



Biosecurity (Form of Search Warrant) Regulations 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 24th day of September 2012

Present:

The Right Hon John Key presiding in Council

Pursuant to section 165 of the Biosecurity Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Primary Industries made in accordance with section 164D of that Act, makes the following regulations.

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Regulations

1 Title

These regulations are the Biosecurity (Form of Search Warrant) Regulations 2012.

2 Commencement

These regulations come into force on 1 October 2012.

3 Interpretation

- (1) In these regulations, **Act** means the Biosecurity Act 1993.
- (2) Terms or expressions used but not defined in these regulations, but defined in the Act, have the same meaning as in the Act.

4 Form of search warrant

A search warrant issued under section 111 of the Act must be in the form set out in the Schedule.

5 Revocation

The Biosecurity (Forms) Regulations 1995 (SR 1995/129) are revoked.

Schedule

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Form of search warrant

Form

Search warrant

Section 111(1), Biosecurity Act 1993

To *[full name]*, an inspector/authorised person/constable/every constable*

*Select one.

1 Ground of warrant

I am satisfied, on an application made by *[full name]* on *[date]*, that there are reasonable grounds for believing that there is on or in the place *[description of place]* the following thing that (or things, each of which) is a thing—

Select the applicable paragraph(s).

- in respect of which an offence against the Biosecurity Act 1993 punishable by imprisonment has been or may have been committed; or
- that is or may be evidence of the commission of an offence against the Biosecurity Act 1993 punishable by imprisonment; or
- that is intended to be used for the commission of an offence against the Biosecurity Act 1993 punishable by imprisonment.

[description of thing(s)].

The suspected offence(s) to which this warrant relates is/are*: *[specify]*.

*Select one.

2 Conditions

This warrant is subject to the following conditions: *[specify]*.

3 Authority

Subject to the conditions set out above, this warrant authorises you, and any person called by you to assist,—

- (a) to enter and search the place; and
- (b) to search for and seize *[description of what may be seized]*; and

Form—*continued*

- (c) to seize anything else found in the course of carrying out the search, or as a result of observations in relation to the place, if you have reasonable grounds to believe that you could have seized the item under any search warrant that you could have obtained or any other search power that you could have exercised; and
- (d) to use any force that is reasonable in the circumstances to enter or break open or access any area within the place for the purposes of carrying out the search and any lawful seizure; and
- (e) to use any assistance that is reasonable in the circumstances.

4 Remote access search

Omit this paragraph if the warrant does not authorise a remote access search.

[Set out the access information that identifies the thing to be searched remotely.]

5 Period of execution of warrant

The power to enter and search under this warrant may be exercised on 1 occasion/on *[specify the number of times that the warrant may be executed]**.

The warrant must be executed within 14 days/*[specify number of days that warrant is issued for, which must not exceed 30 days]* days* from the date of issue of this warrant.

*Select one.

Date of issue: *[date]*

Name or unique identifier:

Signature:

(Judge/authorised issuing officer*)

*Select one.

Form—*continued*

Important information

Seizure of items

A list of things seized will be provided to you as soon as practicable after the seizure, and in any case not later than 7 days after the seizure.

Availability of privileges

These notes set out an explanation of the availability of privileges recognised for the purposes of a search conducted under this warrant and an outline of how any of those privileges may be claimed.

The notes provide general information relating to these matters. For further details relating to these matters, *see* sections 136 to 148 of the Search and Surveillance Act 2012 and the relevant sections of the Evidence Act 2006.

The following privileges are recognised for the purposes of a search conducted under this warrant:

- legal professional privilege (referred to in section 53(5) of the Evidence Act 2006) and privilege for communications with legal advisers (as described in section 54 of the Evidence Act 2006). A person who obtains professional legal services from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was intended to be confidential and was made in the course of and for the purpose of the provision of professional legal services from the legal adviser:
- privilege for preparatory materials for proceedings (as described in section 56 of the Evidence Act 2006):
- privilege for settlement negotiations or mediation (as described in section 57 of the Evidence Act 2006):
- privilege for communications with ministers of religion (as described in section 58 of the Evidence Act 2006):
- privilege in criminal proceedings for information obtained by medical practitioners and clinical psychologists (as described in section 59 of the Evidence Act 2006):
- privilege for informers (as described in section 64 of the Evidence Act 2006):

Form—*continued*

- rights conferred on journalists under section 68 of the Evidence Act 2006 to protect certain sources.

Effect of privilege and how privileges may be claimed

Claims for privilege for things seized or sought to be seized

- 1 If you wish to claim privilege in respect of any thing seized or sought to be seized under this search warrant,—
 - (a) you must, as soon as practicable, provide to the person responsible for executing the search warrant a particularised list of the things in respect of which the privilege is claimed;
 - (b) if the thing or things in respect of which you are claiming the privilege cannot be adequately particularised, you may apply to a District Court for directions or relief.

Interim steps pending resolution of privilege claim

- 2 While a claim of privilege is being determined, the person executing the search warrant—
 - (a) may secure the thing (including, if the thing is intangible, by making a forensic copy) and deliver the thing, or a copy of it, to the District Court to enable the determination of a claim to privilege; and
 - (b) must give you access to the secured thing; and
 - (c) must not search the thing secured, unless no claim of privilege is made, or a claim of privilege is withdrawn, or the search is in accordance with the directions of the court determining the claim of privilege.

Searches affecting privileged materials

- 3 If the person who is to execute the search warrant has reasonable grounds to believe that any thing discovered in the search may be the subject of a privilege, he or she—
 - (a) must provide to any person who he or she believes may be able to claim a privilege a reasonable opportunity to claim it; and
 - (b) may, if he or she is unable to identify or contact a person who may be able to claim a privilege, or that person's

Form—*continued*

lawyer, within a reasonable period, apply to a District Court for a determination as to the status of the thing.

Effect of privilege

- 4 If you make a claim of privilege in respect of any thing that is seized or sought to be seized, you have the right—
- (a) to prevent the search of any communication or information to which the privilege would apply, pending determination of the claim to privilege, and subsequently if the claim to privilege is upheld:
 - (b) to require the return of a copy of, or access to, any such communication or information, pending determination of the claim to privilege.

Important: If you do not understand this information or if you want further advice about the availability of privileges and how any of those privileges may be claimed, you should consider getting legal advice on the matter immediately.

Inquiries

If you have any inquiries about this search, you should contact the officer in charge, whose details are below.

[Officer's name or unique identifier] at [address].

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are the Biosecurity (Form of Search Warrant) Regulations 2012. The regulations, which come into force on 1 October 2012, revoke and replace the Biosecurity (Forms) Regulations 1995 (the **1995 regulations**).

Regulation 4 and the *Schedule* re-enact, with some changes, the prescribed form for a search warrant issued under section 111 of the Biosecurity Act 1993 (the **Act**) (form B of the Schedule of the 1995 regulations). The changes to the form standardise the content and style of the form, to the extent that is possible, with those of other prescribed forms for search warrants.

These regulations do not carry over the current form for a search warrant issued under section 110 of the Act to enter and inspect a dwellinghouse, marae, or building associated with a marae (Form A of the Schedule of the 1995 regulations). This is because it is unnecessary to re-enact this form as provisions of the Search and Surveillance Act 2012, which also come into force on 1 October 2012, amend the Biosecurity Act 1993 to—

- provide that applications for search warrants (except a search warrant issued under section 111) are to be made in the manner provided by the Search and Surveillance Act 2012; and
- dispense with the need for search warrants to be in a prescribed form.

Regulation 5 revokes the Biosecurity (Forms) Regulations 1995.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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These regulations are administered by the Ministry for Primary Industries.
