



# Search of persons

## GUIDELINES

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### Contents | Rārangi upoko

Introduction   Whakatakinga.....	3
Supporting information.....	3
Powers to undertake personal searches.....	4
Reporting use of power.....	7
Section 169 of the SSA 2012.....	7
Misuse of Drugs Amendment Act 1978.....	8
Types of personal searches.....	8
Preliminary search.....	8
Rub-down search.....	9
Strip search – partial or full.....	10
Personal search powers must be used lawfully and reasonably.....	12
Who can conduct a personal search.....	12
Establishing reasonable cause.....	13
Choosing the appropriate type of personal search.....	13
Requirements under section 125 of the SSA 2012.....	14
Search of persons under the Customs and Excise Act 2018.....	14
Search of persons under section 13EA of the MDAA 1978.....	15
Considerations: Transgender and intersex people.....	16
Considerations: Disabled or pregnant person, or person requiring support.....	17
Detention of persons for the purpose of a personal search.....	18
Use of reasonable force.....	19

Use of the toilet..... 19

Items located during a search – goods, money, weapons, and electronic devices ..... 19

## Introduction | Whakatakinga

Use these guidelines to understand your obligations when carrying out a search of a person.

This document should be read alongside:

- › For airport and maritime staff conducting the search under section 210 or 211 of the CEA - [Procedure: Conducting a personal search - 0929](#).
- › For investigations staff conducting an internal search under the Misuse of Drugs Amendment Act 1978 - [Undertake internal concealment detention - s13A MDAA - Procedure - 0780](#).

## Supporting information

The following information supports these guidelines:

- › [Procedure: Conducting a personal search - 0929](#)
- › [Guidelines: Detaining a person - 0070](#)
- › [Guidelines: Children and young persons - 0056](#)
- › [NZCS 309: Notice of detention for personal search – Section 210](#)
- › [NZCS 310: Notice of detention for personal search – Section 211](#)
- › [NZCS 311: Rub-down search information](#)
- › [NZCS 312: Certification to undertake personal search](#)
- › [NZCS 318: Children and Young Persons Checklist](#)
- › [Strip search information sheet - 0058](#)
- › [Ops Pro 001: Use of reasonable force against persons](#)
- › [Ops Pro 106: Drugloo procedures](#)
- › [Procedure: Initial search of an electronic device - 0061](#)
- › [Guidelines: Thresholds and general guidelines for the search of electronic devices - 0057](#)
- › [Guidelines: Use of interpreters \(Government Language Assistance Services\) - 0868](#)
- › [Investigations - Arrest](#)
- › [Investigations - Search warrants](#)

## Powers to undertake personal searches

Customs officers are authorised to undertake personal searches under the following legislation:

› [Customs and Excise Act 2018](#) (CEA 2018)

**Note:** The search powers under the CEA 2018 can be applied by other legislation for the purpose of that legislation. For example, section 36 of the Misuse of Drugs Act 1975 applies the search powers under sections 210 and 211 of the CEA 2018 for the purposes of detecting unlawfully imported/exported controlled drugs.

› [Search and Surveillance Act 2012](#) (SSA 2012)

› [Misuse of Drugs Amendment Act 1978](#) (MDAA 1978)

All searches must be lawful, reasonable, and carried out for Customs purposes related to Customs functions and duties.

The following table lists the legislation and summarises what Customs are authorised to do. This table does not contain all information about search of persons (also refer to related guidance and legislation).

Legislation	Type of personal search	Who it applies to; or when it applies	Limitations	Notes
Section 210(2) CEA 2018	<a href="#">Preliminary search</a> (as defined in section 210(6) of the CEA 2018)	A person who: <ul style="list-style-type: none"> <li>› is on board, or in the process of disembarking from, a craft that has arrived in New Zealand, or</li> <li>› is on board, or is in the process of embarking onto, a craft that is departing from New Zealand, or</li> <li>› who has arrived in, or is departing from, New Zealand and is in a designated place<sup>1</sup>.</li> </ul>	A preliminary search involves little or no physical contact and is carried out with the use of an aid (such as a Customs dog) and not by any more invasive means.	A Customs officer or Police constable may: <ul style="list-style-type: none"> <li>› conduct a <b>preliminary search</b> of the person</li> <li>› detain the person for a reasonable period for purposes of conducting a preliminary search.</li> </ul>
Section 210(3) CEA 2018	One of the following: <ul style="list-style-type: none"> <li>› <a href="#">Rub-down search</a></li> <li>› <a href="#">Partial strip search</a></li> <li>› <a href="#">Full strip search</a>.</li> </ul> <p><b>Note:</b> The search may result in more than one of these search types being used. For example, a rub down search may locate something on the top half of the body. This may lead to a partial strip search of the top half of the body, etc.</p>	A person who: <ul style="list-style-type: none"> <li>› is on board, or in the process of disembarking from, a craft that has arrived in New Zealand, or</li> <li>› is on board, or is in the process of embarking onto, a craft that is departing from New Zealand, or</li> <li>› has arrived in, or is departing from, New Zealand and is in a designated place.</li> </ul>	You must have <b>reasonable cause to suspect</b> that the person has hidden on or about their person: <i>Section 210(3)(a)</i> <ul style="list-style-type: none"> <li>› any dutiable, uncustomed, prohibited, or forfeited goods<sup>2</sup></li> <li>› evidence relating to any such goods</li> <li>› anything that is, or might be, evidence of a contravention of the CEA 2018.</li> </ul> <b>OR:</b> <i>Section 210(b)</i>	You or a Police constable may: <ul style="list-style-type: none"> <li>› detain the person for as long as is necessary to enable a search to be carried out</li> <li>› use any force that is reasonable for the purposes of the search</li> <li>› search the person whether or not a preliminary search of the person has been conducted.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>› Except for subpart 3, Part 4 of the SSA 2012 applies, including section 126(4) of</li> </ul>

<sup>1</sup> “Designated place” is defined in section 5(1) of the CEA 2018.

<sup>2</sup> “Dutiable, uncustomed, prohibited, or forfeited goods” are defined in section 5(1) of the CEA 2018

Legislation	Type of personal search	Who it applies to; or when it applies	Limitations	Notes
			<ul style="list-style-type: none"> <li>› the person has a dangerous item<sup>3</sup> on or about their person, and</li> <li>› the item poses a threat to the safety of yourself or a Police constable, or any other person, and</li> <li>› there is a need to act immediately to address that threat, and</li> <li>› a preliminary search would expose you or a Police constable, or any other person, to greater risk from the threat.</li> </ul>	<p>that Act (refer to <a href="#">Who can conduct a personal search</a>).</p> <ul style="list-style-type: none"> <li>› Obligations and rules under section 125 of the SSA 2012 apply. Refer to <a href="#">Requirements under section 125 of the SSA 2012</a></li> <li>› Police constables can also exercise this power.</li> </ul>
Section 211(2) CEA 2018	<p>One of the following:</p> <ul style="list-style-type: none"> <li>› <a href="#">Rub-down search</a></li> <li>› <a href="#">Partial strip search</a></li> <li>› <a href="#">Full strip search</a>.</li> </ul> <p><b>Note:</b> The search may result in more than one of these search types being used. For example, a rub down search may locate something on the top half of the body. This may lead to a partial strip search of the top half of the body, etc.</p>	<p>A person who:</p> <ul style="list-style-type: none"> <li>› has, within the preceding 24 hours, arrived in New Zealand at a place other than a Customs place<sup>4</sup>, or</li> <li>› is about to depart from New Zealand from any place other than a Customs place, or</li> <li>› is in a Customs place.</li> </ul>	<p>You must have <b>reasonable cause to believe</b> that the person has hidden on or about their person (refer to section 211(2)(a)-(c):</p> <ul style="list-style-type: none"> <li>› any dutiable, uncustomed, prohibited, or forfeited goods, or</li> <li>› evidence relating to any such goods, or</li> <li>› anything that is, or might be, evidence of a contravention of the CEA 2018</li> </ul>	<p>You may detain the person for as long as is necessary to enable a search to be carried out.</p> <p>You may use any force that is reasonable for the purposes of the search.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>› Except for subpart 3, Part 4 of the SSA 2012 applies, including section 126(4) of that Act (refer to <a href="#">Who can conduct a personal search</a>).</li> <li>› Obligations and rules under section 125 of the SSA 2012 apply. Refer to <a href="#">Requirements under section 125 of the SSA 2012</a></li> <li>› Police constables can also exercise this power.</li> </ul>
Section 81 SSA 2012	<p>One of the following:</p> <ul style="list-style-type: none"> <li>› <a href="#">Rub-down search</a></li> <li>› <a href="#">Partial strip search</a></li> <li>› <a href="#">Full strip search</a>.</li> </ul>	<p>A person who is involved in a delivery under <a href="#">section 12</a> of the Misuse of Drugs Amendment Act 1978.</p>	<p>You must have <b>reasonable grounds to believe</b> that the person is in possession of any one or more of the following (refer to section 81(2)(a)-(d):</p> <ul style="list-style-type: none"> <li>› A controlled drug</li> <li>› A precursor substance</li> <li>› A package in relation to which the Customs officer has replaced all or a</li> </ul>	<p>You may seize anything that, on reasonable grounds, is believed to be one of the things listed in section 81(2)(a)-(d).</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>› Part 4 of the SSA 2012 applies (by way of section 89(1)(c)). This includes section 126(4) of that Act (refer to <a href="#">Who can conduct a personal search</a>).</li> <li>› Obligations and rules under section 125 of the SSA 2012 apply. Refer to</li> </ul>

<sup>3</sup> “Dangerous item” is defined in section 5(1) of the CEA 2018

<sup>4</sup> “Customs place” is defined in section 5(1) of the CEA 2018

Legislation	Type of personal search	Who it applies to; or when it applies	Limitations	Notes
			<p>portion of any controlled drug or precursor substance</p> <ul style="list-style-type: none"> <li>› Evidential material in relation to section 6(1)(a) or 12AB of the MDA</li> </ul>	<p><a href="#">Requirements under section 125 of the SSA 2012</a></p>
Section 88 SSA 2012	<p>One of the following:</p> <ul style="list-style-type: none"> <li>› <a href="#">Rub-down search</a></li> <li>› <a href="#">Partial strip search</a></li> <li>› <a href="#">Full strip search.</a></li> </ul>	<p>Applies if an officer has exercised a power of arrest or detention (or both) under the SSA or any other enactment (refer to section 82 of the SSA 2012).</p>	<p>You must have <b>reasonable grounds to believe</b> that the person who is arrested or detained has on them or is carrying (refer to section 88(2)(a)-(c) anything that:</p> <ul style="list-style-type: none"> <li>› May be used to harm any person; or</li> <li>› May be used to facilitate the person's escape; or</li> <li>› Is evidential material relating to the offences in respect of which the arrest is made or the person is detained.</li> </ul>	<ul style="list-style-type: none"> <li>› Part 4 of the SSA 2012 applies (by way of section 89(1)(c)). This includes section 126(4) of that Act (refer to <a href="#">Who can conduct a personal search</a>).</li> <li>› Obligations and rules under section 125 of the SSA 2012 apply. Refer to <a href="#">Requirements under section 125 of the SSA 2012</a>.</li> </ul>
Section 13EA MDAA 1978	<p>May undertake:</p> <ul style="list-style-type: none"> <li>› Rub-down search (as defined in section 13EB)</li> <li>› Strip search (as defined in section 13EC)</li> <li>› Both a Rub-down search and a strip search</li> </ul> <p><b>Important:</b></p> <p>For information on internal concealments, refer to <a href="#">Undertake internal concealment detention - s13A MDAA - Procedure - 0780</a>.</p>	<p>The circumstances are that:</p> <ul style="list-style-type: none"> <li>› a detention warrant has been issued under section 13E, and</li> <li>› reasonable cause to suspect is held that person has hidden on or about his or her person any Class A controlled drug or Class B controlled drug.</li> </ul>		<ul style="list-style-type: none"> <li>› In deciding the type of search to carry out the officer must have regard to all relevant circumstances, including those in section 13ED(2).</li> </ul> <p><b>Note:</b> Gender considerations must be taken into account. Refer to section 13ED and the section in this document <a href="#">Who can conduct a personal search</a></p> <ul style="list-style-type: none"> <li>› If as a result of the search an officer finds Class A or Class B controlled drugs, the officer may take possession of those (section 13EA(4)).</li> <li>› Reasonable force may be used if necessary to carry out the search (section 13EA(5)).</li> <li>› If the person being searched requests an internal exam, the officer may complete the search before arranging for the internal exam.</li> </ul>

## Reporting use of power

### Section 169 of the SSA 2012

When you use a **search power** under the SSA 2012 or the CEA 2018 (to which provisions of Part 4 of the SSA 2012 apply), you **must** report this by completing an activity/information report or any other relevant report as soon as practicable.

Refer to the following table for reporting requirements under section 169 of the SSA 2012.

Requirements	Notes
What you must report on (as detailed in the relevant procedure)	<p>A Customs officer who carries out a warrantless search <b>must</b> complete a written report on the exercise of that power, as soon as practicable (section 169(2) of the SSA 2012).</p> <p>Your report must contain (section 169(3):</p> <ul style="list-style-type: none"> <li>➤ A short summary of the circumstances, and the reasons you needed to exercise the warrantless power (ie, the reasons for the search)<sup>5</sup>.</li> <li>➤ Whether any evidential material was seized.</li> <li>➤ Whether any criminal proceedings have been brought or are being considered as a consequence of seizing that evidential material.</li> </ul>
<p>What you do not need to report on</p> <p><b>Note:</b> Although the SSA 2012 does not require law enforcement agencies to report on these types of searches, you should still capture a record of the search in CusMod.</p>	<ul style="list-style-type: none"> <li>➤ A rub-down search under section 85 or 88 of the SSA 2012 of a person following their arrest or detention under any other enactment.</li> <li>➤ The exercise of a power of entry that does not confer a power of search.</li> <li>➤ A search undertaken by consent.</li> </ul> <p><b>Note:</b> A search undertaken by consent needs to be carefully considered and discussed with supervisor, and if carried out must be fully documented.</p>

**Note:** You should make detailed notebook entries covering:

- the circumstances and reasons (grounds to suspect or believe) for your use of a warrantless power. This will act as your decision record.

<sup>5</sup> A warrantless power is a power exercised without a search warrant (eg a search of a person at the airport).

- ideally, which particular warrantless power(s) you used. These notes will form the basis of your reporting process and references for possible future Court appearances.

## Misuse of Drugs Amendment Act 1978

Section 13EE of the MDAA 1978 provides reporting requirements.

You **must** report the use of this power by completing a written report within three working days for the chief executive.

## Types of personal searches

### Preliminary search

Key information	Description
Meaning	<p>A preliminary search involves little or no contact between the person conducting the search and the person being searched.</p> <p>Refer to section 210(6) of the CEA 2018.</p>
Method	<p>This is conducted by using an aid or aids (eg, Customs Detector Dog, chemical substances, imaging equipment, or some other mechanical, electrical, or electronic device or other similar aid), but not by any more invasive means.</p>
Detention	<p>The person <b>may</b> be detained for the preliminary search.</p> <p><b>If</b> they are detained, it must only be for a reasonable period to conduct a preliminary search and they must be informed of their rights under section 23 of the NZBORA 1990. In addition, all children and young persons must have their rights under section 215 of the OTA 2009 explained in a manner and language appropriate to their age and level of understanding.</p>
Notes	<p>The search and detention powers for the purpose of the preliminary search are under section 210(2) of the CEA 2018.</p> <p>The <a href="#">obligations and rules</a> under section 125 of the SSA 2012 do not apply.</p> <p>If using equipment becomes intrusive, then it will cease to be a preliminary search.</p>

## Rub-down search

Key information	Description
Meaning	<p>You as the searching officer may do any or all of the following when searching a clothed person:</p> <ul style="list-style-type: none"> <li>➤ run your hand over the body of the person being searched, whether outside or inside their clothing</li> <li>➤ for the purpose of permitting a visual inspection, require the person being searched to do any or all of the following:               <ul style="list-style-type: none"> <li>○ open his or her mouth. You must have obtained consent to visually look in a person's mouth. You must not insert any instrument, device or thing into the person's mouth</li> <li>○ display the palms of his or her hands</li> <li>○ display the soles of his or her feet</li> <li>○ lift or rub his or her hair.</li> </ul> </li> </ul>
Method	<p>You may require the person being searched:</p> <ul style="list-style-type: none"> <li>➤ to remove, raise, lower, or open any outer clothing (including, without limitation, any coat, jacket, jumper, or cardigan) being worn by the person being searched. An exception is where that person has no other clothing, or only underclothing, under their outer clothing</li> <li>➤ to remove any head covering, gloves, or footwear (including socks or stockings) being worn by the person.</li> </ul> <p>A rub-down search may include a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears. It must not include the insertion of any instrument, device, or thing into any of those orifices.</p>
Detention	<p>The person being searched may be detained only for as long as is necessary to enable a search to be carried out (section 125(1)(d) of the SSA 2012).</p> <p>You must inform the person of their rights under section 23 of the NZBORA 1990.</p> <p>In addition, all children and young persons must have their rights under section 215 of the OTA 2009 explained in a manner and language appropriate to their age and level of understanding.</p> <p>Issue a Notice of Detention. Refer to <a href="#">Detention of persons for the purpose of a personal search</a>.</p>

Key information	Description
Reasonable force	May be used that is reasonable for the purposes of the search (section 125(1)(e) of the SSA 2012). Refer to <a href="#">Use of reasonable force</a> .
Notes	<p>The obligations and rules under section 125 of the SSA applies. See the section above: Rules and obligations when searching persons – section 125 of the SSA 2012.</p> <p>Before undertaking a rub-down search, you must get approval from a SupCO/CTS/approved Team Leader using form NZCS 312.</p> <p>The person being searched can choose to be searched at the bench or in a private room. Give them a copy of NZCS 311 Rub-down search information.</p> <p>At no time should you touch the bare skin of the person being searched.</p>

### Strip search – partial or full

**Important:** You must carry out a strip search with decency and sensitivity, and in a manner that affords the person being searched the degree of privacy and dignity consistent with achieving the purpose of the search. Use careful judgement to determine the extent of the search required (especially in the exposure of private parts, as it is important to afford dignity to the person).

**A person should only be required to strip completely naked in exceptional circumstances.** In most cases, the search should be carried out in sections (eg, ask the person to remove the top half of their clothing. Then instruct them to put the clothing back on before asking them to remove lower clothing).

Key information	Description
Meaning	<p>You as the searching officer may require the person to undress, or to remove, raise, lower, or open any item or items of clothing so that the genitals, buttocks, or breasts are:</p> <ul style="list-style-type: none"> <li>➤ uncovered, or</li> <li>➤ covered only by underclothing.</li> </ul> <p><b>Note:</b> A person should only be required to strip completely naked in exceptional circumstances. In most cases, the search should be carried out in sections. For more information refer to the procedure: Conducting a personal search.</p>
Method	<p>You must explain the search procedure to the person about to be searched.</p> <p>If you are conducting a strip search, you must advise that:</p>

Key information	Description
	<ul style="list-style-type: none"> <li>➤ all items of clothing may be removed</li> <li>➤ if the person cooperates, they will not be touched</li> <li>➤ the person should follow your instructions.</li> </ul> <p>Ask the person to remove one item of clothing at a time and pass it to you. Closely examine each item.</p> <p>You must not touch the person in any way, unless it is necessary to use reasonable force to carry out the search.</p> <p>Searches <b>will not</b> include a search of any body cavity.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>➤ You may ask a person to remove their sanitary pad for inspection.</li> <li>➤ You cannot ask them to remove a tampon or a menstrual cup as this would be an internal examination, which is controlled under section 13A of the Misuse of Drugs Amendment Act 1978.</li> <li>➤ At the conclusion of the search: <ul style="list-style-type: none"> <li>○ offer the detainee a fresh sanitary pad</li> <li>○ if you inspect a used sanitary pad, you can claim the Internal Concealment allowance (via Additional Payments in the Staff Kiosk using allowance code 348)</li> <li>○ note on form NZCS 312 that the person was menstruating and if applicable, a used sanitary pad was inspected.</li> </ul> </li> </ul>
Detention	<p>The person being searched may be detained only for as long as is necessary to enable a search to be carried out (section 25(1)(d) of the SSA 2012).</p> <p>You must inform the person of their rights under section 23 of the NZBORA 1990.</p> <p>In addition, all children and young persons must have their rights under section 215 of the OTA 2009 explained in a manner and language appropriate to their age and level of understanding.</p> <p>Issue a Notice of Detention. Refer to <a href="#">Detention of persons for the purpose of a personal search</a></p>
Reasonable force	<p>May be used that is reasonable for the purposes of the search (section 125(1)(e) of the SSA 2012). Refer to <a href="#">Use of reasonable force</a>.</p>

Key information	Description
Notes	<p>While the search power is under section 210 or 211 of the CEA 2018, the detention power for a personal search is under section 125(1)(d) of the SSA 2012.</p> <p>If a personal search requires a strip search, you <b>must</b> fully explain the details of this process to the person. Give them the Strip search information sheet.</p> <p>The obligations and rules under section 125 of the Search and Surveillance Act 2012 applies. See the section below: <a href="#">Requirements under section 125 of the SSA 2012</a>.</p> <p>Before undertaking a strip search, you must get approval from a SupCO, CTS, or approved Team Leader using form NZCS 312.</p> <p>At no time should you touch the bare skin of the person being searched except when using reasonable force to carry out the search.</p>

## Personal search powers must be used lawfully and reasonably

A search must be conducted with decency and sensitivity, and in a manner that affords the person being searched the degree of privacy and dignity that is consistent with achieving the purpose of the search. This applies when considering the type of search to be conducted, and when carrying that search out. Any force used must be reasonable in the circumstances.

Under section 21 of the New Zealand Bill of Rights Act 1990 (NZBORA 1990), everyone has a right to be secure against unreasonable search.

Any personal search must be **lawful and reasonable**. This means it must:

- be conducted under a lawful authority (if it is not, then it will be unlawful and any evidence gathered may not be admissible)
- be carried out in a manner that is considered reasonable.

When conducting a personal search, you should be aware of factors such as language barriers, cultural background, or disability. You should seek advice from your supervisor if you are unsure.

## Who can conduct a personal search

Only Customs officers trained to Level 2 Officer Safety Tactics can conduct a personal search.

Two Customs officers of the same gender must always be present during a rub-down or strip search, one to conduct the search (searching officer) and the other to witness the search (witnessing officer). Both officers must fully understand the powers and limitations of the legislation relating to a personal search.

If the search is to be a strip search, the searching officer and the witnessing officer must be of the same gender as the person being searched. If a second Customs officer of the same gender is not available, a Police constable of the same gender can assist. No other person (eg, MPI officer) can witness a search.

A strip search – partial or full must not be carried out in view of any person who is not the same gender as the person being searched.

**Note:** If searching an intersex person, you must refer to [Searching transgender and intersex people](#).

**Important:** The search must be discussed with the officers who are assigned to conduct the personal search, and address any questions that may arise at that time. If an officer raises genuine and reasonable concerns about conducting a search in the circumstances the officer should not be required to conduct the search unless extreme and/or urgent circumstances require otherwise, and no other authorised officer is available to carry out the search.

## Establishing reasonable cause

Thresholds need to be met to proceed with a personal search, as specified in the legislation under which the personal search will be undertaken.

Term	Meaning
Reasonable cause (or grounds) to <b>suspect</b>	This is a lower standard than reasonable cause to believe. It is a set of facts or circumstances that, when viewed objectively, would lead a Customs officer to conclude that it is more likely than not that the thing suspected is so. An officer should be able to cite the specific facts and circumstances that give rise to the reasonable suspicion. These must be recorded in your notebook.
Reasonable cause (or grounds) to <b>believe</b>	This is a set of facts or circumstances that, when viewed objectively, would cause a Customs officer to conclude it is highly likely that the thing believed is so. An officer should be able to cite the specific facts and circumstances that lead to the belief and be able to cite any tangible evidence in support of their belief. These must be recorded in your notebook.

## Choosing the appropriate type of personal search

Once reasonable cause has been established, a decision needs to be made as to what is the most appropriate type of search to conduct. The degree of intrusiveness which is justifiable will depend on the nature of the suspicion held. Refer to [Types of personal searches](#).

The person should not be left unattended, except when the person wants to speak to a lawyer (refer to guidelines: Detaining a person) or use the toilet (refer to [Use of the toilet](#)).

Once you complete the search, you may complete a further search as long as the reasonable cause threshold for that search is met (ie, if a preliminary search has been conducted, such as Detector Dog screening, and then a more intrusive search is being considered).

## Requirements under section 125 of the SSA 2012

Section 125 of the SSA 2012 sets out what you must do and what you may consider when you conduct a personal search.

## Search of persons under the Customs and Excise Act 2018

By application of section 89(3) of the SSA 2012, where there are inconsistencies between the provisions under the CEA 2018 and SSA 2012, the CEA 2018 provision will apply. In the table below, the specific powers where the CEA 2018 provisions apply instead of the SSA 2012 are those covering the (i) copying of documents and (ii) accessing a computer system or other storage device.

Key information	Notes
You <b>must</b>	<ul style="list-style-type: none"> <li>➤ <b>Identify</b> yourself by name or unique identifier. You must provide evidence of your identity, including when in Customs uniform.</li> <li>➤ <b>Advise</b> the person being searched of the name of the Act and reason for the search (unless this is impractical in the circumstances).</li> <li>➤ <b>Conduct</b> the search with a degree of privacy and dignity that is consistent with achieving the purpose of the search.</li> <li>➤ <b>Promptly provide an inventory of items seized.</b> Give a copy to the person you have searched (unless the goods are forfeited under section 176 of the CEA 2018. If so, normal seizure provisions apply).</li> </ul>
You <b>may</b>	<ul style="list-style-type: none"> <li>➤ <b>Detain</b> the person, but only for as long as is necessary to achieve the purpose of the search.</li> <li>➤ <b>Use reasonable force</b> to carry out the search.</li> <li>➤ <b>Search any item</b> that the person is wearing or carrying, or is in the person's physical possession or immediate control.</li> <li>➤ <b>Use any equipment</b> to facilitate the search, as long as it: <ul style="list-style-type: none"> <li>○ involves minimal contact, and</li> <li>○ is reasonable in the circumstances.</li> </ul> </li> <li>➤ If you think it is in the interest of the person being searched, <b>ask</b> for the help of a: <ul style="list-style-type: none"> <li>○ medical practitioner or nurse</li> </ul> </li> </ul>

Key information	Notes
	<ul style="list-style-type: none"> <li>○ parent, guardian, or the person responsible for the day-to-day care of the person being searched.</li> <li>➤ <b>Seize</b> anything the person is carrying, or is in their physical possession or immediate control. The seized item must be the thing you are searching for, or be an item that may lawfully be seized.</li> <li>➤ <b>Copy</b> all or part of any document the person is carrying, or is in their physical possession or immediate control. The copied document must be the document you are searching for, or may lawfully be seized. <ul style="list-style-type: none"> <li>○ <b>Note:</b> the power to copy a document can only be exercised if the threshold under section 257 of the CEA 2018 has been met.</li> </ul> </li> <li>➤ <b>Access</b>, using reasonable measures, a computer system or other data storage device carried, or in the physical possession or immediate control of the person being searched. But only if any intangible material that is the subject of the search may be on that computer system or other device. <ul style="list-style-type: none"> <li>○ <b>Note:</b> the power to search data in electronic devices can only be exercised if the threshold under section 228 of the CEA 2018 has been met.</li> </ul> </li> <li>➤ <b>Copy any intangible material</b> accessed as above that is also the subject of the search or may otherwise be lawfully seized. This includes previewing, cloning, or using other forensic methods before or after removal for examination. <p><b>Note:</b> The power to copy the device or data can only be exercised if the threshold for a full search has been met under section 228, or the thresholds under sections 257 and 258 apply (refer to section 228(15)(c)).</p> </li> <li>➤ <b>Take photographs</b>, or make sound or video recordings or drawings of anything being carried, or in the physical possession or immediate control of the person being searched. You must have reasonable grounds to believe that the photographs, sound or video recordings, or drawings may be relevant to the purposes of the search.</li> </ul>

## Search of persons under section 13EA of the MDAA 1978

Under section 13EA(3) of the MDAA 1978, when deciding what type of search to undertake the officer must have regard to all of the relevant circumstances, including, without limitation, the matters referred to in section [13ED\(2\)](#).

Those circumstances are that the officer who carries out a rub-down search (as defined in section 13EB) or strip search (as defined in section 13EC), or both, must conduct the search with decency

and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

Refer to sections 13ED(1), (3) and (4) of the MDAA 1978 for other requirements. Section 13EE provides reporting requirements.

## Considerations: Transgender and intersex people

### Transgender

A **trans** person is someone whose gender identity differs from their physical body at birth. Some of the terms trans people use to describe themselves include transgender, transsexual, MtF (male to female), FtM (female to male), whakawahine, or fa'afafine. The term "transgender" is used here to cover all trans people.

### Intersex

An **intersex** person is someone who is born with, or naturally develops, a body that does not fit typical biological definitions of male or female. There is a wide range of differing intersex medical conditions and physical variations.

If required, consideration of using one male and one female officer to conduct a personal search on an intersex person should be discussed with the OIC. If further advice is required, discuss the full situation with a CCO/Port Manager.

### Searching transgender and intersex people

When searching transgender and intersex people, it is important you:

- respect the name, pronoun, and gender a transgender or intersex person uses to describe themselves. If you are unsure whether someone prefers to be called 'he' or 'she' (or another pronoun), politely and discreetly ask.
- do not automatically assume someone's gender identity based on their genitals, breast/chest, or other physical features.

A transgender or intersex person can specify the gender (male or female) of the searching and witnessing officers. Asking the person's preference, and their response, should be witnessed by another officer and recorded in the searching officer's notebook.

The following table lists how to determine the appropriate Customs officers to conduct the personal search, in relation to transgender and intersex persons.

If...	Then...
a transgender or intersex person states a preferred gender identity	➤ officers of the appropriate gender/s should then conduct the search.

If...	Then...
<p>you only become aware that someone is transgender or intersex while conducting a search</p>	<ul style="list-style-type: none"> <li>➤ stop the search and ask the person which gender identity they prefer. Your request and their response should be witnessed by another officer</li> <li>➤ the searching officer should record what happened in their notebook</li> <li>➤ officers of the appropriate gender/s should then conduct the search.</li> </ul>
<p><b>any</b> situation arises where an assessment of gender needs to be made (for example, when person will not state a preferred gender identity)</p>	<ul style="list-style-type: none"> <li>➤ consider all available information to make an assessment of their gender (eg, passport details (including declared sex), declared gender of person to be searched, preferred name, clothing)</li> <li>➤ the searching officer should record what happened in their notebook</li> <li>➤ officers of the appropriate gender/s should then conduct the search.</li> </ul>

### If concerns are raised regarding who is conducting the personal search

#### ***The person to be searched***

If a person to be searched raises concern about being searched by a transgender or intersex employee, these should be raised with a SupCO, CTS or higher and considered on a case-by-case basis.

#### ***The officer conducting the search***

If an officer has concerns about being required to search a transgender or intersex person, these should be raised with a SupCO, CTS or higher and considered on a case-by-case basis.

Where there is a genuine and reasonable basis for an employee to object, that employee will not be forced to conduct a strip search unless extreme and/or urgent circumstances require otherwise and no other person authorised to exercise search powers is available to do so.

### Considerations: Disabled or pregnant person, or person requiring support

If you consider that it is in the interests of the person being searched, you may obtain the assistance of:

- a medical practitioner or nurse and/or
- a parent, guardian or other person for the time being responsible for the day-to-day care of the person to be searched.

This requirement is set out under section 125(1)(g) of the SSA 2012. Persons who assist with the search under this section are subject to your supervision and control as the search officer. The responsibility for the proper exercise of the search power remains with you.

The assistance of a medical practitioner might be sought where the person being searched is pregnant or has a physical disability. Medical supervision is strongly recommended where the person being searched is asked to remove artificial limbs, bandages, and casts.

The presence of an adult with responsibilities to a child or young person who is to be searched, may be appropriate both to facilitate the search and to safeguard the interests of the child or young person.

## Detention of persons for the purpose of a personal search

A power to search carries with it a power of detention, but only to the extent it is required and only for as long as is necessary, to achieve the purpose. You must ensure the detained person clearly understands what is about to happen. Refer to the guidelines: Detaining a person.

You must inform a person detained for a personal search of their rights under section 23 of the NZBORA 1990. Give them a Notice of Detention form.

**Note:** The Notice of Detention is **not** a consent form. If the person does not complete/sign the form, you **must** record this in your notebook, along with the reasons why the form wasn't completed and whether the person has read, understood, and waived any NZBORA rights (eg, their right to consult and instruct a lawyer). Provided there are lawful and reasonable grounds to conduct the search, it can proceed without the form being signed.

Detention form	When to use
NZCS 309	To conduct a personal search under section 210(3) of the CEA 2018.
NZCS 310	To conduct a personal search under section 211 of the CEA 2018.
Section 13A	A person detained under section 13A of the Misuse of Drugs Amendment Act 1978 (section 13A detention forms are available on the Customs Investigations Unit collaboration space)

### Notes:

- Once the search has been completed and the person is no longer detained, they must be advised of that.
- If you are detaining a:
  - **child or young person**, refer to the guidelines: Children and young persons and NZCS 318: Children and Young Persons Checklist.
  - **foreign national**, refer to the guidelines: Detaining a person.

## Use of reasonable force

Reasonable force may be used for the purpose of conducting a personal search.

- If the search is under the CEA 2018, the basis for use of force is section 125(1)(e) of the SSA 2012.
- If the search is under section 13EA of the MDAA, the basis for use of force is section 13EA(5) of the MDAA 1978.

Only the amount of force that is reasonable, proportionate, and necessary must be used. This is the only time where the person being searched may be touched unless you are conducting a rub-down search.

For more information, refer to Ops Pro 001: Use of reasonable force against persons.

## Use of the toilet

If the person asks to use the toilet once detained but before the search has been undertaken, you can ask the person to wait until the personal search has been completed.

If the person **insists** they cannot wait for the search to be completed, you **cannot** refuse their request. You must ensure they have sufficient privacy while using the toilet (ie, cubicle door is closed, but not locked).

Directions may include:

- they must use a toilet with a cage fixed over the toilet bowl
- the door of the cubicle must not be locked
- they do not flush the toilet after use
- they exit the cubicle immediately after use.

**Note:** The above directions only apply to persons detained for a personal search.

**Maritime environment:** In the maritime environment, a Customs facility toilet may not be available (for example, the search occurs on a small craft, or within a cruise ship terminal where a public toilet is the only feasible option). In those instances, it may not be practicable to make some or all of the above directions. Use your discretion to determine whether these directions are practicable, remembering that if the person insists they cannot wait, you cannot refuse their request to use the toilet.

## Items located during a search – goods, money, weapons, and electronic devices

Refer to the following table for guidance on goods, money, weapons, and electronic devices located during a search.

Item	Notes
Goods	<ul style="list-style-type: none"> <li>➤ If items are loose, secure the items away from the person.</li> <li>➤ If items are attached to the body of the person, leave the items in situ.</li> <li>➤ <b>Do not</b> remove the items yourself or get the person to remove the items, as photographs may be needed for evidential purposes.</li> </ul>
Money	<ul style="list-style-type: none"> <li>➤ Put the money aside until the end of the search.</li> <li>➤ At the conclusion of the personal search, count the money in front of the person and record the amount in your notebook.</li> <li>➤ To validate this further, have the witnessing officer sign your notebook at the completion of the search.</li> <li>➤ If a large amount of concealed money is located, leave the money in situ. Use your radio to advise the approving officer of the following: <ul style="list-style-type: none"> <li>○ what was located</li> <li>○ approximately how much, and currency (eg, US dollars)</li> <li>○ where it was located.</li> </ul> </li> <li>➤ Await further instructions from the approving officer.</li> </ul>
Weapons	<ul style="list-style-type: none"> <li>➤ Put the item aside and out of reach of the detained person. This includes any item that could potentially be used as a weapon (eg, Swiss army knife).</li> <li>➤ Use your radio to advise the approving officer of the following: <ul style="list-style-type: none"> <li>○ what was located</li> <li>○ where it was located.</li> </ul> </li> <li>➤ Await further instructions from the approving officer.</li> </ul>
Electronic devices	<ul style="list-style-type: none"> <li>➤ Put the device aside until the personal search has concluded.</li> <li>➤ The device may be physically searched. This means you can open compartments and remove the device from the case.</li> <li>➤ Electronic files stored on the device cannot be viewed under section 210(3) or 211 of the CEA 2018.</li> <li>➤ To conduct an initial search or a full search of the electronic contents of the device you must meet reasonable cause thresholds under section 228 of the CEA 2018. Refer to: <ul style="list-style-type: none"> <li>○ Initial search of an electronic device – Procedure – 0061</li> <li>○ General guidelines for the search of electronic devices – Guidelines - 0057.</li> </ul> </li> </ul>

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