

Theft

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Policy statement and principles

What

This chapter outlines what constitutes theft, Police powers in connection to theft, related offences and good practice for investigating a theft.

Why

Theft has a negative impact on communities. Investigating theft offences provides an opportunity to:

- target and catch thieves
- support and reassure community
- seize, return, and seek restitution of victims' stolen property
- ensure people can be safe and feel safe
- give crime prevention advice
- gain the confidence and trust of all.

How

Police will:

- exercise warrant and warrantless powers to stop vehicles, detain vehicle occupants, enter and search places, vehicles or things, and seize stolen property under the [Search and Surveillance Act 2012](#)
- be guided by the policy in the 'Charging decisions' chapter
- use discretion with applying [powers to arrest for theft without warrant under section 315\(2\)](#) of the Crimes Act 1961.

Overview

Theft or stealing defined

Theft or stealing is the act of:

- dishonestly and without claim of right, taking any property with intent to deprive any owner permanently of that property or of any interest in that property; or
- dishonestly and without claim of right, using or dealing with any property with intent to deprive any owner permanently of that property or of any interest in that property after obtaining possession of, or control over, the property in whatever manner.
- (s 219(1))

Key points related to theft

Key points in this chapter for constabulary employees to be aware of:

- theft comprises several offences under the [Crimes Act 1961](#) and section 11(1)(a) of the Misuse of Drugs Act 1975 with some theft offences having graduated penalties depending on the value of the property stolen
- the power to arrest for theft exists without warrant under section 315(2) of the Crimes Act 1961
- although powers to stop vehicles, detain vehicle occupants, enter and search places, vehicles or things, and seize stolen property under the [Search and Surveillance Act 2012](#), there is **no** power to search a person for stolen property
- shoplifters who enter onto premises with a predetermined intention of committing a crime are not entering “without authority”. Consequently, shoplifters must not be charged with burglary
- a person may commit theft of another person’s property even though those persons were married to each other, or in a de-facto relationship or a civil union at the time of the theft
- it is not theft for a passenger to fail to pay passenger/public transport service fare
- when asked to attend a repossession, you must consider whether:
 - Police presence necessary or appropriate to prevent a breach of the peace
 - the repossession is lawful.

Theft related definitions

This table provides definitions for terms relevant to theft offences. (Section references relate to the [Crimes Act 1961](#) unless otherwise stated).

Term	Definition
Claim of right	<p>'Claim of right', in relation to any act, means a belief at the time of the act in a proprietary or possessory right in property in relation to which the offence is alleged to have been committed, although that belief may be based on ignorance or mistake of fact or of any matter of law other than the enactment against which the offence is alleged to have been committed. (s2)</p> <p>For example, a man leaves a clock at the jeweller's for repairs. When he returns to pick it up, he points out what he thinks is his clock and takes it home. When he looks more closely, however, he realises his mistake. The man has claim of right against a charge of theft or attempted theft, because he believed he had a lawful reason for taking the clock home. He would, however, go on to commit an offence against section 219(2) if he then sold the clock knowing it was not his.</p> <p>Note: Claim of right is a defence to a charge of theft.</p>
Obtain	'Obtain', in relation to any person, means obtain or retain for himself or herself or any other person. (s217)
Property	<p>'Property' includes real and personal property, and any estate or interest in any real or personal property, money, electricity, and any debt, and any thing in action, and any other right or interest. (s2)</p> <p>Note: Intangible property can be stolen.</p>
Dishonestly	'Dishonestly' in relation to an act or omission, means done or omitted without a belief that there was express or implied consent to, or authority for, the act or omission from a person entitled to give such consent or authority. (s217)
Taking (s219 theft or stealing)	In the theft or stealing section, 'taking' does not include obtaining ownership or possession of, or control over, any property with the consent of the person from whom it is obtained, whether or not consent is obtained by deception. (s219(3))
When is theft committed?	<p>For tangible property, theft is committed by a taking when the offender moves the property or causes it to be moved with intent to steal it. (s219(4))</p> <p>Note: It is not necessary to prove that the suspect succeeded in getting away with the goods.</p>
Intent to deprive	<p>An intent to deprive any owner permanently of property includes an intent to deal with property in such a manner that:</p> <ul style="list-style-type: none"> - the property cannot be returned to any owner in the same condition; or - any owner is likely to be permanently deprived of the property or of any interest in the property. <p>s219(2)</p>
Using or dealing with	The words should be given their normal meaning when interpreting whether an act is theft or stealing under section. s219(1)

Health and safety duties

The expectation of the Commissioner and the [Health and Safety at Work Act 2015](#) is that persons in the workplace will take reasonable care to ensure that their acts or omissions do not adversely affect the health and safety of other persons, comply as far as they are reasonably able to with any reasonable instruction that is given to adhere with the Act and its regulations.

A key enabler is the application of the [TENR-Operational threat assessment](#) in the workplace.

See also '[Health, safety and wellbeing](#)' for keeping our communities safe, and ensuring our people are safe and feel safe.

Other related information

For further information, see, as appropriate, these chapters:

- [Association offences](#)

- Attempts
- Burglary and allied offences
- Deception
- National Recording Standard (theft coding guide)
- Receiving
- Repossession agents/employees (in the 'Dealers and traders' chapter)
- Robbery
- Search

Offences

Table of offences and penalties

This table outlines offences under the Crimes Act 1961 or as indicated that relate to theft.

Offence	Penalty	Category
Theft by person in special relationship (ss220 & 223(a))	7 years imprisonment	Category 3 offence
Theft of livestock and other animals (s 220A)	7 years imprisonment	Category 3 offence
Theft of property exceeds \$1,000 in value (s 223(b))	7 years imprisonment	Category 3 offence
Theft of property exceeds \$500 but does not exceed \$1,000 in value (s 223(c))	1 year imprisonment	Category 2 offence
Theft of property does not exceed \$500 in value (s 223(d))	3 months imprisonment	Category 2 offence
Theft of parts of killed animals (ss221 & 223(b), (c) or (d))	(b) 7 years (c) 1 year (d) 3 months imprisonment	Category 3 offence Category 2 offence Category 2 offence
Theft by spouse or partner (ss 222 & 223(b), (c) or(d))	(b) 7 years (c) 1 year (d) 3 months imprisonment	Category 3 offence Category 2 offence Category 2 offence
Criminal breach of trust s229	7 years imprisonment	Category 3 offence
Theft/receiving/obtains by fraud a controlled drug s11(1)(a), (b) or (c) - Misuse of Drugs Act 1975	7 years imprisonment	Category 3 offence

Note: While section 219 defines theft, section 223 actually creates the offence and provides a penalty for it and is therefore the correct section to reference a charge to.

Value of stolen property (not known, inclusive of GST or held under lien or property is a cheque)

If the exact value is not known, it is enough to say within which value range it falls; for example, less than \$500. However, this value range must be specified on the Information and proved in court.

The value of a thing from a retailer combines the retail price inclusive of GST. See *Police v Pure* [2020] NZHC 330.

Where a person steals their own property that is being held under [lien](#), the sum specified in the charge is the full value of the property - **not** the sum of the debt owed.

Police powers

To arrest

For any theft, you can arrest without warrant under section [315\(2\)](#) of the Crimes Act 1961.

Warrantless powers under the Search and Surveillance Act 2012

There is no power to search a person for stolen property.

Search of arrested or detained person

If you have reasonable grounds to believe a person has the stolen/received property on or about them, you may arrest them and use section [88](#) of the Search and Surveillance Act 2012 to search for the stolen/received property. You must name the item you are looking for in the search.

Should you not find the stolen/received property as a result of a rub-down search, section [88](#) of the Search and Surveillance Act 2012 allows you to conduct a more intimate search of the suspect including a strip search. See '[Searching people](#)' in the 'Search' chapter regarding strip searches.

Special rules about searching persons

You must also comply with section [125](#) of the Search and Surveillance Act prior to commencing the search. You must:

- identify yourself by name or unique identifier
- state the reason for the search
- state the search is taking place under the Search and Surveillance Act 2012
- if not in [Police uniform](#), produce evidence of your identity.

Search after arrest

If the person is arrested you may also use:

- section [83](#) of the Search and Surveillance Act 2012 - to search a place for the stolen/received property if you believe that evidential material will be concealed, altered, damaged or destroyed (CADD)
- section [84](#) of the Search and Surveillance Act 2012 - to search a vehicle for the stolen/received property.

Both sections [83](#) and [84](#) require you to comply with the obligations outlined in section [131](#) of the Search and Surveillance Act 2012 prior to entering the place or vehicle. You must:

- identify yourself by name or unique identifier
- state the search is taking place under the Search and Surveillance Act 2012
- state the reason for the search
- state your intention to enter and search the place or vehicle
- if not in [Police uniform](#), produce evidence of your identity.

Other search power that may assist

There is no warrantless search power to enter a private place to search for stolen/received property, however, section [8](#) Search and Surveillance Act may assist.

Section [8](#) of the Search and Surveillance Act 2012 allows you to enter a place or vehicle without warrant to search for and arrest a person who has committed an offence punishable by imprisonment (theft/receiving). You must **believe**:

- that the person is there; and
- the person will leave to avoid arrest; or
- the stolen/received property will be concealed, altered, damaged or destroyed.

Note: Section [8](#) does not allow you to search for the stolen or received property.

Once you have arrested the suspect you may then rely on sections [83](#) and [84](#) of the Search and Surveillance Act 2012 to search the

place or vehicle for the stolen/received property.

Note: While searching for the suspect in the place or vehicle you may come across the stolen/received property. As it came into your plain view while conducting a lawful search, you can seize the property pursuant to section [123](#) of the Search and Surveillance Act 2012 if you have reasonable grounds to believe that you could have seized the item(s) under any search warrant that could have been obtained under the Search and Surveillance Act or any other search power exercisable.

Section [8](#) requires you to comply with the obligations outlined in section [131](#) of the Act prior to entering the place or vehicle. You must:

- identify yourself by name or unique identifier
- state the search is taking place under the Search and Surveillance Act 2012
- state the reason for the search
- state your intention to enter and search the place or vehicle
- if not in [Police uniform](#), produce evidence of your identity.

See '[Applying section 8](#)' in '[Part 5 - Carrying out search powers with or without warrants](#)' of the '[Search](#)' chapter for further information.

Stopping/searching vehicles

There are separate powers in the Search and Surveillance Act 2012 to assist with searching vehicles. Consider section [29](#) - allows you to search a vehicle **in a public place** if you **believe** that any stolen property is in or on it (note, the power to search does not explicitly include a power of entry to a place do so).

If the vehicle is mobile then you need to use section [121](#) of the Search and Surveillance Act 2012 to stop the vehicle.

Once the vehicle has stopped you must comply with section [129](#) of the Act. You must:

- identify yourself to the driver
- state the reason for the search
- state the search is taking place under the Search and Surveillance Act 2012
- if not in [Police uniform](#) produce identification.

Section [131](#) of the Search and Surveillance Act 2012 must be complied with prior to entering the vehicle to commence the search. You must:

- identify yourself by name or unique identifier
- state the search is taking place under the Search and Surveillance Act 2012
- state the reason for the search
- state your intention to enter and search the vehicle
- if not in [Police uniform](#) produce identification.

Stopping vehicle for purpose of arresting an offender

Under section [9](#) of the Search and Surveillance Act 2012 you may stop a vehicle for purpose of arresting an offender if you have reasonable grounds to **suspect** a person in the vehicle has committed an offence punishable by imprisonment (theft/receiving) or reasonable grounds to believe that the person is in or on the vehicle.

Note: You must comply with the [obligations](#) under section [129](#) of the Act.

After using section [9](#) of the Act to stop the vehicle, then under section [10](#) you may require the details of any occupant you have reasonable grounds to **suspect** has committed an offence punishable by imprisonment.

You may also under section [10](#):

- search the vehicle to locate the suspect
- search the vehicle for the stolen/received property, if:
 - the suspect has been arrested or

- the suspect was seen fleeing the vehicle prior to arrest.

Prior to entering the vehicle to conduct a search under section 10 of the Act you must comply with subsection 2 of that section (advise the driver of the reason for the search unless the driver is the person you reasonably suspect of having committed the offence and intend to arrest) and the [obligations](#) under section [131](#).

Detention of vehicle occupants

Occupants of the vehicle may be detained under section [118](#) of the Search and Surveillance Act 2012 for the purpose of determining any connection between the occupants and the reason for the search.

As they are detained they must be advised of their rights under the [New Zealand Bill of Rights Act 1990](#) in accordance with the '[Chief Justice's Practice Note on Police Questioning](#)'. See also the '[Rights caution](#)' chapter in the Police Manual.

Note: An opportunity to consult and instruct a lawyer will be given after the search is completed.

Search of occupants of vehicle

Should you not locate the stolen/received property in the vehicle, consider whether the property could now be in the possession of one of the occupants.

To search an occupant of the vehicle you must satisfy section [119](#) of the Search and Surveillance act 2012 in that you must have reasonable grounds to **believe** the stolen/received property is on that person.

Note: There is no power to search all occupants.

Power to seize property

You may seize anything that is the subject of the search or that may lawfully be seized:

- under section [110](#)(d) if it is found in the vehicle
- under section [125](#)(j) if it is found on a person.

Matters of ownership

Section [218](#)(1) of the Crimes Act 1961 refers to all matters of ownership.

Owner of stolen property

For the purposes of Part [10](#), a person is to be regarded as the owner of any property that is stolen if, at the time of the theft, that person has:

- possession or control of the property, or
- any interest in the property, or
- the right to take possession or control of the property.

Note: To be capable of being stolen, the property must have an owner.

Abandoned property

Abandoned property cannot be stolen, although property that appears to be abandoned is often still owned by someone. For example, household rubbish is not abandoned. Its ownership passes to the local authority if the authority wishes it to. If the rubbish collector takes it for their own use, they are guilty of theft. *Williams v Phillips* (1957) 41 Cr App R 5 refers.

Person or persons unknown

The owner need not be identifiable or even ascertainable. While it is usual to name the owner when charging, this is not essential. A person can be convicted of theft of "the property of a person or persons unknown" if:

- the suspect has no title or right to the property, or
- the property is owned by someone else, or
- the circumstances indicate that the property is stolen. Such circumstances may include:
 - the way in which the suspect kept the property, or
 - the nature, quantity and condition of the property, or
 - the lack of adequate explanation from the suspect.

See '[Doctrine of recent possession](#)' in the 'Receiving' chapter.

Property can be stolen from the possession of a bailee or carrier of goods, even though the true owner cannot be traced.

Theft by asserting ownership

It is theft to use property, without its owner's authority, as security against a loan, whether or not the creditor gains possession. For example, a man who was left in charge of his friend's boat and included it in his list of assets when obtaining a loan, committed theft. By listing the boat as his own asset, he "asserted ownership". *Dunbar and Rogers v Arnott* [1960] 2 QB 244 refers.

Issues may arise as to whether property can be considered to have been "used or dealt with" if its physical status is unaffected but the accused has entered into transactions regarding it. Under the previous law entering into a transaction affecting property where the terms of the transaction were inconsistent with the rights of the true owner of the property was a conversion (see e.g. *R v Dunbar* [1963] NZLR 253 (CA); *R v Nottingham* [1992] 1 NZLR 395). Such transactions or attempted transactions should be considered to come within the "deal with" element of the definition of the offence. Theft will include any act which is inconsistent with the rights of the owner and without authority: *Maihi* [1993] 2 NZLR 139, 141, (1992) 9 CRNZ 304, 306; *McNicholl v Police* (1990) 6 CRNZ 603, 605; although as *Maihi* illustrates, a mere decision to convert is not enough without some conduct as well.

Theft against another owner

An owner of any property may be guilty of theft against another owner of that property. ([s218](#)(2))

Who can commit theft?

Theft can be committed by, for example:

- the owner of a property item, against a person with the right to possession and control of the property
- a lessee, against their reversioner
- any joint owner, or tenant in common of, or partner in any thing, against the other people with an interest in it
- any director, officer or member of any body corporate, against that body.

How to prove theft

You must prove the suspect:

- dishonestly and without claim of right
- took any property
- with intent to deprive any owner permanently of that property or of any interest in that property

or

- dishonestly and without claim of right
- used or dealt with any property
- with intent to deprive any owner permanently of that property or of any interest in that property
- after obtaining possession of, or control over, the property in whatever manner.

In addition, you must prove

- the property was capable of being stolen
- ownership by any person(s)
- the value of the property.

Theft of live stock, other animals, wild creatures and shellfish

Theft of livestock and other animals

A person commits theft and is liable to imprisonment for a term not exceeding 7 years if they steal any livestock or any other animal that is the property of any other person. ([s220A](#))

Note: Livestock includes animals such as cattle and sheep. The offence also extends to the theft of companion animals such as pet dogs, cats or birds. Section 220A recognises that animals are sentient beings (able to experience feelings) and that their theft is not the same as theft of inanimate property.

Theft of parts of killed animals

Under section [221](#) of the Crimes Act 1961, every one commits theft if they kill any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

From the absence of any specific provision, theft of a tame animal is possible in any circumstance; while theft of a wild animal is only possible where the circumstances of its taking or killing come within section [218](#)(3) or (4) in relation to wild living creatures).

Theft of wild creatures kept in confinement

All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in New Zealand, are, if kept in a state of confinement, capable of being stolen, not only while so confined, but after they have escaped from confinement [s218](#)(3).

All other living creatures wild by nature are, if kept in a state of confinement, capable of being stolen so long as they remain in confinement, or are being pursued upon escaping from confinement - [s218](#)(4).

'State of confinement' defined

A wild living creature is in a state of confinement so long as it is in an enclosure designed to prevent escape, or otherwise secured, and to allow its owner to take possession of it when they please - [s218](#)(5).

Theft of shellfish

Shellfish of all types are capable of being stolen when in oyster beds, marine farms, layings, and fisheries that are the property of any person and that are sufficiently marked out or shown as such property ([s218](#)(6)). See also section [101A](#) of the Fisheries Act 1983 for an offence of taking, removing etc. of farmed aquatic life.

Theft by spouse or partner

Introduction

Under section [222](#) of the Crimes Act 1961, a person may be convicted of theft of another person's property even though those persons were married to each other or in a defacto relationship or a civil union at the time of the theft.

Effect of Property (Relationships) Act 1976

Court orders

A husband or wife commits theft if they take, or convert, or otherwise deal with the property of their spouse, after an order has been made under section [25](#) of the Property (Relationships) Act 1976. Under this section, the Family Court or High Court can make orders regarding the status, ownership, vesting or possession of any specific property. The spouse against whom the order is made loses rights previously held.

Under section [25](#)(3) of the Act, the court may, at its discretion, make such an order even if the couple are still living together. Provided all the ingredients of theft could be proved, this means the party losing previous rights can be charged with theft. Even if there are no orders in place and one spouse or partner sells a jointly-owned asset that could be an offence in light of section [218](#)(2) of the Crimes Act 1961 (an owner may be guilty of theft against another owner).

Relationship property

The definition of 'property' in s [2](#) of the Crimes Act 1961 includes an interest in any real or personal property. Where a couple have property which is 'relationship property' under section [8](#) of the Property (Relationships) Act 1976, each spouse may be considered to have an interest in the property, and thus either can steal the property from the other by depriving the other of his or her interest in it.

Proving offence of disposing of family chattels by spouse or partner

You must prove the suspect:

- knew that proceedings were pending under the Property (Relationships) Act, and
- without the leave of a judge of the High Court or a District Court judge or a Family Court judge or registrar, or the consent in writing of the other party
- sold, charged, or disposed of any of the family chattels, or
- (except in an emergency) removed from the family home or homes any of the family chattels which are household appliances or effects or which formed part of the furniture of that home or those homes.

(s[45](#) Property (Relationships) Act 1976)

Theft by person in special relationship and criminal breach of trust

Theft by person in special relationship

Theft by person in special relationship' under section [220](#) of the Crimes Act 1961 does not apply to persons committing theft against their employer (previously referred to as 'theft by a servant' prior to the Crimes Amendment Act 2003). The fact that someone has committed theft against their employer is an aggravating feature of the offence of theft for the purposes of sentencing, as the relationship between employer and employee involves an element of trust. For this reason it should always be mentioned in the Summary of Facts or in evidence that the offence was committed against an employer.

Section 220 relates to a theft where the defendant and the complainant are in a **fiduciary relationship**. This means that there is a **legal obligation of trust** between the parties, such as the treasurer of a club. A person who is placed in such a position of trust has a strict duty to deal with the property on the terms that give rise to that position.

What you must prove

You must prove the suspect:

- received or was in possession of, or had control over, any property on terms or in circumstances that the person knows and requires the person:
 - to account to any other person for the property, or for any proceeds arising from the property; or
 - to deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person

and

- intentionally failed to account to the other person as so required; or
- intentionally dealt with the property, or any proceeds of the property, otherwise than in accordance with those requirements.

Note: This applies whether or not the person was required to deliver over the identical property received or in the person's possession or control.

It is a question of law whether the circumstances required any person to account or to act in accordance with any requirements.

Criminal breach of trust

Criminal breach of trust is an offence under section [229](#).

You must prove the suspect:

- was a trustee of any trust
- dishonestly and contrary to the terms of that trust
- converted anything to any use, not authorised by the trust.

Theft, receives or obtains by fraud a controlled drug

Under section [11](#) of the Misuse of Drugs Act 1975, every person commits an offence against the Act and is liable on conviction to imprisonment for a term not exceeding 7 years who:

- steals a controlled drug; or
- with intent to defraud by any false pretence, either directly or through the medium of any contract obtained by the false pretence, obtains possession of or title to a controlled drug, or procures a controlled drug to be delivered to any person other than themselves; or
- receives a controlled drug obtained by any offence, or by any act, wherever committed, that, if committed in New Zealand, would constitute an offence, knowing that the controlled drug had been dishonestly obtained or being reckless as to whether or not the controlled drug had been stolen or so obtained.

Note: These provisions apply to section [11](#) offences:

- section [246](#)(2) to (5) of the Crimes Act 1961 in respect of proceedings for an offence of receiving a controlled drug
- sections [219](#), [220](#), [222](#), [240](#) and [246](#)(2) to (5) of the Crimes Act 1961 with such modifications as may be necessary for construing an offence of theft of, receiving or obtaining by fraud a controlled drug.

Related information

See:

- the '[Drugs](#)' chapter for drug related offences, their ingredients, procedures and instructions for handling controlled drugs and searching people for drugs, as well as general advice on other drug related matters
- the '[Search](#)' chapter for general advice with searching people, places, vehicles or things.

Computer theft/crimes

See '[Elements of offences involving computer systems](#)' in the '[Deception](#)' chapter for guidance concerning computer crime.

Theft by finding

A person can be guilty of theft who, on finding an article, is aware of who the owner is, or has reasonable grounds to believe the owner could be found, but still:

- takes possession of it with intent to use it, and
- does not take reasonable steps to return it or locate the owner.

Theft by finding falls under the "deals with" provisions.

Notes:

- Reasonable steps could include reporting the find to Police. *R v Oram* [1908] 27 NZLR 955 refers.
- A bona fide belief that goods have been abandoned is a defence to theft by finding. *R v White* (1912) 7 Cr App R 266 (CCA) refers. See the section '[Abandoned property](#)' in this chapter.

Theft from a person with an interest in property

Any interest in that property

Property can be stolen from someone who has merely an interest in it, such as a bailee or [lien holder](#). For example, a person who steals property in transit with Kiwi Rail, can be charged with stealing it "from the possession of Kiwi Rail", because Kiwi Rail is the bailee.

Note: In cases where someone else has an interest in the property, a person can steal their own property. This does not apply, however, where a contract is invalid, for example, as it can be in contracts with minors. In such a case, it may not be theft for the owner to take property away without consent and without having paid for repairs.

Theft from lien holders

Introduction

Difficult situations may arise, requiring Police involvement, when customers may not appreciate that in certain circumstances repairers maintain a lawful [lien](#) over property, e.g. motor vehicles, and are lawfully entitled when exercising that lien, to maintain possession of the property until payment of goods and services is made.

It is important when responding to escalating incidents involving lien holders maintaining possession of property under a lien that Police understand:

- the nature of a lien and the rights of the lien holder to enforce it by maintaining possession of the property
- that the owner may properly be charged with theft if, before the invoice for parts and labour is paid, they remove a vehicle or other property from a repairer lawfully exercising their rights under a lien, i.e. it is a criminal matter and not "just a civil matter".

What is a lien?

A lien gives someone a legal right to keep possession of property (e.g. a motor vehicle) until a condition is satisfied. It is enforceable against anyone, including an owner of the property.

Liens are most commonly enforced until a debt due for repairs, parts or improvements, is paid in full. For example, a motor vehicle or property repairer may [claim a lien](#) and refuse to return the vehicle to a customer until the parts and labour are paid for. This applies even if the amount charged for the work is in dispute.

The lien expires once the debt for repairs is paid.

A lien does not cover payment for other expenses such as storage or maintenance costs and penalty interest unless the terms of supply expressly provide for such expenses and the customer has had notice of those terms.

Parts of a house

Parts of a house (e.g. spouting, roof, wall cladding etc.) are considered to be part of the land. As such, these sorts of goods cannot be taken back or reclaimed in lieu of payment once installed.

Claiming a lien

There is no formal procedure necessary to claim a lien. A motor vehicle repairer (for example) simply refuses to return the item or motor vehicle to the customer until the parts and labour are paid for.

To claim a lien the holder must be satisfied:

- lawful possession has been obtained with the express or implied authority of the owner for work or repairs to be carried out
- the work is an improvement or repair - maintenance is not covered
- [continuous possession](#) has been maintained on the repairer's premises.

Continuous possession

Once the property leaves the repairer's premises, the right to a lien is lost. The right is not revived by a subsequent recovery of possession. Accordingly, if the terms of trade provide credit or payment on the 20th of the following month rather than 'cash on delivery', a lien cannot be claimed as possession will be lost.

What if there are other interests in the property?

A lawful lien overrides the interests of a person or company holding a security interest (e.g. the property is being paid off under a hire purchase agreement) or charge registered against the property, provided the repairer has no knowledge of the security interest or charge and the materials and services relating to the lien are provided in the ordinary course of business. This is the case even if the interest or charge prohibits the creation of a lien.

Where a repairer has notice of another interest or charge before commencing work, a lien cannot be claimed.

Offences

Unlawful removal of a vehicle (or other property) by an owner breaches the lawful possessory interest of the repairer in the repaired vehicle pursuant to the lien. It also breaches any applicable "romalpa clause" providing that title to the property or parts does not pass to the owner until payment is made in full.

In these circumstances an owner can be charged with theft of the parts or of their "own" vehicle, as the repairer's lien is a legally enforceable interest, rendering the repairer the "owner" for the purposes of sections [218](#) and [219](#) of the Crimes Act 1961.

This would not apply however, if the contract was invalid, e.g. as it can be with minors. In such a case, it may not be theft for the owner to take property away without consent and without having paid for repairs.

Note: Criminal charges laid will not result in the repairer recovering monies owed. The criminal law is not a mechanism for debt collection. Monies owing to the repairer must be pursued by civil action.

Trade Me complaints/theft

See '[Schedule 1 - Investigation response to Trade Me related offences](#)' in the Letter of Agreement with Trade Me in Police Instructions for guidance around the handling of complaints made to Police from Trade Me.

Failure of passengers to pay passenger/public transport service fare

See: ['Fare evasion'](#).

Landlord and tenant disputes

General

The [Residential Tenancies Act 1986](#) does not apply to motels/hotels, lodging or boarding houses or premises used for temporary/transient accommodation. Provisions of the Trespass Act should be used in these cases.

For a full list of exclusions, see section [5](#) and [5A](#).

Every tenancy agreement must be in writing and signed by both tenant and landlord (the landlord must give the tenant a copy).

Note: Under section [13C](#), any part of the Act is enforceable even if nothing was put down in writing.

Can a landlord seize or dispose of property?

Tenant's goods cannot be seized or disposed of by the landlord:

- as security for or in payment of any amount owing by way of rent, or
- for any other reason arising from the tenancy

unless:

- subject to an order of the tenancy tribunal, or of any court on appeal of the tribunal
- goods disposed of under sections [62 to 62C](#) of the Act, or in accordance with regulations made for the purposes of section 62(3A) when premises are contaminated, or
- foodstuffs and other perishable goods if the landlord has reasonable cause to believe the tenant has abandoned the premises.

([s33](#))

Seizing or disposing of any goods in contravention of section 33(1) is an unlawful act. Under Schedule [1A](#) (Amounts for unlawful acts) of the Act the amount for a section 33 unlawful act is \$3,000 in any proceedings before the tribunal.

Repossession and hire purchase

Introduction

Most repossession of goods, including vehicles, are handled by creditors or their agent alone without incident and without Police being involved.

Requests to attend a repossession

If a creditor or their agent believes a repossession may be difficult, e.g. because the debtor may become violent, or otherwise breach the peace, Police may be requested to attend the repossession. In these circumstance Police functions include preventing a breach of the peace and crime prevention, not to assist the creditor or their agent with repossession.

The key issues for Police when asked to attend a repossession are:

- Is Police presence necessary or appropriate to prevent a breach of the peace?
- Is the repossession lawful?

In addition, Police responding to a request to attend a repossession will need to consider Police priorities at the time the request is made. If there are other more urgent matters requiring Police attendance, you may need to discuss alternative times.

Basic rules about repossessions under Credit Contracts and Consumer Finance Act 2003

The complexities of civil law and repossessions are beyond the scope of this instruction. However, it is helpful to be aware of the basics relating to repossession of consumer goods under the [Credit Contracts and Consumer Finance Act 2003](#).

When a person uses a consumer good as security for a loan (for example under a hire purchase agreement) the person signs a contract. In the conditions (fine print) it says that the seller has the right to take back the goods if the buyer defaults in payment. This is called repossession.

The rules regarding repossession of consumer goods are set out in subparts [2](#) and [4](#) of Part 3A of the Credit Contracts and Consumer Finance Act 2003. Subject to rules and limitations in the Act a creditor or their agent has a lawful right to enter premises and repossess goods if:

- a debtor is in default under the credit contract or the goods are at risk and the creditor complies with:
 - Part [3A](#) requirements imposed on them, and
 - lender responsibility principles set out in Part [1A](#), relevant to the repossession (s 83E)
- the goods are at risk and the creditor believes on reasonable grounds that the goods have been, or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to the provisions of the relevant credit contract.

Note: Consumer goods are not at risk merely because another creditor has, in relation to those consumer goods, given the debtor a repossession warning notice.

(s[83E](#))

Rules applying at time of repossession

Rules that apply at the time of repossession to a creditor or creditor's agent include:

- must allow debtor time to remedy default or at least 15 days to elapse (s[83N](#))
- must produce certain documents on entry (s[83O](#))
- must comply with certain requirement for entry if occupier not present (s[83P](#))
- must exercise right to enter premises in accordance with lender responsibility principles (s[83Q](#))
- must not enter premises if complaint (in writing relating to enforcement action) not resolved or unforeseen hardship application not decided (s[83R](#))
- must not enter residential premises at certain times (s[83S](#))
- restrictions applying in relation to persons repossessing consumer goods (s[83T](#)).

Note: The requirement for a copy of the repossession warning notice and other documents under section [830](#) to be left on the premises does not apply if the repossession takes place from a public place such as in the case of the repossession of a motor vehicle.

Trespass

A repossession agent cannot be treated as a trespasser even if warned off the property by the purchaser. They can however be a trespasser if the purchaser is not an occupier of those premises.

If the goods have been removed to premises occupied by a third party, any consent given by the debtor to enter those premises may not be an effective consent to enter as this has to be given by the person in control of those premises.

Note: Police have no right to enter or remain on the premises under the [Credit Contracts and Consumer Finance Act 2003](#).

Procedure if requested to attend a repossession

Follow these steps if a creditor or their agent requests Police assistance with repossession.

Step	Action								
1	<p>Assess the risks raised by the intended repossession by:</p> <ul style="list-style-type: none"> - considering information supplied by the person doing the repossession along with information from Police sources relating to the debtor, their associates and the address of the repossession - assessing whether there is a risk that there may be a breach of the peace, warranting Police presence - if assessment indicates a risk, apply TENR for considering the safest outcome. 								
2	<p>Check that the creditor or agent has the necessary documentation required:</p> <ul style="list-style-type: none"> - if the goods are consumer goods, a copy of the repossession warning notice (unless repossession is on the basis that the goods are "at risk", then debtor's name and address from which the goods will be repossessed, creditor's contact details and the reason why the goods are being repossessed): <ul style="list-style-type: none"> - a copy of the credit contract - a copy of the creditor's or creditor's agent's licence or certificate of approval (under the Private Security Personnel and Private Investigators Act 2010) - a written statement that specifies the premises have been entered and the date of entry and an inventory of consumer goods to be taken - a written statement setting out the debtor's rights following repossession to make a complaint about the creditor or creditor's agent's conduct - in all other cases, a copy of the contract setting out the right to repossess the property. <p>In the case of:</p> <ul style="list-style-type: none"> - a creditor's agent, evidence of authority from the creditor to take possession of the goods on the creditor's behalf, - an out of hours entry onto private property, the debtor's written consent to the exercise of right of entry). 								
3	<p>Provide an appropriate Police presence to attend the scene with the creditor or agent.</p> <p>Note:</p> <ul style="list-style-type: none"> - Police only attend a repossession to prevent a breach of the peace and do not provide assistance to the creditor or their agent. - An 'appropriate Police presence' may not be immediately available due to other Police priorities. Discuss alternative times. - Powers of entry under the Credit Contracts and Consumer Finance Act 2003 relate to the creditor or their agent and Police have no specific powers under this Act to enter or remain on private property. 								
4	<p>At the scene:</p> <table border="1" data-bbox="130 1464 1513 1912"> <thead> <tr> <th data-bbox="130 1464 523 1503">If...</th> <th data-bbox="523 1464 1513 1503">consider...</th> </tr> </thead> <tbody> <tr> <td data-bbox="130 1503 523 1608">the creditor or agent is being threatened or assaulted</td> <td data-bbox="523 1503 1513 1608">warning, arrest and prosecution</td> </tr> <tr> <td data-bbox="130 1608 523 1771">wilful and forcible obstruction of the creditor or their agent occurs</td> <td data-bbox="523 1608 1513 1771"> <ul style="list-style-type: none"> - in case of minor forcible obstruction, advise creditor or agent to withdraw before violence or a breach of the peace occurs and for them to seek legal advice about other civil remedies. - in case of major forcible obstruction, arrest and prosecution for assault </td> </tr> <tr> <td data-bbox="130 1771 523 1912">the debtor has disposed of the property with intent to defraud the creditor</td> <td data-bbox="523 1771 1513 1912">prosecution for causing loss by deception, section 240 of the Crimes Act 1961.</td> </tr> </tbody> </table>	If...	consider...	the creditor or agent is being threatened or assaulted	warning, arrest and prosecution	wilful and forcible obstruction of the creditor or their agent occurs	<ul style="list-style-type: none"> - in case of minor forcible obstruction, advise creditor or agent to withdraw before violence or a breach of the peace occurs and for them to seek legal advice about other civil remedies. - in case of major forcible obstruction, arrest and prosecution for assault 	the debtor has disposed of the property with intent to defraud the creditor	prosecution for causing loss by deception, section 240 of the Crimes Act 1961.
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Related information

See the part relating to '[Repossession agents/employees](#)' in the 'Dealers and traders' chapter for law and good practice relating to

licensing and the businesses of repossession agents and repossession employees.

Dealing with theft

At the scene

Follow these steps.

Step	Action
1	Obtain the facts in brief from the victim and witnesses.
2	If the suspect is present, locate and contain. If the suspect is not present, take any immediate action to locate the suspect.
3	Obtain assistance if required and conduct the scene examination.

See the '[Crime scene examination](#)' chapter for more information.

Victim and witness interviews

Follow these steps.

Step	Action
1	Interview the victim and record: <ul style="list-style-type: none"> - the circumstances of the theft - value of the property - the description of the property that will allow it to be identified. For example: <ul style="list-style-type: none"> - serial numbers - identifying marks including those in hidden locations - any distinctive features such as alterations or damage - evidence to make or support an identification, such as: <ul style="list-style-type: none"> - appliance guarantees - purchase invoices - documents that show serial numbers - photographs of the item.
2	Check that the ingredients of the offence have been established.
3	Consider whether the complaint is genuine. Locate evidence to corroborate ownership such as owner manuals, receipts, photographs and documents that record the model and serial number.
4	Obtain a description of the suspect, including information to support their nomination as a suspect.
5	Complete enquiries and witness interviews ensuring that all investigations are documented.

When you receive the file

Follow these steps if you receive a theft complaint for investigation.

Step	Action
1	<p>Read the file carefully and ensure:</p> <ul style="list-style-type: none"> - the ingredients of theft are met - a detailed description of the property is recorded - NIA records have been entered and updated - Investigative or forensic opportunities are identified and an investigation plan addresses these.
2	Contact the victim to update them and obtain any further information they can provide.
3	Consider any prevention opportunities that arise in respect of the victim or the wider community.

Investigation of the complaint

Follow these steps.

Step	Action
1	<p>Consider releasing information that may result in the location of the property e.g.:</p> <ul style="list-style-type: none"> - Police bulletin board messages - media releases - social networking sites.
2	Complete the enquiries identified in the investigation plan.
3	If the theft was from commercial premises, consider that the suspect may be an employee. Liaise with management and profile employees to identify any suspects.
4	Warn possible avenues of disposal, such as second-hand dealers and pawn brokers, about the theft. See 'Dealers and traders' chapter for further guidance about second-hand dealers and pawn brokers.
5	Maintain contact with the victim.
6	Prioritise time sensitive enquiries.
7	Complete any outstanding enquiries; for example, to identify any recovered property.
8	Consider fingerprint and forensic examination of exhibits.

Suspect

Follow these steps.

Step	Action
1	When you have identified a suspect, locate them and consider executing a search warrant to seize evidence of the offending. Recover any property and obtain the suspect's explanation for it. Enter recovered property into the Police Register of Property (PROP).
2	Interview the suspect. See ' Investigative interviewing suspect guide ' in the 'Interviewing' chapter for further information.
3	Consider enquiries to corroborate or refute the suspect's statement including investigating statements about co-offenders.
4	Where appropriate, consider identification evidence (see sections 45 and 46 of the Evidence Act 2006). Photograph the suspect and obtain their fingerprints and palm prints, voluntary DNA.
5	Where the conditions for arrest are met, arrest the suspect.
6	Where charges are contemplated, follow the guidance in the ' Charging decisions ' chapter and consider taking an Intention to Charge (Part 2B of the Criminal Investigations (Bodily Samples) Act 1995) DNA sample. See also ' DNA sampling ' chapter.
7	Prepare the prosecution file. See ' Prosecution file and trial preparation ' chapter for instructions on file order, prosecution forms and preparing for trial.

Case completion

Follow these steps.

Step	Action
1	<p>After the prosecution:</p> <ul style="list-style-type: none"> - cancel any calls for information - ensure that NIA records are updated - acknowledge the assistance given by the public and Police - when the appeal period has expired or any appeal has been dismissed, return any remaining property - ensure that all case completion tasks are attended to - update the victim.
2	Consider DNA voluntary or compulsion upon conviction for an imprisonable offence.

Shoplifting

Shoplifters not to be charged with burglary

See [Police v Barwell](#), CRI-2006-409-77 July 6, 2006, Judge John Hansen J High Court Christchurch for the decision relating to shoplifters not to be charged with burglary.

See also the '[Charging decisions](#)' chapter for further guidance about making charging decisions that are nationally consistent.

On arrival at the scene

By the time you arrive at the scene, the investigation may already be under way. Often the suspect has already been apprehended and interviewed by the store employees or security staff.

Interview the victim, store employees and security staff. Record whether the suspect:

- was seen removing the property
- hid the property - if so, where
- tried to pay for the property
- left the shop with the property
- was alone
- is known to the staff or management
- has been interviewed - what did they say.

Also find out:

- where the property is
- its value
- whether it is identifiable - if so, by whom, and how.

Interviewing the suspect

See the '[Investigative interviewing suspect guide](#)' in the 'Interviewing' chapter for guidance with interviewing.

if. . .	then. . .
the suspect admits the theft	record the admission or explanation.
the suspect denies the theft	<p>assess the evidence. For example, the suspect may:</p> <ul style="list-style-type: none"> - admit to taking the property but deny having criminal intent - for example, they may have left the payment on the counter because no shop assistant was present - claim that it was bought elsewhere. If so: <ul style="list-style-type: none"> - find out if the property was wrapped - inspect the property for shop labels - ask if the staff can identify the property - compare the price. If necessary, check with the store from which it was allegedly bought - ask the suspect to describe the salesperson in the other shop.
you are not satisfied that an offence has been committed	do not arrest. Report the facts.
the suspect admits the offence, or you are satisfied that the ingredients have been established	decide whether to warn, report for summons or arrest. Consider the suspect's behaviour, explanation and age.
you arrest the suspect	conduct a search under section 88 of the Search and Surveillance Act. For further guidance see Police powers section in this chapter.
you arrest or report	take possession of the property for evidential purposes. See the 'Exhibit and property management' chapter for handling and managing exhibit property.

The follow up

Follow these steps.

Step	Action
1	Prepare the file as directed.
2	Ensure that all recovered property is labelled and safely stored.
3	In the case of perishable goods, initial it and have the shop owner freeze it.
4	Consider searching the suspect's premises, by consent or under warrant.

Distributing photographs of shop thieves

Refer to the ['Community disclosure of offenders' information'](#) chapter.

Animal/stock thefts

Complaints about stolen stock may be genuine, mistaken, or an attempt to conceal fraud. Be alert to the possibility of poor farm management as a reason for stock losses. See '[Theft of livestock and other animals](#)' in this chapter for the offence and penalty.

Initial action

Examine stock records to check the accuracy of the victim's figures. Obtain details of:

- the tallies giving rise to the complaint (when were they taken, and why)
- purchases
- sales.

Interviewing the victim

Interview the victim and obtain a statement including:

- a description of the farm, including:
 - size and layout. Prepare an approximate scale plan showing boundaries, nearby roads and neighbouring farms
 - type of land. For example, is it grassed or in scrub? Are there any natural hazards
 - type and condition of the fences and gates
- this stock information:
 - when the stock count was last found to be correct and the accuracy of these figures
 - the reason for that muster or check, and the person responsible for it
 - subsequent stock movements
 - any provisions made for inspecting and overseeing stock
 - when, and under what circumstances, the shortage was discovered.

Verify the information from stock records.

- Details of:
 - purchases and sales
 - stock agents
 - employees, including carriers.
- A full description of the missing stock, covering:
 - number, breed and value
 - earmarks, brands and tattoos, where applicable. Ascertain the earmarks of purchased stock and find out if the victim's earmark was subsequently added. Obtain a diagram of each.
- Details of stock returned to or from neighbouring farms.
- Any suspects and reasons for suspicion.
- Details of any parties who may have a financial interest in the reported loss.

See the '[Investigative interviewing witness guide](#)' in the 'Interviewing' chapter for specific guidance with interviewing witnesses. Note that witnesses in the investigative interviewing guidelines includes victims.

Examining the farm

Follow these steps.

Step	Action
1	Examine the farm promptly. Look for evidence that stock have been removed which may include: <ul style="list-style-type: none"> - evidence of the route taken - damage to, or interference with, gates - signs that a portable ramp was placed over the fence at the roadside - tracks in a roadside paddock that indicate stock were mustered there - tyre marks.
2	Verify the victim's scale plan and their information about the: <ul style="list-style-type: none"> - farm's terrain, vegetation and hazards - type and condition of fences and gates.
3	Consider obtaining soil and vegetation samples from the property. These may be used to compare with samples from recovered stock or other relevant items.

See [Crime scene examination](#) chapter for guidelines and an outline of minimum standards for crime scene processing.

Obtaining further information

It may also be helpful to interview:

- the neighbouring farmers - ask them:
 - whether any stock has strayed onto their property
 - whether any stock is missing from their properties
 - whether they have noticed any suspicious movements of vehicles or people
 - their opinion or knowledge of the victim's competence, honesty and financial position
 - about any suspects living in, or known to be visiting, the district
- stock inspectors
- stock agents and sales yard staff - ask them if they have sold any of the victim's stock
- freezing works and abattoirs - ask them if they have killed any of the victim's stock, and check their records
- business people - if necessary, ask them discreetly about the victim's financial position.

Notifications and suspect enquiries

Follow these steps.

Step	Action
1	If you are satisfied that the stock has been stolen and can be identified, consider media releases or 'Bulletin Board' notifications containing details of: <ul style="list-style-type: none"> - the offence - the stock including descriptions and diagrams of their earmarks, brands, tattoos and brucellosis tags - the type of information sought.
2	Check known suspects. If you have to search farm property, consider obtaining a warrant.
3	Obtain details of other possible suspects from Intel or other police employees via the 'Bulletin Board'.

See the '[Investigative interviewing suspect guide](#)' in the 'Interviewing' chapter for specific guidance with interviewing suspects.

Related documents

The following documents are related to the topic of animal/stock thefts:

- '[Animal identification and tracing](#)' chapter describes Police powers provided for in the [National Animal Identification and Tracing Act 2012](#)
- '[Interviewing](#)' chapter for specific guidance with conducting interviews
- '[LOA - Federated Farmers of New Zealand](#)' outlines the agreement of co-operation between them and Police
- '[MOU - Agriculture and Forestry](#)' outlines the collaborative working relationship between the Police and the Ministry of Agriculture and Forestry, now known as the Ministry of Primary industries.

Electricity thefts

The ways to steal electricity are numerous and difficult for the untrained eye to detect. In any investigation work closely with an electrical inspector.

Initial action

If you receive a complaint that electricity is being stolen, find out:

- the address at which the theft is occurring
- approximately how long it has been going on
- the method being used, if known
- where the meter is.

Liase with your local power authority and electrical inspectors, and obtain from the authority:

- the details of the occupier at the address of the theft
- an estimate of the amount being stolen - this is usually calculated from the occupier's previous accounts but if they are new to the address, an estimate of the amount may not be possible unless the suspect confesses
- the name and address of the previous occupier.

Executing the warrant

Electricity is normally stolen by tampering with the meter. Obtain a search warrant and, in the company of an electrical inspector, enter the premises and follow these steps.

Step	Action
1	In your presence have the electrical inspector examine the meter. If evidence of tampering is found: <ul style="list-style-type: none"> - have the inspector explain to you how it was done - photograph and seize the relevant wires and screws.
2	Consider that the matter may have been tampered with or bypassed to facilitate a drug growing operation. Look for evidence of a current or historic drug growing operation.
3	Look for an excessive number of appliances plugged into one point. Photograph these.
4	Obtain the details of everyone present in the house.
5	Seize any relevant documents.

Enquiries

Interview the:

- witnesses, and obtain their statements
- neighbours, about possible suspects and any suspicious behaviour
- previous occupants, to obtain a statement from them as to whether or not they tampered with the meter box
- suspect, according to the '[Investigative interviewing suspect guide](#)', to obtain their explanation.

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