

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.

What is a 'search'?

There is no set definition of a 'search', either in statute or case law. Recent case law suggests a 'search' requires a conscious act of state intrusion into an individual's reasonable expectation of privacy, as opposed to a mere observation ([Pollard v R](#) [2010] NZCA 294; [Lorigan v R](#) [2012] NZCA 294 applying [Hamed v R](#) per Blanchard J).

A search is not:

- kneeling and using a torch to observe an article secreted inside a car headlight ([R v Dodgson](#) (1995) 2 HRNZ 300 (CA))
- asking a person to hold up a bicycle so the serial number can be checked ([Everitt v A-G](#) [2002] 1 NZLR 82 (CA))
- asking a person to hold out their hands for inspection ([R v Yeung](#) HC Akl 22 May 2009)
- a voluntary request to a power company for aggregated monthly power usage data ([R v Alsford](#) [2017] NZSC 42 and [R v Gul](#) [2017] NZCA 317).

What is a 'seizure'?

There is no statutory definition of 'seizure'. Seizure is 'removing something from the possession of someone else' ([Hamed v R](#)). An item generated by exercising a search or surveillance power (e.g. a photograph) is not a 'seizure' (see 'thing seized' under section [3](#) of the Search and Surveillance Act 2012).

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
- 'Hate crimes and hate incidents investigations' chapter for information about recognising, recording and dealing appropriately with **hate crime**, **hate incidents** and **hate speech** within the context of scene attendance, investigations, applying proportionality and using discretion
- 'New Zealand Bill of Rights' chapter for a summary of the rights protected by NZBORA and outlines Police obligations under NZBORA, particularly in relation to search and seizure.

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 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 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
Applicant	Under section 97 applicant for a search warrant means: <ul style="list-style-type: none">- a constable, or- 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.
Arms	Arms means any firearm, airgun, pistol, pistol carbine conversion kit, restricted weapon, prohibited magazine, non-prohibited magazine, part, imitation firearm, or explosive (as those terms are defined in the Arms Act 1983), or any ammunition.
Chief executive	Chief executive includes the Police Commissioner.
Constable	'Constable' has the same meaning as in section 4 of the Policing Act 2008.
Controlled drug	'Controlled drug' has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975.
Enforcement officer	'Enforcement officer' means: <ul style="list-style-type: none">a. a constable (<i>see definition above</i>), orb. 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.
Evidential material	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.
Examination order	Examination order means an examination order made under section 38. (See Part 10 - Examination orders).
Informant	'Informant' is not restricted to a covert human intelligence source (CHIS). 'Informant' has the same meaning as in section 6(1) 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.
Issuing officer	Issuing officer means: <ul style="list-style-type: none">- a Judge- 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.
Judge	Judge means a District Court Judge or a Judge of the High Court.
Police bail	'Police bail' has the same meaning as in Part 2 of the Bail Act 2000.

Police employee	<p>'Police employee' has the same meaning as in section 4 of the Policing Act 2008 and means:</p> <ul style="list-style-type: none"> - a person employed under section 18 of the Policing Act (Commissioner may appoint Police employee); and - except in Part 4 (provisions relating to employment of Police employees) of that Act, includes a person seconded to the Police.
Police uniform	<p>'Police uniform' has the same meaning as in section 4 Policing Act 2008. (See additional information about uniform in "Entry, announcement and identification requirements" in Part 5 - Carrying out search powers with or without a warrant).</p>
Production order	<p>Production order means a production order made under section 74 of the Search and Surveillance Act 2012. (See Part 9 - Production orders).</p>
Reasonable grounds to believe	<p>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.</p> <p><i>(Definition not taken from Search and Surveillance Act 2012)</i></p>
Reasonable grounds to suspect	<p>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.</p> <p><i>(Definition not taken from Search and Surveillance Act 2012)</i></p>
Remote access search	<p>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.</p>
Road block	<p>Road block means any form of barrier or obstruction preventing or limiting the passage of vehicles.</p>
Rub-down search	<p>Rub-down search means a search described in sections 85, 86 and 87.</p>
Search power	<p>Search power, in relation to any provision in the Act, means:</p> <ul style="list-style-type: none"> - every search warrant issued under the Act or an enactment set out in column 2 of the Schedule to which that provision is applied; and - every power, conferred under the Act or an enactment set out in column 2 of the Schedule to which that provision is applied, to enter and search, or enter and inspect or examine (without warrant) any place, vehicle, or other thing, or to search a person.
Seized items	<p>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).</p>
Strip search	<p>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:</p> <ul style="list-style-type: none"> - uncovered; or - covered only by underclothing.
Thing	<p>Includes any tangible or intangible thing e.g. an email address or information used to access an Internet data storage facility.</p>

Thing seized	Thing seized does not include anything made or generated by a person exercising a search or surveillance power (for example, photographs, drawings, or audio or video recordings made by or on behalf of that person, or a forensic copy of a computer hard drive). See ' What is a seizure? ' in this chapter.
Tracking device	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"> - the location of a thing or a person: - 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.
Unique identifier	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"> a. is assigned to them by the law enforcement agency that employs or engages them for the purposes of its operations; and b. uniquely identifies them in relation to the law enforcement agency.
Unlawfully at large	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"> 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; b. unlawfully at large within the meaning of the Corrections Act 2004 or the Parole Act 2002 c. a prison breaker within the meaning of section 119 of the Crimes Act 1961 d. an escapee from lawful custody within the meaning of section 120 of the Crimes Act 1961 e. a special patient or restricted patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 who has escaped or failed to return on the expiry or cancellation of a period of leave f. a care recipient or special care recipient within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 who has escaped or failed to return on the expiry or cancellation of a period of leave 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 311(1) of that Act and who is absconding from the custody of the chief executive (as defined in that Act).
Vehicle	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.

	Principle
Lawfulness and reasonableness	All searches must be lawful and reasonable. (See Lawfulness and reasonableness of searches in this chapter for more information).
Implied licence of entry to property	<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"> - Davey v Police [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. - Hall v R [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.
Search hierarchy	<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 Smith v Police [2019] NZHC 2111 and Lethbridge v New Zealand Police [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 91-96 of the Act.</p>
Decision records	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.
Identification and notice	<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 -Carrying out search powers with or without a warrant for information about your responsibilities to provide information when searches of places, vehicles and things are conducted.</p>
Force used against property must be reasonable	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. (s131(3))
Search or seizure should be witnessed	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.
Seized property must be documented	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
173	Failing to comply with examination order Fails to comply with an examination order without reasonable excuse.	- Individual - 1 year imprisonment - Body corporate - \$40,000 fine
174	Failing to comply with a production order Fails to comply with a production order without reasonable excuse.	- Individual - 1 year imprisonment - Body corporate - \$40,000 fine
176	Fails to comply with directions or leaves search when directed to stay Without reasonable excuse: <ul style="list-style-type: none"> - fails to comply with a direction under section 117(1) (special powers where an application for a search warrant is pending), or - leaves any place or vehicle at which the person is detained under section 118(1) (powers of detention incidental to powers to search of places and vehicles). 	- 3 months imprisonment
177 (1)	Stopping vehicles <ul style="list-style-type: none"> - 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, and - knows or ought to know that the person exercising the power is an enforcement officer. Note: A constable may arrest without warrant any person they have reasonable grounds to suspect has committed an offence against this sub-section. (s177 (4))	- 3 months imprisonment
177 (2)	Stopping vehicles <ul style="list-style-type: none"> - Fails to comply with a requirement made by a constable to supply particulars (under section 10(1) (a) or 32(c); and - knows or ought reasonably to know that the person imposing the requirement is a constable. 	- 3 months imprisonment
177 (3)	Stopping vehicles <ul style="list-style-type: none"> - Fails to comply with a requirement made by an enforcement officer under section 128 to remain stopped, and - knows or ought to know that the person imposing the requirement is an enforcement officer. Note: A constable may arrest without warrant any person they have reasonable grounds to suspect has committed an offence against this sub-section. (s177 (4))	- 3 months imprisonment
178	Computer system searches Fails without reasonable excuse to assist a person exercising a search power under section 130 (1) 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
175	<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"> - an examination order - a production order - a search warrant - a surveillance device warrant - a declaratory order 	1 year imprisonment
179	<p>Disclosing information acquired through search or surveillance</p> <p>Knowingly discloses the substance, meaning, or purport of information acquired through:</p> <ul style="list-style-type: none"> - the exercise of a search or surveillance power - an examination order - a production order - 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. <p>Note: The offence extends to a person assisting a constable or enforcement officer.</p>	<ul style="list-style-type: none"> - Individual - 6 months imprisonment - Body corporate \$100,000 fine

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">- by delivering it:<ul style="list-style-type: none">- personally to the person, or- at the person's usual or last known place of residence or business, including by fax or by electronic mail, or- sending it by prepaid post addressed to the person at their usual or last known place of residence or business. <p>Note: 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">- to an officer of the corporation, or- the registered office of the corporation- Note: Service is in the same manner as giving it to a person.
partnership	<ul style="list-style-type: none">- to any one of the partners <p>Note: Service is in the same manner as giving it to a person.</p>

(s [181](#))
