



LIN21/095

Comptroller-General of Customs (Warrants) Amendment Directions 2021

I, Michael Outram, Comptroller-General of Customs, make the following directions.

Dated 26 November 2021

Michael Outram
Comptroller-General of Customs

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Schedules	1
Schedule 1—Amendments	2
<i>Comptroller-General of Customs (Warrants) Directions 2015</i>	2

1 Name

This instrument is the *Comptroller-General of Customs (Warrants) Amendment Directions 2021*.

2 Commencement

This instrument commences on 1 December 2021.

3 Authority

This instrument is made under section 183UC of the *Customs Act 1901*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Comptroller-General of Customs (Warrants) Directions 2015

1 Section 1.1

Omit “regarding warrants outline the policy of the Department of Immigration and Border Protection (the Department)”, substitute “set out directions”.

2 Section 1.4

Omit “a regional Branch on duty at the time e.g. EL2/Superintendent of a regional office of Enforcement Command”, substitute “a regional branch on duty at the time”.

3 Section 1.5

Omit “the case relevant to a particular warrant, e.g. EL1/Inspector”, substitute “the investigation relevant to a particular warrant, e.g. Inspector.”.

4 Section 1.6

Omit “investigating officer of the case relevant to a particular warrant, e.g. APS6/Supervisor”, substitute “officer responsible for conducting the investigation relevant to a particular warrant, e.g. Supervisor/Senior Border Force Officer”.

5 At the end of section 1

Add:

- 1.7 The term ‘Australian Border Force’ has the same meaning as in the *Australian Border Force Act 2015*.
- 1.8 The term ‘ABF Investigator’ refers to an officer of Customs who occupies a position in the Australian Border Force as an investigator.

6 Section 2.1

Repeal the section, substitute:

2.1 Applying for and executing a search warrant relating to premises or a person

A search warrant may only be applied for or executed by an officer of Customs who is an ABF Investigator, and holds one or more of the following qualifications:

- a) a Certificate IV in Government (Investigations);
- b) a Diploma or Advanced Diploma of Government Investigation.

An executing officer or person assisting must comply with all of the conditions of the warrant.

7 Section 2.2

Omit “has obtained a Certificate IV in Government (Investigations) and occupies a position in Enforcement Command as an investigator” (wherever occurring), substitute “is an ABF Investigator who holds a Certificate IV in Government (Investigations) or a Diploma or Advanced Diploma of Government Investigation”.

8 Section 2.4 (heading)

Omit “Enforcement Command”, substitute “warrant”.

9 Section 2.4

Omit “Legal Division”, substitute “Legal Group”.

10 Section 2.6

Omit “OIC of the regional Branch”, substitute “relevant OIC”.

11 Section 2.7

Omit “on the relevant case file, and for Enforcement Command these records must also be kept in the case management system”, substitute “in accordance with applicable record-keeping requirements (including case management systems)”.

12 Section 2.8

Repeal the section, substitute:

2.8 Warrants to be executed only when in the interest of the Australian Border Force

Prior to warrant execution, the relevant OIC must confirm in writing that the proposed warrant is necessary and in accordance with the interests and functions of the Australian Border Force.

13 Section 2.9

Repeal the section, substitute:

2.9 Potentially sensitive matters

The OIC will ensure that a relevant SES employee or acting SES employee in the Australian Border Force is briefed prior to the execution of a warrant relating to a potentially sensitive matter.

14 Section 2.10

Omit “their SES1/Commander or Regional Commander”, substitute “the relevant SES employee or acting SES employee in the Australian Border Force”.

15 Section 2.11

Repeal the section, substitute:

2.11 Records

Each OIC of a relevant work area for warrants must maintain a formal record of all warrant applications (regardless of outcome), executed warrants, frisk/ordinary searches, Australian Border Force Use of Force Reports and allegations of damage. Records must be kept in accordance with applicable record-keeping requirements (including case management systems).

16 Section 3 (heading)

Omit “**Enforcement Command**”, substitute “**ABF Investigator**”.

17 Section 3.1

Omit “officers in Enforcement Command”, substitute “ABF Investigators”.

18 Section 3.2

Repeal the section, substitute:

- 3.2 Pre Warrant Report: following approval from the Case Manager to make a warrant application, and prior to execution of the warrant, a Pre Warrant Report must be completed by the Case Officer. The report must detail the nature and purpose of the proposed warrant action, including a risk assessment, must be recorded in the case management system. The Pre Warrant report must be disseminated in accordance with ABF operational reporting requirements, and must be forwarded to:
- a) the OIC; and
 - b) the relevant SES employees or acting SES employees in the Australian Border Force.

19 Section 3.3

Repeal the section, substitute:

- 3.3 Post Warrant Report: following search warrant execution, a Post Warrant Report must be compiled by the Case Officer and recorded in the case management system. The report details the events and outcome of the warrant. The Post Warrant Report must be disseminated in accordance with ABF operational reporting requirements, and must be forwarded to:
- a) the OIC; and
 - b) the relevant SES employees or acting SES employees in the Australian Border Force.

20 Section 3.4

Repeal the section, substitute:

- 3.4 Use of force: where use of force was necessary and reasonable to execute a warrant, full details must be reported to the OIC as soon as practicable after the incident. Australian Border Force operational safety procedures and Use of Force Reports must be followed/completed.

21 Section 4

Repeal the section, substitute:

4. **Directions regarding reporting in other Australian Border Force work areas**
- 4.1 Similar procedures to those set out in section 3 must be followed for warrants applied for by officers other than ABF Investigators to ensure consistency and accountability.

22 Section 5

Repeal the section, substitute:

5. **Transitional matters**

-
- 5.1 This instrument, as in force after the commencement of this section, applies in relation to warrants applied for, or issued, before that commencement.
- 5.2 Anything done or omitted to be done in accordance with a provision of this instrument (as in force before the commencement of this section) is taken to have been done or omitted to be done in accordance with the corresponding provision of this instrument (as in force after that commencement).

Note: See the *Comptroller-General of Customs (Warrants) Amendment Directions 2021* for the amendments made to this instrument to which this section applies.