

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the Comptroller-General of Customs

Customs Act 1901

Comptroller-General of Customs (Warrants) Amendment Directions 2021

Purpose of supplementary explanatory statement

This supplementary explanatory statement amends the initial explanatory statement (the explanatory statement) to the *Comptroller-General of Customs (Warrants) Amendment Directions 2021* (the Amendment Directions), following correspondence with the Senate Standing Committee for the Scrutiny of Delegated Legislation. It provides further detail about each of the amendments made by the Amendment Directions to the *Comptroller-General of Customs (Warrants) Directions 2015* (the Directions).

Details of the Directions

Before Attachment A to the explanatory statement, insert the following Attachment:

ATTACHMENT AA

Details of the Comptroller-General of Customs (Warrants) Amendment Directions 2021

Section 1 – Name of the Instrument

This section provides that the title of this instrument is the *Comptroller-General of Customs (Warrants) Amendment Directions 2021* (the Amendment Directions).

Section 2 – Commencement

This section provides that the instrument commences on 1 December 2021.

Section 3 – Authority

This section sets out the authority under which the Amendment Directions are made, which is section 183UC of the *Customs Act 1901*.

Section 4 – Schedules

This section sets out the formal enabling provision for the Schedules to the Amendment Directions and provides that each instrument that is specified in a Schedule to the Amendment Directions is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the Amendment Directions has effect according to its terms.

The instrument amended is the *Comptroller-General of Customs (Warrants) Directions 2015* (the Directions).

Schedule 1 – Amendments

Comptroller-General of Customs (Warrants) Directions 2015

Item 1 – Section 1.1

Item 1 amends section 1.1 of the Directions. The current version of section 1.1 acts as a preamble to the Directions, stating that the Directions outline the policy of the Department of Immigration and Border Protection. As the name of the Department has changed, to streamline the provision, this part of the provision is omitted.

Item 2 – Section 1.4

Item 2 amends section 1.4 of the Directions. Section 1.4 defines the term ‘Officer in Charge’ (OIC), which is an officer with warrant oversight responsibilities under the Directions. Section 1.4 currently sets out an example of persons eligible to be an OIC by reference to a position in Enforcement Command, which has changed to a regional control and specialist unit structure under the restructure of the Australian Border Force (ABF). The term Enforcement Command no longer reflects the contemporary command structure of the ABF. Item 2 removes the example so that the OIC is the highest ranking officer in a regional branch on duty at the time.

Item 3 – Section 1.5

Item 3 amends section 1.5 of the Directions. Section 1.5 defines the term ‘Case Manager’, which is an officer with warrant oversight responsibilities under the Directions. Section 1.5 currently sets out an example of officers who may be a Case Manager, including EL1 officers/Investigators. Item 3 removes reference to EL1 officers, to ensure the scope of Case Managers reflects the current authority structure of these duties in the ABF.

Item 4 – Section 1.6

Item 4 amends section 1.6 of the Direction. Section 1.6 defines the term ‘Case Officer’, which is an officer with warrant reporting responsibilities under the Directions. Section 1.6 currently sets out an example of officers who may be a Case Officer, including APS6 officers/ Supervisors. Item 4 removes the reference to APS6 officers, and inserts a reference to Senior Border Force Officers, to ensure the scope of Case Officers reflects the current authority structure of these duties in the ABF.

Item 5 – At the end of section 1

Item 5 inserts sections 1.7 and 1.8 at the end of section 1 to define the terms ‘Australian Border Force’ and ‘ABF Investigator’. Section 1.7 provides that the term ‘Australian Border Force’ has the same meaning as the *Australian Border Force Act 2015*, being the part of the Department known as the Australian Border Force. Section 1.8 defines the term ‘ABF Investigator’ to be an officer of Customs occupying a position in the ABF as an Investigator. ABF Investigators are within regional units and specialist units throughout the ABF.

Item 6 – Section 2.1

Item 6 repeals and substitutes section 2.1 of the Directions. Section 2.1 sets out the category of persons who may apply for and execute a search warrant, currently by reference to officers in Enforcement Command. Following the ABF restructure, the substituted version of section 2.1 instead enables warrants to be applied for and executed by qualified ABF Investigators in regional and specialist units. In addition, it also enables ABF Investigators to apply for and execute these warrants if they hold the higher qualification of a Diploma or Advanced Diploma in Government Investigation, instead of only where holding the relevant Certificate IV.

Item 7 – Section 2.2

Item 7 amends section 2.2 of the Directions. Section 2.2 sets out the category of persons who may apply for and execute a seizure warrant or seizure of goods in transit warrant. Replacing officers in Enforcement Command following the restructure of the ABF, the amended section 2.2 enables these warrants to be applied for and executed by qualified ABF Investigators in regional and specialist units of the ABF. The amended version of section 2.2 also enables ABF Investigators to apply for and execute these warrants if they hold the higher qualification of a Diploma or Advanced Diploma in Government Investigation, instead of only where holding the relevant Certificate IV.

Item 8 – Section 2.4 (heading)

Item 8 amends the heading to section 2.4 of the Directions, which sets out the requirements for warrant application vetting, to remove the reference to ‘Enforcement Command’. The term Enforcement Command no longer reflects the contemporary command structure of the ABF.

Item 9 – Section 2.4

Item 9 amends section 2.4 of the Directions, which provides for warrant application vetting, to update a reference to Legal Division to correctly reflect the Legal Group in the Department’s current structure.

Item 10 – Section 2.6

Item 10 amends section 2.6 of the Directions. Section 2.6 sets out the procedure for further warrant applications where the initial application is rejected for a substantive deficiency. The current version of section 2.6 states that further application must not be made without prior permission from the ‘OIC of the regional Branch’. The substituted version of section 2.6 replaces this with ‘relevant OIC’, to reflect the language used in the amended Directions when referring to the OIC.

Item 11 – Section 2.7

Item 11 amends section 2.7 of the Directions. Section 2.7 sets out the record-keeping requirements for decisions and considerations regarding the application and execution of

warrants, including particular requirements for warrants executed within Enforcement Command. The substituted version of section 2.7 is a structure-neutral provision to ensure records are kept in accordance with requirements applicable in the circumstances.

Item 12 – Section 2.8

Item 12 repeals and substitutes section 2.8 of the Directions. Section 2.8 sets out the requirement for warrants to be executed only when in accordance with the interests and functions of the Department. Currently there are separate requirements for warrants executed within Enforcement Command, which is a term no longer reflective of ABF command structure. The substituted version of section 2.8 streamlines this requirement and requires the relevant OIC within the region or specialist team to confirm in writing that the proposed warrant meets this threshold in relation to the ABF.

Item 13 – Section 2.9

Item 13 repeals and substitutes section 2.9 of the Directions. Section 2.9 sets out the persons an OIC is required to brief prior to the execution of warrants relating to potentially sensitive matters. The current version of section 2.9 includes SES1/Commander Enforcement Command or Regional Commanders in the list of persons to be briefed by an OIC. The substituted version of section 2.9 is a structure-neutral provision that applies this requirement to briefing the relevant SES and acting SES employees in the circumstances. This due to the term Enforcement Command no longer being reflective of ABF command structure.

Item 14 – Section 2.10

Item 14 amends section 2.10 of the Directions. Section 2.10 sets out the reporting requirements for allegations of damage to property caused during the execution of a warrant, including the persons to which the report must be delivered. The current version of section 2.10 requires reports to be delivered to an ‘SES1/Commander or Regional Commander’. The amended version of section 2.10 is a structure-neutral provision that applies this requirement to reporting to the relevant SES or acting SES employee in the circumstances.

Item 15 – Section 2.11

Item 15 repeals and substitutes section 2.11 of the Directions. Section 2.11 sets out the warrant record-keeping requirements. The substituted version of section 2.11 updates the names of documents required to be kept to match current Departmental reporting. The substituted version of section 2.11 also ensures that these records must be kept in accordance with applicable record-keeping requirements, including case management systems.

Item 16 – Section 3 (heading)

Item 16 amends the heading to section 3 of the Directions. The current version of section 3 deals with warrants applied for by officers in Enforcement Command, which is a term no longer reflective of ABF command structure. Following the Amendment Directions, section 3

deals with warrants applied for by ABF Investigators. The amended heading to section 3 reflects this change.

Item 17 – Section 3.1

Item 17 amends section 3.1 of the Directions to provide that section 3 applies to ABF Investigators in regional and specialist units, rather than officers in Enforcement Command (which is a term no longer reflective of ABF command structure).

Item 18 – Section 3.2

Item 18 repeals and substitutes section 3.2 of the Directions. Section 3.2 sets out the requirements for and contents of Pre Warrant Reports, including how they must be recorded and the officers to which they must be disseminated. The substituted version is a structure-neutral provision that requires the Report to be recorded in the case management system, and disseminated to the relevant OIC and relevant SES or acting SES employees in the Australian Border Force.

Item 19 – Section 3.3

Item 19 repeals and substitutes section 3.3 of the Directions. Section 3.3 sets out the requirements for and contents of Post Warrant Reports. The substituted version of section 3.3 is being aligned with the Pre-Warrant Report provision in section 3.2. This includes a requirement to disseminate the Post Warrant Report to the relevant OIC and relevant SES or acting SES employee in the Australian Border Force.

Item 20 – Section 3.4

Item 20 repeals and substitutes section 3.4 of the Directions. Section 3.4 sets out the requirement to report an instance of use of force to execute a warrant. The substituted version of section 3.4 updates references to the procedures that must be followed to refer to current Australian Border Force operational safety procedures and Use of Force Reports.

Item 21 – Section 4

Item 21 repeals and substitutes section 4 of the Directions to make consequential changes following the change in scope in section 3. Substituted section 4 clarifies this procedure and provides that similar procedures to section 3 will be followed for warrants applied for by officers other than ABF Investigators.

Item 22 – Section 5

Item 22 repeals and substitutes section 5 of the Directions. Section 5 sets out the Transitional matters for the Directions dealing with the amendments made by the Amendment Directions.

Section 5.1 applies the amended version of the Directions to any warrants, including those applied for, or issued, before the commencement of the amendments. However, section 5.2 ensures that anything already done to comply with the requirements of the old version of the

Directions will be taken to meet the requirements of the corresponding provisions of the amended Directions.