

POLICE POWERS TO STOP AND SEARCH

WHAT ARE YOUR RIGHTS?



➔ When can the Police stop and search me?

The Police have a broad range of powers to search and seize property, depending on a range of different factors.

If the Police stop you on the street, you should give them your correct name and address if they ask, but you are not generally bound to answer their questions. They can't search you unless:

- you let them, or
- you are arrested, or
- they have a search warrant, or
- there are reasonable grounds to suspect you have drugs or an offensive weapon on you, or
- you are in a public place where there is a liquor ban and they are searching for alcohol, or
- you are in transit (i.e. in an airport, railway station or other such place) and they have reasonable grounds to believe that you have property that has been stolen or unlawfully obtained.

The Police have special powers to search under the Misuse of Drugs Act and the Arms Act - but they must tell you that they are using those powers when they search you if they don't have a search warrant.

They do not need a search warrant to search a vehicle if they believe any property that is stolen or obtained by a crime involving dishonesty is in the vehicle.

➔ When can the Police search my house?

If you give them permission or they have reasonable grounds to suspect drugs are on the property, they do not need a search warrant. They also have special powers under the Arms Act to enter in emergencies involving firearms. Otherwise they need a search warrant to search your house.

➔ What about when I'm driving?

The Police have the right to stop you when you're driving to check your WOF and registration, the safety of your car or to conduct random breath tests. If you are driving and are signalled to stop by a uniformed Police Officer, you must stop. You must give your name and address and that of the owner if someone else owns the car.

If you have been stopped, the Police cannot search your car unless you let them, they have a search warrant or they have good cause to believe there are drugs or firearms in your car.

If you do not stop when a Police Officer signals you to, the Police have special powers to enter properties "in fresh pursuit". If the Police Officer suspects that you have been driving dangerously, recklessly or are driving under the influence of alcohol or drugs and are in "fresh pursuit", they can enter any property you have gone into in order to arrest or detain you. They do not need a warrant to do this.

If you have been disqualified from driving or had your licence suspended or been forbidden from driving and a Police Officer believes you have been driving a car, they can seize it for 28 days. They are also able to seize your car if they believe on reasonable grounds, that you have been racing or doing wheel-spins in it.

The Police also have the power to stop a vehicle if there are reasonable grounds to suspect there is someone in the vehicle who is "unlawfully at large" (eg. an escaped prisoner) or who has committed an offence punishable by imprisonment.

➔ What if I'm drinking in a public place?

City councils make bylaws prohibiting alcohol from being consumed or possessed in public places. Many do so in order to forbid drinking on beaches and in central city areas. If there is a "liquor ban" in force for a specific public place, a Police Officer can search a container (such as a bag) in the possession of any person in that place or any vehicle there, for the purpose of ascertaining if alcohol is present. The Officer can also seize any alcohol or container found. They do not need a search warrant to do this.

➡ What is a search warrant?

A search warrant is a document issued by a Judge, Court Registrar or Justice of the Peace authorising the Police to enter a specified property to seize goods or documents. If Police have a search warrant you must let them in to 'execute' the warrant, without interference. However, you have the right to call your lawyer at any time during the search. The Police are also allowed to execute a search warrant when a house is unoccupied. They usually leave a copy of the warrant there with the contact details of the Police Officer who conducted the search.

A search warrant should be addressed to the constable in charge of the search. It will only be valid for one month from the date of issue. **The copy of the warrant you get will not be signed.** This is in order to protect the identity of the Court official who authorised it.

The warrant must state the reason and purpose of the warrant and give the constable authority to enter a stated address to search and take defined things. The warrant should not be too broad (i.e. "any stolen property at the address"). The warrant must state the things to be taken and the purpose of the taking so that you can understand it and get legal advice if you wish.

If you do not let the Police onto your property or try to obstruct them in carrying out the warrant then you will be arrested for breaking the law and could be fined up to \$2000 or jailed for up to three months. The Police are also allowed to have 'civilians' with them to help execute the warrant but they should be supervised by a Police Officer.

A sample of what a search warrant looks like:

Section 198	(S.P-50)
SEARCH WARRANT Summary Proceedings Act 1957 CRN: 5678910	
TO:	Every Constable (or to, constable)
I am satisfied on an application	
* (in writing made on oath) * made on oath orally, the grounds for which I have noted in writing	
THAT there is reasonable ground for believing that there is (are) in: the buildings, boxes, outhouses, vehicles, receptacles, premises or places situated at Flat 4, 12 Main Street, Wellington	
the following thing(s), namely: One Thorn 20" colour television set, serial number 012345NZ (upon or in respect of which an offence of) Burglary of a dwelling house at 3 The Parade, Wellington has been, or is suspected of having been committed)	
* (which there is reasonable to believe will be evidence as to the commission of an offence of Burglary * (which there is reasonable ground to believe will be intended to be used for the purpose of committing an offence of	
THIS IS TO AUTHORISE YOU at any time of times within one month from the date of this warrant to enter and search the said buildings, boxes, outhouses, vehicles, receptacles, premises or place situated at Flat 4, Main Street, Wellington with such assistants as may be necessary, and if necessary to use force for making entry, whether by breaking open doors or otherwise, and also to break open the * (box) (receptacle)(any box or receptacle therein or thereon) by force if necessary; and also to seize * (any thing upon or in respect of which the offence has been or is suspected of having been committed) * (any thing which there is reasonable ground to believe will be evidence as to the commission of the offence) * (any thing which there is reasonable ground to believe is intended to be used for the purpose of committing the offence)	
DATED at Wellington this 17 th day of September 2006	
District Court Judge Justice of the Peace (Deputy) Registrar (not being a Constable)	

➡ How do Police get a search warrant?

When applying for a search warrant, the Police must provide sufficient information to convince the JP or Judge a search is justified. The Police will usually put this information in a sworn document called an "affidavit" and this forms the "grounds" for the warrant. While they do not need to provide *all* the information they have, they must avoid being vague or general and should provide details when applying for a warrant.

➡ What about my rights?

Under the NZ Bill of Rights Act, you have the right not to be searched or have your property seized unreasonably.

If you are concerned about whether or not the Police had reasonable grounds to get a search warrant you should write a letter to the Police Officer whose name is on the warrant, asking for a copy of the affidavit supporting the application. This letter to the Police should request disclosure of the application leading to the issue of the search warrant and the rationale for the search stating that you **base your request on section 12 of the Official Information Act** and/ or Information Privacy Principle 6 of the Privacy Act.

If your request for information is declined, you should be provided with the reasons for this decision. You can then complain to the Ombudsman or Privacy Commissioner.

If the Police damage your property while they execute a search warrant, the Crown Proceedings Act prevents you from making a claim in a Court against them for the cost of the damage. **However, you could complain to the Police Complaints Authority** about the Police conduct and an 'ex gratia' payment in compensation may be a possibility.

For more information contact your local Community Law Centre