

Part 4 General searches in respect of drugs

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Overview

Introduction

The Search and Surveillance Act 2012 provides the entry, search, seizure, stopping and moving vehicle powers associated with drugs. This part of the 'Drugs' chapter provides guidance in relation to those powers:

- initial steps for conducting a search
- carrying out drug searches
- search pursuant to a section 6 search warrant
- warrantless searches associated with drugs
- search without warrant - discretion
- stopping and moving vehicles to search for drugs
- seizure, forfeiture and disposal of drugs and articles related to the Misuse of Drugs Act offence
- reporting requirements.

Related information

See also these Police Instructions in the '[Search](#)' chapter:

- '[Part 2 - Search warrants](#)'
- '[Part 3 - Warrantless powers to search places, vehicles and things](#)'
- '[Part 5 - Carrying out search powers with or without warrants](#)'
- '[Part 8 - Searching people](#)'
- '[Part 12 - Procedures applying to seized and produced things](#)'
- '[Part 14 - Reporting](#)'.

When can you search a person in relation to an offence against the Misuse of Drugs Act?

Powers for searching people

You may search a person:

- when executing a search warrant under section 6 of the Search and Surveillance Act 2012 if the offence that was specified in the application for the search warrant is an offence against the Misuse of Drugs Act 1975 and the person is found in or on a place or vehicle ([s19](#)), or
- when conducting a warrantless search of a place or vehicle under section [20](#) of the Search and Surveillance Act 2012 and exercising a warrantless search power of the person found in or on the place or vehicle under section [21](#) of the Act, or
- when exercising a warrantless search power under section [22](#) [searching a person anywhere] for 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, (note, section [22](#) does not authorise a constable to enter or search a place or vehicle) or
- during the course of a delivery in relation to which a Customs officer has exercised their power under section [12](#) of the Misuse of Drugs Amendment Act 1978 and the person is involved in that delivery (section [81](#) of the Search and Surveillance Act 2012 warrantless search power), or
- when exercising a warrantless search power incidental to an arrest or detention under section [88](#) of the Search and Surveillance Act 2012, or
- with their consent under Subpart [2](#) of Part 4 of the Search and Surveillance Act 2012.

Note: In certain circumstances you may also require a person to permit a medical practitioner to conduct an internal search by examination under section [23](#) of the Search and Surveillance Act 2012.

Related information

See '[Part 8 - Searching people](#)' in the '[Search](#)' chapter for:

- [Powers for searching people](#)
- [Searches of arrested or detained people](#)
- [Rub-down searches](#)
- [Internal searches](#)
- [Searching transgender and intersex people.](#)

Initial steps for conducting a search

Follow these initial steps when you conduct a search.

Step	Action
1	Where practicable obtain the consent of a sergeant or above before obtaining a search warrant. For more information see the 'Search' chapter, Part 2- Search warrants for guidance on preparation of a search warrant.
2	<p>Conduct a risk assessment when planning a search and follow these guidelines in 'Part 5- Carrying out search powers with or without warrant' in the 'Search' chapter:</p> <ul style="list-style-type: none">- 'Risk assessment when planning searches'- 'Procedure for planning searches'. <p>s.6(c) OIA</p>

Step	Action
3	<p>If it is not practicable to obtain a search warrant you should consider a warrantless search under section 20 of the Search and Surveillance Act 2012.</p> <p>Note: The power provided under that section must be exercised when it is not practicable to obtain a search warrant and when you have reasonable grounds:</p> <ul style="list-style-type: none"> - to believe that in or on the place or vehicle, or in the possession of a person there is 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 - to suspect that in or on the place or vehicle an offence against the Misuse of Drugs Act 1975 has been committed, or is being committed, or is about to be committed in respect of that controlled drug or precursor substance; and - to believe that, if the entry and search is not carried out immediately, evidential material relating to the suspected offence will be: <ul style="list-style-type: none"> - destroyed, - concealed, - altered, or - damaged. <p>(s20)</p>
4	<p>Always consider the use of a Narcotic Detector Dog (NDD) when executing a search warrant. Police <u>NDDs</u> are also capable of locating cash and firearms.</p> <p><u>NDDs</u> are located across the country. Should your District not have an <u>NDD</u>, other neighbouring Districts' handlers are always willing to assist. Contact your local dog section supervisor for assistance.</p>
5	<p>For planning purposes, see these section headings in 'Part 5 - Carrying out search powers with or without warrants' of the 'Search' chapter:</p> <ul style="list-style-type: none"> - Risk assessment when planning searches - Procedure for planning searches - Separating individuals posing risk from premises to be searched - Execution of searches and mandatory notifications to COMMS and DCCs.
6	<p>Ensure personal protection kit (PPK) is carried and that you have enough containers for the exhibits.</p>

Step	Action
7	<p>If encountering cannabis grows, which commonly feature makeshift electrical connections to steal electricity, then ensure an electrical tester pen is carried to check for live cables even if the power is believed to be turned off. If no electrical tester pen is available, or you have any doubt, then have an electrician available to verify the scene is safe.</p> <p>For further information click on this link relating to electrical testing pens.</p>

Carrying out a drug search

Follow these steps when carrying out drug search.

Step	Action
1	<p>Satisfy the identification and announcement requirements on entry, unless there are exceptions to announcing entry and giving reasons for the search.</p> <p>Note: The wearing of BAS 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.</p>
2	<p>Use reasonable force to enter property and detaining people at the scene. See:</p> <ul style="list-style-type: none">- announced forced entry- unannounced forced entry- entry with firearms- detaining people at searches of places and vehicles- options prior to using force on a person
3	<p>Secure the scene to be searched.</p>

4 Search people and property as thoroughly as the circumstances demand and the Search and Surveillance Act 2012 allows.

Remember:

- to abide by the special rules about searching people under section 125 of the Act
- the thoroughness of your search will depend on the seriousness of the offence and the basis for your suspicion or belief, for example:
 - you would be justified in taking apart the vehicle if you had good evidence that a large quantity of cocaine were hidden in it
 - if, on the other hand, you merely suspected that it contained a few joints of cannabis, you would not be so justified
- if you are unsure how extensively to search, seek advice from your supervising officer or a more experienced colleague.

Where to look for drugs

Drug users and dealers are extremely meticulous and inventive when hiding their drugs. There is no one recurring hiding place, and searchers need to be thorough and imaginative. However, do not overlook the obvious.

Suspects often hide their drugs away from their immediate surroundings; for example, in the garden. In any situation, put yourself in the suspect's shoes and ask yourself: "Where can I hide my drugs so that I have ready access to them and they will not be lost or damaged?"

This is a list of common hiding places. It is not exhaustive.

In or about the person:	Motor vehicles:
<ul style="list-style-type: none">- shoes with cavities in the heel- seams and linings of clothing, and cloth covered buttons- surgical dressings- hair and hats- body cavities- stomachs or bowels- cigarette lighters- fountain pens and propelling pencils- double bottom suitcases and handbags- bottles of alcohol- aerosol cans.	<ul style="list-style-type: none">- behind internal mirrors- under mats- in internal panels, such as door panels- behind horn buttons- in radio or stereo speakers.

5	<p>Look out for and seize:</p> <ul style="list-style-type: none">- controlled drugs- instruments used in offences. Be careful of syringes. If you do prick yourself, milk the wound and seek medical treatment immediately- money from the sale of controlled drugs (see the 'Cash handling' chapter for instructions with handling money)- documents relating to controlled drugs and to travel. These may help identify clients or suppliers- financial records and other documents that may be useful in a proceeds of crime action. You should consider the benefits of taking such action before you search, so that you can include the items in the warrant- unidentified prescription medicines (drugs). Remember that you cannot search for and seize prescription medicines without warrant, unless they are also listed as controlled drugs- evidence relating to importation including:<ul style="list-style-type: none">- track and trace receipts- correspondence- computers, faxes and cellphones- emails- contact lists / numbers- packaging from previous importations, if applicable- money and financial records- scales and packaging etc in relation to supply charges- P O Box documentation- travel documentation- passports.
6	<p>If seizing GHB, GBL, 1,4B, or other unknown liquids, then ensure their safe handling, storage and disposal.</p> <p>Follow the procedure when handling, storing and disposing GHB, GBL, 1,4B or other unknown liquids in 'Part 11 - Custody, storage and disposal of controlled drugs' in the 'Drugs' chapter.</p>
7	<p>If you discover items believed to be part of a clandestine drug laboratory freeze the scene and obtain expert help as soon as possible.</p> <p>See the 'Clandestine drug laboratories' chapter in the Police Manual for health safety guidance and standard operating procedures for district employees.</p>

8	As soon as possible, report any seizures of controlled drugs to the National Drug Intelligence Bureau. Complete the Drugs Search & Seizure form (accessed through the TenOne webpage under ' Notifications '). Do not leave someone else to do this.
9	Do not allow suspects to go to the toilet until they have been searched.
10	<p>Do not search any internal part of any arrested or detained person, except for, requiring the person to open their mouth and permitting a visual inspection of their mouth (s85). If you suspect that a person has drugs hidden internally, immediately refer the matter to your supervising officer.</p> <p>See 'Search' chapter, Part 8 - Searching people for guidance on internal searches,</p>
11	<p>Leave with the occupier or person in charge of vehicle or other thing a copy of the search warrant and accompanying notice.</p> <p>See Search chapter, Part 5 - Carrying out search powers with or without warrants for guidance on notice requirements after search.</p>
12	Enter in the Police Register of Property (PROP) system a copy of an inventory of any controlled drugs, precursor substances, instruments, money, documents, financial records or other property seized. Arrange for receipt from <u>PROP</u> system to be supplied to occupier or person in charge of vehicle.

Search pursuant to a section 6 search warrant

Searching places, vehicles or things pursuant to search warrant

Warrants under section [6](#) of the Search and Surveillance Act 2012 are for:

- places, such as known addresses and Post Office boxes
- vehicles
- things, such as cell phones (including text messaging) and call data (things).

Search of persons pursuant to search warrant

Under section [19](#) of the Search and Surveillance Act 2012, you may search any person found in or on a place or vehicle, in relation to which a search warrant is issued under section 6 of the Act, if the offence that was specified in the application for the search warrant is an offence against the Misuse of Drugs Act 1975.

([s 19](#))

Warrantless searches associated with drugs

Warrantless searches of places and vehicles

See '[warrantless searches associated with drugs](#)' in the 'Search' chapter, [Part 3 - Warrantless powers to search places, vehicles and things](#) for your power under section [20](#) of the Search and Surveillance Act 2012 to search places and vehicles.

Warrantless searches of people

See '[warrantless searches of people in relation to drugs](#)' in the 'Search' chapter, [Part 8 - Searching people](#) for your powers under sections [21](#) and [22](#) of the Search and Surveillance Act 2012 to search people suspected of drug offences.

Note: The power under section [21](#) arises from conducting a search of a place or vehicle under section [20](#) of the Act, whereas the power under section [22](#) does not authorise you to enter or search a place or vehicle in order to search the person.

Police and Customs search powers relating to delivery of drugs

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

([s81](#))

Internal search of a person arrested for certain drug offences

The first criteria to be met with making this requirement is that the person must be arrested for an

offence against section 6 or 7 or 11 of the Misuse of Drugs Act 1975.

See '[Internal searches](#)' in [Part 8 - Searching people](#) of the 'Search' chapter for requiring a person to permit a medical practitioner to conduct an internal search of a person arrested for certain drug offences under section [23](#) of the Search and Surveillance Act

Note: Section [124](#) of the Act generally prohibits internal searches except as provided by section [23](#) and does not limit or affect sections [13A to 13M](#) of the Misuse of Drugs Amendment Act 1978 relating to powers, duties, examination, certification, detention warrant, associated searches, reporting requirements etc. when reasonable cause to believe Class A or Class B controlled drugs are internally concealed.

Approval for drug related searches

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

Search without warrant - discretion

Under normal circumstances, search warrants must be obtained, with the consent of a sergeant or above in all situations other than emergencies.

The authority provided under section [20](#) of the Search and Surveillance Act 2012, to search without warrant must be exercised when you believe it is not practicable to obtain a warrant.

Note: Where a Police employee not specialising in drug law enforcement conducts a drug search without warrant pursuant to the provisions of the Search and Surveillance Act 2012, and it was not practicable in the circumstances to obtain the prior permission of a sergeant or above, the reason for and the result of the search must be reported to a supervising sergeant or higher as soon as practicable.

Where a search without warrant reveals evidence of an offence other than a breach of the Misuse of Drugs Act, no prosecution action is to be taken until the circumstances of the search and evidence of the offence has been referred to a legal advisor unless, due to the seriousness of the offence or the prevailing circumstances, an arrest is unavoidable.

For further information see the '[Search](#)' chapter.

Reasonable grounds for belief

For the search to be valid, you must have reasonable grounds for believing that the drug you are searching for is specified in the Schedule [1](#), or Part 1 of Schedule [2](#), or Schedule [3](#), of the Act. A search for just any type of drug would not be valid. *Hill v A-G* (1990) 6 CRNZ 219 refers.

For example, you cannot search for prescription drugs unless they are also listed as controlled drugs in the schedules to the Misuse of Drugs Act 1975.

Your “reasonable ground” may be based on information given by another officer, provided that this officer has maturity and credibility - *R v Taylor* (1993) 10 CRNZ 393 refers.

“Reasonable ground for believing” requires a higher standard of proof than does the Arms Act, which requires only reasonable ground to suspect.

Stopping and moving vehicles to search for drugs

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.

(s [121](#))

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">- lawful authority to search the vehicle, but it is impracticable to do so at that place, or- reasonable grounds to believe it is necessary to move the vehicle for safekeeping.

(s [122](#))

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.

(s [128](#))

Duty to provide information to vehicle's driver

Immediately after stopping the vehicle, you must:

- identify yourself to the driver (either by name or 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.

(s [121](#), s [129](#))

Note: There is no power to demand name, address and date of birth of each person in the vehicle when the vehicle has been stopped under the Search and Surveillance Act 2012 to conduct a warrantless drug search.

Further information

See '[Entry, announcement and identification requirements](#)' in the 'Search' chapter, [Part 5-Carrying out search powers with or without warrants](#) for associated powers, obligations and exceptions to announce entry and provide identification.

Seizure, forfeiture and disposal

Seizing and destroying prohibited plants and seeds

Under section 18 of the Misuse of Drugs Act 1975 you or an assistant you believe necessary may seize and destroy any of the following:

- a prohibited plant that is not being cultivated in accordance with:
 - the conditions of a licence granted under the Act; or
 - regulations made under the Act;
- the seed of a prohibited plant that is not in the possession of a person:
 - authorised under the Act to cultivate the plant; or
 - permitted by regulations made under the Act to have the seed in their possession.

Disposal of seized or unlawful items

Under section [160](#) of the Search and Surveillance Act 2012, if an unlawful item (e.g. a controlled drug or prohibited plant) is seized or produced and possession of which from whom it was seized or produced;

- is unlawful under New Zealand law; and
- there is no mechanism provided for disposal of it, or it has not been disposed of under any other enactment; and
- no order has been made by a court as to its disposal;

then, you may destroy it if certain following criteria is met:

- notice is given to the person from whom the unlawful item was seized or who was required to produce and that person:
 - consents to its destruction, or
 - does not within 30 working days object to its destruction, or
- the person to who notice would otherwise be given, cannot be located after reasonable inquiries have been made, or
- in a case where a person objects to the destruction of the thing within 30 working days of receiving the notice and any person applies to a Court to determine the status of the thing, whether possession by the person from whom it was seized or who was required to produce it is unlawful under New Zealand law.

(s160(2))

See 'disposal of unlawful things' in the 'Search' chapter, [Part 12 - Procedures applying to seized and produced things](#) for further guidance on the destruction criteria.

Forfeiture

Under section [32](#) of the Misuse of Drugs Act 1975 every person convicted of an offence against the Act, in addition to any penalty imposed, forfeits to the crown, all articles, if any, in respect of which the offence

was committed and in their possession. Articles forfeited must be sold, destroyed or otherwise disposed of as the Minister directs.

See section [32](#)(3) and (4) of the Act for the provisions relating to forfeiture of money and convictions against section [6](#) of the Act.

Reporting requirements

Notifications

When you conduct a search in relation to the Misuse of Drugs Act 1975 offence:

- pursuant to a search warrant under section 6 of the Search and Surveillance Act 2012 and the accompanying powers to search persons under section 19 of the Act, or
- under the warrantless powers of section 20, 21 and 22 of the Search and Surveillance Act 2012, or
- with the consent of any person, and subject to the rules about consent searches under sections 92 to 95 of the Search and Surveillance Act 2012

then you must as soon as practicable and before going off duty, submit a notification to the Commissioner outlining the circumstances justifying the search and the result of the search.

In [R v Smith](#) (1996) 13 CRNZ 481 (CA) it was held that Police failure to report as required by statute is not a matter which goes to the lawfulness of the search, but repeated failure to explain non-compliance may give rise to a negative inference.

In [R v Adams](#) (1993) 10 CRNZ 687, where the adequacy of information in the report was considered, it was held that while a statutory reporting requirement had not been complied with, the discretion to exclude the evidence would not be exercised because the tainting of the search was retrospective (the illegality did not result in the finding of the evidence), the defects were of a modest nature, and there was no question of prejudice to the accused.

Fisher J held that the purpose of a statutory reporting requirement was to ensure that some measure of answerability and supervision is maintained over Police constables carrying out these searches.

Notification is effected by completing the Drugs Search & Seizure form (accessed through the TenOne webpage under 'Notifications') fulfils this requirement.

It is crucial that constables comply with legislative and policy notification requirements as the intelligence collected by the [NIC](#) Drug Targeting Team ensures that a realistic picture of what is occurring nationally is maintained.

Search warrant reports

The issuing officer may impose a condition in the search warrant requiring a report within a specified period of time under section 104 of the Search and Surveillance Act 2012. If the warrant is issued with this condition, then you must on behalf of the Commissioner provide a search warrant report within the specified period.

See 'Search warrant reports' in the '[Search](#)' chapter, [Part 14 - Reporting](#) for guidance on the content of the reports and the procedure for their preparation.

Drugs suspected in postal articles

Postal Services Act 1998

The [Postal Services Act 1998](#) regulates the provision of postal services including [courier services](#). The Act requires the registration of postal operators (e.g. New Zealand Post).

Detention of postal articles suspected of containing drugs in contravention of MODA

Under section [5](#) of the Postal Services Act 1998, if a postal operator has reason to suspect that any postal article has been posted in contravention of the [Misuse of Drugs Act 1975](#) that postal operator may detain the postal article for opening and examination at a postal outlet by:

- two or more persons specially authorised for the purpose by a postal operator; or
- one such authorised person in the presence of:
 - another employee of that postal operator; or
 - a Customs officer,

and (except as provided in any other enactment) must not be opened or examined otherwise.

A postal article that is detained may be opened and examined at a postal outlet but the power to open and examine the postal article remains only with specially authorised persons, not with Police. However, Police can open and examine a postal article when executing a search warrant or exercising a warrantless search power.

Drugs believed to be posted in contravention of the Misuse of Drugs Act 1975

Under section [10](#) of the Postal Services Act 1998, the postal operator must deliver a postal article to the Commissioner of Police or to such other persons as the Commissioner directs where a postal article is believed, on reasonable grounds, to be in contravention, or to have been posted in contravention of the [Misuse of Drugs Act 1975](#). Following the postal article must be dealt with in accordance with the Misuse of Drugs Act.