

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

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Executive summary

Key points to note:

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Police may exercise **warrantless powers** to enter and search places, vehicles and things in a number of situations including:

- to effect arrest or incidental to arrest
- in emergency situations
- to search for evidential material in serious offences
- to search for arms, drugs or offensive weapons.

-
If you have a warrantless power to search places, vehicles and things you may also **seize** anything that is the subject of the search or that may lawfully be seized.

-
Warrantless search powers have a number of associated general powers (s110) that can be used when exercising a particular search power, e.g. to enter, request assistance, or use force if necessary (property only).

-
Obtain approval from a sergeant (including acting sergeant) or above before exercising any warrantless search powers in relation to arms or drugs, unless impracticable in the circumstances.

-
It is normally not necessary for a tracking device warrant to be obtained, when a victim provides tracking information/intelligence on the whereabouts of their stolen property (e.g. mobile phone) to Police. Depending on the circumstances and urgency, a search warrant or warrantless search power may be exercised instead.

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

Overview

Purpose

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

Search hierarchy

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

See:

- [Search warrants](#) for guidance on seeking a search warrant authorising the searching of places, vehicles and things

Law Notes:

- *R v Bailey* [2017] NZCA 211 relating to **direction to stop car so as to identify occupants and warrantless search of vehicle**
- *McGarrett v R* [2017] NZCA 204 relating to **stopping a car on drug run using the Land Transport Act and warrantless search of vehicle**
- *Moore v The Queen* [2022] NZCA 109 deals with the **admissibility of evidence provided by a private citizen, obtained through a warrantless search**.

Warrantless searches: consider alternatives or document reasons why alternatives are unrealistic

Before warrantless searches are conducted, it is important that officers consider alternatives or have a legitimate reason why alternatives are unrealistic to pursue in the particular circumstance. To help avoid subsequent challenges to a warrantless search, officers should document contemporaneously or at the first available opportunity why they chose to conduct a warrantless search and why alternatives (e.g., search warrant) were not possible, so that these notes can be referred to in evidence if necessary.

Relevant case law

The case *Renson v Police* [2021] NZHC 2342 relates to unlawful warrantless search for cannabis under section [20](#) at a private dwelling and failure to consider obtaining an oral warrant. Police had the opportunity to consider alternatives because there was nobody inside the premises who could destroy or conceal evidence, thus there was no sense of urgency. The failure to consider obtaining an oral warrant was significant in this case.

In *R v Leota* [2023] NZHC 583 (Part 1) demonstrated where urgency is not required to conduct a warrantless search, it may still factor into the reasonableness of searches under [New Zealand Bill of Rights Act 1990](#). In this case, there were a combination of factors, including some urgency, that meant the warrantless search was reasonable.

Inventory searches

Inventory searches are a warrantless search power available to Police through the common law. They are not provided by legislation. The power is available to protect the personal property of those who have for example their vehicle impounded. Inventory searches allow Police to fulfil their obligation to take reasonable steps to preserve the owner's property. They are consistent with the right to be free from unreasonable search and seizure under section [21](#) of the New Zealand Bill of Rights Act 1990 because they are executed for the owner's benefit.

Inventory searches must not be used for the purpose of obtaining suspicious or unlawful items from individuals. Discoveries made by Police during an inventory search can, however, provide grounds for further searches. Such was the case in *Curran v R* [2023] NZCA 287, even though the section [20](#) search was ultimately unlawful.

Warrantless powers to search people

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

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

Reporting warrantless searches

Under section 169 of the Search and Surveillance Act 2012 it is a legislative requirement that every warrantless search, entry or surveillance power must be notified to the Commissioner 'as soon as practicable after the exercise of the power'. Policy requires this notification to be completed no later than the end of the shift during which it occurs. See '[Part 14 - Reporting](#)' in the 'Search' chapter for further guidance.

Notifications must be submitted via OnDuty.

Seizure and other powers incidental to powers of search

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

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

(s110)

Case Law

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

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

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

Seizure of cash of or over \$10,000 in suspicious circumstances

Section 123B provides the opportunity to consider when you find large amounts of cash (includes gold bars and gold ingots) of or over \$10,000 in suspicious circumstances to invoke the seizure power, if you are:

- exercising a search power, or
- lawfully in any place or in or on a vehicle, or
- conducting a lawful search of a person,

AND

- the officer who locates the cash needs to reasonably believe the cash is of or over the \$10,000 threshold, AND
- is not satisfied with the explanations given, AND
- has reasonable ground to suspect that the cash is not lawful or is to be used for an unlawful purpose.

See '[Seizure of cash of or over cash seizure threshold amount](#)' in 'Part 12 - Procedures applying to seized and produced things' of the 'Search' chapter for further information about the requirements that apply to the use of this power under sections [123A to 123E](#) and contacting the Asset Recovery Unit (ARU).

Warrantless search on CheckPoint

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

- persons
- vehicles
- places.

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

Written report to the Commissioner on exercise of warrantless search power

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

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

References to the Act

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

Entry and search to effect arrest

Entry to arrest person unlawfully at large

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

(s7)

See '[Unlawfully at large defined](#)' in this chapter for guidance about the limitations with what constitutes unlawfully at large.

When entry to premises required to execute warrant to arrest

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

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

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

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

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

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

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

Unlawfully at large defined

"Unlawfully at large" means that the person:

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

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

Note: Unlawfully at large does not include a person who breaches home detention conditions by being at an address other than the specified home detention residence. This situation does not constitute a person “unlawfully at large” under the Act, and the section 7 warrantless power of entry to arrest person unlawfully at large does not apply.

Case Law

In [Wright v R \[2022\] NZCA 459](#) the case is about the belief required to invoke section 7 of the Search and Surveillance Act 2012. The Court of Appeal determined there must be evidence supporting a reasonable belief that the person Police seek are there. This is a higher standard than mere suspicion.

This case helps separate the standards of reasonable ‘suspicion’ and ‘belief’, the latter being required to invoke search powers under section 7 of the Search and Surveillance Act 2012.

For the Police to believe the person they are seeking is at an address, it is important to first discount any other plausible explanations for their whereabouts. Otherwise, an officer may merely be acting on a suspicion. [Karlsson v Police \[2019\] NZCA 409](#) is a good example of this: in that case the explanation as to the whereabouts of the person sought was implausible, and there were enough factors contributing to the senior constable’s reasonable belief that they were at the property without additional enquiries. A car registered to the person being searched for was located on the property, and the occupant talked to at the property was supplying blatantly false information.

Entry to avoid loss of offender or evidential material

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

(s8)

Applying section 8

Section 8 only empowers police to search for and arrest a person. That must be the officer’s intention at the time of entry.

Section 8 only applies where:

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

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

communication; or are known to be actively trying to evade Police.

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

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

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

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

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

If it is not practicable to obtain an arrest warrant or search warrant (if applicable for evidential material), section 8 enables Police to enter a property or vehicle to arrest the person. Having entered the address it may be possible to also seize evidential material relating to the offence where items are in plain view (section 123); or following arrest to search the arrested person and seize evidential material (section 88); or to search for evidential material that there are reasonable grounds to believe will be destroyed, concealed, altered, or damaged, if entry is delayed (sections 83 and 84).

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

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

Case law

See the following case law relevant to section 8:

- *Court v R* [2020] NZCA 76 The Court's interpretation of section 8 highlighted the need for the power to be engaged to enter a property to search for and arrest a person, not to search for or preserve property. Section 8 is not the basis for a general search for stolen property. It is a power of "extraordinary nature", and a misuse of such is significant. A casual approach will not be tolerated by the Courts.
- *Round v R* [2020] NZCA 557 for the Court of Appeal's emphasis that "intention to arrest the suspect is central to the power"
- *Harris v Police* HC Wellington AP18/97, 12 March 1997 in relation to the officer's intention to arrest the person involved in an assault was not negated by the fact that Police spoke to other party-goers to identify the person before arresting them
- for determining the objective standards of reasonable suspicion and the higher standard of reasonable belief:
 - *Wild v Police* [2017] NZHC 1344
 - *Police v Orupe* [2016] NZDC 3984
 - *Hawkes v R* [2015] NZCA 49
 - *R v Sione Malafiu Falala* [2013] NZHC 1686

In *Hurdle v R* [2022] NZCA the case involved a Dynamic scene where Police successfully invoked warrantless search powers under sections 8 and 20 of the Search and Surveillance Act 2012.

Overall, the Court accepted that in a fast-moving situation such as this, Constable B reasonably and lawfully entered the property to search for H upon receiving instructions to apprehend him. It was also found that in the circumstances, Sergeant S rightfully invoked the warrantless search of the property under s 20 of the SSA, and the Court accepted his explanation as to why an oral warrant could not reasonably be obtained. The Court also clarified that powers under s 8 of the SSA are not immediately

exhausted after an arrest, but rather extend past the arrest and give Police authority to remain on the property to complete additional tasks, such as securing the scene.

Emergency powers

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

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

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

(s [14](#))

Case law

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

This case possibly broadens the scope of [s14](#) of the Act; it provides that an officer may take action under that section in order to respond to risks to the safety of police officers engaged in high risk duties.

No power of detention

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

Entry and search for evidential material (serious offences)

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

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

(s15)

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

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

Case Law

In *N v The Queen* [2021] NZCA 418, the Court's view was that the officers should have been more organised and should have planned to seek a search warrant in advance, but nevertheless accepted that the search they undertook was an understandable response to the reality of the situation at the end of the interview.

Searching people in public place for evidential material

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

(s16)

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

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

(s17)

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

Case Law

The case of *R v Vaitohi & Talakai* [2022] NZHC 1165 is about the admissibility of evidence obtained under section 17 of the Search and Surveillance Act 2012 and provides an example of a successful use of section 17 of the Act.

Warrantless searches associated with arms

Arms in places or vehicles

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

(s18(3))

Case Law

In [O'Brien v R \[2022\] NZCA 253](#) is a case about a warrantless search under section 18 of the Search and Surveillance Act. The case represents a positive example of Police correctly executing warrantless searches under the Search and Surveillance Act. The Court of Appeal agreed, based upon several factors, that obtaining a warrant first would have been impracticable. Urgency, the time of night, available Police resources and any risks of evidence tampering are some factors which might be relevant to evaluating whether a warrant should be obtained.

Approval for arms-related searches of places and vehicles

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

Searching people associated with arms

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

Warrantless searches associated with drugs

Search of places and vehicles

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

(s20)

Case Law

The case [Renson v Police](#) [2021] NZHC 2342 relates to unlawful warrantless search for cannabis under section [20](#) at a private dwelling and failure to consider obtaining an oral warrant. Police had the opportunity to consider alternatives because there was nobody inside the premises who could destroy or conceal evidence, thus there was no sense of urgency. The failure to consider obtaining an oral warrant was significant in this case.

In [McIntyre v R](#) [2020] NZCA the Court considered an aerial surveillance search without-warrant and cannabis destruction. If search or entry powers are needed to seize or destroy prohibited drugs, a warrant must be obtained or the warrantless search power under section [20](#) of the Act, which relates to the Misuse of Drugs Act, invoked.

The [Hurdle v R](#) [2022] NZCA case involved a dynamic scene where Police successfully invoked warrantless search powers under sections [8](#) and [20](#) of the Search and Surveillance Act 2012. See the [case law](#) in this chapter for further information about the case.

[McIntyre v New Zealand Police](#) NZHC 434 relates to knowing your thresholds for warrantless searches. When invoking warrantless search powers under section [20](#) of the Search and Surveillance Act, it is important that officers establish that they had reasonable grounds to believe that, if entry and search was not carried out immediately, evidential material “would” be lost. It is insufficient to provide that they thought evidential material “could” be lost.

Approval for drug related searches under sections 20 and 21

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

People found in or on places or vehicles

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

(s21)

Searches of people associated with drugs

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

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

Police and Customs powers relating to delivery of drugs

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

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

(s81)

Warrantless searches for offensive weapons

Searching vehicles for offensive weapons

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

(s28)

Case Law

In [Terrill v R \[2022\] NZCA 514](#) the thresholds for searches under section 28 (offensive weapons) of the Search and Surveillance Act 2012 were considered. Although the Court of Appeal determined that the “reasonable suspicion” threshold was not met, the evidence produced by the search was nevertheless held admissible under section [30](#) of the Evidence Act 2006.

Conducting a lawful search under section [28](#) of the Search and Surveillance Act is fact dependent. This case demonstrates the difficulty of balancing professional experience with objective circumstances, but also the importance of doing so when invoking search powers. In this case, the officers’ suspicions proved correct, but the original threshold for a lawful without warrant search was still not met.

Definitions

These meanings apply in section 28.

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

(s26)

Searching people for offensive weapons

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

Searching vehicles for stolen property

Warrantless search of vehicle for stolen property

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

(s29)

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

Case law

In [Nassery v R](#) [2020] NZCA 511, the Court of Appeal:

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

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

Warrantless search of place, vehicle or thing

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

Entry and search of places and vehicles incidental to arrest

Entry and search of places after arrest

If you have arrested a person for an offence:

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

(s83)

Entry and search of vehicles after arrest

If you have arrested a person:

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

(s84)

Case law

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

The Court of Appeal in [Mellas v R](#) [2020] NZCA 418, held that given the opportunity for Police to investigate the veracity of M's story while in custody and obtain a search warrant, the Court found that not doing so and instead Police exercising the section [84](#) warrantless search was careless and excluded the evidence pursuant to section [30](#) of the Evidence Act 2006. It is a well-established principle that it is not reasonable to proceed with a warrantless search in circumstances where a warrant could have been sought. Additionally, in this case 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.

In [Borrell v R](#) [2021] NZCA 553 the Court of Appeal concluded that Police had reasonable grounds to believe that evidential material relating to the charge of unlawfully being in an enclosed yard was in the vehicle. Therefore, the warrantless search under section [84](#) of the Act was lawful, as were the subsequent searches. A warrantless search of a vehicle subsequent to an offender's arrest may be justified under section [84](#) of the Act if a Police officer reasonably believes that an offence has or is about to be committed and evidential material relating to that offence is inside the vehicle. In this case, the warrantless search was justified because Police reasonably believed B had or was about to commit a burglary on the property. B admitted knowing the property was vacant, had a history of dishonest offending, and acted in a way that attempted to keep Police away from the vehicle. The Court accepted these factors were sufficient for the officers to believe evidential material relating to the offence was in the vehicle.

Tracking stolen property

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

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

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

Acting on tracking information

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

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

Powers under the Search and Surveillance Act

The main powers under the Act that apply are:

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

Is tracking stolen property surveillance or search?

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

Warrant or warrantless power?

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

Determining time and delay for tracking stolen property

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

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

Reporting warrantless searches of places, vehicles and things

Reporting warrantless searches to the Commissioner

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

Quick reference guide: warrantless use of powers notifications and reporting

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