



AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE PRACTICE STATEMENT

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Title: Customs delegations and authorisations (Interim Policy).

Purpose: To set out the process for making delegations and authorisations under heads of power under the Customs Acts ensuring that:

- a) the provision and issue of delegations and authorisations to officers of Customs by the Minister for Home Affairs (**Minister**) or Chief Executive Officer of Customs (**CEO**) respectively accord with applicable legislative requirements; and
- b) the exercise of those delegations and authorisations accords with legislative requirements and the general law and do not exceed any limits of authority defined by the Minister or CEO respectively.

Owner: Chief Operating Officer

Category: Corporate

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Summary of main points

Customs and Border Protection Practice Statements are endorsed policy and must be followed by all Customs and Border Protection employees. This Practice Statement outlines:

- Powers and functions under Customs' legislation
- Customs delegations and authorisations
- The process for making instruments of delegation and authorisation
- Exercising legislative powers and functions

The electronic version published on the intranet is the current Practice Statement.

Introduction Statement

Generally speaking legislation confers powers and functions on the Minister for Home Affairs (Minister) and the Chief Executive Officer of Customs and Border Protection (CEO). Vast numbers of actions and decisions are made by the Minister and the CEO under various heads of power under the Customs Acts. Administration can only truly be efficient and effective if the responsibility for certain actions and decisions are devolved from department heads, CEO and Ministers. Delegations and authorisations are the mechanisms that make this devolution of power lawful.

Definitions

- Collector** means the CEO, the Regional Director for a State or Territory, or any Officer of Customs doing duty in the matter in relation to which the expression is used.
- Customs Acts** means the *Customs Act 1901*, the *Customs Administration Act 1985*, any other Act and any instruments (including rules, regulations or by-laws) made under the Customs Act, the Customs Administration Act or any other Act, relating to Customs in force within the Commonwealth or any part of the Commonwealth.
- Officer of Customs** means a person employed by Customs and Border Protection or authorised in writing by the CEO

Scope

This Practice Statement covers all operational delegations and statutory authorisations made by the CEO or the Minister for Home Affairs under the Customs Acts and applies to staff in all Divisions.

This Practice Statement excludes financial authorisations made under the *Financial Management and Accountability Act 1997*, Financial Management and Accountability Regulations 1997 and the Financial Management and Accountability (Finance Minister to Chief Executives) Delegation 2010, and human resources delegations made under the *Public Service Act 1999*.

For queries relating to delegations made by other agency heads/Ministers (under legislation other than the Customs Acts) contact the relevant Customs and Border Protection Branch from the list¹ below:

- For Australian Tax Office delegations see *Trade Revenue & Indirect Tax Policy, Trade Services Branch, Trade and Compliance Division*;
- For Immigration and Citizenship delegations see *Passengers Policy Branch, Passengers Division*;
- For Restricted Goods/Regulation 13E Defence and Strategic Goods List delegations see *Firearms and Weapons Section, Trade Policy and Regulation Branch, Trade and Compliance Division*;

¹ Note that this list is current as at January 2011.

- For financial delegations under the *Financial Management and Accountability Act 1997* see *Finance Governance and Compliance*; and
- For Human Resource delegations under the *Public Service Act 1999* see *People and Place Strategy and Policy Branch, People and Place Division*.

Policy Statement

1. This Practice Statement sets out the Customs and Border Protection Policy concerning:
 - Powers and functions under the Customs Acts;
 - Customs delegations and authorisations;
 - Delegation Instruments (and how to make and revoke them); and
 - Exercising a power or function.

Powers and functions under the Customs Acts

General Principles

2. Powers and functions under the Customs Acts may be performed by the following:
 - Minister;
 - CEO;
 - Collector;
 - Officers of Customs; and
 - Authorised Officers.

Sources of power

Ministerial Powers

3. Section 9 of the Customs Act provides the Minister with the power to delegate, by signed instrument, to an Officer of Customs all or any of the functions and powers of the Minister under the Customs Acts. Under section 9, any power or function exercised by the delegate is deemed to have been performed or exercised by the Minister.
4. Note – there are certain powers under anti-dumping provisions of the Customs Act which cannot be delegated.
5. In addition to powers delegated by the Minister under section 9 of the Customs Act, there are similar delegation provisions in the legislation of other Ministers. For example, Officers of Customs may be delegated powers and functions by the Minister for Immigration and Citizenship under the *Migration Act 1958* or the Commissioner of Taxation under the GST Acts.

CEO Powers

6. The CEO has many powers and functions under the Customs Acts and several other Commonwealth Acts. Section 14 of the Customs Administration Act 1985 provides the CEO with the power to delegate, by signed instrument, to an officer or class of officers of Customs all or any of the functions and powers of the CEO under the Customs Acts or any other law of the Commonwealth. Other laws of the Commonwealth include but are not necessarily limited to the:
 - *Australian Postal Corporation Act 1989*
 - *Copyright Act 1968*

- *Crimes Act 1914*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Financial Transactions Reports Act 1988*
- *Fisheries Management Act 1991*
- *Migration Act 1958*
- *Narcotic Drugs Act 1967*
- *National Health Act 1953*
- *Olympic Insignia Protection Act 1987*
- *Psychotropic Substances Act 1976*
- *Quarantine Act 1908*
- *Trade Marks Act 1995*

Officers of Customs Powers

7. The CEO can only delegate his or her powers and functions to Officers of Customs. If it is necessary to delegate powers and functions to officers who are not Officers of Customs (eg officers of Tax or Immigration) those officers must first be made Officers of Customs in accordance with section 4(1) of the Customs Act which provides that an Officer of Customs means, amongst other things, a person authorised in writing by the CEO under the Customs Act to perform all of the functions of an Officer of Customs.

Authorised Officers

8. Subsection 4(1) of the Customs Act provides that an authorised officer means an officer of customs authorised in writing by the CEO to exercise the powers or perform the functions of an authorised officer under that section.
9. Officers of Customs can also exercise powers and functions in their own right. For example under section 186 of the Customs Act an Officer of Customs may examine any goods subject to the control of Customs and Border Protection.

Customs Delegations and Authorisations

10. There are two main ways in which an Officer of Customs can be delegated or authorised to exercise powers and functions:
 - Delegations; and
 - Statutory authorisations.

Delegations

11. A person can exercise a power or perform a function of another person if there is an express power of delegation. If a person has been delegated a power or a function, that power or function may be exercised by the delegate based on their opinion, belief or state of mind. The exercise of a delegated power by a delegate is an act of the delegate and not the person who delegated the power.
12. This means that the person who delegated the power cannot:
 - Direct the delegate in the exercise of the delegate's discretion; or
 - Make the exercise by the delegate of the power conditional on certain events occurring, or on the delegate taking certain action.
13. The person delegating the power can:
 - issue non-binding guidelines. However failure to comply with the guidelines would not, of itself, invalidate a delegate's exercise of power.

- Still exercise the power or perform the function.
14. Delegations may be limited. For example, an officer may be delegated power for a limited period of time.
 15. Under a delegation, the:
 - The delegate must exercise the power or perform the function based upon their own opinion, belief or state of mind;
 - The exercise of a delegated power is an act of the delegate and not the person who delegated the power;
 - The delegator cannot direct the delegate how to exercise the power or perform the function;
 - The delegator can issue non-binding guidelines;
 - The delegator can still exercise the power or function notwithstanding that it has been delegated to another person; and
 - The delegation can be limited.

Statutory Authorisations

16. Some legislation provides for the appointment of authorised officers or the authorisation of certain persons to exercise specified statutory powers. For example, under the Customs Acts, particular functions and powers are conferred on authorised officers. In such cases the authorised officer exercises the power or function in his or her own right. As previously mentioned, an authorised officer can also exercise powers and functions in their own right.
17. The principles governing delegations described above apply equally to statutory authorisations. The principles relating to delegates exercising their own discretion, the form of instruments of delegation and the effect of a change of person holding the office of the delegator apply equally to statutory authorisations.

Instruments of Delegation and Authorisation

18. There are a number of different forms of instruments of delegation and authorisation. These include instruments of delegation based on:
 - Position Numbers;
 - Name; and
 - Class of officers.

Positions Numbers

19. Instruments usually refer to the persons holding, occupying or from time to time performing the duties of designated positions. This means that, as different people occupy the same position they can exercise the delegation while occupying that position. It is therefore important that you always check whether the position you are currently in has a delegation. For example, when performing higher duties it does not automatically follow that because the lower position had been delegated powers and functions that those same powers and functions are held by the higher position.

Name

20. Sometimes powers and functions are delegated to a person by reference to that person's name. The CEO usually authorises an officer of Customs to exercise

the relevant powers or perform the relevant functions by reference to the officer's name. This is generally because the powers or functions quite often require specific training before they can be exercised (for example audit, search etc). The officer of Customs will be able to exercise the power or perform the function independently of the position that they are in. Usually such delegations are revoked once the person moves to another area of Customs and Border Protection where they no longer need to exercise the powers or perform the functions.

Class of Officers

21. Powers and functions may also be delegated to a class of officers (for example all Level 3 officers in the Passengers Division). This type of delegation is often simplest and most flexible but currently its use is not widespread across Customs and Border Protection².

How to make (and revoke) an Instrument of Delegation or Authorisation

22. The LSB prepares all instruments of delegation and authorisation and all instruments of revocation. The process of preparing instruments of delegation or authorisation or the revocation of a delegation or authorisation is to:
 - Establish whether a delegation or authorisation or revocation of a delegation or authorisation is required;
 - Confirm whether training is required/has been undertaken;
 - Obtain NM/ND approval;
 - Send a request for delegation or authorisation or revocation of a delegation or authorisation together with the NM/ND approval to the LSB.

LSB will prepare the relevant instruments for the CEO's or Minister's approval

23. Contact the LSB if you require an instrument of delegation or authorisation to be either made or revoked.
24. Once an instrument of delegation or authorisation, or an instrument of revocation, has been signed by the CEO or Minister, the LSB will input the data into People Soft, within 5 working days. A copy of the signed instrument will be provided to the person requiring the delegation or authorisation or the instrument of revocation. The LSB retains all original instruments.

Delegations by other Agency Heads

25. Delegations by other agency heads or Ministers to officers of Customs are prepared by the relevant agencies.

Exercising a power or function

26. Officers of Customs - what to do before exercising a power or a function:
 - Check whether you have a delegation or authorisation;
 - Confirm that it is appropriate for you to exercise the delegation or authorisation;

² The more widespread use of this type of instrument is being considered as part of the implementation of the new COMPASS system.

- Check whether there are any limits to the delegation or authorisation and that what you are proposing to do falls within those limits;
 - Read all relevant administrative procedures and guidelines
27. When exercising the power or performing the function under a delegation or authorisation, it is extremely important to remember at all times that:
- The decision is your own;
 - You must take into account all relevant considerations;
 - You must not take into account irrelevant matters;
 - Your decision must be reasonable, fair and unbiased; and
 - You must not seek to achieve an improper purpose or exhibit bad faith or improper motive in exercising a discretion;
 - You may contact the LSB if you have any queries or concerns.

Key roles and responsibilities

The Legal Services Branch has responsibility for this Practice Statement.

Consultation

This Practice Statement is an interim policy statement that reflects existing practices. In preparing this Practice Statement, all National Directors were consulted³:

Approval

Approved on	16 February 2011	
By	Mike Pezzullo Chief Operating Officer	
Endorsed on	17 February 2011	
By	Michael Carmody Chief Executive Officer	

³ Substantial consultation will be undertaken at the relevant time when this Practice Statement is reviewed as part of the COMPASS implementation system.