds to believe is necessary to:               <ul style="list-style-type: none"> <li>prevent the offending from being committed or continuing, or</li> <li>avert the emergency.</li> </ul> </li> </ul> <p><b>Note:</b> 'take any action' means take any action that is reasonable in the circumstances.</p>

Compensation will seldom be paid for any damage incurred by a constable forcing entry under section [14](#). The responsibility for the repairs lies with the owner or occupier. This is because damage arising is necessary and reasonable in the circumstances. In many cases the repair costs will be met by insurance cover.

## Claims for compensation

### Employees should not incur expenditure or commit to compensation

Police employees must not agree to expenditure on behalf of Police to rectify damage caused to any property in the execution of a search warrant or statutory power, as this may pre-empt the relevant District Commander's or National Manager's decision as to the payment of compensation.

Police employees should not give any indication or undertaking on behalf of Police to an owner or occupier as to the payment of compensation for costs incurred or loss suffered. Any such statement by a Police employee may provide a basis for a successful future legal claim by the owner or occupier. The decision whether to pay such compensation is for the District Commander or National Manager.

### If practicable photograph scene before and after search

Unless it is impracticable, all search scenes should be photographed before the search is undertaken and afterwards. This will assist with settling many disputes when Police claim the damage or mess was there beforehand and the complainant says otherwise. Should damage occur, then document the damage for future reference.

### Procedure when claims arise

Where a claim arises, it should be directed by the officer in charge of the incident concerned to the District Commander or National Manager for consideration.

All claims forwarded to the District Commander or National Manager should be accompanied by documentation from the officer in charge detailing:

- the circumstances in which the search warrant or statutory power was executed
- background information
- the grounds for Police action
- the damage caused
- the outcome of the search warrant or statutory power being executed
- the owner of the property and the occupier or user of the property at the relevant time
- the nature and basis of the claim as stated by the owner of the property
- costs incurred in rectifying the damage together with evidence of the same, and
- any steps taken by Police or the owner to prevent further loss or damage.

### Assisting owners to claim compensation

Whilst it is not anticipated that employees will solicit claims for compensation from property owners, officers in charge should assist owners in putting their claim forward for consideration if they lack the ability to do so and in the circumstances the damage caused is unreasonable. (See [Execution of search warrant or other statutory power](#) and [Warrantless entry in emergencies](#) in this chapter).

## Payment of claims for compensation

### Payment is made at District Commander's/National Manager's discretion

Reimbursement of costs and the payment of claims are made at the discretion of the relevant District Commander or National Manager in accordance with financial delegations and other guidelines and requirements.

The payment of claims must be made where applicable in accordance with:

- national policy, for example Police Manual chapters:
  - [Financial delegations](#) for information about the framework of financial delegated authority and financial restrictions within Police
  - [Insurance](#) for information about general/public liability insurance
- any Police legal advice
- any Police public liability insurance policy.

Refer to Cabinet Office Circular CO(18)2 – Proposals with Financial Implications and Financial Authorities for information about departments seeking approval of proposals with financial implications:

- expenses for compensation or damages for settlement of claims
- ex gratia expenses made in respect of claims that are not actionable at law, but for which there exists a moral obligation and payment should be made.

## Making damaged premises secure

### Actions to avoid incurring liability for damages

Premises should not be left unoccupied and insecure after a forced entry, as liability for further loss may arise, e.g. if the contents are stolen from the address. Officers in charge should make every attempt to prevent such loss by ensuring the property is made secure without incurring a liability for costs on behalf of Police. This will mean:

- liaising with the owner or occupier to secure their own property. If necessary and practicable, offer to wait for a specified time for the owner or occupier, or an agent, to arrive to do this, or
- at the occupier's or owner's request, engaging a contractor to make the premises secure on the understanding that the occupier or owner will bear the cost, or
- attending staff effecting a temporary repair where feasible, e.g. by boarding up a window.

### When police engage contractors to do repair work

Employees should be aware that if Police engage contractors to make repairs, then Police should expect to pay the cost of repairs.

If you facilitate making premises secure for property owners, it must be established directly with the owner that they agree to pay for the cost of repairs before engaging a contractor. The contractor must be made aware that the owner is responsible for paying the invoice for repairs to secure the property.

### Circumstances when it may be necessary for Police to incur expenditure

In rare cases where there is a significant risk associated with leaving premises unoccupied and insecure, all reasonable efforts to contact the owner or occupier should be made to obtain their agreement to cover costs of repairs. If no other solution can be found, then it may be necessary for Police to incur liability for the cost of the repair by calling a tradesperson such as a glazier or locksmith. In this situation, the minimum work necessary to secure the premises should be carried out, in consultation with your supervisor.

Where practicable, you should obtain verbal authorisation from the District Commander through the Area Commander, or the relevant National Manager before any liability is incurred.

However, such an approach should not be followed where the owner or occupier who stands to suffer further loss has refused to make the premises secure themselves.

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## **Surveillance introduction**

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The content of this chapter must not be disseminated external to Police without prior approval from the National Manager: Criminal Investigations Group.

# Policy statement and principles

## What

Surveillance may be carried out with or without the use of a surveillance device.

The [Search and Surveillance Act 2012](#) regulates only surveillance activities undertaken by means of a device. Surveillance not involving the use of a device is not governed by the Act (that is, it is undertaken through observing or listening without aids other than spectacles, contact lenses and hearing aids that restore normal sight or hearing).

The use of surveillance devices must comply with the powers, rules and obligations of the Act to safeguard against unjustified intrusions on ‘reasonable expectations of privacy’, a right that is given expression in section [21](#) of the New Zealand Bill of Rights Act 1990.

## Why

The use of electronic interception devices, tracking devices and visual surveillance devices under the surveillance device regime of the Act enables Police to use these devices to investigate crime, target and catch offenders.

## How

To meet its objectives and obligations when carrying out surveillance with a device, Police will:

- balance the complimentary values of law enforcement and human rights
- be mindful of unjustified intrusions on ‘reasonable expectations of privacy’, under section [21](#) of the New Zealand Bill of Rights Act 1990
- avoid carrying out surveillance with a device without a warrant to obtain evidential material where there is an opportunity to obtain a warrant (any evidential material obtained as a result of the surveillance may be found to be inadmissible)
- before obtaining a surveillance device warrant or use the emergency warrantless surveillance power, ensure there are reasonable grounds to believe that the surveillance will obtain “evidential material”
- apply [TENR operational threat assessment](#) before placing surveillance devices operationally
- comply with the reporting requirements involving surveillance devices under the Act.

# Overview

## Parts of the Surveillance chapter

The '[Surveillance](#)' chapter is comprised of these parts:

- Surveillance introduction
- Surveillance squad
- Categories of surveillance with a device
- Surveillance device warrants
- Retention and destruction of surveillance data and documents
- Surveillance by radar and from aircraft, drones etc.
- Surveillance reporting
- Privilege and immunities involving surveillance.

## Health and safety duties

The expectation of the Commissioner and the [Health and Safety at Work Act 2015](#) is that employees carrying out surveillance with a device will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of themselves or others, and comply as far as they are reasonably able to with any reasonable instruction that is given to adhere with the Act and its regulations.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace. See also '[Health, safety and wellbeing](#)' for keeping our communities safe, and ensuring our people are safe and feel safe.

## Related information

See:

- the '[Electronic interception](#)' chapter for guidance about the use of electronic interception devices
- the '[Search](#)' chapter for guidance on searches, search powers, declaratory orders, production orders and immunities under the Act.

## References to the “Act”

References to “the Act” or to sections of an Act in this chapter are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

# The scope of the surveillance regime

## Surveillance without a device

The Search and Surveillance Act 2012 regulates only surveillance activities undertaken by means of a device. Surveillance not involving the use of a device is not governed by the Act (that is, it is undertaken through observing or listening without aids other than spectacles, contact lenses and hearing aids that restore normal sight or hearing). This means that surveillance:

- without a device cannot be authorised by a warrant
- will be unlawful if it involves a trespass (that is, an unauthorised entry onto private land or the handling of private property)
- will be lawful and able to be undertaken without restriction (including general intelligence gathering) if it does not involve a trespass and in the circumstances it is reasonable (as required by section 21 of the Bill of Rights Act.)

**Note:** There is nothing to preclude getting a search warrant to trespass on a place in order to conduct surveillance **without a device**. Flying over property does not constitute a trespass and this includes the use of drones and model aircraft. See '[Surveillance by radar and from aircraft, drones etc](#)' in this chapter for further instructions.

## Types of device

The regime in the Act regulates the use of three types of devices, all defined fairly broadly:

- an interception device
- a tracking device
- a visual surveillance device.

(s3)

## Single regime

The Act brings together the use of all three types of devices within a single warrant regime. The criteria, procedures and application and warrant forms are the same regardless of the device.

As a result, it is possible to make a single application for one warrant to use more than one type of device.

## The law enforcement focus of the regime

The focus of the Act is the use of technology to investigate offences, and its purpose is to monitor compliance with the law and the investigation and prosecution of offences in a manner that is consistent with human rights values. It follows that the existing law does not inhibit the use of technology for purposes other than obtaining evidential material of an offence (e.g. the location of missing persons) and that, provided no trespass is involved, any such use is likely to be lawful.

## Surveillance with or without trespass

Remember:

- If no surveillance device is used to carry out your surveillance and no trespass is involved, then neither a warrant nor a warrantless surveillance power is needed for your surveillance activity.
- If no surveillance device is used to carry out your surveillance and trespass is involved, then a search warrant is required.

## Trespass surveillance defined

Trespass surveillance means surveillance that involves trespass to land or trespass to goods. (s)

The term is defined for the purposes of section 45 of the Act. A trespass requires an entry onto or interference with private property such as land, vehicles or goods without the express or implied authority of the owner.

## Surveillance with or without warrant

If you carry out surveillance with a device, conduct a search, or seize or obtain evidential material without a warrant where you had an opportunity to obtain a warrant, evidential material obtained as a result of the search, surveillance or seizure may be

found to be inadmissible. See [\*R v Laugalis\*](#) (1993) and [\*R v Williams\*](#) [2007].

## Preventing offences during surveillance

It is not uncommon during surveillance to become aware of either an intent to commit a crime or to witness a crime unfolding that involves injury to another person. In these circumstances, the constable conducting the surveillance must decide whether or not to interfere in the activities of the offenders to prevent the crime from being committed or to reduce the harm caused by the offending. This could, of course, jeopardise the surveillance operation, or if the decision is made not to interfere and allow the offence to be committed, risk injury or perhaps death to a victim.

All constables swear an oath to prevent offences against the peace (section[22](#) of the Policing Act 2008). There will always be the expectation that Police will intervene to prevent injury or death.

## Reasonable grounds to "suspect" or "believe"

### Use of the terms "suspect" or "belief" under the Act

Where powers under the Act relate to evidential material, the thresholds that must generally be met before the powers may be exercised are that there are "reasonable grounds to suspect" that the offence has been, is being or will be committed and "reasonable grounds to believe" that the evidential material will be found in or on the place, vehicle, thing or person. However, in relation to firearms, knives, offensive weapons and disabling substances, there need only be "reasonable grounds to suspect" that they will be found.

### The distinction between "suspicion" and "belief"

The distinction between the two lies in the strength of the conclusion reached, with belief requiring a higher threshold than suspicion. In *R v Sanders* [1994] 3 NZLR 450, (1994) 12 CRNZ 12 (CA) and *R v Williams* [2007] NZCA 52, [2007] 3 NZLR 207, (2007) 23 CRNZ 1 at [213], the Court concluded that for the threshold for belief to be met, the judicial officer issuing a warrant had to be satisfied that the state of affairs alleged by the applicant actually exists. That does not mean proof of the state of affairs is required; there must be an objective and credible basis for thinking a search will turn up the items identified in the warrant: *Warner v R* [2011] NZCA 258 at [21]. There must be more than surmise or suspicion that something is inherently likely: *R v Laugalis* (1993) 10 CRNZ 350, 1 HRNZ 466 (CA).

In contrast, reasonable grounds to suspect requires more than idle speculation, but need not amount to more than an apprehension with some evidential basis that the state of affairs may exist: *R v Sanders* (above); *Seven Seas Publishing Pty Ltd v Sullivan* [1968] NZLR 663 (SC).

## Evidential material

Before you can obtain a surveillance device warrant or use the emergency warrantless surveillance power, you must have reasonable grounds to believe that the surveillance will obtain "evidential material".

In the Search and Surveillance Act, "evidential material" in relation to an offence or a suspected offence is defined in section 3 as:

*"evidence of the offence, or any other item, tangible or intangible, of relevance to the investigation of the offence."*

In the context of search warrants, "evidence" has always had a broad meaning and covers a range of material that might not necessarily be used as evidence in any criminal prosecution for the suspected offence. For example, the Law Commission noted that, in respect of the scope of the equivalent Canadian provision, the Supreme Court of Canada in *Canadian Oxy Chemicals Ltd v Canada (Attorney General)* [1999] 1 SCR 743 said:

"On a plain reading, the phrase "evidence with respect to the commission of an offence" is a broad statement, encompassing all materials which might shed light on the circumstances of an event which appears to constitute an offence. The natural and ordinary meaning of this phrase is that anything relevant or rationally connected to the incident under investigation, the parties involved, and their potential culpability falls within the scope of the warrant."

The threshold that has been applied in relation to search warrants under the Summary Proceedings Act will continue to be applicable to search warrants and surveillance device warrants under the [Search and Surveillance Act 2012](#).

## Offences

This table outlines offences relating to surveillance under the Act.

Offence code	Section	Offence	Penalty
7468	<a href="#">175</a>	<p><b>False application</b></p> <p>Making an application for a:</p> <ul style="list-style-type: none"> <li>• surveillance device warrant;</li> <li>• search warrant; or</li> <li>• declaratory order</li> </ul> <p>that contains assertion or statement known to be false.</p>	<p>On conviction:</p> <ul style="list-style-type: none"> <li>• 1 year imprisonment</li> </ul>
7463	<a href="#">179</a>	<p><b>Disclosing information acquired through search or surveillance</b></p> <p>Knowingly discloses information acquired through:</p> <ul style="list-style-type: none"> <li>• the exercise of a search or surveillance power; or</li> <li>• the exercise of a production order or examination order; or</li> <li>• the use of a device, technique, or procedure, or the carrying out of an activity specified in a declaratory order</li> </ul> <p>otherwise than in the performance of the person's duties, functions or powers</p> <p><b>Note:</b> The offence extends to a person assisting a constable or enforcement officer.</p>	<p>On conviction:</p> <ul style="list-style-type: none"> <li>• Individual, 6 months imprisonment</li> <li>• Body corporate \$100,000 fine</li> </ul>

**Note:** See the section 'Offences under the Act' in [Part 1 - Search introduction](#) of the 'Search' chapter for a full list of offences under the Act.

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## **Categories of surveillance with a device**

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## Executive summary

Surveillance without a device (for example, watching activity with the naked eye, or listening to a conversation without the aid of a listening device) is governed by the pre-existing law. In brief, such surveillance is lawful if no trespass is involved or in the particular circumstances is not unreasonable under section [21](#) of the New Zealand Bill of Rights Act 1990.

Surveillance by means of a device falls into four categories and these are explained in this part:

- surveillance that may be undertaken lawfully without a warrant ([category 1](#))
- surveillance that normally requires a warrant ([category 2](#))
- surveillance normally requiring a warrant that may be done without warrant in situations of emergency or urgency ([category 3](#))
- surveillance that is always unlawful ([category 4](#)).

Key, critical points for Police to note:

- The [Search and Surveillance Act 2012](#) applies only to surveillance using one of three specified devices:
  - interception device
  - tracking device
  - visual surveillance device.
- Surveillance without a device (for example, watching activity with the naked eye, or listening to a conversation without the aid of a listening device) is governed by the pre-existing law. In brief, such surveillance is lawful if no trespass is involved or in the particular circumstances is not unreasonable under section [21](#) of the New Zealand Bill of Rights Act 1990.
- Interception, tracking and visual surveillance devices are defined on page 3.
- A number of surveillance activities are generally lawful without warrant.
- In certain emergency situations surveillance that normally requires a warrant may be undertaken for a period without a warrant. The surveillance without a warrant in these situations of emergency or urgency must be for a period not exceeding 48 hours from the time the surveillance device is first used.

# Surveillance devices

The Act regulates the use of three types of surveillance devices (interception, tracking and visual), and they are broadly defined. (s3)

## Interception device

Interception device is defined in section 3, and means:

- any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept or record a private communication (including a telecommunication); but
- does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing.

This definition covers all manner of listening devices, from sophisticated devices used to intercept communications through to simple audio recorders.

## Tracking device

Tracking device in section 3 means:

- a device that may be used to help ascertain, by electronic or other means, either or both of the following:
  - the location of a thing or a person;
  - whether anything has been opened, tampered with, or in some other way dealt with; but
- does not include a vehicle or other means of transport, such as boat or helicopter.

If the device is being used to track the location of a thing or a person, it does not require that the device be installed in or on a thing. If the technology being employed allows a person or thing to be tracked remotely by means of a device that does not need to be installed on a thing being tracked or in the possession of the person being tracked, it comes within the definition of tracking device and is governed by the regime. Accordingly, it covers technology, for example, that enables a person's location to be determined from the GPS on their smart phone when it is turned on.

## Visual surveillance device

Visual surveillance device is defined in section 3 to mean:

- any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to observe, or to observe and record, a private activity; but
- does not include spectacles, contact lenses, or a similar device used to correct subnormal vision of the user to no better than normal vision.

This is a wide definition. It includes photographic and video cameras and binoculars, and it encompasses anything else that enhances normal vision.

## Categories of surveillance with a device

Under the [Search and Surveillance Act 2012](#), surveillance by means of a device now falls into four categories:

- surveillance that may be undertaken lawfully without a warrant (category 1)
- surveillance that normally requires a warrant (category 2)
- surveillance normally requiring a warrant that may be done without warrant in situations of emergency or urgency (category 3)
- surveillance that is always unlawful (category 4).

## Category 1: Surveillance using a device that is lawful without a warrant

### Surveillance activities that are generally lawful

Apart from the activities that are permitted under section [48](#) (use of a surveillance device in some situations of emergency or urgency), the following surveillance activities are generally lawful without warrant:

- visual and audio surveillance without a device that does not involve trespass on land or goods (these are outside the scope of the surveillance device regime under the Act)
- observation of private activity in the curtilage of private premises, and any recording of that observation, if any part of the observation or recording is by means of a visual surveillance device, and the duration of the observation, for the purposes of a single investigation, or a connected series of investigations, does **not exceed**:
  - 3 hours in any 24-hour period; or
  - 8 hours in total ([s46](#))

**Note:** The stipulated time period beyond which a warrant is required relates to the whole period of observation if a visual surveillance device is used for any part of it. For example, if a constable in the course of keeping observations on a suspected 'tinny house' photographs a person entering the premises on a single occasion, a warrant is required once the total period of the observation exceeds 3 hours in 24 or 8 hours in total.

- interception of a communication that is not 'private' ([s46](#))
- the use of a tracking device for the sole purpose of determining whether a thing has been opened, tampered with or in some other way dealt with, if its installation does not involve a trespass
- the recording of what an officer **could** see or hear without the assistance of the device in private premises that he or she has lawfully entered (for example, a digital recording or a written account of a conversation that an officer overhears, or a video recording of the interior of a house that the officer observes) ([s47](#))
- the covert recording of a voluntary conversation between two or more persons with the consent of at least one of them (for example, the covert recording by an officer of a conversation in which he or she is participating, or the installation of a listening device on a CHIS that enables the officer to record a conversation between the CHIS and a third party) ([s47](#))
- activities carried out:
  - under section [4A\(1\) or \(2\)](#) of the [New Zealand Security Intelligence Service Act 1969](#); or
  - under section [15A\(1\)\(a\)](#) of the [Government Communications Security Bureau Act 2003](#); or
  - by the enforcement officer's use of a surveillance device, if that use is authorised under an enactment other than the Search and Surveillance Act 2012. ([s47](#))

### Surveillance activities must be lawful and reasonable

Although these activities are lawful and may be undertaken without a warrant, they are still subject to section [21](#) of the New Zealand Bill of Rights Act and must therefore be reasonable.

Nevertheless, the fact that Parliament has stated that the activities falling within category 1 can lawfully be undertaken without a warrant can give you some confidence that they will normally be reasonable. The question of reasonableness is only likely to arise if there is something unusual about the particular circumstances in which the activity is being carried out.

If you digitally record a conversation that you overhear in a house, and you subsequently use technology to make a muffled conversation clearer, it is doubtful whether this is lawful without a warrant. Similarly, it is doubtful whether it is lawful for you to use the zoom function on a video camera at a later date to view more closely particular parts of the scene of a house that you have lawfully entered ([s 47\(1\)\(a\)\(ii\)](#)). Note, however, for the second scenario involving use of a visual surveillance device, there may be circumstances when this is permitted ([ss 110\(j\)](#) and [123\(3\)](#)). In both these situations you should err on the side of caution and obtain a warrant beforehand unless a warrantless power can be exercised.

### Example of category 1 activity that is lawful without a warrant

The use of Police owned [CCTV](#) in cell blocks, watch houses and the exterior of Police premises is surveillance using a device that is lawful without a warrant because visual observation/recording:

- is not of private activity ([s46](#))
- is not on private premises and to the extent it is, is not covert ([s46](#))

- does not involve trespass to land or goods (s46)
- is not unreasonable (section 21 of the New Zealand Bill of Rights Act) for the following reasons:
  - health and safety (preventing harm) of employees, public and prisoners
  - investigating complaints of assault by one prisoner on another prisoner
  - investigating complaints against Police
  - clarifying allegations about property handling and security.

## Category 2: Surveillance using a device that requires a warrant

### Types of activities requiring a warrant

There are five types of activities involving a device that, **subject to the use of the emergency warrantless power** (i.e. category 3), require a warrant under section [46](#):

- interception of a private communication by means of an interception device
- use of a tracking device (unless it is solely for the purpose of ascertaining whether something is opened, tampered with or dealt with and the installation of the device does not involve a trespass to land or goods)
- visual observation and/or recording of private activity in private premises and any recording of that observation by means of a visual surveillance device
- visual observation and/or recording of a private activity in the curtilage of private premises by means of a visual surveillance device for longer than the specified time thresholds
- visual observation and/or recording by means of a visual surveillance device that involves trespass to land or goods.

It should be noted that law enforcement agencies other than Police must have approval from the Governor General, by Order in Council made on the recommendation of the Minister of Justice, before they can undertake any visual surveillance involving trespass or use an interception device. ([s50](#))

### Interception of a private communication by means of an interception device

A warrant must be obtained to use an interception device to intercept a private communication (whether in oral, written or in the form of a telecommunication). It does not matter where the communication or conversation occurs. If it is 'private', a warrant to intercept it is required even if it is occurring in a public place. Exceptions to the requirement to obtain a warrant can be found in [s47\(1\)\(a\) and \(b\)](#). ([s46](#))

There are two criteria that must be satisfied before a communication or conversation will be regarded as 'private':

- |          |  |
|----------|--|
| <b>1</b> | It must occur in "circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication" - in other words, there must be something in the situation or surrounding circumstances that might reasonably lead you to believe that the parties intend it to be confidential. If there is not, the communication cannot be private.   |
| <b>2</b> | Even if there is evidence that parties intend the communication to be confidential, it must not occur in "circumstances in which any party to the communication ought reasonably to expect that the communication may be intercepted by some other person without having the express or implied consent of any party to do so". If they ought reasonably to expect interception, the communication is not private even if they intend it to be confidential. For example, people cannot reasonably expect to have confidential conversations in a crowded public place or cafe where they can readily be overheard. It should be emphasised that the test here, is what the participants' 'reasonable expectation' ought to be. If offenders are having a confidential conversation in circumstances in which they have a right to expect that it will not be intercepted, it will be a private communication even if they suspect that it is in fact being intercepted. |

If the communication is 'private', a warrant to use an interception device to intercept it is available only when:

- there are reasonable grounds to suspect that an offence punishable by 7 years imprisonment or more, or against section [44, 45, 50, 51, 54 or 55](#) of the Arms Act 1983, or against section [25, 26](#), or [70](#) of the Psychoactive Substances Act 2013, has been, is being or will be committed; and
- there are reasonable grounds to believe that the interception will obtain evidential material in respect of the offence.

([s45](#))

A warrant to intercept a 'private' communication in order to gather evidential material in relation to any lesser offence, or for any other purpose, is not available and any such interception will be unlawful.

### Use of a tracking device

A warrant must be obtained to use a tracking device in the following circumstances:

- when it is being used in any way to ascertain the location of a person or thing
- when it is being used to determine whether anything has been opened, tampered with or in some other way dealt with, and its use involves trespass on land or goods (so that, for example, the installation of motion sensors around the perimeter of a cannabis plantation on private land requires a warrant, since this involves trespass, whereas the installation of an alarm with the consent of the owner in order to detect unauthorised entry does not).

Under section [51](#) a warrant is available only when:

- there are reasonable grounds to suspect that an imprisonable offence (or an offence for which a search warrant could be obtained under other specific legislation) has been, is being or will be committed; and
- there are reasonable grounds to believe that the use of the tracking device will obtain evidential material in respect of the offence.

The offence penalty threshold in section [45](#) that restricts some forms of trespass surveillance, does not apply to the use of tracking devices.

Where the device is being used to track the location of a thing or person, it may not be necessary for that device to be installed in or on the thing being tracked, though this will often be the case. A warrant is also required where the tracking technology employed does not depend on the installation of the device; for example, the use of technology to determine the whereabouts of a person through their mobile phone.

## **Visual surveillance of private activity in private premises by means of a visual surveillance device**

A warrant must be obtained to use a visual surveillance device to observe, or to observe and record, private activity in private premises.

Two criteria must be satisfied before this warrant requirement applies:

- |          |   |
|----------|---|
| <b>1</b> | The activity being observed must be 'private'. That means that it must be "activity that, in the circumstances, any one or more of the participants in it ought reasonably to expect is observed or recorded by no one except the participants". As with the second criterion in relation to 'private communication', the test here is what the participants' reasonable expectation ought to be, rather than what their expectation as to privacy actually is.   |
| <b>2</b> | The activity must be occurring in 'private premises'. These are defined in section <a href="#">3</a> to mean "a private dwelling house, a marae and any other premises that are not within the definition of non-private premises". The latter are defined to mean "premises, or part of a premises, to which members of the public are frequently permitted to have access, and includes any part of a hospital, bus station, railway station, airport, or shop". In short, therefore, the warrant requirement covers activity that occurs in any building other than a building to which the public frequently have access. Of course, the public may have general access to a building (such as a shop) at some times of the day but not others. Similarly, the public may have access to one part of a building (such as a hospital) but not another. Some premises may therefore be private premises at some times and non-private premises at others. Some may also be partly private premises and partly non-private premises. If you are intending to mount a surveillance operation in respect of a building other than a dwelling house, therefore, you should think carefully about the parts to which, and the times at which, the public have access when you determine whether a warrant is required. |

If these criteria are met, a warrant is available only when:

- there are reasonable grounds to suspect that an offence punishable by 7 years imprisonment or more, or against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the Arms Act 1983, or against section [25](#), [26](#), or [70](#) of the Psychoactive Substances Act 2013, has been, is being or will be committed (s [45](#)); and
- there are reasonable grounds to believe that the surveillance will obtain evidential material in respect of the offence ([51](#)).

The use of a visual surveillance device to observe/record private activity on private premises for offences that do not meet the thresholds in section [45](#) is unlawful.

## Visual surveillance of private activity in the curtilage of private premises by means of a visual surveillance device

A warrant must be obtained to use a visual surveillance device to observe, or to observe and record, private activity in the curtilage of private premises if the visual surveillance being undertaken is for longer than the prescribed time periods of:

- 3 hours in any 24-hour period; or
- 8 hours in total. ([s46\(1\)\(e\)](#))

**Note:**

- If no surveillance device used and no trespass occurs, then no warrant is required.
- If a trespass is to occur, but a device is not used, then a search warrant is required.
- If a device is used to record, say, activities at a 'tinny house', a surveillance device warrant should be obtained even though those activities can be observed by passersby.
- When using a visual surveillance device the time starts when initial observations commence (this applies whether or not a device was used to commence initial observations).
- There is no requirement to commence an application for a surveillance device warrant when it is known beforehand the observation will not extend beyond the statutory time periods. Should any doubt exist about the period of observation required, then err on the side of caution and commence an application for a surveillance device warrant immediately.
- **Remember:** You must stop the observation at the expiry of the time period, unless you have obtained a surveillance device warrant authorising the visual surveillance or have invoked the emergency or urgency powers under section [48](#) of the Act.

Three criteria need to be satisfied before this warrant requirement applies:

1 The activity being observed must be 'private', as discussed above.
2 The activity must be occurring in the 'curtilage' of private premises. The 'curtilage' means the land immediately surrounding a house or building, including any closely associated buildings and structures but excluding any associated open fields beyond them. It defines the boundary within which the owner of a building can have a reasonable expectation of privacy and where common daily activities take place. For example, in relation to a residential dwelling, the curtilage is the ground between the fence, garden, hedge or mowed grass border and the house. In other words, it is a garden, front or back yard, lawn or other equivalent piece of ground near to or belonging to a home. The curtilage of the dwelling does not necessarily equate with the boundary of the property, although in the vast majority of cases the boundary and the curtilage exactly coincide. Thus, the curtilage of a suburban home is likely to be clearly defined by a fence line, whereas the house and curtilage on a farm will form a small part of the whole property.
3 In respect of a single investigation, or a connected series of investigations, the surveillance must not exceed 3 hours in a 24-hour period or 8 hours in total. Surveillance of a curtilage by means of a device that does not exceed these time periods does not require a warrant. The time starts when initial observations commence (this applies whether or not a device was used to commence initial observations).

If these criteria are met, a warrant is available only when:

- there are reasonable grounds to suspect that an offence punishable by 7 years imprisonment or more, or against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the Arms Act 1983, or against section [25](#), [26](#), or [70](#) of the Psychoactive Substances Act 2013,, has been, is being or will be committed ([s45](#)); and
- there are reasonable grounds to believe that the surveillance will obtain evidential material in respect of the offence ([s1](#) ).

The use of a visual surveillance device to observe/record private activity on private premises for offences that do not meet the thresholds in section [45](#) is unlawful.

## Visual surveillance by means of a visual surveillance device that involves trespass on land or goods

A warrant must be obtained to use a visual surveillance device to observe, or to observe and record, any activity (private or otherwise) if the installation or use of that device involves trespass on land or goods. You are trespassing if you enter onto any private land, or handle any private goods (for example, by installing a device on a vehicle), without the explicit or implied consent of the owner.

A warrant is available only when:

- there are reasonable grounds to suspect that an offence punishable by 7 years imprisonment or more, or against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the Arms Act 1983, or against section [25](#), [26](#), or [70](#) of the Psychoactive Substances Act 2013,, has been, is being or will be committed ([s45](#)); and
- there are reasonable grounds to believe that the interception will obtain evidential material in respect of the offence ([51](#) ).

A warrant to observe any activity involving trespass on land or goods, in order to gather evidential material in relation to any lesser offence or for any other purpose is not available and any such observation will be unlawful.

In contrast, no warrant is required to observe activity on private land that is not private premises or the curtilage of private premises if no trespass is involved. For example, you can without a warrant observe farmland with binoculars or a video camera from a road or other public place.

## **Category 3: Surveillance using a device that normally requires a warrant but may be done without warrant in situations of urgency or emergency**

Section [48](#) of the Act makes provision for surveillance that normally requires a warrant to be undertaken for a period without a warrant. The surveillance must be for a period not exceeding 48 hours from the time the surveillance device is first used in some specified situations of emergency or urgency.

There are two conditions that must be met before you can use this warrantless power:

- you must be entitled to apply for a surveillance device warrant in that situation that you are presented with
- obtaining a warrant beforehand is impracticable in the circumstances.

### **Situations allowing the exercise of warrantless surveillance powers**

The situations that allow the exercise of this warrantless power largely mirror those that allow the exercise of a warrantless search power. Under section [48](#), if you are:

<b>in any one or more of these situations where you have reasonable grounds...</b>	<b>and you believe that use of the surveillance device...</b>	<b>then you may use a surveillance device...</b>
to suspect that an offence punishable by a term of imprisonment of 14 years or more has been, is being, or is about to be committed;	would obtain evidential material in relation to the offence;	intermittently or continuously for a period not exceeding 48 hours in total without obtaining a surveillance device warrant, if:
<p>to suspect that under section <a href="#">14(2)</a>:</p> <ul style="list-style-type: none"> <li>• an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or loss of, any property; or</li> <li>• there is risk to the life or safety of any person that requires an emergency response;</li> </ul>	is necessary to prevent the offending from being committed or continuing, or to avert the emergency;	<ul style="list-style-type: none"> <li>• you are entitled to apply for a surveillance device warrant in relation to these situations; but</li> <li>• obtaining a warrant within the time it is proposed to undertake the surveillance is impracticable in the circumstances.</li> </ul>
<p>to suspect that under section <a href="#">18(2)</a>:</p> <ul style="list-style-type: none"> <li>• a person is carrying arms; or</li> <li>• a person is in possession of arms, or has them under their control; and</li> </ul> <ul style="list-style-type: none"> <li>• they are in breach of the Arms Act 1983; or</li> <li>• they, by reason of their physical or mental condition (however caused): <ul style="list-style-type: none"> <li>◦ is incapable of having proper control of the arms; or</li> <li>◦ may kill or cause bodily injury to any person; or</li> <li>◦ that, under the Domestic Violence Act 1995: <ul style="list-style-type: none"> <li>▪ a protection order or a police safety order is in force against the person; or</li> <li>▪ there are grounds to make an application against him or her for a protection order;</li> </ul> </li> </ul> </li> </ul>	is necessary to facilitate the seizure of the arms;	
to suspect that a category 3 or 4 offence in relation to arms or an offence against the Arms Act 1983 has been committed, or is being committed, or is about to be committed;	would obtain evidential material in relation to the offence;	
to suspect that an offence has been committed, or is being committed, or is about to be committed in relation to a controlled drug specified or described in <a href="#">Schedule 1</a> , Part 1 of <a href="#">Schedule 2</a> , or Part 1 of <a href="#">Schedule 3</a> of the Misuse of Drugs Act 1975, or to a precursor substance specified or described in Part 3 of <a href="#">Schedule 4</a> of that Act;	would obtain evidential material in relation to the offence;	
<p>to suspect that a person is in possession of any one or more of these things (section <a href="#">81(2)</a>):</p> <ul style="list-style-type: none"> <li>• a controlled drug</li> <li>• a precursor substance</li> <li>• a package in relation to which the Customs officer has replaced all or a portion of any controlled drug or precursor substance</li> <li>• evidential material in relation to the commission of an offence under section <a href="#">6(1)(a)</a> (dealing with controlled drugs) or <a href="#">12AB</a> (knowingly import or export precursor substances for unlawful use) of the Misuse of Drugs Act 1975;</li> </ul>	would obtain evidential material in relation to the offence;	

If these warrantless surveillance powers involve trespass surveillance (other than by means of a tracking device) or an interception device, they are available only when:

- there are reasonable grounds to suspect that an offence punishable by 7 years imprisonment or more, or against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the Arms Act 1983, or against section [25](#), [26](#), or [70](#) of the Psychoactive Substances Act 2013,, has been, is being or will be committed; and
- there are reasonable grounds to believe that the surveillance will obtain evidential material in respect of the offence. ([45](#))

**Note:** The power to use a surveillance device for a period not exceeding 48 hours without a warrant extends to all enforcement officers. See:

- 'Internal approvals' in '[Surveillance device warrants](#)' for guidance in the circumstances and level of approval required when using warrantless surveillance powers.
- '[Surveillance reporting](#)' for notifying the Commissioner of the use of the warrantless surveillance power on the Search and Surveillance System.

Before using any surveillance device that would normally require a warrant, you should ask yourself the following questions:

- What type of surveillance is involved (i.e. interception, tracking, visual surveillance without a trespass, visual surveillance involving trespass)?
- Is the suspected offence of a type that would enable a warrant to be obtained for that type of surveillance?
- Does one of the six situations justifying the use of warrantless surveillance apply?
- Is it impracticable to obtain a warrant before the surveillance needs to commence?

## How to apply the period of 48 hours without a warrant

The stipulated time period of 48 hours commences from the time the surveillance device is first used.

If you commence a warrantless surveillance activity, but think that the surveillance might continue for a sufficiently lengthy period then you should immediately commence the process of obtaining a warrant. If the application is refused, you must cease the surveillance activity immediately. In any event, you must never continue the warrantless surveillance beyond 48 hours from the time at which the surveillance device is first used.

## Example of when s48 emergency or urgency powers should be used

### Section 6(c) Official Information Act 1982



## Category 4: Surveillance using a device that is always unlawful

It follows that the use of a surveillance device is always unlawful if it is not:

- generally lawful without warrant ([category 1](#)); or
- authorised by warrant ([category 2](#)); or
- authorised by the emergency or urgency warrantless provision ([category 3](#)).

Unless the use of the device falls into category 1, all surveillance for intelligence gathering, or for evidence gathering in respect of offences for which a warrant is not available, is unlawful.

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## Surveillance device warrants

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The content of this chapter must not be disseminated external to Police without prior approval from the National Manager: Criminal Investigations Group.

## Executive summary

This part provides instructions about surveillance device warrants:

- internal approvals
- making application for warrants
- de-confliction process
- Police internal protocols for communicating with Courts
- safe execution of warrants – entry to adjoining/neighbouring properties
- retention and security
- disclosure and requests for warrants.

Police must be aware of these key, critical points for surveillance device warrants:

- A surveillance device warrant must be obtained to use a surveillance device in respect of a person, place, vehicle, or thing, unless some situations of emergency or urgency apply under section 48.
- Any constable may apply for a surveillance device warrant, subject to [internal approval](#) from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager). Surveillance device warrant applications because of their complexity may be prepared outside the Search and Surveillance System using the enhanced features of the Microsoft Word platform.
- The warrant **must** be prepared in the Search and Surveillance System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, **unless** the system cannot be accessed **and** there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible. **Note:** Preparing the warrant in the Search and Surveillance System also ensures:
  - data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament ([s170](#))
  - managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months ([s49\(3\)](#)).
- Approval to exercise a warrantless surveillance device power should first be obtained from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager), unless the specific criteria in the [internal approval](#) section are met.
- Warrant application owners and their supervisors upon receipt of a de-confliction email relating to conflicting surveillance device warrant/search warrant applications for the same target must comply with the actions set out in the [de-confliction](#) section.

# Introduction to surveillance device warrants

## When is a surveillance device warrant required?

Except as provided in sections [47](#) (some activities that do not require a warrant) and [48](#) (some situations of emergency and urgency), an enforcement officer who wishes to undertake any one or more of the following activities must obtain a surveillance device warrant:

- use of an interception device to intercept a private communication
- use of a tracking device, except where a tracking device is installed solely for the purpose of ascertaining whether a thing has been opened, tampered with, or in some other way dealt with, and the installation of the device does not involve trespass to land or trespass to goods
- observation of private activity in private premises, and any recording of that observation, by means of a visual surveillance device
- use of a surveillance device that involves trespass to land or trespass to goods
- observation of private activity in the curtilage of private premises, and any recording of that observation, if any part of the observation or recording is by means of a visual surveillance device, and the duration of the observation, for the purposes of a single investigation, or a connected series of investigations, exceeds:
  - 3 hours in any 24-hour period; or
  - 8 hours in total.

**Note:** The activities above for which a surveillance device warrant is required is subject to the restrictions on some trespass surveillance and use of interception device in section [45](#) of the Act.

## What does a surveillance device warrant authorise?

A surveillance device warrant may authorise you to use surveillance device(s):

- for the purpose of:
  - intercepting private communications
  - tracking (unless the purpose is only to determine whether a thing is being handled and the installation of the device does not involve a trespass on land or trespass to goods)
  - visual observation of private activity on private premises, and any recording of that observation
  - visual observation of private activity in the curtilage of private premises for longer than 3 hours in any 24 hour period, or 8 hours in total, and any recording of that observation
  - visual surveillance that involves a trespass to land or goods
- to obtain evidential material from a person, place, vehicle or other thing in respect of specific offences (see [Grounds for applying](#) for description of offences) identified under section [45](#) of the Act.

**Note:** Offences under section [45](#) include those:

- punishable by 7 years imprisonment
- against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the [Arms Act 1983](#)
- against section [25](#), [26](#), or [70](#) of the [Psychoactive Substances Act 2013](#).

## Who may apply for a surveillance device warrant?

Any constable may apply for a surveillance device warrant, subject to [internal approval](#).

Any enforcement officer may apply for a surveillance device warrant, but if the application for a surveillance device warrant is seeking authority to use visual trespass surveillance or an interception device, then the officer must be employed or engaged by an enforcement agency that has been approved by an Order in Council. ([s49\(5\)](#))

Under section [50](#) an enforcement officer (such as a customs officer) must have their specified law enforcement agency approved (by the Governor-General, by Order in Council made on the recommendation of the Minister of Justice) to carry out visual trespass surveillance and to use interception devices.

## Grounds for applying

You can apply for a surveillance device warrant if you have reasonable grounds:

- to suspect an offence punishable by 7 years imprisonment, or an offence against section 44, 45, 50, 51, 54 or 55 of the Arms Act 1983, or against section 25, 26, or 70 of the Psychoactive Substances Act 2013, for the most intrusive form of surveillance on privacy (e.g. use of interception devices and visual surveillance devices involving trespass), or an offence punishable by imprisonment when any lesser intrusion of privacy is contemplated (e.g. to use a visual surveillance devices not involving trespass and tracking devices), **and**
- to believe that the surveillance will obtain evidential material in respect of the offence, involving the person, or in the place, vehicle or other thing specified in the application.

See the section 'Evidential material' in '[Surveillance introduction](#)' for more information about what this term means. (ss[45](#) and [51](#))

See the section 'Category 2: surveillance using a device that requires a warrant' in '[Categories of surveillance with a device](#)' for more information.

## No other restrictions for obtaining a warrant

Other than obtaining internal approval and satisfying the grounds for obtaining a surveillance device warrant, there are no other operational policy or legal restrictions. While there is no statutory preference for one form of evidence gathering over another, the least intrusive form that is reasonably practicable should be preferred. Another matter to be considered is the cost versus the benefit.

## Period of warrant limited

A warrant may be issued for a period of no more than 60 days after the date on which the warrant is issued, and is in force for that period. (s[55](#))

## Extending period of warrant

There is no warrant renewal procedure under the Act. To extend the period of 60 days or the lesser period for which the warrant is valid, a new application for a surveillance device warrant will be required. Use information provided in the original application and explain why you want to continue with the surveillance device beyond the expiry period of the earlier application under paragraph 6 of the application. The new warrant application can be made to the same Judge or a different Judge, but it is preferable to present the application to the same Judge if available.

## **Internal approvals**

### **Use of interception devices**

#### **Telephone interception and/or installation of a device for audio interception**

Devices involving landline telephone/mobile phone interception or installation of a device for audio interception require CMC/TSU approval.

Approval requirements:

Stage	Description
1	<p>Initial approval from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) - hereafter referred to as "DI".</p> <p><b>Note:</b> The applicant will invariably be the subject matter expert.</p>
2	CMC Ops Manager approached to confirm capacity.
3	If no capacity and high priority request, CMC Ops Manager endeavours to reprioritise or involves CMC Approvals Committee.
4	Request for TSU assistance and confirmation of capacity if required.
5	<p>Warrant application approved by CSM/FCM.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&amp;S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant <b>must</b> be prepared in the S&amp;S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, <b>unless</b> the system cannot be accessed <b>and</b> there is urgency with making a written application. In this situation the warrant must be prepared in the S&amp;S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A").</p> <p><b>Note:</b> Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> <li>• data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (<a href="#">s170</a>)</li> <li>• managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (<a href="#">s49(3)</a>).</li> </ul>
6	<p>Application checked by a Police legal advisor to verify that the legal requirements of the <a href="#">Search and Surveillance Act 2012</a> are met.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• The consultation with a legal advisor should be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of a surveillance device(s) pursuant to section <a href="#">48</a>.</li> <li>• The warrant <b>must</b> have a Search and Surveillance System generated identification number attached or a practicable explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.</li> </ul>
7	<p>Application made to Judge.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Any Police employee can physically file the application at Court on behalf of the applicant.</li> <li>• The application should be filed in the Court of jurisdiction most likely to hear any subsequent trial.</li> <li>• All communications with the judiciary should be conducted by Legal Services and not individual constabulary Police employees.</li> </ul>
8	On issue of warrant, copy of warrant and application provided to CMC/TSU.

## Warrantless power to use interception device

An interception device may be used for surveillance in some situations of emergency or urgency under the section [48](#)

warrantless power. Approval to use an interception device should be obtained from a DI unless:

- the immediacy of the situation does not allow for prior planning and approval from a DI; and
- statutory criteria met; and
- an opportunity arises to obtain evidential material that would otherwise be lost if not taken at the time

**Notes:**

The DI should consult with Legal Services before approving the use of section<sup>48</sup> emergency/urgency power. If a Legal Advisor is:

- unavailable then the DI may proceed and approve a request once all the facts and law have been considered
- available then the consultation with a legal advisor should be recorded by way of a notebook entry and/or decision log entry.

See these Police Manual chapters:

- '[Categories of surveillance with a device](#)' for instructions relating to 'Category 3: Surveillance using a device that normally requires a warrant, but may be done without warrant in situations of urgency or emergency'
- '[Covert backstopping](#)' for the obtaining and use of covert equipment for audio, video, transmitting, tracking, intercepting and telecommunications purposes.
- '[Surveillance reporting](#)' for notifying the Commissioner of the use of the warrantless surveillance power on the Search and Surveillance System.

## Use of tracking devices

Approval requirements largely reflect current policy:

Stage	Description
1	<p>Initial approval from a DI.</p> <p><b>Note:</b> The drafter of the application will invariably be the subject matter expert.</p>
2	Request for TSU assistance and confirmation of capacity if required. (This may also be a case where CMC is involved.)
3	<p>Warrant application requires CSM/FCM approval.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&amp;S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant <b>must</b> be prepared in the S&amp;S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, <b>unless</b> the system cannot be accessed <b>and</b> there is urgency with making a written application. In this situation the warrant must be prepared in the S&amp;S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A").</p> <p><b>Note:</b> Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> <li>• data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (<a href="#">s170</a>)</li> <li>• managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (<a href="#">s49(3)</a>).</li> </ul>
4	<p>Application checked by a Police legal advisor to verify the legal requirements of the <a href="#">Search and Surveillance Act 2012</a> are met.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• The consultation with a legal advisor must be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of the surveillance device(s) pursuant to section <a href="#">48</a>.</li> <li>• The warrant <b>must</b> have a Search and Surveillance System generated identification number attached or an explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.</li> </ul>
5	<p>Application made to Judge.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Any Police employee can physically file the application at Court on behalf of the applicant.</li> <li>• The application should be filed in the Court of jurisdiction most likely to hear the subsequent trial.</li> <li>• All communications with the judiciary should be conducted by Legal Services and not individual constabulary Police employees.</li> </ul>
6	On issue of warrant, copy of warrant and application provided to TSU where the installation of a device is required.

## Use of visual surveillance devices

### Installation of visual surveillance equipment

If device for observing and recording private activity through installation of covert visual surveillance equipment, whether or not involving trespass, must be done through TSU and under Police internal policy requires a surveillance device warrant:

Stage	Description
1	<p>Initial approval from a DI.</p> <p><b>Note:</b> The drafter of the application will invariably be the subject matter expert.</p>
2	Request for TSU assistance and confirmation of capacity. (This may also be a case where CMC is involved)
3	<p>Warrant application approved by CSM/FCM.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&amp;S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant <b>must</b> be prepared in the S&amp;S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, <b>unless</b> the system cannot be accessed <b>and</b> there is urgency with making a written application. In this situation the warrant must be prepared in the S&amp;S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A").</p> <p><b>Note:</b> Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> <li>• data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (<a href="#">s170</a>)</li> <li>• managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (<a href="#">s49(3)</a>).</li> </ul>
4	<p>Application checked by a Police legal advisor to verify the legal requirements of the <a href="#">Search and Surveillance Act 2012</a> are met.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• The consultation with a legal advisor must be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of the surveillance device(s) pursuant to section <a href="#">48</a>.</li> <li>• The warrant <b>must</b> have a Search and Surveillance System generated identification number attached or an explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.</li> </ul>
5	<p>Application made to Judge.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Any Police employee can physically file the application at Court on behalf of the applicant.</li> <li>• The application should be filed in the Court of jurisdiction most likely to hear any subsequent trial.</li> <li>• All communications with the judiciary should be conducted by Legal Services and not individual constabulary Police employees.</li> </ul>
6	On issue of warrant, copy of warrant and application provided to TSU.

## Visual surveillance equipment not requiring installation

If other visual surveillance equipment is being used (e.g. binoculars, cameras, mobile phones with camera/video function):

Warrantless / warrant	Approval description
Warrantless	<p>Interception available in situations of emergency/urgency where:</p> <ul style="list-style-type: none"> <li>• statutory criteria met; and</li> <li>• the immediacy of the situation does not allow for prior planning; and</li> <li>• an opportunity arises to obtain evidential material that would otherwise be lost if not taken at the time</li> <li>• approval required from a DI.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The DI should consult with Legal Services before approving the use of section 48 emergency/urgency power. If a Legal Advisor is: <ul style="list-style-type: none"> <li>◦ unavailable then the DI may proceed and approve a request once all the facts and law have been considered</li> <li>◦ available then the consultation with a legal advisor must be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of the surveillance device(s) pursuant to section 48.</li> </ul> </li> <li>• See these chapters: <ul style="list-style-type: none"> <li>◦ ‘<a href="#">Categories of surveillance with a device</a>’ for instructions relating to ‘Category 3: Surveillance using a device that normally requires a warrant, but may be done without warrant in situations of urgency or emergency’</li> <li>◦ ‘<a href="#">Surveillance reporting</a>’ for notifying the Commissioner of the use of the warrantless surveillance power on the Search and Surveillance System.</li> </ul> </li> </ul>
Warrant	Follow the instructions in the step/action table for <a href="#">‘Installation of covert surveillance equipment’</a> .

Any exceptions to the [internal approvals](#) policy, either in a particular case or in relation to a particular class of users, require the approval of the National Manager: Criminal Investigations.

# How to apply for a surveillance device warrant

## Mode of application

An application for a surveillance device warrant is normally made in writing and given to the Judge in hard copy.

However, if this is impracticable in the circumstances, you may, with prior agreement of the Judge:

- make an application orally, e.g. by telephone or personal appearance, or
- have your written application considered without a personal appearance before and/or without oral communication with the issuing officer.

Written applications may be transmitted to the Judge electronically via the Electronic Operating Model. **Note:** This system is not yet operational). ([ss52](#) and [100](#))

## When are oral applications allowed?

A Judge may allow an application to be made orally (e.g. in person or by telephone call) and excuse an applicant from putting all or part of the application in writing if satisfied that:

- requiring a written application would result in a delay that would compromise the effectiveness of the surveillance operation, **and**
- the question of whether the warrant should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
- all the required information (i.e. that required in a written application) is supplied to the issuing officer. ([ss52](#) and [100\(3\)](#))

If an oral application is allowed, the Judge must record the grounds for the application as soon as practicable.

A written surveillance device warrant must also be issued. It is not possible to simply rely on the Judge's agreement to undertake the activities authorised. The Judge must sign a warrant. For this reason, it will be necessary for the applicant to supply the Judge with a draft warrant or a template that can be populated.

## Applications without personal appearance or oral communication

A Judge may allow an application without a personal appearance or oral communication if satisfied that:

- the question of whether the warrant should be issued can be properly determined on the basis of the applicant's written communication, **and**
- the information required for the application has been supplied to the Judge, **and**
- the Judge is satisfied that there is no need to ask questions of, or seek further information from, the applicant. ([ss52](#) and [100\(4\)](#))

# Applying for surveillance device warrants

## Pre-application checks and set-up

Step	Action
1	<p>Create a <u>NIA</u> Case if one does not already exist.</p> <p><b>Note:</b> Avoid identifying target details for forthcoming warrant applications in the NIA case as this may compromise the security of subsequent warrant execution.</p>
2	<p>Check <u>NIA</u> for any information about the proposed target(s) and also any 'notings' for search warrants issued under other Acts in the previous three months. This information must be included in the application.</p>

## Making application

Follow these steps when making an application for a surveillance device warrant:

Step	Action
1	<p>Any constable may apply, subject to meeting internal approval requirements.</p> <p><b>Note:</b> The application should be filed in the Court of jurisdiction most likely to hear any subsequent trial.</p> <p>See the section titled, '<a href="#">Internal approvals</a>' in this chapter.</p>
2	<p>Make the application for surveillance device warrant in the Search and Surveillance system. Because of their complexity, surveillance device warrant applications may instead be prepared outside the Search and Surveillance (S&amp;S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant <b>must</b> be prepared in the S&amp;S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, <b>unless</b> the system cannot be accessed <b>and</b> there is urgency with making a written application. In this situation the warrant must be prepared in the S&amp;S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A").</p> <p><b>Note:</b> Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> <li>• data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (<a href="#">s170</a>)</li> <li>• managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (<a href="#">s49(3)</a>).</li> </ul>
3	<p>Direct application to High Court or District Court Judge. Identify the Judge by name (if known).</p> <p><b>Note:</b></p> <p>Whether the application is lodged in the District Court or the High Court is determined by the Court that any resulting proceedings are likely to be heard. If the application involves a complex legal issue or is likely to set a significant precedent, the application should be directed to a High Court Judge.</p>
4	Identify constable applying for warrant. ( <a href="#">s49(1)</a> )

Step	Action
5	<p>Identify type of devices to be used and the method of use intended:</p> <ul style="list-style-type: none"> <li>• visual surveillance device (e.g. visual surveillance device to observe and record private activity on private premises)interception device (e.g. interception (audio) device to intercept and record private conversations)</li> <li>• tracking device (e.g. tracking device to ascertain location of target). (<a href="#">s49(1)</a>)</li> </ul> <p><b>Note:</b> A single application can include more than one type of device to be used.</p>
6	<p>Accurately list and describe in reasonable detail the name and address or other description of the person(s), place(s), vehicle(s), or other thing(s) that are the target(s) of the surveillance. (<a href="#">s49(1)</a>)</p> <p><b>Note:</b> If this information cannot be provided, then under section <a href="#">49(2)</a> of the Act describe as specifically as possible the parameters of, and objectives to be achieved by, the use of the surveillance device(s).</p>
7	<p>State how many days the surveillance device is sought to be used for</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• The maximum period is 60 days.</li> <li>• The period the surveillance device(s) is in force commences <b>after</b> the date on which the surveillance device warrant is issued, even though the warrant may be executed immediately after it is signed by the Judge (i.e. 60 days on the application and warrant becomes 61 days, because it includes the part day remaining when the warrant is signed.) (<a href="#">s55(1)</a>)</li> </ul>
8	<p>Set out the grounds on which the warrant is sought. (<a href="#">s49(1)</a>)</p> <p>For more information about the grounds for a warrant, see:</p> <ul style="list-style-type: none"> <li>• the section, '<a href="#">Grounds for applying</a>'</li> <li>• the section 'Category 2: surveillance using a device that requires a warrant' in <a href="#">Categories of surveillance with a device</a>'.</li> </ul> <p><b>Note:</b> Each offence should be separately specified.</p>

Step	Action
9	<p>Outline information relied on in support of suspicion as to offence(s):</p> <ul style="list-style-type: none"> <li>• establish the link between what information is sought and the target and the target person(s), place(s), vehicle(s) or other things that are the object of the surveillance  <b>Note:</b> All known targets of surveillance must be disclosed in the application for a surveillance device warrant to ensure that the online de-confliction process in the S&amp;S system operates in compliance with the legal requirements of section 49(3) of the Act. See '<a href="#">All known targets of surveillance must be disclosed in the application</a>' for an example.</li> <li>• set out all relevant information whether favourable or unfavourable</li> <li>• describe information received, details of who received it, when and in what circumstances (where appropriate provide an assessment of the significance and reliability of the information)</li> <li>• describe what relevant inquiries have been made</li> <li>• explain any delay between the last receipt of information or the last enquiry and this application for a warrant</li> <li>• if evidence relied on is provided by a confidential informant, as much information as possible about the informant (without compromising a confidential informant's identity) must be given</li> <li>• in respect of information received from other people, details are to be provided of who received it, when and in what circumstances</li> <li>• as far as possible, information received from an informant should be reported in the informant's own words</li> <li>• all relevant information is to be included, even if confidential, except that information revealing the name, address, or any other identifying details of an informant</li> <li>• the reason for every expression of belief in the application must be explained (personal knowledge is not required, but where the applicant does not have personal knowledge of a matter, the basis for believing in its truth should be set out).</li> </ul> <p>(<a href="#">R v Williams</a> refers)</p>
10	<p>Describe as specifically as possible, the nature of the evidential material believed to be obtainable.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Use the same guide for information relied on under step 9 to support your belief that evidential material is obtainable.</li> <li>• If this information cannot be provided, then under section 49(2) of the Act describe as specifically as possible the parameters of, and objectives to be achieved by the use of surveillance device(s).</li> </ul>
11	<p>Specify the details of any relevant other application(s) for a search warrant or a surveillance device warrant, including the result of that application(s), for the previous 3 months.</p> <p><b>Note:</b> You should check in NIA for further information in relation to previous applications, especially when those previous applications related to multiple targets. (<a href="#">s49(3)</a>)</p>
12	<p>Provide any additional information in paragraph 8 of the application that is required to enable the Judge to approve the application, for example:</p> <ul style="list-style-type: none"> <li>• information about your intended use that is relevant to its reasonableness</li> <li>• reasons for period of warrant</li> <li>• any special features of the device that might affect the reasonableness of its use</li> <li>• any information about the steps that will be taken to protect privileged or confidential material</li> <li>• the condition that the Judge must be provided with a report on the use of the surveillance device within 1 month of the expiry of the warrant (or an earlier date specified by the Judge) additional conditions to be added (e.g. shorter warrant period for one device over another) and reasons.</li> </ul>

Step	Action
13	If the application is for/includes the use of a visual surveillance device then the following information should be provided under paragraph 8 of the application: <ul style="list-style-type: none"> <li>• the intended location or locations of the devices</li> <li>• the intended field(s) of view</li> <li>• the procedure to be adopted to keep private images (particularly of non-suspects) not required for the purposes of the investigation.</li> </ul>
14	Include as an annex any document in support of the application and ensure: <ul style="list-style-type: none"> <li>• it accompanies the application; and</li> <li>• that it is referred to in the: <ul style="list-style-type: none"> <li>◦ 'Information in support of suspicion as to offence(s)' in paragraph 4 of the application</li> <li>◦ 'Description of evidential material believed to be obtainable' in paragraph 5 of the application</li> <li>◦ 'Information supporting belief that evidential material available' in paragraph 6 of the application</li> <li>◦ 'Additional information' in paragraph 8 of the application.</li> </ul> </li> </ul> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• Supporting documents should only be used if necessary (e.g. to provide detailed narrative if matter has complex history, or to set out an association chart or timeline).</li> <li>• Include a table of contents as a front sheet in lengthy and complex applications that have many subheadings.</li> </ul>
15	Confirm the truth and accuracy of the contents of the application. (ss <a href="#">52</a> and <a href="#">99</a> )  <b>Note:</b> In addition to confirming the truth and accuracy at paragraph 9 of the application, you also state: "I am aware that it is an offence to make an application containing any assertion or other statement known to me to be false".
16	Sign and date the application including location of the signing.
17	Submit the application to a Police Legal Advisor to check the application and accompanying unsigned warrant.  <b>Note:</b> The warrant must have a Search and Surveillance System generated identification number attached or an explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.

**Note:**

- A significant departure from these procedures and guidelines risks the warrant (and therefore the surveillance) being deemed unlawful. This in turn may lead to the exclusion of evidential material under section [30](#) of the Evidence Act 2006.
- There is no difference in application procedures between different forms of surveillance (e.g. visual, audio or tracking).

## Manual application process

If the online Search and Surveillance system is not available, you may manually complete:

- these documents:
  - Application for Surveillance Device Warrant Pol SD1
  - Surveillance Device Warrant Pol SD2
  - Surveillance Device Warrant Report Pol SD3
  - Warrantless Surveillance Power Notification Pol SD6
- the application process by:
  - manually creating (type up) applications/warrants
  - obtaining copies of the official standard forms from the National Criminal Investigations Group (NCIG)

- seeking the indulgence of the Court to make oral surveillance device warrant application if the circumstances are urgent (section 52 of the Search and Surveillance Act refers).

# What should be included and avoided in applications?

## Including informant information in surveillance device applications

### Informant defined

Under section 3 of the Act, 'informant' has the same meaning as in section 6(1) of the Criminal Disclosure Act 2008, i.e. any person who provides verbal or written information, whether or not in recorded form, to a law enforcement officer.

'Informant' is not restricted to Covert Human Intelligence Sources (CHIS).

### Revealing identity of informants

The names and other identifying details of informants who are not registered as CHIS may be withheld but care must be exercised to ensure they are informants rather than witnesses, i.e. that they gave information with an expectation that their identity would be protected (refer [R v Williams](#) - see Law Notes - [30 May 2007](#) & [R v Kissling](#)).

While the Judge may require you to supply further information concerning the grounds on which the warrant is sought, they must **not**, in any circumstances, require you to disclose the name, address, or any other identifying detail of an informant **unless**, and only to the extent that the information is necessary for them to assess:

- the credibility of the informant, and/or
- whether there is a proper basis for issuing the warrant. ([s98\(2\)\(b\)](#))

### Including CHIS information

Follow these steps to include CHIS information in a surveillance device warrant application.

Step	Action
1	Do not name a CHIS in the surveillance device warrant application or, include any information that could lead to their identification. Explain to the Judge that you do not want the identity of the CHIS revealed.
2	As far as possible, report information received in the CHIS's own words.
3	<p>You can use hearsay information to outline the grounds for the application, if it is of high reliability. Indicate its reliability by stating:</p> <ul style="list-style-type: none"> <li>• the CHIS's credibility</li> <li>• the CHIS's reliability and whether they have given reliable information in the past, e.g. "In the past, Covert Human Intelligence Source 'A' has supplied Police with information that has proved to be reliable"</li> <li>• whether the information has been confirmed by other means.</li> </ul> <p><b>Note:</b> Current Police guidance on providing sufficient information to the warrant issuer about a CHIS is contained in Law Notes issued in respect of <a href="#">R v Williams</a> [2007] NZCA 52 (see Law Notes - <a href="#">30 May 2007</a>) and <a href="#">R v Kissling</a>, so the warrant issuer can assess reliability.</p>
4	Indicate in the application who received the information from the CHIS, when and in what circumstances.
5	Be prepared to withdraw any surveillance device warrant application if the Judge demands details that identify the CHIS.

### Good practice with preparing application

As an applicant for a surveillance device warrant you should follow the steps in this table. It outlines good practice for [written applications](#) and for [orally communicating applications](#) for surveillance device warrants.

Step	Action
1	Accurately describe the offence you believe the surveillance relates to.
2	Explain what evidential material you expect to obtain and why, how and where you expect to obtain it and why. You should be as specific as possible.
3	Make sure you describe the target person, place, vehicle or other thing where you expect to obtain the evidential material, such as the correct address or if unavailable other description of the place or registration number of a car.  <b>Note:</b> See also ' <a href="#">All known targets of surveillance must be disclosed in the application</a> ' in this chapter for guidance.
4	Include a description of all relevant information held or received (whether favourable or unfavourable) and all relevant inquiries made.
5	If there has been a delay in applying for a warrant, make any necessary inquiry to ensure everything contained in the application is current and explain why that is so. Explain any delay between the last receipt of information and/or the last inquiry and the application for a warrant.
6	Follow the guidance on including informant information above.
7	Disclose all relevant information, even if confidential. If you are concerned about inadvertent disclosure of confidential information, then consider putting it in an attachment to the application, sealed and marked confidential. You should refer in the application to the attachment.
8	Explain the reason for every expression of belief in the application. You should never express a conclusion without saying why.
9	Scrutinise the grounds on which you apply for a warrant and consider, taking the role of 'devil's advocate', whether the application meets the statutory criteria.
10	Refer the application to a legal advisor with Legal Services for checking before submitting the application to the Judge.

## Errors commonly made when applying for surveillance device warrants

If you are the applicant for a surveillance device warrant, then do not:

- apply for too wide a warrant (i.e. be specific about describing person, place, vehicle or other thing requiring surveillance, or evidential material to be obtained)
- state conclusions without saying why
- include standard form material on the criminal activity being investigated unless it is relevant to the particular application
- leave out relevant information
- include misleading information
- describe the belief of "the Police" or the belief of another person. Applicants must describe their own personal belief in a state of affairs justifying the issue of a warrant, and the facts that make them hold that belief. If you refer to the belief of another Police constable, or information received by another constable, then that constable should be identified
- omit an explanation for a delay in applying for the warrant
- omit information concerning the reliability of aCHIS
- seek to undertake surveillance activities where there is limited information to support a belief that evidential material will be obtained.

# De-confliction

## Introduction

Where more than one active document shares the same NIA target (i.e. two surveillance device warrant applications or a surveillance device warrant application and a search warrant application), the de-confliction process aims to prevent the interests of one investigation from conflicting with the interests of the other.

## Open and closed applications explained

An 'open' classification means the application is revealed to other applicants for a warrant on the same target.

A 'closed' classification means the application is not seen by other applicants.

Every application for a surveillance device warrant is 'closed' by default.

With every application for a search warrant, the applicant must decide whether their application is 'open' or 'closed'.

See the table in the 'De-confliction process outlined' section below to verify who will or will not receive a de-confliction message revealing another application for the same target.

## De-confliction process outlined

The Search and Surveillance system may send a de-confliction email to the owners of documents (and their supervisors) which share the same NIA target, according to the table below. If you are advised of a conflict, you must act to resolve the potential conflict.

**Note:** The online Search and Surveillance system automatically identifies other search warrant and surveillance device warrant applications made in the previous 3 months.

The system enables Police to comply with the provisions of the Search and Surveillance Act 2012. The law requires that an issuing officer in respect of a surveillance device warrant is made aware of any applications for either surveillance device warrants or search warrants in the preceding 3 months. An issuing officer in respect of a search warrant needs to be made aware of applications for search warrants in the preceding 3 months only.

This diagram illustrates the document owners or users who will or will not receive de-confliction messages from the Search and Surveillance system.

Original Document (User 1)	New Application (User 2)	Who is notified by email
Surveillance Device Warrant (closed)	Surveillance Device Warrant (closed)	Both user 1 and 2
'Open' Search Warrant	Surveillance Device Warrant (closed)	User 2 only
'Closed' Search Warrant	Surveillance Device Warrant (closed)	User 2 only*
Surveillance Device Warrant (closed)	'Open' Search Warrant	User 1 only
Surveillance Device Warrant (closed)	'Closed' Search Warrant	User 1 only*

\* The owner of the 'closed' surveillance device warrant will be notified of the 'closed' search warrant application, as the surveillance device system overrides this setting.

## Conflicting surveillance device warrant applications

Both document owners and their supervisors receive a message, if two Surveillance Device Warrant applications are made in respect of the same target.

## De-confliction action

If you receive a de-confliction email you must contact the other applicant/supervisor and agree on a course of action. This action will depend on individual circumstances and on the potential that each investigation has to impact on the other.

The agreed outcome may involve:

- joint execution of both warrants
- one of the applications being delayed/withdrawn,  
or
- co-ordination of the execution of both warrants.

## Conflicting surveillance device warrant/search warrant applications

Irrespective of the security status of a search warrant application, an applicant for a surveillance device warrant on the same target will receive a notification of the search warrant application. The search warrant applicant will not receive any notification.

When a surveillance device warrant applicant (and supervisor) is made aware of a search warrant application, they must carefully consider the implications of how the search warrant could affect their investigation and weigh this up against the need to inform the other applicant.

The surveillance device warrant applicant or their supervisor will take all reasonable steps to contact the search warrant applicant, or their supervisor or senior manager, if the warrant has not yet been executed.

## De-confliction actions - surveillance device warrant applicant

The outcome may involve:

- where the search warrant has not yet been executed:
  - arranging for the search warrant applicant to withdraw or delay their warrant; or
  - allowing the proposed search warrant to proceed, and disclosing the warrant application in the new surveillance device warrant application; or
- where the search warrant has already been executed:
  - not advising the search warrant applicant but disclosing the search warrant and results in the surveillance device warrant application.

## All known targets of surveillance must be disclosed in the application

All **known** targets of surveillance **must** be disclosed in the application for a surveillance device warrant to ensure that the online de-confliction process in the S&S system operates in compliance with the legal requirements of section [49\(3\)](#) of the Act (i.e. the applicant must disclose in the application the details of any other applications for a search warrant or a surveillance device warrant that the applicant knows to have been made within the previous 3 months in respect of the person, place, vehicle, or other thing proposed as the object of the surveillance; and the result of that application or those applications).

For example, it is unacceptable for the purpose of protecting the confidentiality of an investigation to only identify a phone number as a target for an interception device on an application, when the identity of the user and the place applying to that phone number are also known.

Under section [49\(4\)](#) of the Act you must, before making an application for a surveillance device warrant, **make reasonable inquiries** within Police for the purpose of complying with section [49\(3\)](#). **Note:** 'Reasonable inquiries' includes making your application online and responding to automated de-confliction alerts should they arise in the S&S system.

## Practice note for the hearing of applications

The Chief High Court Judge and the Chief District Court Judge in consultation with Police have issued a practice note that governs the arrangements to apply in relation to the hearing of applications for surveillance device warrants and declaratory orders under the [Search and Surveillance Act 2012](#) in the District Courts and the High Court.

The practice note does not seek to describe the statutory requirements for the granting of warrants and orders (which are defined in the Act), but rather to prescribe the arrangements for making, and for the hearing and security of applications.

These topics are included in the practice note:

- advice of an intended application for a surveillance device warrant or declaratory order
- application documentation for surveillance device warrants
- assessment of written applications for surveillance device warrants
- applications for declaratory orders
- the surveillance device warrant or declaratory order
- subsequent applications for surveillance device warrants
- oral applications for surveillance device warrants
- surveillance device warrant report.

View the 2012 Practice note: Procedures for processing surveillance device warrant applications. (PDF below)

 [2012\\_Practice\\_Note\\_\(SS\\_Act\\_2012\).pdf](#)

288.03 KB

See the section '**Police internal protocols for communicating with Courts**' below for further guidance contacting the Courts over surveillance matters.

## Police internal protocols for communicating with Courts

In all High Court matters filed in centres where Legal Services employees are based, Legal Services will liaise with High Court staff and arrange for the filing of applications, in consultation with the case OC. In provincial centres, Case OCs will arrange and file their applications, in consultation with Legal Services.

Communications with any High Court Judge should be conducted by Legal Services advisors, wherever possible. Operational employees should not communicate directly with, or appear before a High Court Judge without the involvement of a Legal Advisor. If a Judge contacts the applicant directly, the applicant should request the involvement of a Police Legal Advisor in the discussion. If a High Court Judge requires an appearance, a Legal Advisor should be present. If a District Court Judge requires an appearance in a centre in which no Legal Services advisors are based, the Legal Services section responsible for that centre should be advised. A request may be made for a Legal Advisor to appear by phone.

No operational employees should appear before a Judge on a surveillance device warrant matter without first consulting Legal Services.

See the section '[Practice note for hearing of applications](#)' in this chapter for further information about Court protocols for processing surveillance device warrant applications.

## Issuing surveillance device warrant

A surveillance device warrant may be issued by a Judge of the District or High Court only. The Judge must be satisfied with the [grounds for the warrant](#) and that the offence category restrictions under section [45](#) and conditions under section [51](#) do not prevent the issuing of the warrant. (s[53](#))

### Note:

- If it is not practicable to get a physical warrant before execution, then it is sufficient to have:
  - a facsimile
  - a printout of electronically generated copy
  - a copy made by a constable or authorised officer at the direction of the Judge and endorsed to that effect.

(ss[58](#) and [105](#))

- A warrant may not be issued for surveillance of a legally privileged communication unless there is a *prima facie* case that a communication will be made or received for a dishonest purpose or for the purpose of planning or committing an offence.

(s[54](#))

## When is a surveillance device warrant invalid?

A surveillance device warrant is invalid:

- if having regard to the information contained in the application, the grounds or conditions for lawful issue of the warrant were not satisfied at the time the surveillance device warrant was issued. Those grounds being:
  - to suspect that an offence specified in the application and punishable by imprisonment has been, or is being, or will be committed **and**
  - to believe that the surveillance of the person(s), place(s), vehicle(s) or other thing(s) will obtain 'evidential material' (defined in '[Surveillance introduction](#)') in respect of the offence(s) specified in the application
- if the warrant contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the warrant as to its purpose or scope.

Note: If a warrant is invalid under section [107](#) of the Act, then neither section [204](#) of the Summary Proceedings Act 1957 (proceedings not to be questioned for want of form) nor section [379](#) of the Criminal Procedure Act 2011 (proceedings not to be questioned for want of form) applies to that warrant. (ss[58](#) and [107](#))

# Safe execution of surveillance device warrants - entry to adjoining/neighbouring properties

## Introduction

When it is known in advance that Police employees will need to enter properties adjoining/near the target property for the safe execution of a surveillance device warrant (for example, TSU will be involved in executing a surveillance device warrant for an interception device), it is good practice to seek a power of **entry** to those adjoining/nearby properties.

Where specialist groups such as AOS or TSU are going to be involved in the execution of a surveillance device warrant they must be consulted about how the warrant will be executed and whether entry to adjoining properties is necessary.

In situations of urgency, it is accepted that Police may need to briefly enter onto properties adjoining/near the target property, for the safe execution of the warrant, even though no specific authorisation has been obtained.

## Application to include entry to adjoining/neighbouring properties

If a warrant is to be sought to install a surveillance device located at one address (e.g. 5 East Street), but in the process of executing the warrant, Police need to trespass on adjoining or neighbouring properties (e.g. 3 and 7 East Street), then the warrant application should also seek a warrant to **enter** the adjoining or neighbouring properties (e.g. 3 and 7 East Street).

The justification for this is in section [55\(3\)\(h\)\(i\)](#) of the Act.

## Wording application and warrants

Make it clear that you are seeking a power of entry only in respect of the adjoining/neighbouring properties for safe execution of the surveillance device warrant and explain why and provide the Judge or issuing officer with the relevant legal basis.

Where appropriate, also make it clear that the entry to dwellings on the adjoining/neighbouring property is not sought.

For the warrant application form, use 'Additional information' section (paragraph 7). For example:

### 7. Additional information

I provide the following additional information:

Power of entry on other properties required for safe execution of surveillance device warrant

7.1 Police specialists will be assisting with carrying out the activities authorised by this warrant. In order to ensure safe execution of the warrant, those specialists may need to enter onto the following properties in addition to the properties specified at paragraph 1:

- a. [address].
- b. [address].
- c. [address].  
(the "neighbouring properties")

7.2 The reasons why Police employees may need to enter these neighbouring properties are:

- a. [explain why e.g. why is TSU required in the first place (e.g. covert operation, risks associated with the particular individual or address), why these particular properties need to be entered. Could be to do with location of property where device is to be installed (e.g. in rear section not easily viewed from street), may need to be able to observe property from different angles in order to ensure covert nature of operation preserved and no one returns to house. Should have a paragraph dedicated to each property and why necessary to enter that property. Should explain in relation to each property what the entry will involve (e.g. just within the yard - don't need to enter premises).]

b. etc

7.3 This power to enter the neighbouring properties is sought in reliance on s.55(3)(h)(i) of the Search and Surveillance Act 2012, which permits a warrant to specify which premises or area may be entered.

For the surveillance device warrant form use the following wording as a guide in paragraph (2.6). For example:

2.6 To enter (but not search) the following premises or areas:

(i) [the property (but not the dwelling) at address 1]

(ii) [the property (but not the dwelling) at address 2] etc.

In order to install, maintain, or remove the surveillance device/surveillance devices.

**Note:** If practicable seek legal guidance in regards wording the application and warrant for entry to adjoining or neighbouring properties.

# Quick reference guide: surveillance device warrants and warrantless powers

## Pre-application checks and set-up

Step	Action
1	<p>Setup a <u>NIA</u> Case if one does not already exist.</p> <p><b>Note:</b> Avoid identifying target details for forthcoming warrant applications in the NIA case as this may compromise the security of subsequent warrant execution.</p>
2	Check <u>NIA</u> for any information about the proposed target(s) and also any 'notings' for search warrants issued under other Acts in the previous three months. This information must be included in the application.
3	Establish the <u>NIA</u> Person, Location, Vehicle or Item ID number for each target. This is the ID number which appears in the blue bar at the top of the NIA response. If there is no NIA identifier, create one in NIA by creating a link in the occurrence for the location, vehicle or item under surveillance.

## Apply for Surveillance Device Warrant

Step	Action
1	<p>Create the warrant application.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&amp;S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant <b>must</b> be prepared in the S&amp;S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, <b>unless</b> the system cannot be accessed <b>and</b> there is urgency with making a written application. In this situation the warrant must be prepared in the S&amp;S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A").</p> <p><b>Note:</b> Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> <li>• data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (<a href="#">s170</a>)</li> <li>• managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (<a href="#">s49(3)</a>).</li> </ul>
2	<p>Review and follow-up on any de-confliction notifications advising of other active warrant applications for the same target(s). Contact the other applicant(s) and determine whether or not to proceed.</p> <p>Notes:</p> <ul style="list-style-type: none"> <li>• The online S&amp;S system automatically identifies other search warrant and surveillance device warrant applications made in the previous 3 months.</li> <li>• You may also need to check <u>NIA</u> for any additional targets identified in the three-month history and include explanation in the "Additional Information" section of the application.</li> </ul>

## Approvals

Step	Action
1	Submit the draft application to the approving officer (see ' <a href="#">Internal Approvals</a> '). Review and revise as required.
2	Gain approval to proceed, see the section titled ' <a href="#">Internal approvals</a> ' in this chapter for the level of approval and requirements.
3	Submit the draft application and warrant to Legal Services for review.
4	Finalise the application and recheck the three-month history. Entries in this section will be automatically refreshed prior to printing and may change as time progresses during preparation of the warrant.
5	Print the application and warrants, sign the application and present them for authorisation to a Judge. Use a Judge from a District or High Court depending on where proceedings are likely to be heard.
6	Review/revise the warrant as required, to gain authorisation.
7	Record any conditions specified by the Judge in the Search and Surveillance system.
8	Execute the warrant.

## Using warrantless surveillance device power

Step	Action
1	Gain approval to proceed, see the section titled ' <a href="#">Internal approvals</a> ' in this chapter for the level of approval and requirements.
2	Use powers without warrant if required (e.g. section <a href="#">48</a> in an emergency situation).
3	See ' <a href="#">Categories of surveillance with a device</a> ' for instructions relating to 'Category 3: Surveillance using a device that normally requires a warrant, but may be done without warrant in situations of urgency or emergency'.

## Surveillance device warrant notifications and reporting

Step	Action
1	Record the outcomes and other information in the S&S system.
2	Within one month after execution (or earlier if this was a condition of the issuing officer), complete through the online S&S system: <ul style="list-style-type: none"> <li>• a surveillance device warrant report (<b>Note:</b> report back to the same Judge who authorised the warrant)</li> <li>• a surveillance device warrant application notification.</li> </ul> <p><b>Note:</b> The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who approved the surveillance device warrant application should also approve the report to the Judge and the notification to the Commissioner.</p>
3	See the section: <ul style="list-style-type: none"> <li>• 'Surveillance device warrant report' of '<a href="#">Surveillance reporting</a>' for further guidance with the reporting procedure</li> <li>• 'Notification to Commissioner' of '<a href="#">Surveillance reporting</a>' for further guidance with completing the notification.</li> </ul>

## Warrantless surveillance device power notifications and reporting

Step	Action
1	Record the outcomes and other information in the S&S system.
2	<p>Within one month after exercising warrantless surveillance device power complete:</p> <ul style="list-style-type: none"> <li>• a warrantless surveillance device power report (POL SD4)</li> <li>• a warrantless surveillance power notification (POL SD5),</li> </ul> <p>notifying the use of warrantless powers used and the outcomes associated with the exercise of the warrantless powers online in the S&amp;S system.</p> <p><b>Note:</b> The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who approved the surveillance device warrantless power should also approve the report to the Judge and the notification to the Commissioner.</p>
3	<p>See the section:</p> <ul style="list-style-type: none"> <li>• 'Warrantless surveillance device power report' of '<a href="#">Surveillance reporting</a>' for further guidance with the reporting procedure</li> <li>• 'Notification to Commissioner' of '<a href="#">Surveillance reporting</a>' for further guidance with completing the notification.</li> </ul>

## Retention and security of applications for warrants

The responsibility for retaining and securing the applications once they have been presented for signing remains with the issuing officer.

For further guidance on the retention and security of applications for warrants and action to be taken whenever security of the application retained by an issuing officer may be compromised, see the 'Search' chapter, [Part 2 - Search warrants](#).

## Disclosure and requests for copies of surveillance device warrant applications

Surveillance device warrant applications are subject to disclosure under the [Criminal Disclosure Act 2008](#). They should generally be disclosed, subjected to the redaction of sensitive information such as Covert Human Intelligence Source (CHIS) information. Applications may also be the subject of a request under the [Official Information Act 1982](#) or the [Privacy Act 2020](#).

Surveillance device warrant applications or parts of applications containing sensitive information can be withheld under all three Acts (Criminal Disclosure Act 2008, Official Information 1982 and Privacy Act 2020).

**Before any of the contents are released you must:**

- consult the primary owner who prepared the surveillance device warrant application, and
- if the disclosure may reveal the identity of a CHIS or contains any CHIS information, then also obtain approval from the O/C Human Source Management Unit (HSMU)
- consider consulting with Police Legal Section if necessary.

**Note: Information must not be electronically released, unless the minimum approved redaction software at Police being Adobe Pro 9 is applied which permanently redacts texts and images from PDF files. Only Adobe Pro 9 or an upgraded version must be used for all cases of electronic redaction.**

See:

- [Electronic redaction and disclosure](#) for specific instructions relating to redaction using Adobe Pro
- [‘Criminal disclosure’ chapter](#) for information about restrictions on disclosure
- [‘Privacy and official information’ chapter](#) for guidance with personal and official information requests
- [Part 8 Police Human Source information in warrants orders and disclosure](#) for CHIS and human related source disclosure.

See also: [Adobe Redaction Training Material](#).

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## **Surveillance by radar and from aircraft, drones etc**

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**The content of this chapter must not be disseminated external to Police without prior approval from the National Manager: Criminal Investigations Group.**

## Executive summary

This part includes instructions for surveillance by radar, from manned aircraft, drones, RPAS, UAS, UAV and model aircraft.

Police must be aware of these key, critical points for surveillance by radar and from aircraft, drones etc.:

- If the use of radar of a specific target (e.g. ship) in respect of criminal offending that is intending to obtain information that is evidential material in respect of that offending, then a surveillance device warrant should be obtained or a warrantless power should be invoked where the grounds in section [48\(2\)](#) exist.
- An aircraft, RPAS, UAV, UAS, drones or model aircraft is not a surveillance device, but the equipment installed or carried in these aerial vehicles such as a heat-sensing device, binoculars, night vision device, camera and video camera are surveillance devices.
- [Civil Aviation Rules](#) governing the use of RPAS, UAV, UAS, drones, model aircraft and other unmanned aircraft **must** be complied with for conducting surveillance activities.
- If it is intended to use hired private aircraft (helicopter and fixed wing), RPAS, UAV, UAS, drones and model aircraft for Police surveillance operations then you **must** seek initial approval from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager).

## Definitions and acronyms

These following definitions apply to this part of the Surveillance chapter.

<b>Drones</b>	Drones are unmanned aerial vehicles (UAV). Essentially, a drone is a flying robot. The aircraft may be remotely controlled or can fly autonomously through software-controlled flight plans in their embedded systems working in conjunction with GPS.
<b>Radar</b>	Radar has the ordinary dictionary meaning of: <ul style="list-style-type: none"> <li>• A method for detecting the position and velocity of a distant object. A narrow beam of extremely high-frequency radio pulses is transmitted and reflected by the object back to the transmitter. The direction of the reflected beam and the time between transmission and reception of a pulse determine the position of the object.</li> <li>• The equipment used in such detection.</li> </ul>
<b>RPAS</b>	Remotely Piloted Aircraft System. A remotely piloted aircraft is an unmanned aircraft that is piloted from a remote station. While some RPAS can be programmed to operate automatically or on an automatic basis, the operator may still intervene. RPAS is the official term for these remotely piloted aircraft. They are also known as UAVs, UAS and drones.
<b>Ship</b>	Ship has the same meaning as defined in section 2 of the Crimes Act 1961: "Ship means every description of vessel used in navigation, however propelled; and includes any barge, lighter, dinghy, raft, or like vessel; and also includes any ship belonging to or used as a ship of the armed forces of any country."
<b>UAS</b>	Unmanned Aerial System.
<b>UAV</b>	Unmanned Aerial Vehicle.
<b>Unmanned aircraft</b>	An aircraft designed to operate with no pilot on board. It includes RPAS (where operators are able to intervene in the control) and also fully autonomous aircraft.

## Use of radar as a tracking device

### When no surveillance device warrant required

If radar is being used for general navigation, a surveillance device warrant is not required.

If Police are notified that a ship has been involved in a minor matter and radar is used to help locate and track the ship so that the people responsible can be spoken to, no warrant is required. The tracking information is unlikely to be of any evidential value and the thresholds required in section [48](#) of the Search and Surveillance Act (the Act) are unlikely to be reached.

If radar is used in a search and rescue operation, no warrant is required.

### When surveillance device warrant or warrantless power should be used

If a specific ship is being targeted in respect of criminal offending and the use of radar will obtain information that is evidential material in respect of that offending, a surveillance device warrant should be obtained or a warrantless power should be invoked where the grounds in section [48\(2\)](#) exist, e.g. if the ship is involved in the trafficking of drugs or is visiting locations where cannabis is being cultivated.

If there is offending of some nature and radar is likely to be a helpful tool to locate and apprehend those responsible, a surveillance device warrant is not required if the tracking information is not of any evidential value. However, if any of the emergency situations in section [48\(2\)](#) apply, a warrantless power should be invoked.

If there is a planned operation involving criminal offending, and it is necessary to track a ship as part of that operation, a surveillance device warrant should be obtained (whether radar or some other device is used to track the ship).

# Surveillance from aircraft, drones etc.

## Introduction

This section applies to Police:

- carrying out surveillance from:
  - the 'Eagle' helicopter at Auckland
  - military aircraft (helicopter and fixed wing) engaged for Police operations
  - private aircraft (helicopter and fixed wing) hired for Police operations
  - RPAS, UAV, UAS, drones and model aircraft
- obtaining approval to use RPAS, UAV, UAS, drones and model aircraft for Police operations.

An aircraft, RPAS, UAV, UAS, drones and model aircraft is not a surveillance device, but the equipment installed or carried in these aerial vehicles such as a heat-sensing device, binoculars, night vision device, camera and video camera are surveillance devices. The [Search and Surveillance Act 2012](#) regulates the use of surveillance devices (interception, tracking and visual) for law enforcement purposes.

See also these chapters:

- [Police air operations](#)
- [Remotely Piloted Aircraft Systems \(RPAS\)](#).

## Application of Act for surveillance from an aircraft, RPAS, UAV, UAS, drones and model aircraft

Surveillance in the circumstances set out in section [46](#) is not permissible unless authorised by a warrant or under the emergency warrantless powers. Activities for which a warrant is required in order to obtain evidential material include:

- Use of a surveillance device that involves trespass to land or goods. For example, conducting visual surveillance from a drone flying near ground level over private property.
- Observing private activity in private premises, and any recording of that observation, by means of a visual surveillance device. For example, visual surveillance that involves filming what is going on inside private premises through the windows of those premises from a drone.
- Observing private activity in the curtilage of private premises and any recording of that observation is any part of the observation or recording is by means of a visual surveillance device, and the duration of that observation exceeds 3 hours in a 24 hour period or 8 hours in total. For example, visual surveillance of the goings on in the enclosed back yard of a private dwelling from a high flying drone for an extended period.
- Using an interception device to intercept a private communication. For example, if it were possible to record private communications using a recording device.

Use of surveillance in other circumstances where there is not a criminal investigation, no evidential material is to be obtained and the circumstances are such that it is unlikely that private activities or private communications will be involved will be permissible without a warrant. For example, using a heat sensing device to locate and rescue missing persons, locate and recover bodies or to protect life and property.

## Civil aviation rules for RPAS, UAV, UAS, drones and model aircraft

The Civil Aviation Authority of New Zealand has responsibility for administering and enforcing [Civil Aviation Rules](#) governing the use of RPAS, UAV, UAS, drones, model aircraft and other unmanned aircraft.

The rules are divided into groups of related rules called 'Parts'. There are two Parts:

- Part 101 '[Gyrogliders and Parasails, Unmanned Aircraft \(including Balloons\), Kites, and Rockets - Operating Rules](#)'. Part 101 sets out the rules under which RPAS under 25 kg can be operated without requiring certification. There are limitations on use of RPAS under this Part such as the RPAS operator must only use it in daylight; must keep the RPAS within sight; must have consent from any person or property owner they want to fly above; and operate the RPAS at 120 metres (400 feet) or lower. RPAS weighing between 15 and 25kg must also be constructed or inspected, approved and operated under the authority of a person or association approved for this purpose by the Director of CAA.

- Part 102 '[Unmanned Aircraft Operator Certification](#)'. Part 102 provides a means for an operator of an unmanned aircraft (including RPAS) to apply for operator certification to use the unmanned aircraft in circumstances where that would not be permitted by Part 101. For example, where the operator wants to use a larger RPAS; fly the RPAS at night or out of line of sight; fly the RPAS above 120 metre (400 feet); or fly above people or properties without getting consent.

## **Internal approval to use private aircraft, RPAS, UAV, UAS, drones and model aircraft for surveillance operations**

If it is intended to use hired private aircraft (helicopter and fixed wing), RPAS, UAV, UAS, drones and model aircraft for Police surveillance operations then you **must** seek initial approval from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager).

The Detective Inspector should consult with:

- Response and Operations Group to confirm that the private company, pilot or operator are certified and qualified to conduct the kind of Police operations proposed in compliance with [CAA rules](#).
- A Legal Adviser for clarification on any issues around whether a surveillance device warrant is required for the activity proposed.

See also:

- 'Internal approvals' in '[Surveillance device warrants](#)' of this chapter
- '[Police air operations](#)' chapter
- '[Remotely Piloted Aircraft Systems \(RPAS\)](#)' chapter.

## **Surveillance for law enforcement purposes**

Surveillance from an aircraft, RPAS, UAV, UAS, drone and model aircraft using a device to obtain evidential material for criminal proceedings is governed by the Act. Only the more common visual surveillance devices used in these aerial vehicles are covered by these guidelines.

### **Heat-sensing device**

A heat-sensing device used for observing private activity is likely to be a visual surveillance device under the Act. However, the use of such a device from a flying aircraft, RPAS, UAV, UAS, drone and model aircraft to observe a fleeing offender in a public place or in the curtilage of private premises does not usually require a warrant or the exercise of a warrantless surveillance power, because the surveillance:

- does not involve a trespass to land or goods; and
- the activity of a fleeing offender is not 'private activity'.

**Note:** A warrant would be required if a visual surveillance device is being used to observe 'private activity' in the curtilage of private premises for more than 3 hours in 24 or 8 hours in total for the purpose of a single investigation.

### **Camera, video camera, binoculars and night vision devices**

Cameras, video cameras, binoculars and night vision devices are visual surveillance devices. These devices must not be used from an aircraft, RPAS, UAV, UAS, drone and model aircraft to observe, or observe and record private activity in private premises without a warrant or private activity in the curtilage of private premises for an extended period, unless a warrantless surveillance power in some situations of emergency or urgency exists under the Act.

Visual surveillance may be carried out from an aircraft, RPAS, UAV, UAS, drone and model aircraft to observe or observe and record:

- any activity in a public place; or
- any activity in non-private premises (i.e. those to which the public are frequently permitted to have access) or the

curtilage of non-private premises; or

- private activity in the curtilage of private premises, if the duration of the observation, for the purpose of a single investigation, or connected series of investigations does not exceed:
  - 3 hours in any 24 hour period; or
  - 8 hours in total.

**Note:** The cost/benefit and restricted flying time for aircraft, RPAS, UAV, UAS, drone and model aircraft would assist with complying with these time periods.

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## **Surveillance squad**

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**The content of this chapter must not be disseminated external to Police without prior approval from the Director: National Criminal Investigations Group.**

## Executive summary

This part of the surveillance chapter applies to the use of dedicated surveillance squads. It contains information about surveillance squads, and about how to prepare for a surveillance operation.

Key, critical points for Police to note:

- You must always prepare your surveillance thoroughly so that you are not detected.
- The safety and effectiveness of a squad depends on the anonymity of its members and secrecy about their vehicles, equipment and methods.
- All squad members must maintain this protection and ensure that they do not reveal information to any other person.
- In normal circumstances, surveillance officers should not be required to give evidence.
- Surveillance squad premises must not be located within publicly identifiable Police premises.

# Overview

## Introduction

Surveillance is the observation of people, vehicles, places or objects in order to obtain information about the activities and identities of individuals.

### Section 6(c) Official Information Act 1982

[REDACTED]  
[REDACTED].

Surveillance is planned, directed and secretive with the purpose of discovering the nature and extent of criminal activity to identify the people involved, and to gather evidence.

## Objectives of surveillance

The objectives of surveillance are to:

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)  
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## Surveillance preparation

### Section 6(c) Official Information Act 1982

## Related information

See the additional parts of the '[Surveillance](#)' chapter for guidance on surveillance law and good practice under the [Search and Surveillance Act 2012](#).

## Requesting a surveillance squad deployment

### Things to consider before seeking surveillance squad help

Before you request the assistance of a surveillance squad consider:

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**Note:** You must be available to provide any support requested by the surveillance team throughout its deployment.

Then decide:

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If, after considering these factors, you decide that the assistance of a surveillance squad would be appropriate, request a deployment by completing the required Request for Surveillance Form and submitting to the O/C Surveillance. To obtain the request form, go to

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## Surveillance squads

Section 6(c) Official Information Act 1982





## Confidentiality of investigation techniques

Section 6(c) Official Information Act 1982






## Selection and appointment of surveillance officers

Applicants for surveillance squad positions must be identified through nationally advertised positions and selected in terms of approved appointment processes.

The successful applicant's appointment is dependent on the candidate passing the pre-selection assessment and agreeing to the terms of the 'Conditions of Service Agreement'. This agreement provides for:

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The pre-selection assessment:

- will include:

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- may include:

- team building activity

S

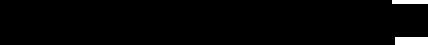


## Probation

A constable must:

- initially be appointed to the surveillance squad for a twelve (12) month probationary period
- be assessed by their supervisors during the probationary period to establish whether they are suitable for permanent appointment to the surveillance squad
- receive appropriate training and regular feedback regarding performance during the probationary period

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Section 6(c) Official Information Act 1982

, the constable must be advised that the probationary period has finished and that their position is confirmed.

Unless exceptional circumstances exist, every applicant must be permanently appointed constables before being considered for a

surveillance squad position.

## Surveillance resources

Section  
6(c)

Official  
Information  
Act 1982

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

Surveillance vehicles may not be used for private purposes.

A surveillance officer can only be 'on call' in accordance with the terms of the sworn members employment agreement. Surveillance cars being used by squad members 'on call' do not attract fringe benefit tax ([FBT](#)).

## Equipment

Surveillance officers are responsible for the security and maintenance of all equipment issued to them and must report losses to their supervisor as soon as practicable.

Section 6(c)

Official

Information

Act 1982

[REDACTED]

[REDACTED]

[REDACTED]

## Financial responsibilities

All expenses associated with a surveillance squad are national expenses. Following a written application, the officer in charge of surveillance may be issued with a permanent advance from which all squad costs should be met. The level of the permanent advance will be set from time to time by the Executive Director: Finance.

If a purchase or charge will exceed the permanent advance, the Manager: Surveillance may authorise a special advance. The officer in charge of surveillance must keep accounting records as required by the Director: Assurance at [PNHQ](#).

Advice on managing the finances of a surveillance squad must be obtained from the Manager: Surveillance, National Criminal Investigations Group, [PNHQ](#).

## Surveillance reporting

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The content of this chapter must not be disseminated external to Police without prior approval from the National Manager: Criminal Investigations Group.

## Executive summary

The Act requires the reporting of surveillance activities to:

- a Judge (referred to as 'report-backs') and includes two types of surveillance reports:
  - activities authorised by surveillance device warrant ([s59](#))
  - the exercise of warrantless surveillance device powers ([s60](#))
- the Commissioner (referred to as notifications) for the purpose of preparing the annual report.

This part will outline the reporting requirements and procedures.

Police must be aware of these key, critical points for surveillance reporting:

- A surveillance device warrant report must be completed for a Judge within 1 month of the warrant being issued or sooner should the Judge make it a condition. ([sections 59 and 55\(2\)](#))
- A warrantless surveillance device power report must be posted, emailed or delivered to a Judge within 1 month after the date of the last day of any period of 48 hours or less in which the surveillance device was used. ([s60](#))
- The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who approved the surveillance device warrant application, or sought or approved the use of emergency powers under section [48](#) should complete and sign the report.
- There are two types of surveillance notifications that must be made to the Commissioner as soon as practicable:
- Warrantless surveillance power notification. ([s169\(1\)](#))
- Surveillance device warrant application notification. ([s172](#)).
- **Note:** The Commissioner must provide an annual report to parliament with information gathered from the notifications. ([s170](#))

## Surveillance device warrant report

The surveillance device warrant report informs the Judge of the outcome authorised by warrant within 1 month of expiry of the warrant. (s[59](#))

**Note:** The Judge may have made it a condition of the warrant that a report is to be provided sooner than 1 month from the expiry of the warrant. (s[55\(2\)](#))

The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who approved the surveillance device warrant application should approve the report that has been prepared and signed by the applicant.

### Reporting procedure

When completing the report, follow the steps in this table.

Step	Action
1	Use the surveillance device warrant report in the online Search and Surveillance (S&S) system.
2	Direct the report to the Judge (by name) who issued the warrant.  <b>Note:</b> Should that Judge be unavailable then the report must be directed to another Judge of the same Court.
3	Enter your name, agency (NZ Police) and location.
4	Specify: <ul style="list-style-type: none"><li>• date of application for a surveillance device</li><li>• number of days warrant was granted for</li><li>• date the surveillance device warrant expired</li><li>• type of surveillance devices used (interception, visual, tracking device).</li></ul>
5	Provide the name or description of person, place, vehicle, thing or person under surveillance (target).
6	Advise whether: <ul style="list-style-type: none"><li>• warrant was executed, or reason if not executed</li><li>• evidential material was obtained as a result of carrying out activities authorised by warrant and if obtained whether that material was specified in the warrant. (s55(3)(e))</li></ul>
7	Describe in reasonable detail the material obtained, where from and whether the material ought to be destroyed or retained, giving reasons; if no material was obtained then describe what was expected to be obtained.  <b>Note:</b> Material is not limited to evidential material.
8	Describe the circumstances in which the surveillance device was used. Examples of circumstances that may apply are provided with the form on the S&S System.
9	Specify whether criminal proceedings as a result of evidential material obtained under the warrant: <ul style="list-style-type: none"><li>• have been brought</li><li>• are under consideration</li><li>• have not been brought.</li></ul>
10	Confirm whether the warrant required any other information and if so specify other information required.
11	Complete location and date of signing the report.
12	The original report must be delivered to a contact person at the Court in a secure envelope addressed to the Judge and bearing the number assigned to the original application.  <b>Note:</b> This is a requirement set out in paragraph 9.1 of the 2012 Practice note: Procedures for processing surveillance device warrant applications:  <div style="border: 1px solid black; padding: 5px; display: inline-block;"> <input type="checkbox"/> <a href="#">2012_Practice_Note_(SS_Act_2012).pdf 288.03 KB</a> </div> Duplicate copy to file. <b>Note:</b> The S&S system automatically collates returns for the Commissioner's annual report to parliament.

## **Warrantless surveillance device power report**

The warrantless surveillance device power report informs the Judge of the exercise of warrantless powers (i.e. Category 3 surveillance device powers) within 1 month after the date of the last day of any period of 48 hours or less in which the surveillance device was used. ([s60](#))

The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who sought or approved the use of emergency powers under section [48](#) should complete and sign the report.

### **Reporting procedure**

When completing the report, follow the steps in this table.

Step	Action
1	Use the warrantless surveillance device power report in the online Search and Surveillance (S&S) system.
2	Direct the report to a Judge of the District Court or High Court.
3	Enter your name, agency (NZ Police) and location.
4	Specify the date and time the surveillance commenced and expired.  <b>Note:</b> To remain lawful the surveillance must not exceed 48 hours.
5	Select the type of surveillance devices used (interception device, visual surveillance device, tracking device).
6	Provide the name or description of person, place, vehicle, thing or person in possession of thing (target).
7	Select one or more of the options on the form advising the reason for exercising the warrantless surveillance device power and specify the offence(s) suspected of having been, being or about to be committed.
8	Describe the information that led you to form your suspicion and belief that provided the reason for exercising the warrantless surveillance device power.
9	Include the following information: <ul style="list-style-type: none"> <li>• whether the use of the surveillance device resulted in:               <ul style="list-style-type: none"> <li>◦ obtaining evidential material of the relevant offence (in the case of use of a surveillance device in a situation set out in section 48(2)(a), (d), or (e)); or</li> <li>◦ preventing the offending from being committed or continuing, or averting the emergency (in the case of use of a surveillance device in a situation set out in section 48(2)(b)); or</li> <li>◦ facilitating the seizure of the arms (in the case of use of a surveillance device in a situation set out in section 48(2)(c)); and</li> </ul> </li> <li>• the circumstances in which the surveillance device was used.</li> </ul>
10	Outline additional information.  <b>Note:</b> This requirement only applies when a previous warrantless surveillance device report has been furnished and the Judge requires further information.
11	Specify location and date of signing the report.
12	The original report must be posted, emailed or delivered to Judge.  <b>Note:</b> If the report contains information that could put continuing or future investigations at risk, then deliver to Judge by hand.  Duplicate copy to file.  <b>Note:</b> The S&S system automatically collates returns for the Commissioner's annual report to parliament.

## Serious breach of surveillance device warrant conditions or statutory provisions

If the Judge considers that the surveillance activities carried out were in breach of the conditions of the warrant or statutory warrantless power, then the Judge may report on the breach to the Commissioner. (ss61& 62)

The Commissioner may delegate the National Manager: National Criminal Investigations Group the power to investigate and report any alleged breaches via the Manager: Covert Operations Group. The outcome of the investigation will be notified to the Judge reporting the breach.

The Judge may also order that the subject of a serious surveillance breach be notified if the public interest outweighs potential prejudice to:

- any Police investigation
- safety of informants (CHIS) or undercover Police officers
- supply of information to Police
- any international relationships of the Police.

## Reporting multiple surveillance and targets from one event or operation to a Judge

### Reporting multiple surveillance device applications and warrants from one event or operation

Every application made for a surveillance device warrant requires a separate surveillance device warrant report to a Judge with an outcome that captures the result of that application and warrant (i.e. multiple applications and warrants for surveillance devices or period of warrant and targets from one event or operation must be reported individually to the Judge).

**Note:** Unlike the multi-warrant search system the surveillance system only permits one surveillance device warrant to be associated with each report.

Notifications must be made online in the S&S system. Note that the S&S system automatically collates returns for the Commissioner's annual report to parliament.

**Note:**

- If the surveillance is authorised by warrant, then the report should be addressed to the same Judge issuing the warrant, or if that Judge is unavailable to a Judge of the same Court.
- If a warrantless surveillance device power is exercised under emergency or urgency and then a surveillance device warrant is obtained for the same event or operation, both the warrantless surveillance device power report and surveillance device warrant report must be completed. Send both reports to the same Judge.

### Reporting multiple exercises of warrantless surveillance device powers from one event or operation

Only one warrantless surveillance device power report to a Judge is required to be completed in situations involving the exercise of more than one warrantless surveillance device power being exercised against one or multiple targets arising out of one event or one operation.

A report covering multiple targets for one event or one operation must also include the number of associated targets (i.e. persons, places, vehicles and other things) that were the object of the surveillance.

#### Example scenario

This is a scenario in which multiple warrantless surveillance device powers are exercised at a single event or operation.

Example	Description
Scenario	<p>AOS are called to an armed incident at a house and 10 officers use their telescopic sights on their firearms to view 3 offenders inside the house through windows. In addition, interception devices are installed to intercept conversations of the offenders inside. The entire operation runs for 8 hours.</p> <p><b>In this scenario only one warrantless surveillance device power report is required.</b></p>

## Notification to Commissioner

There are two types of surveillance notifications made to the Commissioner:

- Warrantless surveillance power notification. (s169(1))
- Surveillance device warrant application notification. (s172)

**Note:** These notifications must be made as soon as practicable after:

- the warrantless surveillance power has been exercised, or
- the surveillance device warrant has been executed or the application has been refused.

### Warrantless surveillance power notification

When completing the notification, follow the steps in this table.

Step	Action
1	Use the warrantless surveillance power notification in the online Search and Surveillance (S&S) system.
2	Complete details of: <ul style="list-style-type: none"> <li>• person on whose behalf the form is filled out</li> <li>• incident details</li> <li>• target details (e.g. person, place, vehicle, or other thing).</li> </ul>
3	PART A (about power exercised) – enter: <ul style="list-style-type: none"> <li>• date and time surveillance commenced and expired</li> <li>• reason and circumstances surrounding exercise of warrantless power (select one or more of the options provided)</li> </ul> <p><b>Note:</b> If the option ‘other’ is selected then a summary of reason(s)/circumstance(s) must be provided and a 258 report submitted to the supervisor. Selecting this option is likely to indicate that the reason(s) and circumstance(s) for exercising the warrantless surveillance power is unlawful</p> <ul style="list-style-type: none"> <li>• whether warrantless surveillance power resulted in the obtaining of evidential material</li> <li>• types and number of surveillance devices used (i.e. interception device, visual surveillance device, tracking device) and whether for 24 hours or less; or 24 to 48 hours</li> <li>• whether any criminal proceedings have been brought, or are being considered as a consequence of the seizure of that evidential material (<a href="#">s169(3)(c)</a>)</li> <li>• the number of persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by the exercise of a warrantless surveillance power (<a href="#">s170(e)</a>).</li> </ul>
4	Note the S&S system automatically collates returns for the Commissioner's annual report to parliament.
5	PART B (about whether or not a Judge has reported a breach to the Commissioner) <p>If a Judge reports a breach, the details must be entered alongside the corresponding surveillance device warrant in the S&amp;S online system.</p> <p><b>The information required includes:</b></p> <ul style="list-style-type: none"> <li>• when the Judge has reported a breach</li> <li>• details of the lack of authorisation reported; and</li> <li>• the result of the investigation into the breach.</li> </ul> <p><b>Note:</b> A letter will be prepared for the National Manager: NCIG to sign on behalf of the Commissioner, advising the Judge the result of the investigation and, if the breach is upheld, what steps are being taken to prevent a similar breach from reoccurring. A copy of the letter must be forwarded to the District Commander or National Manager responsible for the employee involved in the reported breach.</p>

## Notifying multiple surveillance device applications and warrants from one event or operation

Every application made for a surveillance device warrant requires a separate notification to the Commissioner with an outcome that captures the result of that application and warrant (i.e. multiple applications and warrants for surveillance devices or period of warrant and targets from one event or operation must be notified individually to the Commissioner).

**Note:** Unlike the multi-search warrant system, the surveillance system only permits one surveillance device warrant to be associated with each notification.

Notifications must be made online in the S&S system. The system automatically collates returns for the Commissioner's annual report to parliament.

If a warrantless surveillance power is exercised under emergency or urgency and then a surveillance device warrant is obtained for the same event or operation, both the warrantless surveillance power notification and surveillance device warrant notification must be completed in the S&S System.

## Notifying multiple exercises of warrantless surveillance powers from one event or operation

Only one warrantless surveillance power notification to the Commissioner is required to be completed in situations involving the exercise of more than one warrantless surveillance power being exercised against a single or multiple targets arising out of one event or one operation.

A notification covering multiple targets for one event or one operation, must also include the number of associated targets (i.e. persons, places, vehicles and other things) that were the object of the surveillance.

### Example scenario

This is a scenario in which multiple warrantless surveillance powers are exercised at a single event or operation.

Example	Description
Scenario	Section 6(c) Official Information Act 1982 [REDACTED] [REDACTED] [REDACTED]

### Surveillance device warrant notification

When completing the notification, follow the steps in this table.

Step	Action
1	Use the surveillance device warrant Outcomes notification on the online Search and Surveillance (S&S) system.
2	Complete details of: <ul style="list-style-type: none"> <li>• person on whose behalf the form is filled out</li> <li>• incident details.</li> </ul>
3	PART A (about making of application) - enter:  whether application granted, refused or withdrawn and date  <b>Note:</b> If application has been withdrawn (i.e. application has not been presented to Judge), then no further information from this point on the notification requires to be completed - go to step 6.  <ul style="list-style-type: none"> <li>• name of Judge who considered application, whether from the District or High Court and location of court</li> <li>• date and time surveillance commenced and expired.</li> </ul> <b>Note:</b> If application has been refused by Judge, then no further information from this point on the notification requires to be completed.
4	PART B – (about execution of warrant) – enter: <ul style="list-style-type: none"> <li>• whether warrant was executed <b>Note:</b> If warrant was not executed, then no further information from this point on the notification requires to be completed</li> <li>• types and number of surveillance devices used (i.e. interception device, visual surveillance device, tracking device) and whether for less than 1 day, 1 to 3 days, 3 to 7 days, 7 to 21 days, 21 to 60 days</li> <li>• whether any criminal proceedings have been brought, or are being considered as a consequence of the seizure of that evidential material (s169(3)(c))</li> <li>• the number of persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by the exercise of a warrantless surveillance power (s170(e)).</li> </ul>
5	Note the S&S system automatically collates returns for the Commissioner's annual report to parliament.
6	PART C - (about whether or not a Judge has reported a breach to the Commissioner)  If a Judge reports a breach, the details must be entered alongside the corresponding surveillance device warrant in the S&S online system.  <b>The information required includes:</b> <ul style="list-style-type: none"> <li>• when the Judge has reported a breach</li> <li>• details of the condition(s) or applicable statutory provision breached; and</li> <li>• the result of the investigation into the breach.</li> </ul> <b>Note:</b> A letter will be prepared for the National Manager: NCIG to sign on behalf of the Commissioner advising the Judge of the result of the investigation and, if the breach is upheld, what steps are being taken to prevent a similar breach from reoccurring. A copy of the letter must be forwarded to the District Commander or National Manager responsible for the employee involved in the reported breach.

## **Retention and destruction of surveillance data and documents**

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The content of this chapter must not be disseminated external to Police without prior approval from the National Manager: Criminal Investigations Group.

## Executive summary

Police must be aware of these key, critical points:

- The [Search and Surveillance Act 2012](#) provides rules about the extent to which information obtained as a result of a surveillance operation may be retained.
- In addition a Judge receiving a report about the use of a surveillance device, either under warrant or under the emergency warrantless power, may give directions as to the destruction or retention of the material obtained as a result of the surveillance.
- Surveillance information that becomes part of a court record must be retained in accordance with the rules about court records.

## Rules about retention or destruction

Under section [63](#), the rules about retention or destruction divide surveillance information into three categories:

- raw surveillance data
- excerpts from raw surveillance data
- information obtained from raw surveillance data.

### Raw surveillance data

Raw surveillance data is defined in section [3](#) and:

- (a) means actual video or actual audio recordings; and
- (b) includes full (or substantial parts) of transcripts of audio recordings.

Raw surveillance data may be retained until:

- the conclusion of criminal proceedings (which is defined to include the later of either the conclusion of appeal proceedings or the expiry of any period for bringing such an appeal)
- a maximum of 3 years if no criminal proceedings have been commenced but the data is required for an ongoing (as distinct from a future) investigation.

For example a full record of visual surveillance, or a full recording or transcript of an audio interception; but **does not** include tracking data or intercepted text messages.

Raw surveillance data may be retained until:

- the conclusion of criminal proceedings in relation to an offence in respect of which the data was collected (which is defined to include the later of either the conclusion of appeal proceedings or the expiry of any period for bringing such an appeal); or
- subject to the order of the Court a maximum of 3 years if no criminal proceedings have been commenced but the data is required for an ongoing (as distinct from a future) investigation.

([s63\(1\)](#))

A Judge may make an order extending the retention period for up to 2 years. The application has to be made before the expiry of the 3 year period. If application is made before expiry of the initial 3 year period and the Judge is satisfied that the data is required for the ongoing investigation, the Judge may make an order and may attach any conditions to it that they think fit.

([s63\(2\)](#))

### Excerpts from raw surveillance data

If you wish to retain excerpts from raw surveillance data for a longer period than that permitted under section [63\(1\)](#) in relation to the whole of the raw data, an application may be made to a Judge for an order to that effect. The Judge may make such an order if satisfied that the excerpts may be required for a **future** investigation, and may attach any conditions to that order that he or she thinks fit. The order could be for a fixed or indefinite period.

([s63\(3\)](#))

Examples of excerpts from raw surveillance data include selected time periods from a visual surveillance record, or edited sections of the transcript of an audio interception that have eliminated irrelevant or superfluous material.

## Information from raw surveillance data

Information that is obtained from raw surveillance data, but that does not in itself constitute raw surveillance data, may be retained if there are reasonable grounds to suspect that the information **may** be relevant to an **ongoing or future** investigation. No judicial order is required.

An example of information from raw surveillance data includes an account of what is seen or heard that is entered in the NIA database.

## Disposal of raw surveillance data, excerpts, and information obtained

Under section [64](#) Police must ensure that any raw surveillance data, excerpts from raw surveillance data, and information obtained from it that is not itself raw surveillance data, and that is not retained under section [63](#) or as part of a court record, is deleted or erased.

## Retention of raw surveillance data or excerpts of raw surveillance data forms

These forms should be used if you are seeking to retain raw surveillance data or excerpts from raw surveillance data:

- POL SZ13 – Application for retention of raw surveillance data (s63(2))
- POL SZ14 – Order for retention of raw surveillance data (s63(2))
- POL SZ16 – Application for retention of excerpts from raw surveillance data (s63(3))
- POL SZ17 – Order for retention of excerpts from raw surveillance data (s63(3))

Applications are made to either a District Court Judge or a Judge of the High Court. The Judge may issue the order subject to conditions.

**Note:** These forms are available on Police Forms > Search and surveillance > Seizure Forms > POL SZ13, SZ14, SZ16 or SZ17.

## Retaining surveillance documents after execution

You must retain the following documents in the relevant case file:

- if applicable, written authority from supervisor authorising application for surveillance device warrant
- a copy of the surveillance device warrant application, if made in written form, otherwise a record of the oral application made (**Note:** If the application contains sensitive information, consider securing it elsewhere and endorsing the file accordingly)
- copies of all documents tendered in support of the application
- the surveillance device warrant.

(ss[52](#) and [101](#))

**Note:** The specified documents must be retained until the later of:

- conclusion of any proceedings
- destruction of the documents under the [Public Records Act 2005](#) in accordance with the '[Retention and disposal of Police records](#)' chapter.

(ss[52](#) and [101\(2\)](#))

Under the [Public Records Act 2005](#) there is a statutory obligation to retain documents classified as 'public records'. Documents containing surveillance information may be considered 'public records'. Destruction of 'public records' is permissible with the authority of the Chief Archivist.

A Judge receiving a surveillance device warrant report or report on use of surveillance device in situation of urgency or emergency may give directions as to the destruction or retention of material obtained as a result of the surveillance.

(s61(1)(a) and s62(1)(a))

Those directions take precedence over the rules in section63.

(s63(7)(a)

## Court records

Section 63 is also subject to any enactment requiring the retention of information that is part of a court record. Documents on the court record that contain raw surveillance data, excerpts of raw surveillance data must be dealt with by the Court in accordance with the rules dealing with court records.

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## Privilege and immunities involving surveillance

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# Policy statement and principles

## What

The [Evidence Act 2006](#) sets out various privileges. Section [136](#) of the Search and Surveillance Act 2012 recognises those privileges and sections [140](#) and [141](#) of the Act deal with privilege in respect of surveillance.

This part of the '[Surveillance](#)' chapter details procedures for Police employees to comply with the Act and enable a claim of privilege to be made and determined in respect of material that is the subject of surveillance powers.

## Why

Privileged communications or information may not be used in proceedings unless the privilege has been waived and use has been authorised by a Judge. Compliance with the guidance and procedures in this chapter when carrying out surveillance powers will ensure privilege is appropriately preserved and mitigate against future challenges to the surveillance.

## How

When carrying out surveillance powers, Police will:

- before applying for a surveillance device warrant, consider whether privileged communications or information may be recorded when carrying out the surveillance, e.g.:
  - is it likely that the surveillance may contain communication from a lawyer?
  - is the person who is the target of surveillance someone whose communications may be privileged, such as a lawyer, a doctor, a journalist or a minister of religion?
- if you reasonably anticipate privileged communications or information may be recorded when executing a surveillance device warrant, include information in the application to:
  - identify the privilege that may apply and the nature of the potentially privileged information/communications
  - explain how Police will comply with duties imposed under the Act to prevent the interception of privileged information/communication, and destroy any records of privileged communications and information that might be made as a consequence of the surveillance
- **before** conducting surveillance when privilege may apply, seek legal advice from a legal advisor
- if there are reasonable grounds to believe that information/communications recorded **during** surveillance are privileged, discuss with the Crime Monitoring Centre how you can comply with your obligation under the Act to:
  - take all reasonable steps to prevent further interception of such communications or information; and
  - destroy the record of that privileged communication or information, unless that is impracticable or impossible. Usually it is not practicable to destroy a part of the complete evidential surveillance record, but the relevant parts may be "locked down".

If you are uncertain about whether the communication or information is privileged, you can apply to a Judge to determine whether:

- the communication or information can be the subject of surveillance; and
- any record of the information or communication is required to be destroyed

# Overview

## Purpose of this chapter

This chapter details:

- surveillance that may involve privilege
  - restrictions on issue of surveillance device warrant under section 54 of the Search and Surveillance Act 2012
  - requirement for all surveillance device warrants to contain a condition that relates to any privileged communications obtained under the warrant
- effect of privilege on surveillance under section 140 of the Search and Surveillance Act 2012
- claims by any person wishing to claim privilege in respect of surveillance under section 141 of the Act
- immunities relating to surveillance under the Act.

## References to “the Act”

All statutory references in this chapter are to the [Search and Surveillance Act 2012](#) unless otherwise stated.

## Related information

See also these Police Manual chapters:

- [Search](#) chapter:
  - [Part 13 – Privilege and immunities under the Act](#) for guidance with:
    - recognised privileges
    - privilege relating to search warrants, production orders and examination orders
    - immunities under the Act in the exercise of entry and search powers
- [Surveillance](#) chapter:
  - [Surveillance device warrants](#) for information about applying for surveillance device warrants.

# Surveillance that may involve privilege

## Identifying privilege

Before applying for a surveillance device warrant or undertaking warrantless surveillance, consider whether any of the recognised privileges under section [136](#) of the Search and Surveillance Act 2012 and the [Evidence Act 2006](#) as outlined in [Part 13 – Privilege and immunities under the Act](#) of the ‘Search’ chapter might reasonably apply in the circumstances. For example:

- Is it likely that the person that is the target of surveillance will have privileged communications with a lawyer, doctor, or minister of religion?
- Is the person who is the target of surveillance someone whose communications may be privileged, such as a lawyer, a doctor, or a minister of religion?
- Is the target of surveillance a journalist who is likely to be in contact with a source whose identity the journalist has promised to protect?
- Is it likely that privileged communications will be conducted by the people using a phone number that you are planning to intercept?

## Seek legal advice if surveillance may involve privilege

If a surveillance device warrant or warrantless surveillance may involve privileged communications or information, legal advice should be sought on the procedure for making application or carrying out surveillance.

See the part '[Surveillance device warrants](#)' in the 'Surveillance' chapter for guidance with applying for surveillance device warrants.

## Application for surveillance device warrant where privilege may be an issue

If you reasonably anticipate intercepting privileged communications when executing a surveillance device warrant, include information in the application to:

- identify the privilege that may apply and the nature of the potentially privileged information/communications
- explain what steps you will take to prevent the surveillance of privileged information/communications, and to destroy (or lock down) that information/communications.

The Crime Monitoring Centre can provide information about their procedures for managing privilege.

In accordance with standard conditions on the surveillance device warrant, you will not be able to use any privileged communications that might be intercepted. (s55(1)(e))

Privilege does not apply if the court is satisfied that there is a prima case that the communication or information is made or received, or compiled or prepared:

- for a dishonest purpose; or
- to enable or aid any person to commit or plan to commit an offence.

An application for a surveillance device warrant seeking authorisation to intercept communications in circumstances where privilege would normally apply (for example, between a lawyer and a particular client) on the basis that the privilege does not apply may be complex. Before seeking legal advice, consider what evidence there is to satisfy the court that there is a prima facie case that the communications between those two people are being made for a dishonest purpose or to enable/aid commission (or planning to commit) offences. There will need to be careful planning on the following types of matters so that you can explain to the issuing Judge:

- How the group of communications you say are not privileged can be separated out from those that are privileged.
- How those communications will then be reviewed and assessed before they can be used by Police. For example, an independent lawyer may need to be engaged.
- When and how the person who might be able to claim privilege will be aware of the surveillance and therefore in a position to make a claim privilege for determination by a court.

See the part '[Surveillance device warrants](#)' in the 'Surveillance' chapter for information about applying for surveillance device

warrants.

## Restrictions on issue of surveillance device warrant

A Judge must not issue a surveillance device warrant that is primarily intended to facilitate surveillance or recording of activity between a lawyer and his or her client that is communication of a kind to which legal professional privilege normally applies unless the Judge is satisfied that there is a *prima facie* case that the communication is to be made or received:

- for a dishonest purpose; or
- for the purpose of planning to commit or committing an offence.

(s54)

See the [commentary](#) in Westlaw for an explanation relating to:

- legal professional privilege
- “primarily intended”
- other protections for privileged material
- dishonest or criminal purpose.

## Standard condition of surveillance device warrant in relation to privileged communication

Every surveillance device warrant must contain a condition that the enforcement officer (Police officer) carrying out the activities authorised by the warrant must not use any communication obtained under the authority of the warrant unless the privilege is waived or its use is authorised by a Judge, if the officer has reasonable grounds to believe that the communication may be subject to a privilege specified in section [136](#) of the Act.

(s55(1)(e))

See the [commentary](#) in Westlaw for an explanation relating to section [55\(1\)\(e\)](#) – use of privileged communication.

## Effect of privilege on surveillance powers

Section [140](#) of the Search and Surveillance Act 2012:

- confers rights on privilege holders to prevent surveillance of privileged communication or information and have privileged material destroyed
- imposes obligations on Police to prevent interception of privileged communications or information
- provides a framework for Police conducting surveillance to obtain a ruling from a Judge when it is uncertain whether privilege applies to any particular information or communication or to any record of communication.

## Rule of inadmissibility of any privileged communication or information recorded obtained from surveillance

If privileged communications or information are recorded in the course of surveillance, they are not admissible in any proceedings except:

- with the consent of the privilege holder; and
- if the court agrees to admit them. ([s140\(5\)](#)).

## Rights of person making a claim of privilege

A person who makes a claim of privilege in respect of any surveillance has the right:

- to prevent, to the extent that it is reasonably practicable to do so, the surveillance of any communication or information to which the privilege would apply, pending determination of the claim to privilege (and also subsequently, if the claim to privilege is upheld)
- if the claim to privilege is upheld, to require the destruction of any record of any such communication or information, to the extent that this can be achieved without destruction of any record of any other communication or information.

([s140\(1\)](#))

## Obligations of Police undertaking surveillance

For most surveillance, the privilege holder will not be aware of the surveillance until after the operation has been terminated. Any privilege claim is therefore likely to come later on.

Accordingly, the Act imposes obligations on Police undertaking surveillance to consider privilege as the surveillance occurs.

A person who is undertaking surveillance authorised by the Act (whether under a surveillance device warrant or otherwise) must:

- take all reasonable steps to prevent the interception of any communication or information to which a recognised privilege would apply
- destroy any record of a communication or information made as a consequence of the surveillance to which a recognised privilege would apply, unless that is impossible or impracticable without destroying a record of information to which a privilege does not apply.

([s140\(2\)](#))

## Police may apply to court when uncertain if privilege applies

A person undertaking surveillance under the Act who is uncertain about whether section [140](#) applies to any information or communication or record of a communication or information, may apply to a District Court Judge for an order determining whether:

- the communication or information can be the subject of surveillance; and
- any record of such communication or information is required to be destroyed under this section.

([s140\(3\)](#))

**Note:** For making application use the 'Determination of communication or information S140 Application' form (POL PR7) for surveillance situations. Go to Police Forms (L-Z) > Privilege Forms > Determination of communication or information or

information S140 Application.

## Determining application

For the purposes of determining any application, the Judge of the appropriate court may require the record of the information or communication to be produced to them.

(s140(4))

**Note:** The privilege relating to the rights conferred on a journalist to protect certain sources under section68 of the Evidence Act 2006, must be heard in the High Court.

## Related information

See:

- the [commentary](#) in Westlaw for an explanation relating to the effect of privilege on surveillance
- [Part 13 – Privilege and immunities under the Act](#) in the ‘Search’ chapter for how privilege applies to search warrants, production orders and examination orders.

## Claims for privilege in respect of surveillance

### Responsibilities of person claiming privilege

Under section [141](#) of the Search and Surveillance Act 2012 any person who wishes to claim privilege in respect of any surveillance:

- must provide the Police person responsible for the surveillance with a particularised list of the matters in respect of which the privilege is claimed, as soon as practicable after the person claiming privilege becomes aware of the surveillance of the matters in respect of which privilege is claimed; and
- if the matters in respect of which the privilege is claimed cannot be adequately particularised, then the person, may apply to a Judge of the appropriate court for directions or relief.

### Related information

See the [commentary](#) in Westlaw for an explanation relating to claims for privilege in respect of surveillance.

## Immunities under the Act

### Immunities when obtaining or executing surveillance device warrant

You are immune from civil or criminal liability for any act done in good faith to obtain a surveillance device warrant and in the execution if the execution is carried out in a reasonable manner.

(s165)

### Immunities when exercising surveillance powers

You are immune from civil and criminal liability for any act done in good faith in order to exercise a surveillance power if you:

- exercise the power in a reasonable manner, and
- believe on reasonable grounds that the pre-conditions for the exercise of that power have been satisfied.

Every person is immune from civil and criminal liability for any act done in good faith and in a reasonable manner in order to assist you to exercise a surveillance power.

**Note:** The onus is on the person asserting immunity in any civil proceeding to prove the facts necessary to establish the claim.

(s166)

### Crown immunity

Section [167](#) clarifies that if any person is immune from civil liability with obtaining or executing a surveillance device warrant and surveillance powers in respect of anything done or omitted to be done, then the Crown is also immune from civil liability in tort in respect of that person's conduct.

### Related information

See '[Part 13 – Privilege and immunities under the Act](#)' in the 'Search' chapter for immunities under the Act in relation to exercise of an entry or search power.

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