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# Receiving, Continued...

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## Overview

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## Executive summary

This chapter is about people receiving property that was stolen or obtained by an imprisonable offence. Receivers may be either opportunists taking advantage of a 'bargain' or professionals who receive stolen goods and organise this and related offending as a criminal enterprise.

Employees must be aware of these key, critical points covered in this chapter:

- Receiving is an offence against section [246\(1\)](#) of the Crimes Act 1961 with three graduated penalties depending on the value of the property received (section [247](#))
- The ingredients of receiving include, the person(s):
  - received property stolen or obtained by any imprisonable offence
  - knowing at time of receiving, property had been stolen, or illegally obtained, or were reckless as to whether or not the property had been stolen or illegally obtained.
- Constables may apply powers to:
  - enter, search and seize received property under the Search and Surveillance Act 2012
  - arrest without warrant under section [315\(2\)](#) of the Crimes Act 1961.

## Definitions

This table details some definitions of terms relevant to receiving.

Term	Definition
Conceal or dispose	To help in concealing or disposing of property, the suspect need not gain physical possession of it. An intermediary arranging the sale of the property is guilty of helping in concealing or disposing of property. You must prove that the person did help in disposing of the property, and that they did so knowing that it was stolen or obtained by any imprisonable offence.
Property	Includes real and personal property, and any estate or interest in any real or personal property, money, electricity, and any debt, and anything in action, and any right or interest. (s2)
Receiving	Receiving is complete as soon as the offender has either exclusively or jointly with the thief or any other person, possession of, or control over, the property, or helps in concealing or disposing of the property. (s246(3))

## Other relevant information

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

- [Association offences](#)
- [Attempts](#)
- [Burglary and allied offences](#)
- [Deception](#)
- [Theft.](#)

Relevant law includes:

[Crimes Act 1961](#)

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### Offences and penalties

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### Receiving

Offence	Ingredients
Receiving	<p>'Receiving' is when a person:</p> <ul style="list-style-type: none"> <li>• committed the act of receiving any property, stolen or obtained by any other imprisonable offence</li> <li>• knew at the time of receiving that property had been stolen, or so obtained, or were reckless as to whether or not the property had been stolen or so obtained.</li> </ul> <p>Section <a href="#">246</a>(1) of the Crimes Act 1961.</p> <p><b>Note:</b> If the person who dishonestly obtained the property is unknown, the suspect can be charged with receiving from 'a person or persons unknown'.</p>

### When is receiving complete?

The act of receiving any property stolen or obtained by any other imprisonable offence is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of, or control over, the property or helps in concealing or disposing of the property.

([s246](#)(3))

### Act committed overseas

Receiving property that was obtained by any act committed overseas is an offence under New Zealand law only if the receiving takes place in New Zealand.

Property obtained by any act committed outside New Zealand that, if it had been committed in New Zealand, would have constituted an imprisonable offence is, subject to subsection (5) section [246](#), to be regarded as having been obtained by an imprisonable offence.

([s246](#)(2))

If a person is charged with an offence under this section and the property was obtained by an act committed outside New Zealand, it must be presumed, unless the person charged puts the matter at issue, that the doing of the act by which the property was obtained was an offence under the law of the place where the act was done.

([s246](#)(5))

### Property returned or legal title acquired

If any property stolen or obtained by any other imprisonable offence:

- has been returned to the owner, or
- legal title to any such property has been acquired by any person

then a subsequent receiving of it is not an offence, even though the receiver may know that the property had previously been stolen or obtained by any other imprisonable offence.

([s246](#)(4))

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It is not an offence of receiving to receive property stolen or obtained by any other imprisonable offence if:

- the property has been recovered by an agent for the owner (because the person has recovered the property with the intention of returning it to the owner or the Police)
- Police have recovered the property (because the property is no longer stolen, consequently no person can be guilty of receiving it).

### Must be original property stolen or obtained

The property received must be all or part of the original property stolen or obtained by any other imprisonable offence. An offence of receiving would not be possible if, for example:

- the offender stole a ring, sold it, then gave some of the proceeds to an associate
- the offender stole a \$100 note, changed it for \$20 notes and then gave two of the \$20 notes to an associate.

### Penalties and categories

The value of the property received affects the penalty and should be specified in the charge. This table details the penalties under the Crimes Act 1961.

Value of thing received	Penalty	Section	Category of offence
Up to \$500	Three months	<a href="#">247(c)</a>	Category 2
\$500.01 and up to \$1000	One year	<a href="#">247(b)</a>	Category 2
Over \$1000.01	Seven years	<a href="#">247(a)</a>	Category 2

If no value is stated in the charge, the sentencing Judge may use the procedure set out in section [24](#) of the Sentencing Act 2002.





### Legislation surrounding the offence of receiving

This section contains the following topics:

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- [Police power to arrest](#)
- [Warrantless powers under the Search and Surveillance Act 2012](#)
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#### Receiving the property of a spouse

Under section [222](#) of the Crimes Act 1961, it is an offence for one spouse to steal the property of the other spouse while they are married, or in a civil union or a de-facto relationship with each other **at the time** of the theft; and to receive that property subsequently is an offence under section [246](#).

**Note:** This does not apply to relationship property.

#### Police power to arrest

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 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 conduct the search. **Note**, you must also comply with section [125](#) (special rules about searching persons) of the Act prior to commencing the search.

#### Search after arrest

If the person is arrested you may also use:

- section [83](#) – 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](#) –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](#) (identification and notification requirements) of the Act prior to entering the place or vehicle.

#### Other search power that may assist

There is no warrantless search power to enter a private place to search for stolen/received property, however, there is the section [8](#) Search and Surveillance Act power that may assist (to enter and arrest offender if you believe CADD occurring. Arrest offender and search place using section [83](#)).

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

#### Searching vehicles

There are separate powers in the Search and Surveillance Act to assist with searching vehicles. Consider:

- section [29](#) – to search a vehicle if you believe that any stolen property is in or on it
- section [121](#) – to stop a mobile vehicle and then search using either sections [29](#) or [17](#)



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- section [9](#) – to stop a vehicle for purpose of arresting the offender. Then use section [10](#) to search for evidential material (stolen/received property)

Sections [29](#) and [10](#) require you to comply with the obligations outlined in section [131](#) of the Search and Surveillance Act 2012 prior to entering the vehicle.

**Note:** There is no specific search power to search the occupants of a vehicle that you have searched for stolen/received property. You are constrained to the search powers outlined above.

See the '[Search](#)' chapter for Police powers to search with or without warrant.



### **Doctrine of recent possession**

The doctrine of recent possession is a rebuttable presumption that where a person is found with goods that have been recently stolen and cannot give a satisfactory explanation, that person is either the thief or the receiver or has committed some other offence associated with the theft of the property, e.g. burglary or robbery.

This doctrine is particularly important in cases where a suspect is found in possession of recently stolen property, but where no other evidence is available. There must, however, be evidence that the property was stolen.

The circumstances in which the property was received may prove the theft. The person does not have to prove that the property was in their possession lawfully; the onus is on the prosecution to prove that it was not. The person's failure to explain the possession does not in itself prove the offence.

The doctrine applies to property recently obtained through burglary, theft and receiving. If there is no positive evidence linking the person with the offence but there is evidence that the goods were obtained by theft or burglary, the person should be charged with theft or burglary (as the case may be), and receiving as an alternative charge. The Court will decide which is appropriate.

Whether the possession is 'recent' depends on the circumstances of the case and the nature of the property. For example, possession of a DVD player may be considered recent if the DVD player was stolen within the week, whereas possession of a cache of antique jewellery may be considered recent if the jewellery was stolen within the last two months. Be aware though that the courts do not tend to place heavy reliance on the doctrine of recent possession. To achieve a successful prosecution for receiving, evidence beyond the doctrine of recent possession is generally required.

See 'Adams on Criminal Law' for an explanation on the doctrine of recent possession by clicking on these references [CA219.09 - Recent possession](#) and [CA246.07 - Recent possession](#).





## Dealing with receiving offences

This section contains the following topics:

- [Detecting offences](#)
- [General enquiries](#)
- [Interviewing the suspect](#)
- [Preparing for prosecution](#)

### Detecting offences

You may find out about a receiving offence through:

- the thief (when you interview suspects about dishonesty offences - always find out how the property is disposed of)
- human sources (informants)
- undercover Police
- surveillance (be careful not to act in any way that amounts to recovering the property before the suspect takes possession of it)
- finding stolen property when searching premises (this could indicate receiving, burglary or theft).

### General enquiries

Follow these steps when you receive a complaint about stolen property.

Step	Action
1	Be meticulous in recording the description, so that you can identify the property later.
2	Find out how you can prove the identification; for example, how can you prove that the property has the serial numbers given?
3	Interview witnesses and take their statements.
4	Obtain a search warrant and execute it in the suspect's presence if possible. Issue a Police 268 for any property seized, including the property thought to be stolen. Take care in the handling/packaging of the exhibit to avoid destruction of potential forensic evidence.
5	If you recover any property: <ul style="list-style-type: none"> <li>• have it photographed</li> <li>• consider fingerprints/DNA</li> <li>• have enquires made in order to identify it (take written statement if positive identification including how the witness identifies the property as their own)</li> <li>• if appropriate, arrange for it to be forensically examined (for example, by ESR for evidence of erasures of serial numbers).</li> </ul>

**Note:** When investigating receiving offences (s246 Crimes Act 1961), you should remember not to do anything that could be interpreted as recovering the property before the suspect has taken control of it. Where stolen property has been physically recovered by Police, it is legally impossible to commit the offences of receiving or attempted receiving, although there maybe evidence of conspiring to receive property dishonestly obtained. [R v Donnelly](#) [1970] NZLR 980(CA) refers.

### Interviewing the suspect

Interview the person found possessing, or who is suspected of possessing, the stolen or dishonestly obtained property. Find out the circumstances of the receiving and if the person:

- is the thief, burglar or the receiver (if the receiver, try to obtain full details of the thief/burglar)
- had possession or control of the property, or aided in concealing or disposing of it





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- can explain the possession
- knew, or was reckless whether or not, the property was stolen or dishonestly obtained.

See '[Investigative interviewing suspect guide](#)' chapter for detailed interviewing procedures.

### **Preparing for prosecution**

Because the value of the property received affects the penalty, you should include it in the charge if known. If the value is nominal or unknown, file the charge under section [247\(c\)](#).

For further information, see:

- '[Penalties](#)' in this chapter
- '[Case management](#)' chapter for instructions about:
  - preparing case for prosecution
  - prosecuting case
  - case disposal.

