

EXPLANATORY STATEMENT

Issued by the Comptroller-General of Customs

Customs Act 1901

Comptroller-General of Customs (Warrants) Amendment Directions 2021

Authority

Section 183UC of the *Customs Act 1901* (the Act) provides that the Comptroller-General of Customs may, by legislative instrument, give directions relating to the powers of officers under Division 1 of Part XII of the Act.

Background

Division 1 of Part XII of the Act provides for the issuing of search and seizure warrants.

In particular:

- Subdivision C of Division 1 of Part XII of the Act enables a judicial officer to issue a warrant to search premises or a person if there are reasonable grounds for suspecting that there is, or within the next 72 hours will be, evidence relating to an offence on or in the premises or in the person's possession;
- Subdivision D of Division 1 of Part XII of the Act enables a judicial officer to issue a warrant to seize goods on or in particular premises if satisfied that an authorised person has reasonable grounds for suspecting that the goods are forfeited goods and the goods are, or within the next 72 hours will be, on or in the premises and are required to be seized; and
- Subdivision DA of Division 1 of Part XII of the Act enables a judicial officer to issue a warrant to seize goods on or in a particular premises if satisfied that an authorised person has reasonable grounds for suspecting that the goods are forfeited goods and the goods are, or within the next 72 hours will be, on or in the premises and the goods have been or will be brought into Australia on a ship or aircraft and are intended to be kept on board the ship or aircraft for shipment on to a place outside Australia.

Section 183UC of the Act enables the Comptroller-General of Customs to give, by legislative instrument, directions relating to the powers of officers under Division 1 of Part XII of the Act. Such directions are contained in the *Comptroller-General of Customs (Warrants) Directions 2015* (the Directions).

The Directions make provision in relation to the application for, and execution of, search and seizure warrants. The Directions refer specifically to officers in the Enforcement Command of the Department.

Purpose

On 1 December 2021, the Australian Border Force will be restructured. As a result, the Directions are being updated so that they reflect the Australian Border Force's structure as at that date.

In particular, the provisions are being redrafted to apply to ABF Investigators and to other officers of Customs applying for and executing warrants, rather than by reference to the names of particular parts of, or positions of SES employees in, the Australian Border Force.

The Directions are also being updated to add higher-level Diploma qualifications that may be held by ABF Investigators and to make other minor technical changes to the Directions, including to reporting requirements.

Consultation

The amendments contained in the Amendment Directions only affect officers in the Department. As such, the amendments are minor and of a machinery nature, and consultation was not appropriate.

Commencement

The Amendment Directions commence on 1 December 2021.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Comptroller-General of Customs (Warrants) Amendment Directions 2021

This legislative instrument, entitled the “Comptroller-General of Customs (Warrants) Amendment Directions 2021” (the Amendment Directions), is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Amendment Directions amends the *Comptroller Directions (Warrants) 2015* (the Directions) to reflect the Australian Border Force’s structure following the restructure taking effect on 1 December 2021.

The Directions make provision in relation to the application for, and execute of, search and seizure warrants. The Directions refer specifically to officers in the Enforcement Command of the Department.

As a result, the Directions need to be updated so that they apply to ABF Investigators and to other officers of Customs applying for and executing warrants, rather than by reference to the names of particular parts of, or positions of SES employees in, the Australian Border Force.

The Amendment Directions also make changes to add higher-level Diploma qualifications that may be held by ABF Investigators, and to make other minor technical changes, including to reporting requirements.

Human Rights implications

The Amendment Directions do not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The Amendment Directions are compatible with human rights as they do not raise any human rights issues.

Comptroller-General of Customs