

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.
- The gang conflict warranted search powers (Section 18B Search and Surveillance Act) provisions are tightly defined. To support any warrant applications a leadership approval model has been developed that means an application must be authorised by an Assistant Commissioner, in consultation with the relevant Detective Superintendent and District Commander. See the [leadership approval model practice note](#) for guidance.

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
- powers and requirements relating to warrants to search and seize weapons when there is gang conflict.

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.

Other Law Notes relating to the warrant preference rule include:

- [Khalifa v New Zealand Police](#) [2021] NZHC 746
- [Mellas v R](#) [2020] NZCA 418
- [Smith v Police](#) [2019] NZHC 2111.

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

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- 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)

Note: These grounds under section 6 do not apply to an application for a search warrant issued to search and seize weapons when there is gang conflict under section 18D.

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.

Mode of application for a search warrant

You should apply for a search warrant in writing using the on-line Search and Surveillance system and then follow local arrangements with 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.

([s100](#))

How to make oral application for search warrant

When are oral applications allowed?

Ordinarily a search warrant application must be in writing and may be transmitted to the issuing officer electronically. However, if the issuing officer is satisfied the delay in preparing a written application would compromise the effectiveness of the search, then they may allow the application to be made orally or by personal appearance if it can be appropriately determined on that basis and the requisite information is provided by the applicant officer orally, or partly orally and partly in writing.

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. (s 100(3))

Consider seeking an oral search warrant (click on link for [search warrant template](#) arising from an oral application) before conducting a warrantless search. 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. (s 100(5))

See [Razouk v New Zealand Police](#) [2022] NZHC 28 that refers to the importance of knowing how to apply for an oral search warrant under the Search and Surveillance Act 2012. It is important to consider whether obtaining an oral search warrant is practicable. If it is, this course should be preferred over conducting warrantless searches.

When an oral search warrant application is made and the issuing officer issues the search warrant, a written search warrant must be issued. For this reason, it will be necessary for the applicant or issuing officer to have available a [search warrant template](#) that can be populated.

Determining when an oral warrant application may be appropriate

Factors to consider with determining when an oral warrant application may be appropriate include:

- urgency of the situation
- genuine belief (not mere suspicion) that evidence will be concealed, altered, damaged, or destroyed (CADD)
- how unknown or dynamic the scene is
 - continuing potential risk for the safety of any person (note, if the risk is immediate then consider warrantless entry/search power)
 - type of property
 - weather event
- availability of resources to secure the scene under section 117 of the Search and Surveillance Act
- impact on the ability to respond to other urgent matters elsewhere
- cell phone coverage
- time of day and whether an issuing officer is available (this will depend on what local arrangements can be implemented)
- complexity of the application, and whether it can properly be determined on an oral application
- availability and access to paper [search warrant template](#) to complete the warrant if the Search and Surveillance System is not used to generate the documents.

Be prepared that an issuing officer may not permit an oral application in the circumstances.

Identification and notice requirements for person exercising search power

Section [131\(1\)\(b\)\(i\)](#) of the Search and Surveillance Act says a person exercising a search power must, before or on initial entry into or onto the place, vehicle or thing to be searched, provide the occupier with “a copy of the search warrant”. If the occupier is not present and no other person is in charge, the person carrying out the search must leave “a copy of the search warrant” prominently at the place or, if not reasonably practicable, provide a copy of the search warrant to the occupier within seven days.

In the case of a copy of the warrant filled out by the enforcement officer, a second handwritten copy will need to be prepared so that section 131 can be complied with.

Transmission of search warrant

If the applicant officer is not in the same location as the issuing officer and therefore unable to obtain a copy of the warrant directly from the issuing officer, [section 105](#) of the Search and Surveillance Act provides for the transmission of the search warrant. Section [105](#) states:

“If it is not possible or practicable for the person charged with executing the warrant to have it in his or her possession at the time of execution, one of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed:

- (a) a facsimile, or a printout of an electronically generated copy, of a warrant issued by the issuing officer:*
- (b) a copy made by the person to whom the warrant is directed, at the direction of the issuing officer and endorsed to that effect.”*

The purpose of section [105](#) is to provide for the situation where “the remoteness of the place, vehicle or thing to be searched, or the urgency of the situation may result in a search warrant being issued at a distance” (*Adams On Criminal Law ss 105.01*), and it is not therefore possible or practicable for the executing officer to have the original warrant in his or her possession at the time it is executed.

If the issuing officer scans and transmits the original warrant to the applicant officer by electronic means, such as email, and the applicant officer prints out the transmitted copy, that would constitute “a printout of an electronically generated copy” of the warrant and thus comply with section [105\(a\)](#).

Section [105\(b\)](#) contemplates that “a copy [of the warrant]” will be “made by the person to whom the warrant is directed” i.e. the oral narration of the warrant’s terms by the issuing officer, and the written transcription of those terms by the applicant officer.

Pursuant to section [105\(b\)](#), it is sufficient for the enforcement officer in the field to fill out the template warrant at the issuing officer’s direction via telephone. The enforcement officer then needs to include an endorsement that the warrant has been transcribed as directed by the issuing officer. A model template for the endorsement follows:

“This warrant as transcribed is a copy made by [*rank and name of Police officer or rank and unique identifier (QID)*] at the direction of issuing officer [*name or unique identification number*].

[*Signature of named Police officer or rank and unique identifier (QID)*]

[*date/time*]”

The applicant officer would then use the copy of the warrant they have filled out when executing the warrant.

Preparing oral search warrant application

Oral applications should only be made in situations of urgency.

Section [100\(3\)](#) of the Search and Surveillance Act states:

“An issuing officer may allow an application for a search warrant to be made orally (for example, by telephone call) or by personal appearance and excuse the applicant from putting all or any part of the application (including any required material) in writing if-

- (a) the issuing officer is satisfied that the delay that would be caused by requiring an applicant to put all or any part of the application (including any required material) in writing would compromise the effectiveness of the search; and*
- (b) the issuing officer is satisfied that the question of whether the warrant should be issued can properly be determined on the basis of an oral communication or a personal appearance (together with the material described in paragraph (c)); and*
- (c) the information required by section [98\(1\) to \(3\)](#) is supplied (whether orally, or partly orally and partly in writing) to the issuing officer.”*

Note: The application may be communicated by way of personal appearance or by telephone, although other means of oral communication are not excluded.

Making oral search warrant application

Follow these steps with making an oral warrant application:

Step	Action
1	Ensure the situation is urgent. If not, then make a written application .
2	If the situation is urgent and oral contact with the issuing officer (e.g., by telephone call or by personal appearance): <ul style="list-style-type: none">- is not available, then consider using a warrantless search power- is available, then be able to provide the grounds for urgency to the issuing officer. Be prepared to provide wider reasons than just one of the factors outlined in the bullet points for 'Determining when an oral warrant application may be appropriate' to satisfy the issuing officer.
3	Make notes of your appreciation of the factors (these notes may be relied on later in any court proceedings) in your notebook and/or ' Police Aide Memoire: Oral Application For Search Warrant ' (see step 5 relating to aide memoire) to refer to when supplying the following information with your oral application to the issuing officer: <ul style="list-style-type: none">- reasons for making oral application as outlined in the second bullet point in step 2 above- your name and object of the search (i.e., place, vehicle or thing such as a phone)- period of the search warrant = specify days and number of occasions- suspected offence (e.g., Supplying meth s6 (1)(c) Misuse of Drugs Act 1975 / possess for supply meth s6(1)(f) Misuse of Drugs Act 1975 / theft etc)- personal knowledge of the matters gained, because of the information obtained as part of the investigation- information supporting suspicion of offences - what has or is taking place?- describe evidential material - what it is you are looking for?- information supporting belief that evidential material is obtainable. - explain the information that discloses the grounds to search under an urgent oral application for a search warrant- if there have been any warrants executed on the object of the search in the past 3 months and if so, what was the outcome of that search. <p>Note: When making the oral application you need to confirm to the issuing officer the truth and accuracy of the contents of the application.</p>
4	Unless impracticable in the circumstances, obtain approval from a sergeant (including acting sergeant) or above before making an oral application.
5	Endeavour to always carry: <ul style="list-style-type: none">- a blank search warrant template that can be filled out if an issuing officer permits the application to be made orally (for example, by telephone call when one cannot be electronically sent).- a blank 'Police Aide Memoire: Oral Application For Search Warrant' that provides guidance about the information to be made available to the issuing officer. <p>Notes:</p> <ul style="list-style-type: none">- Templates of the 'Police Aide Memoire: Oral Application For Search Warrant' and search warrant template arising from oral application can be obtained by clicking on the links or going to Police Forms (S - Z) > Search & Surveillance > Search Warrants > General.- Issuing officers should also have blank templates, whether in hard copy or electronic form, that they can complete and dictate to the enforcement officer. Police are not required to provide a written application to the issuing officer after a warrant has been issued. However, if the application is made by a telephone call, then a scanned copy/photograph of the warrant could be sent to the issuing officer.

6	Consider whether a partly completed application and warrant (and a copy for the occupant) can be produced at a Police station on the Search and Surveillance System (generally the preferred approach). In such circumstances, the application template form would be more of an aide memoire. The additional information required could then be provided orally (for example, by telephone call) or by personal appearance to the issuing officer if they are prepared to allow the application or part of the application to be made orally.
7	You must be able to comply with sections 100(3)(c) and 98(3) of the Search and Surveillance Act (relating to previous search warrant applications within 3 months to be notified to the issuing officer) if the oral application requirements are to be satisfied.
8	Create the search warrant in the online Search and Surveillance (S & S) System. Select the oral application option in the statement of truth field. By selecting “on oral application” in the S & S System, the following paragraph will be automatically populated in paragraph 2 of the warrant: <i>“That application was made orally, and the truth and accuracy of its contents have been confirmed to me.”</i> Note: If unable to access the S & S System, because of time constraints/remote location etc, then in addition to steps 9, 10 and 11, see specific action to be taken in step 12 below.
9	Arrange a personal meeting, phone call or other means of oral communication with the issuing officer and explain the application to the issuing officer. Note: It is the decision of the issuing officer whether to consider an oral application based on the information you provide explaining the urgency and reasons for it. If the issuing officer is not satisfied that grounds for an oral application exist, they can refuse to hear the application. Police cannot insist it be heard.
10	If the issuing officer agrees to hear an oral application, politely remind them it is their responsibility to make notes about the circumstances and grounds for the application. The issuing officer is required by section 101 of the Search and Surveillance Act to provide their notes to the Court in lieu of a written application. Police are not required to provide a written application to the issuing officer after the fact.
11	Take the physical warrant (and a copy for the occupant) to the issuing officer’s location to make the oral application in person and have the warrant endorsed by the issuing officer as issued.

12 **If unable to access the S & S System because of time constraints/remote location etc.**

- Use the template of the '[Police Aide Memoire: Oral Application For Search Warrant](#)' form as an aide memoire to guide you with including the information required to satisfy the issuing officer that:
 - the delay that would be caused by putting all or any part of the application (including any required material) in writing would compromise the effectiveness of the search; and
 - the question of whether the warrant should be issued can properly be determined on the basis of an oral communication or a personal appearance (together with the material described in the next bullet point); and
 - the information required by section [98\(1\) to \(3\)](#) can be provided (whether orally, or partly orally and partly in writing).
- To comply with section [98\(3\)](#) of the Act (relating to previous search warrant applications within 3 months to be notified to the issuing officer) by:
 - completing a search in On Duty or NIA to identify any previous search warrants for inclusion in the oral application (note, making those checks by mobile phone/laptop/radio comms may be difficult due to remote locations - an alternative may be to travel to the nearest location where reception can be obtained).
- Carry the [search warrant template](#) to use when the issuing officer permits the oral application, but is unable to provide a hard copy or electronic copy that can be printed.
- Complete the dictated search warrant details from the issuing officer onto the [search warrant template](#) (may be handwritten).
- If the search warrant is issued over the phone, ask the issuing officer to direct that it be endorsed by you as issued pursuant to section [105\(b\)](#) of the Act. Record on the warrant the date and time of issue, the issuing officer's identifying number, and the fact that you have endorsed the warrant at the direction of the issuing officer pursuant to section [105\(b\)](#) of the Act (i.e., a copy made by the person to whom the warrant is directed, at the direction of the issuing officer) as follows:

"This warrant as transcribed is a copy made by [*rank and name of Police officer or rank and unique identifier (QID)*] at the direction of issuing officer [*name or unique identification number*].

[*Signature of named Police officer or rank and unique identifier (QID)*]

[*date/time*"]".

- Produce a copy of the warrant for the purpose of leaving the copy with the occupant of the address (see the model endorsement that is required under '[Transmission of search warrant](#)' in this section).

Notes: Policing areas should have local procedures in place so that such applications can be made to issuing officers. A failure to do so may result in evidence being ruled inadmissible where without warrant searches have occurred and an oral application hasn't been appropriately considered.

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.

Case Law

Law Notes concerning oral warrants can be found at the following links:

- [Razouk v Police \[2022\] NZHC 28](#) - the importance of knowing how to apply for an oral warrant
- [Renson v Police \[2021\] NZHZ 2342](#) - failure to consider obtaining oral warrant
- [R v Taylor \[2019\] NZDC 15086](#) - consider oral warrant before conducting warrantless search
- [Burn v R \[2022\] NZCA 254](#) - section 83 (entry without warrant after arrest) of the Search and Surveillance Act and consideration of an oral warrant

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 <u>NIA</u> case	Set-up a <u>NIA</u> Case reference if one does not already exist. Note: Avoid identifying target addresses for forthcoming warrant applications in the narrative of the <u>NIA</u> case as this may compromise the security of subsequent warrant execution.
Assess risks	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 ' Risk assessment when planning searches ' in 'Part 5 - Carrying out search powers with or without a warrant'. Note: 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.
Assess community impact	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. 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. See: - ' Risk assessment when planning searches ' in 'Part 5 - Carrying out search powers with or without a warrant' - the ' Community Impact Assessments (CIAs) ' chapter.
Complete application	Complete a search warrant application. Following the guidance on the application form will ensure the information required by sections 98 and 103 in all warrant applications and search warrants is provided. Note: The Search and Surveillance system permits multiple warrants to be created from a single application. See the 'Search and Surveillance System User Guide' (PDF below) for more information about completing the application.
<div style="border: 1px solid black; padding: 5px; display: flex; align-items: center;"> 📄 <div style="flex-grow: 1;"> Search and Surveillance - User Guide 011214 (Final v2.0).pdf </div> 3.18 MB </div>	

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 'De-confliction' 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 'De-confliction' 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"> - Criminal Proceeds (Recovery) Act 2009 - Films, Videos and Publications Classifications Act 2007 - Mutual Assistance in Criminal Matters Act 1992. <p>Note: 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	<p>Once approved by a supervisor, print out the search warrant and application and sign the application.</p>
Seek issue of warrant	<p>Take your application to an issuing officer.</p> <p>Include these documents with your application:</p> <ul style="list-style-type: none"> - a draft search warrant for the issuing officer's signature - a copy of the draft search warrant and notice to the occupier - all documents tendered in support of the application (annexes). <p>If making a written application or personal appearance before an issuing officer is impractical, see 'Mode of application' 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"> - Planned Action Risk Assessment and CARD prompt - Search Warrant - Search Warrant Application.
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 NIA 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 issuing officer for issuing.</p> <p>Include these documents with your application:</p> <ul style="list-style-type: none"> - a draft search warrant for the issuing officer's signature - a copy of the draft search warrant and notice to occupier - all documents tendered in support of the application (annexes). <p>Note: 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 'Mode of application' in this chapter).</p>

Search warrants for "Things"

Applications for search warrants often cover places and vehicles but can also include “Things” such as devices, facilities and objects.

“Device” application for search warrant

When a device, such as a cell phone or laptop computer, is seized pursuant to a without warrant power, such as section 88 of the Search and Surveillance Act, and there is no urgency, a warrant should be obtained to permit ongoing retention of the device for examination purposes.

As Police are already in possession of the device, the search warrant should be for a “thing”, namely the specified device. For further information on the application of the S&S Act to Police stations and searches of things, refer to the Law Note on [R v Lucas](#) [2015] NZHC 1944.

Key elements and implications addressed with creating a ‘Device’ application include:

- A device is an electronic device capable of storing or creating data.
- The device or devices must already be lawfully in the possession of Police, whether by warrant or warrantless search power.
- For a device seized pursuant to a warrant (from a place or vehicle), a further warrant should only be necessary if the device needs to be reconnected to the network or a search outside of the scope of the original warrant is required. The following table summarises when a device application is required/not required:

Required	Not Required
Search of device is not covered by the original warrant, but the device is lawfully in Police’s possession.	Search of the device is covered by the original warrant.
Search required is outside scope of original warrant, e.g. for different offence.	
Device seized pursuant to warrantless search powers and there is no urgency to search the device at the time of seizure.	

- You cannot use the NIA record for a device that has already been entered as an exhibit or property item in PROP or IMT. At this point, where this has occurred, a separate item must be created in NIA for the device.
- A device application cannot be created when there are other target types covered by the application (locations, vehicles, things, etc).
- When adding a target ‘Thing’, there is now an option to select Thing, device or Facility.
- When selecting device, the Police location of the device must be specified.
- Execution Occasions: for device applications, multiple executions should be requested, as trained staff may be required to use different techniques over the period of the warrant to access and extract the evidential material.
- Duration Days: The default period for ‘Device’ warrants should be 30 days, as the demand around device extractions is expected to result in increased work for trained staff.

Further information

For further information on preparation of ‘Device’ search warrant applications and searches of computers and other devices, see:

- [‘Search and Surveillance System - User Guide’](#)
- [‘Search and Surveillance System - Quick Guide’](#)
- [Douglas v Police](#) [2019] NZHC 2672
- [Ruru v R](#) [2020] NZCA 64
- [Tupoumalohi v R](#) [2020] NZCA 117
- [Cellphone and computer searches](#) in this chapter.

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.

In the case [Mellas v R](#) [2020] NZCA 418 the Court emphasised the significance of the police's failure to comply with section [133](#) of the Act. Written notice of seizure is a statutory requirement with which compliance can only be deferred or excused by a Judge. The Court saw disregard of section 133 as cavalier and took this into consideration in excluding the evidence obtained.

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.

Warrants to search and seize weapons when there is gang conflict

Introduction

[The Criminal Activity Intervention Legislation Act 2022](#) (CAIL) addresses the harm caused by criminal activity and intended to make communities safer. CAIL under subpart [6A](#) of Part 2 of the [Search and Surveillance Act 2012](#) creates search powers for Police to use during times of gang conflict. Those search powers are covered in this section of Part 2 - Search warrants.

The search powers enable Police to conduct a search for weapons in places and vehicles and seize them more effectively when tensions between gangs are high. On application, a Judge can issue a search warrant for a period not exceeding 14 days for such a purpose. The search warrant may be executed on more than one occasion in respect of different places or vehicles, or the same place or vehicle (subject to conditions deemed reasonable by the Judge).

There is no requirement to believe weapons are present in a vehicle or at an address when applying for a search warrant, only that a “gang conflict” exists.

Gang conflict: notification for advice and assistance with preparation and response

In the event where powers are sought relating to warrants to search and seize weapons when there is gang conflict, then Districts must first discuss resourcing requirements with their District Commander and notify their Territorial Detective Superintendent who may be able to provide advice and assistance with preparation and planning before those powers are activated.

Definitions

The following definition of terms under Subpart [6A](#) of Part 2 of the Act relating to warrants to search and seize weapons when there is gang conflict apply.

Term	Definition
Gang	Gang has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013 and includes organisations listed in the Prohibition of Gang Insignia in Government Premises Regulations 2018 .
Gang conflict	Gang conflict means ongoing dissension between 2 or more gangs, or factions within a gang, that: <ul style="list-style-type: none">- has involved, or is likely to involve, the use of weapons, and- has presented, or is likely to present, a risk of harm to persons or damage to property.
Gang insignia	Gang insignia has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013.
Gang member	Gang member: <ul style="list-style-type: none">- means an individual who is a member of a gang (including an individual who is a prospective member or nominee), and- includes:<ul style="list-style-type: none">- an individual who demonstrates affiliation to a gang by displaying the gang’s insignia- an individual who is involved in the affairs of a gang for the likely purpose of participating in a criminal activity.
Weapon	Weapon means: <ul style="list-style-type: none">- any arms, and- any other item made, or modified, for use to cause bodily injury.

([s18A](#))

Application for s 18B warrant to search places and vehicles and seize weapons

If a gang conflict exists, a constable may apply to a Judge for a warrant to:

- search places and vehicles in an area for the purpose of locating weapons at, in, or on those places or in or on those vehicles, and
- seize any weapons found at, in, or on those places or in or on those vehicles.

(s18B)

Note: Section 98 (Application for a search warrant) under the Act does not apply to an application for a warrant to search places and vehicles and seize weapons under section 18B.

Approval

The gang conflict warranted search powers (Section 18B Search and Surveillance Act) provisions are tightly defined. To support any warrant applications a leadership approval model has been developed that means an application must be authorised by an Assistant Commissioner, in consultation with the relevant Detective Superintendent and District Commander. See the [leadership approval model practice note](#) for guidance.

Application and warrant template forms

The following template forms can be obtained from Police Forms > Search and Surveillance > Search Warrants > CAIL:

- POL CAIL 1 - s18B Warrant Application
- POL CAIL 2 - s18D Warrant - Gang Members
- POL CAIL 3 - s18D Warrant - Specified Members and Gang Members.

Target application history

Target application history must be entered in the Search and Surveillance application so it can be accurately recorded and made available to other users of the system.

Only specified district SME's have access to create a CAIL warrant in the Search and Surveillance system, check with your Territorial Detective Superintendent or the Manager Investigative Excellence at NCIG for a list of those who have the required access in your district.

Content of search warrant application

An application for search warrant under section 18B must set out the following particulars:

- the name of the applicant, and
- the provision that authorises the making of the application, and
- the grounds on which the application is made (including the reasons why the applicant believes the legal requirements for issuing the warrant are satisfied), and
- a description of the area in which the gang conflict exists, and
- the name or names of the gang or gangs involved in the gang conflict, and
- a description of the area in which the search of places and vehicles is proposed to be conducted, and
- the name or names of the gang or gangs in that area involved in the gang conflict, and
- the names of any persons other than persons who are gang members of a gang referred to in paragraph (e) whose places and vehicles are proposed to be entered and searched, and
- the addresses of the places proposed to be entered and searched, and
- a description of the vehicles proposed to be entered and searched, and
- the period for which the warrant is sought.

(s18C(1))

Details that search warrant application must disclose

The applicant must disclose in the application:

- details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of any place or vehicle proposed to be searched, and

- the result of that application or those applications.

The applicant must, before applying for a warrant to search places and vehicles and seize weapons under section [18B](#), make reasonable inquiries within the Police, for the purpose of complying with the above requirements.

[\(s18C\(3\) & \(4\)\)](#)

Judge's consideration of search warrant application

When considering an application for a warrant to search places and vehicles and seize weapons under section [18B](#), the Judge:

- may require the applicant to provide further information concerning the grounds on which the warrant is sought, but
- must not, in any circumstances, require the applicant to disclose the name, address, or any other identifying detail of an informant unless, and only to the extent that, that information is necessary for the Judge to assess either or both of the following:
 - the credibility of the informant
 - whether there is a proper basis for issuing the warrant.

[\(s18C\(2\)\)](#)

Issue of s 18D warrant to search places and vehicles in specified area and seize weapons

A Judge may issue a warrant on an application for a warrant to search places and vehicles and seize weapons made under section [18B](#) if the Judge is satisfied that there are reasonable grounds to believe that:

- a gang conflict exists, and
- 1 or more gangs involved in the gang conflict are in a specified area, and
- the issue of the warrant may reduce the risk of harm to people or property.

[\(s18D\(1\)\)](#)

Search warrant authorising search of specified places

A Judge, if satisfied of the following matters, may issue a warrant authorising a search in the specified area of 1 or more specified places for the purpose of locating weapons and seizing any weapons found at, in, or on any of those places:

- there are reasonable grounds to suspect that the specified places are owned, occupied, or used by 1 or more gang members of a specified gang
- there are reasonable grounds
 - to suspect that the specified places are owned, occupied, or used by 1 or more specified persons, and
 - to believe that the specified persons are encouraging or assisting in the gang conflict.

[\(s18D\(2\)\)](#)

Search warrant authorising search of non-private premises

A warrant authorising the search of places specified in the above paragraph may only authorise the search of non-private premises if the Judge issuing the warrant is satisfied that there are reasonable grounds to suspect that the premises are being used by gang members to conduct gang-related activities involving weapons.

[\(s18D\(3\)\)](#)

Search warrant authorising search in the specified area covering specified vehicles

A Judge, if satisfied of the following matters, may issue a warrant authorising a search in the specified area of 1 or more specified vehicles for the purpose of locating weapons and seizing any weapons found in or on any of those vehicles:

- there are reasonable grounds to suspect the specified vehicles are owned or used by 1 or more gang members of a specified gang:
- there are reasonable grounds:
 - to suspect that the specified vehicles are owned or used by 1 or more specified persons, and

- to believe that the specified persons are encouraging or assisting in the gang conflict.

([s18D\(4\)](#))

Search warrant authorising search of vehicles other than specified vehicles

A warrant may also authorise a search within the specified area of any vehicles other than specified vehicles for the purpose of locating and seizing weapons found in or on the vehicles if a constable is satisfied that there are reasonable grounds to suspect that the vehicles are:

- owned or used by 1 or more gang members of a specified gang, or
- owned or used by 1 or more specified persons who are encouraging or assisting in the gang conflict.

([s18D\(5\)](#))

In addition to the warrant power to search for and seize weapons during a gang conflict, there is also a power to seize cash found in suspicious circumstances and believed to be over \$10,000. See 'Part 12 - Procedures applying to seized and produced things for further information about the seizure of cash.

Section 18D definitions

The following definitions apply to section [18D](#) only.

Term	Definition
Specified area	Specified area means the area specified in the warrant by any description (for example, by geographical region) that enables the boundaries of the area to be ascertained, and may be any of the following: <ul style="list-style-type: none"> - the same area as the area in which the gang conflict exists, or - a different area to the area in which the gang conflict exists, or - an area that includes part of the area in which the gang conflict exists, or - an area within the area in which the gang conflict exists.
Specified gang	Specified gang means a gang specified in a warrant issued under this section.
Specified person	Specified person means a person specified in a warrant issued under this section who is not a gang member of a specified gang.
Specified place	Specified place means a place specified in a warrant issued under this section.
Specified vehicle	Specified vehicle means a vehicle specified in a warrant issued under this section.

([s18D\(6\)](#))

Form and content of search warrant

A search warrant issued under section [18D](#) must be:

- in the prescribed form, if any, and
- directed to a constable.

([s18F\(1\),\(2\) & \(3\)](#))

Execution and conditions

The search warrant may be:

- executed by a constable
- subject to any conditions specified in the warrant that the issuing Judge considers 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 constable executing the warrant if, in the absence of such assistance, it would not be practicable to execute the warrant without undue delay.

Note: A person is not required, as a consequence of this condition being imposed, to give any information tending to incriminate the person.

([s18F\(4\) & \(6\)](#))

Content of search warrant

Every search warrant issued under section [18D](#) must contain, in reasonable detail, the following particulars:

- the name of the issuing Judge and the date on which the warrant was issued
- the provision that authorises the issue of the warrant
- a statement that the constable executing the warrant may use any assistance that is reasonable in the circumstances
- a statement that any constable may execute the warrant
- a statement that the constable executing the warrant may use any force, if authorised by this Act or any other enactment, that is reasonable in the circumstances to enter or break open or access any area within the place or vehicle being searched
- the address or a description of the place or vehicle that may be entered, or entered and searched (if applicable)
- a description of what may be seized
- the period during which the warrant may be executed, being a period specified by the issuing Judge not exceeding 14 days from the date on which the warrant was issued
- any conditions specified by the issuing Judge under subsection (4)(b)
- an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed (where applicable)
- a statement that any person found in the place or vehicle to be searched may be searched if there are reasonable grounds to believe that an item being searched for is on that person.

([s18F\(5\)](#))

Identification and notice requirements for person exercising search power

See the '[Identification and announcement requirements on entry](#)' in 'Part 5 - Carrying out search powers with or without warrants' of the 'Search' chapter for the identification and notice requirements for person exercising powers under a warrant to search places and vehicles in specified areas and the seize weapons under section 18D. Section [131\(1\)\(b\)](#), [\(5\)\(ba\)](#) and [\(5bb\)](#) refer specifically to section [18D](#) search warrants.

Places and vehicles may be searched on more than 1 occasion

A search warrant issued under section [18D](#) may be executed on more than 1 occasion in respect of:

- different places or vehicles:
- the same place or vehicle, subject to any conditions specified in the warrant that the Judge considers reasonable.

([s18E](#))

Warrant reports

A Judge who issues a warrant may impose a condition requiring the Commissioner of Police to provide the Judge with a search warrant report within a specified period after the expiry of the search warrant period. A search warrant report must contain information about whether the warrant:

- was executed
- resulted in the seizure of any weapons
- resulted in the seizure of any evidential material

- resulted in any criminal proceedings being brought or considered as a result of the seizure of weapons or other evidential material.

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>Note: 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>9. Additional information</p> <p>I provide the following additional information:</p> <p>Use of surveillance device required for safe execution of warrant</p> <p>s.6(c) OIA</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	<p>You can use hearsay evidence 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"> - the CHIS's credibility - 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". - whether the information has been confirmed by other means. <p>Note: 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 - 30 May 2007) and <i>R v Dunedin</i> District Court, so the warrant issuer can assess reliability. <i>R v Williams</i> [2007] 3 NZLR 207 and R v Kissling [2009] 1 NZLR 641 refer.</p>
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.

StepAction

- 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 s134 from the obligation under s131(4) to provide a copy of the search warrant. (See '[Postponing compliance with notice requirements](#)' 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.

Case Law:

In *The Queen v Costello* [2022] NZCA 64, the case stressed the importance of specifying the address to be searched and associated buildings in warrant application. When applying for a search warrant in circumstances where there are multiple separate buildings within the address, it is important for Police to provide as much detail as possible regarding the area they intend to search. For example, they can provide a Google Maps satellite image or outline the boundaries to specifically include or exclude certain buildings. Doing so will provide clarity and help prevent subsequent challenges to the searches.

- 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 [informants](#) 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...

at any time that is reasonable in the circumstances:

- enter and secure the place, vehicle, or other thing, and
- secure any item(s) found there, and
- direct any person to assist with the entry and securing of the place, vehicle or other thing, or the securing of items in it

if you...

believe 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.

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)

The case *McIntyre v R* [2020] NZCA 503 clarifies that it can be appropriate to include police observations made when invoking section 117 of the Act in search warrant applications. Inclusion was appropriate in this case because the observations corroborated the reasons for seeking a warrant.

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 (s 108)

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.

(s 109)

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.

Note: 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.

(s 103)

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 Consider the reasons for refusal and if those reasons:
 - can be fixed, then:
 - address all the reasons for the refusal
 - redraft the application and proposed search warrant, ensuring the reasons for refusal are addressed in the appropriate paragraphs of both documents
 - re-submit the application to the **same** issuing officer who refused to issue the search warrant. If that issuing officer is not available, you **must** inform the second issuing officer of the reasons why the first issuing officer refused to issue a search warrant
 - cannot be fixed, then:
 - re-evaluate whether or not to continue your investigation without the search warrant being issued, or
 - if the reasons do not appear to be justified, prepare a report and submit the file through your supervisor to Legal Services for direction.

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 - 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.
 - If there are any concerns about:
 - safety of any persons
 - integrity of the Police operation being compromised
 - security of the information
 - sensitivity of the investigation

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.

- 2 Fully communicate all security issues to the issuing officer.
- 3 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.
Note: It is not the responsibility of Police to retain and deliver an application for a search warrant to the nearest Court.
- 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 - if applicable, written authority from supervisor authorising application for search warrant
- Legislative requirement (s 101) - a copy of the search 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 search warrant
 - a copy of any search warrant report required by the issuing officer under section 104.

Note: The specified documents must be retained until the later of:

- conclusion of any proceedings
- destruction of the documents in accordance with policy '[Retention and disposal of Police records](#)'.

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 a CHIS, 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

StepAction

- 1 Set-up a NIA Case reference if one does not already exist.

Note: 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.

- 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 [Community Impact Assessment](#) as required.

Apply for search warrant

StepAction

- 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

StepAction

- 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

StepAction

- 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.