

Part 6 - Road blocks and stopping vehicles for search purposes

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Summary

Introduction

This chapter outlines powers under the [Search and Surveillance Act 2012](#) to stop and move vehicles and to establish road blocks **for the purpose of search and/or to effect arrest**.

Powers to stop and move vehicles or to close roads under the [Land Transport Act 1998](#) or under other legislation for emergency purposes (e.g. in a civil defence emergency) **must not** be used for the purpose of search.

Definition

Curtilage means an area attached to a dwelling house and forming one enclosure with it. In an urban area it would include the area within a dwelling's fenced boundary.

Related information

See:

- these [Road Policing](#) chapters for information about stopping and moving vehicles in relation to traffic enforcement and management:
 - 'Power to stop vehicles and powers once stopped' in the 'Traffic Patrol Techniques' chapter
 - 'Policing Outlaw Motorcycle Gang Runs'
- the [Perimeter control](#) chapter for information about:
 - Police powers to close roads, stop vehicles and establish road blocks in response to critical incidents under other enactments; and
 - good practice for:
 - selecting the location for the road block or checkpoint
 - setting up a road block or checkpoint
 - operating a roadblock or checkpoint
 - stopping vehicles at roadblocks/checkpoints.
- the [Community Impact Assessments \(CIAs\)](#) chapter for information about community impact assessments.

Stopping and moving vehicles to search

Stopping vehicles with or without warrant to search

You may stop a vehicle to conduct a search:

under a power to search...	if you are satisfied that...
without a warrant	grounds exist to search the vehicle
with a warrant	the warrant has been issued and is in force.

On the request of any person (includes not only the driver, but also any passenger) affected by the exercise of a power to stop a vehicle for the purpose of search under section 121, you must:

- identify yourself either by name or by unique identifier
- state the name of the enactment under which the search is taking place and the reason for the search, unless it is impracticable in the circumstances
- if not in Police uniform, produce evidence of your identity.

(s121)

Stopping vehicles under the Land Transport Act 1998

The [Land Transport Act 1998](#) (LTA) cannot be used as an excuse to stop a vehicle for an unrelated purpose.

Note: If police are interested in a vehicle or its occupants for some non-LTA purpose, this will not disqualify police from stopping the vehicle for a legitimate LTA reason should one arise. Once the legitimate purpose is spent, however, the vehicle is free to go as a matter of law. To delay the vehicle longer than is necessary may amount to unlawful detention.

See the following case law for further guidance:

- *Tahapehi v Police* [2018] NZHC 2666: Section 114 of the Land Transport Act 1998 (LTA) - Vehicle stop for genuine LTA purpose was lawful though police's initial interest in vehicle was for non-LTA reasons.
- *McGarrett v R* [2017] NZCA 204: Stopping a car on drug run using the Land Transport Act and warrantless search of vehicle.
- *Baylis v R* [2018] NZCA 271: Incorrect exercise of powers when stopping a vehicle under the Land Transport Act 1998.

Moving vehicle for purpose of search or safekeeping

You may move a vehicle to another place:

if...	and you have...
you find or stop the vehicle	<ul style="list-style-type: none"> - lawful authority to search the vehicle, but it is impracticable to do so at that place, or - reasonable grounds to believe it is necessary to move the vehicle for safekeeping.

(s122)

Duty to remain stopped

You may require the vehicle to remain stopped for as long as is reasonably necessary for the exercise of any powers in respect of:

- the vehicle, or
- the occupants of the vehicle.

(s128)

Duty to provide information to vehicle's driver

Immediately after stopping the vehicle, you must:

- identify yourself to the driver
- state the name of the enactment under which the search is taking place and the reason for the search, unless it is impracticable in the circumstances
- if not in Police uniform, produce evidence of your identity.
(s129)

Stopping vehicles without warrant to effect arrest

You may stop a vehicle without warrant to arrest a person if you have reasonable grounds:

- to suspect that a person:
 - is unlawfully at large, or
 - has committed an offence punishable by imprisonment, and
- to believe the person is in or on the vehicle.
(s9)

Note: "Unlawfully at large" includes:

- a person for whose arrest a warrant is in force, except when it is a fines warrant issued under [Part 3](#) of the Summary Proceedings Act 1957
- anyone who has escaped from lawful custody
- a special or restricted mental health patient who is absent without leave.

Powers and duties after vehicle stopped

If you stop a vehicle under section [9](#) you may:

- require any person in or on the vehicle who you have reasonable grounds to suspect is unlawfully at large or has committed an offence punishable by imprisonment to supply their name, address, other contact details and date of birth
- search the vehicle to locate the person, if you have reasonable grounds to believe they are in or on the vehicle
- search the vehicle to locate property that is evidential material in relation to any offence in respect of which the vehicle was stopped, if the person:
 - has been arrested, or
 - is seen fleeing from the vehicle before they can be arrested.

Before searching, you must tell the driver the object of the proposed search if they are not the person suspected of being unlawfully at large or of committing an offence.

(s10)

Procedures for stopping vehicles

Follow the procedures for stopping vehicles in the [Traffic patrol techniques](#) Police Manual chapter.

Note in particular that Police policy requires that when stopping a vehicle you **must**:

- be wearing a Police uniform or distinctive cap, hat or helmet with a badge of authority affixed to that cap, hat or helmet, **or**
- be following immediately behind the vehicle, and displaying flashing blue lights or flashing blue and red lights, **and/or** sounding a siren.

Power of arrest

If you are exercising a power to stop and search a vehicle, you may arrest the person if they fail to stop when required or to comply with a requirement under section 128 to remain stopped.

(s177)

Establishing a road block for purpose of arrest

Obtaining authorisation for a warrantless road block

If you are a **senior** constable (holding or acting in a position level of sergeant or above) you may authorise the establishment of a road block (orally or in writing) if you have reasonable grounds to:

- believe that in or on a vehicle there is a person who you have reasonable grounds to suspect:
 - has committed an offence punishable by a term of imprisonment or
 - is unlawfully at large, and
- suspect the vehicle will travel past the place where it is proposed the road block be established.

You must be satisfied that, as far as is reasonably practicable, the safety of all road users will be ensured in the area where the road block will be established.

(s30)

Duration and record of warrantless road block authorisation

An authorisation to establish a road block:

- is valid for an initial period not exceeding 24 hours specified by the person giving the authorisation, and
- may be renewed from time to time by a district court judge for a single further period not exceeding 24 hours specified in writing by the judge.

If you authorise a road block, you must keep a written record of:

- the location
- the period(s) for and grounds on which authorisation was granted or renewed.

(s31)

Powers under authorised road blocks implemented without warrant

Any constable may do any or all of these things when a road block is authorised.

	Powers
Establish road block	Establish a road block at the place specified in the authorisation.
Stop vehicles	Stop vehicles at or in the vicinity of the road block.
Require particulars	Require any person in or on any vehicle stopped by the road block who you have reasonable grounds to suspect has committed an offence punishable by imprisonment to state their name, address, and date of birth.
Search vehicle	Search the vehicle for the purpose of locating a person who has committed an offence (punishable by imprisonment) or is unlawfully at large (excluding non-payment of fines warrant), if you or any other constable has reasonable grounds to believe the person is in or on the vehicle.

(s32)

You may also require that a vehicle **remain stopped** for as long as is reasonably necessary to enable you to exercise any of the powers above in respect of the vehicle or its occupants.

(s128)

Power of arrest

You may arrest the person if they fail to stop when required or to comply with a requirement under section 128 to remain stopped.

(s177)

Procedures for establishing road blocks

Follow the procedures for establishing road blocks and checkpoints in the [Perimeter control](#) chapter.

Community impact assessment for establishing road blocks

Road blocks can be intimidating to vulnerable people and innocent members of the community, particularly if carried out by armed Police in full operational uniform. Executing road blocks for the purpose of searches should avoid compromising or undermining wider community support, confidence and reassurance.

The rationale for establishing a road block must be lawful and reasonable. To assist with gauging reasonableness, a [community impact assessment](#) (CIA) must be undertaken of the adverse impact of establishing road blocks:

- where vulnerable people are present
- on the community and interest groups.

Community impact assessments must be a routine part of all risk assessments and should be conducted in writing during the planning stage before establishing a road block. Use the Community Impact Assessment form on Police Forms for this purpose. Be prepared to carry out an ongoing mental CIA as the situation changes during execution of the road block.

Community impact assessments may be done mentally, if it is impracticable due to situations of emergency or urgency. In these circumstances, record the considerations and decisions later in a notebook or a CIA form.

See the [Community Impact Assessments \(CIAs\)](#) chapter for guidance about how to carry out a community impact assessment.

Use of Police checkpoints and conducting traffic stops

Primary purpose of checkpoints and traffic stops

Police cannot establish a checkpoint outside of a particular location, or undertake stopping a vehicle, for the purpose of obtaining identifying details, unless the primary purpose is to enforce transport legislation.

The use of Police checkpoints or conducting traffic stops under the [Land Transport Act](#) must be for genuine and proper Land Transport Act enforcement purposes.

Taking photographs of people at road blocks

A person must not be detained at a roadblock for the purpose of having their photograph taken without a lawful ground for doing so.

Lawful grounds to photograph people

Police can take photographs lawfully in public when people are not detained, consent is given or when authorised by legislation. Photographs must not be taken of children or young persons, unless authorised by legislation. The common law power to photograph citizens is subject to strict limits. In particular, photographs can only be taken by Police for proper law enforcement purposes, such as the prevention and detection of crime, the investigation of alleged offences and the apprehension of suspects or persons unlawfully at large. The common law power must also be considered alongside legislation governing the taking of photographs of people.

Photographing children or young persons

Police may only obtain photographs of a child or young person:

- under section 32 of the Policing Act 2008 if they are in the lawful custody of Police and are detained for committing an offence (they must be at a Police station or another place being used for Police purposes); or
- under section 33 of the Policing Act 2008 when the child or young person is suspected of committing an offence and Police intend to prosecute by way of summons.

See '[Fingerprinting and photographing children and young persons](#)' in [Part 2 - Responding to youth offending and related issues](#) for further information.

Legislation regulating the taking of photographs of people

The legal basis and justification for Police taking photographs of people is regulated by the:

- [Search and Surveillance Act 2012](#)
- [Policing Act 2008](#)
- [Privacy Act 2020](#).

Search and Surveillance Act 2012

Taking photographs involves the use of a camera which is a "visual surveillance device" under the Act. It may be lawful without warrant to use a visual surveillance device to take photographs at a road block if the activity does not involve:

- a trespass on land or goods, or
- the observation of private activity on private premises or the [curtilage](#) of private premises for a period longer than 3 hours in a 24 hour period, or 8 hours in total.

Policing Act 2008

Section 32 of the Policing Act 2008 provides Police with the power to take identifying particulars of a person at a place (road block) being used for Police purposes who is in lawful custody of the Police and is detained for committing an offence. Identifying particulars include the person's photograph. Identifying particulars must be taken in a manner that is reasonable in the circumstances, for example, consider the suitability of the location in terms of privacy and potential risks to the safety of the person and Police.

Privacy Act 2020

The Privacy Act 2020 governs the way in which Police collect, use and disclose personal information about identifiable individuals. The taking of photographs is a collection of personal information. Accordingly, Police employees must ensure that their actions comply with these relevant privacy principles.

Privacy Principle	Explanation
Principle 1	Personal information must not be collected unless the information, connected with a function or activity of the agency (in the case of Police), is collected for a lawful purpose, and necessary for that purpose.
Principle 3	Requires that Police take reasonable steps to ensure that the individual is aware they are being photographed, of the purpose of Police taking the photograph, and whether it is authorised, required by law, or voluntary.

Rules and obligations on Police photographing people at road blocks

Rules and obligations with obtaining consent

If a person gives their consent to being photographed, you should record the consent in writing or on a Police mobility device.

Note: The rules and obligations for consent searches under Subpart 2 of Part 4 of the Search and Surveillance Act 2012 do not apply but provide a useful reference for obtaining informed consent in accordance with the Privacy Act.

See [Part 4 - Consent searches](#) for information about:

- purposes for which a consent search may be undertaken
- advice that must be given before searching
- withdrawal of consent
- circumstances where search by consent is unlawful
- restrictions on persons under 14 years to consent
- disadvantages of using consent searches.

Rules and obligations under the Privacy Act 2020

Under Privacy [Principle 3](#) of the Privacy Act 2020, Police must take reasonable steps when photographing a person to ensure that the person is aware:

- that the photograph is being taken
- of the purpose for which the photograph is being taken
- whether taking the photograph is authorised, required by law or voluntary
- of who will receive and hold the photograph
- their rights of access, and
- of where the photograph will be held.

How can photographs of people be used

If photographs of people have been lawfully and reasonably obtained, they may be used for the following purposes:

- the maintenance of the law, or
- prevention, detection, investigation, and prosecution of offences,
or
- preventing or lessening a serious threat to public safety.

([Privacy Principle 10, Privacy Act 2020](#))

Storage and destruction of photographs

Photographs must be stored and destroyed under these relevant instructions:

- Search chapter, [Part 12 - Procedures applying to seized and produced things](#) in relation to evidential material
- [Photography \(Forensic imaging\)](#) in relation to prisoners' photographs and photographs for Police operations.