

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:

you must...	by written report (notification) that...
notify the Commissioner of the exercise of the power as 'soon as practicable' - Note: Police policy requires this notification to be completed no later than the end of shift.	<ul style="list-style-type: none">- contains a short summary of the circumstances surrounding the exercise of the power, and the reason(s) why the power needed to be exercised- states whether any evidential material was seized or obtained as a result of the exercise of the power- states whether any criminal proceedings have been brought or are being considered as a consequence of the seizure of that evidential material.

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 ([s14](#)))
- a search undertaken by consent.

([s169](#)(4))

Case law

In [Court v R](#) [2020] NZCA 76 the Judge held Police exercised unreasonable search and seizure. Police never submitted a section 169 Search and Surveillance Act report on the exercise of a section 8 warrantless power and subsequent failure to complete the required report indicated a failure by the officers to appreciate the seriousness of a warrantless search power. The unlawfulness of section 8 was compounded by the unexplained failure to report according to section 169.

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"> - the Search and Surveillance System for search warrant applications; or - On Duty; or - the 'Create Notification' feature on the Microsoft Outlook Bulletin Board for all other notifications. <p>Note:</p> <ul style="list-style-type: none"> - Prompts and relevant drop down boxes will assist you complete the notification. - See the Search and Surveillance System User Guide for further guidance with completing your notification
2	Ensure the search power notification to the Commissioner is completed before the end of shift.
3	<p>Submit the completed search power notification before the end of shift on the day the:</p> <ul style="list-style-type: none"> - warrant, examination order and declaratory order application is made, <p>or</p> <ul style="list-style-type: none"> - search power is exercised.
4	<p>Print and retain a hard copy of the notification for your investigation file.</p> <p>Note: 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.

Notification	Manager delegated
<ul style="list-style-type: none">- 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)
<ul style="list-style-type: none">- Arms searches- Biosecurity searches	Director: Capability
<ul style="list-style-type: none">- Examination order applications	Director: Financial Crime Group (Director: FCG)
<ul style="list-style-type: none">- Declaratory order applications	Director: Legal Services (Director: Legal)
<ul style="list-style-type: none">- 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 s [123B](#) (seizure of cash of or over cash seizure threshold amount - \$10,000), or
 - some specified in the warrant and some seized under section [123](#) (items in plain view), or s [123B](#) (seizure of cash of or over cash seizure threshold amount - \$10,000),
- 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>Note:</p> <ul style="list-style-type: none">- Prompts and relevant drop down boxes will assist you complete the notification.- See the Search and Surveillance System User Guide(<i>no longer in use</i>) for further guidance with completing your search warrant report.
2	<p>Print the report for the manually sending to the issuing officer or Judge who requested the report.</p>
3	<p>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.</p>
4	<p>Print and retain a hard copy of the report for your investigation file.</p> <p>Note: 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.

Person responsible	must...
The person instigating the strip search...	<p>record in the electronic custody module brief details of the:</p> <ul style="list-style-type: none">- fact that such a search was conducted- justification for it- people conducting the search- supervisor authorising it. <p>Note: 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">- 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)- 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">- the demeanour and reactions of the person being searched- 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.

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. Note: 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. Note: 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 Search and Surveillance Act 2012 were exercised without a warrant
- occasions as set out in section [171A](#) in relation to warrants under subpart 6A of Part 2 of the Act relating to warrants to search and seize weapons when there is gang conflict
- 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](#) & [172](#))

Information to be included in reports on warrants to search and seize weapons when there is gang conflict

The following information is required to be included in an annual report on warrants to search and seize weapons when there is gang conflict under section [170\(1\)\(ba\)](#):

- the number of applications made under section [18B](#) in the period covered by the report
- the number of warrants issued under section [18D](#) in the period covered by the report
- for each warrant issued under section [18D](#) in the period covered by the report:
 - the number of searches conducted; and
 - the number of places searched (on 1 or more occasions); and
 - the number of vehicles searched (on 1 or more occasions); and
 - the number of weapons seized as a result of the places and vehicles searched
 - the number of persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by the execution of a warrant issued under section [18D](#) in the period covered by the report.

(s [171A](#))

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.

([s169](#)(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.
