



# **Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018**

**No. 82, 2018**

**An Act to amend the law dealing with illicit tobacco offences, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018

No. 82, 2018

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**An Act to amend the law dealing with illicit tobacco offences, and for related purposes**

[Assented to 24 August 2018]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 August 2018
2. Schedule 1	The day after this Act receives the Royal Assent.	25 August 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Offences**

#### ***Excise Act 1901***

##### **1 Subsection 129A(1)**

After “against subsections 117(2) and 117B(2)”, insert “, and for offences against section 295-75 in Schedule 1 to the *Taxation Administration Act 1953*,”.

##### **2 Section 129B**

After “against subsection 117(2) or 117B(2),”, insert “or against section 295-75 in Schedule 1 to the *Taxation Administration Act 1953*,”.

#### ***Income Tax Assessment Act 1997***

##### **3 Subsection 995-1(1)**

Insert:

*customs duty* has the meaning given by the \*GST Act.

*excisable goods* has the meaning given by the \*GST Act.

#### ***Taxation Administration Act 1953***

##### **4 After Division 290 in Schedule 1**

Insert:

### **Division 295—Miscellaneous civil penalties**

#### **Table of Subdivisions**

295-B	Civil penalty for possession of tobacco without relevant documentation
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## **Subdivision 295-B—Civil penalty for possession of tobacco without relevant documentation**

### **Guide to Subdivision 295-B**

#### **295-70 What this Subdivision is about**

A person is liable to a civil penalty if the person possesses 2 kilograms or more of tobacco and the person:

- (a) does not provide certain documents (such as a tax invoice) indicating how the person obtained the tobacco; or
- (b) has stated that the possession was engaged in on behalf of or at the request of another person, but does not provide information enabling the other person to be identified and located.

However, the person will not be liable to the civil penalty in certain circumstances, such as where:

- (a) the person is an individual, and possesses the tobacco for his or her personal use; or
- (b) the person has reasonable grounds to suspect that excise duty or customs duty has been paid on the tobacco, or excise duty and customs duty is not payable on the tobacco.

#### **Table of sections**

295-75	Possession of tobacco without relevant documentation etc.
295-80	Things treated as tobacco

#### **295-75 Possession of tobacco without relevant documentation etc.**

- (1) A person contravenes this subsection if:
  - (a) the person possesses a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  - (d) the condition in subsection (2) is satisfied; and



- (e) the weight of the tobacco equals or exceeds 2 kilograms.
- (2) For the purposes of paragraph (1)(d), the condition in this subsection is satisfied if:
- (a) the person has not provided any of the following:
    - (i) a \*tax invoice indicating how the person obtained the tobacco;
    - (ii) a bill of lading indicating how the person obtained the tobacco;
    - (iii) a customs declaration indicating how the person obtained the tobacco; or
  - (b) the person:
    - (i) has stated that the possession was engaged in on behalf of or at the request of another person; and
    - (ii) has not provided information enabling the other person to be identified and located.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).
- Penalty: 100 penalty units.
- (4) Section 308-510 applies to this section in the same way that it applies to Division 308.
- (5) Subsection (1) does not apply if:
- (a) the person is an individual; and
  - (b) the person possesses the tobacco for his or her personal use.
- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- (7) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or

- (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.
- (8) Subsection (1) does not apply if:
- (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.
- (9) Subsection (1) does not apply if:
- (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
  - (b) the person has reasonable grounds to suspect that any of those circumstances exist.
- (10) If person wishes to rely on subsection (5), (6), (7), (8) or (9) in civil penalty proceedings, the person bears an \*evidential burden in relation to that matter.

### **295-80 Things treated as tobacco**

- (1) For the purposes of this Division, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.
  - (2) To avoid doubt, for the purposes of this Division:
    - (a) treat tobacco seed, tobacco plant (whether or not in the ground) and tobacco leaf as tobacco; and
    - (b) treat cigars, cigarettes and snuff as tobacco.
-

**5 After paragraph 298-80(a) in Schedule 1**

Insert:

- (aa) subsection 295-75(1) in this Schedule (possession of tobacco without relevant documentation);

**6 After Part 4-25 in Schedule 1**

Insert:

**Part 4-30—Offences and prosecutions**

**Division 308—Offences relating to tobacco**

**Table of Subdivisions**

	Guide to Division 308
308-A	Reasonable suspicion offences relating to tobacco
308-B	Fault-based offences of possession, production and manufacture
308-C	Offences relating to equipment relating to the manufacture or production of tobacco
308-E	Other provisions

**Guide to Division 308**

**308-1 What this Division is about**

This Division sets out offences and related provisions relating to tobacco.

## **Subdivision 308-A—Reasonable suspicion offences relating to tobacco**

### **Guide to Subdivision 308-A**

#### **308-5 What this Subdivision is about**

This Subdivision sets out offences for the possession, sale or buying of tobacco of various quantities where it is reasonable to suspect that none of the following circumstances exist:

- (a) excise duty has been paid on the tobacco;
- (b) customs duty has been paid on the tobacco;
- (c) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
- (d) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth.

This Subdivision sets out defences to those offences, such as where an accused person has a relevant permission or licence under excise or customs legislation.

#### **Table of sections**

308-10	Possession of tobacco (500 kilograms or above)—reasonable suspicion offence
308-15	Possession of tobacco (100 kilograms or above)—reasonable suspicion offence
308-20	Possession of tobacco (5 kg or above)—reasonable suspicion offence
308-25	Sale of tobacco (500 kilograms or above)—reasonable suspicion offence
308-30	Sale of tobacco (100 kilograms or above)—reasonable suspicion offence
308-35	Sale of tobacco (5 kg or above)—reasonable suspicion offence
308-40	Buying of tobacco (500 kilograms or above)—reasonable suspicion offence
308-45	Buying of tobacco (100 kilograms or above)—reasonable suspicion offence
308-50	Buying of tobacco (5 kg or above)—reasonable suspicion offence
308-55	Matters taken to satisfy “reasonable to suspect” requirement

#### **308-10 Possession of tobacco (500 kilograms or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person possesses a thing; and

- (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
- (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
- (d) it is reasonable to suspect that none of the following circumstances exist:
  - (i) \*excise duty has been paid on the tobacco;
  - (ii) \*customs duty has been paid on the tobacco;
  - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
  - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
- (e) the weight of the tobacco is 500 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

- (a) 1,000 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.

- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
  - (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if:
  - (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:
  - (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
  - (a) any of the following circumstances exist:

- (i) \*excise duty has been paid on the tobacco;
  - (ii) \*customs duty has been paid on the tobacco;
  - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
  - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
- (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

### **308-15 Possession of tobacco (100 kilograms or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person possesses a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
  - (e) the weight of the tobacco is 100 kilograms or above.

Penalty: 2 years imprisonment or the greater of the following, or both 2 years imprisonment and the greater of the following:

- (a) 500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were

\*excisable goods and entered for home consumption on the day mentioned in subsection (3); or

- (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- (8) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.



Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:
- (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
- (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
  - (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

### **308-20 Possession of tobacco (5 kg or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person possesses a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;

- (ii) \*customs duty has been paid on the tobacco;
- (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
- (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
- (e) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

- (a) 200 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

- (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if:

- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
- (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
- (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:

- (a) the person has permission (within the meaning of the *Excise Act 1901*):
  - (i) to possess the tobacco; or
  - (ii) to move the tobacco; or
- (b) the tobacco is covered by an authority under section 55 of that Act; or
- (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:

- (a) any of the following circumstances exist:
  - (i) \*excise duty has been paid on the tobacco;
  - (ii) \*customs duty has been paid on the tobacco;
  - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
  - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
- (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

**308-25 Sale of tobacco (500 kilograms or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person sells a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
  - (e) the weight of the tobacco is 500 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

- (a) 1,000 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or

- (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- (8) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).
- (9) Subsection (1) does not apply if:
- (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or

- (b) the tobacco is covered by an authority under section 55 of that Act; or
- (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
- (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
  - (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

**308-30 Sale of tobacco (100 kilograms or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person sells a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
  - (e) the weight of the tobacco is 100 kilograms or above.

Penalty: 2 years imprisonment or the greater of the following, or both 2 years imprisonment and the greater of the following:

- (a) 500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:
- (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
- (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
  - (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

### **308-35 Sale of tobacco (5 kg or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
-



- (a) the person sells a thing; and
- (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
- (c) the tobacco is in Australia but not in an external Territory; and
- (d) it is reasonable to suspect that none of the following circumstances exist:
  - (i) \*excise duty has been paid on the tobacco;
  - (ii) \*customs duty has been paid on the tobacco;
  - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
  - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
- (e) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

- (a) 200 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).

- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
  - (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if:
  - (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:
  - (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
  - (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;

- (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
- (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
- (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

### **308-40 Buying of tobacco (500 kilograms or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
  - (a) the person buys a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
  - (e) the weight of the tobacco is 500 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

- (a) 1,000 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
    - (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or

- (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
  - (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
  - (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if:
  - (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:
- (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
- (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
  - (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

### **308-45 Buying of tobacco (100 kilograms or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person buys a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;

- (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
  - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
  - (e) the weight of the tobacco is 100 kilograms or above.
- Penalty: 2 years imprisonment or the greater of the following, or both 2 years imprisonment and the greater of the following:
- (a) 500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or

- (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if:
  - (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

- (9) Subsection (1) does not apply if:
  - (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or
  - (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:
  - (a) any of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
  - (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

**308-50 Buying of tobacco (5 kg or above)—reasonable suspicion offence**

- (1) A person commits an offence if:
- (a) the person buys a thing; and
  - (b) the thing is tobacco (other than tobacco seed or tobacco plant); and
  - (c) the tobacco is in Australia but not in an external Territory; and
  - (d) it is reasonable to suspect that none of the following circumstances exist:
    - (i) \*excise duty has been paid on the tobacco;
    - (ii) \*customs duty has been paid on the tobacco;
    - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
    - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; and
  - (e) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

- (a) 200 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.



- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(d).
- (6) Absolute liability applies to paragraph (1)(e).
- (7) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- (8) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).
- (9) Subsection (1) does not apply if:
- (a) the person has permission (within the meaning of the *Excise Act 1901*):
    - (i) to possess the tobacco; or
    - (ii) to move the tobacco; or
  - (b) the tobacco is covered by an authority under section 55 of that Act; or

- (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

- (10) Subsection (1) does not apply if:

- (a) any of the following circumstances exist:
- (i) \*excise duty has been paid on the tobacco;
  - (ii) \*customs duty has been paid on the tobacco;
  - (iii) excise duty is not payable on the tobacco because of an exemption under a law of the Commonwealth;
  - (iv) customs duty is not payable on the tobacco because of an exemption under a law of the Commonwealth; or
- (b) the person has reasonable grounds to suspect that any of those circumstances exist.

Note: A defendant bears an evidential burden in relation to the matter in subsection (10) (see subsection 13.3(3) of the *Criminal Code*).

### **308-55 Matters taken to satisfy “reasonable to suspect” requirement**

- (1) Without limiting paragraphs 308-10(1)(d), 308-15(1)(d), 308-20(1)(d), 308-25(1)(d), 308-30(1)(d), 308-35(1)(d), 308-40(1)(d), 308-45(1)(d) and 308-50(1)(d), those paragraphs are taken to be satisfied if any of the following circumstances exist:
- (a) the tobacco is not in retail packaging that complies with the requirements in Chapter 2 of the *Tobacco Plain Packaging Act 2011*;
  - (b) the tobacco does not comply with the requirements mentioned in sections 26 and 27 of the *Tobacco Plain Packaging Act 2011*;
  - (c) in the case of buying or selling:
    - (i) an information standard has been made under subsection 134(1) or 135(1) of Schedule 2 to the *Competition and Consumer Act 2010* for tobacco (or for a particular kind of tobacco); and
    - (ii) the supplier does not comply with the standard in supplying the tobacco;
  - (d) if a safety standard has been made or declared under subsection 104(1) or 105(1) of Schedule 2 to the *Competition*

- and Consumer Act 2010* for tobacco (or for a particular kind of tobacco)—the tobacco does not comply with the standard;
- (e) a permanent ban or an interim ban on consumer goods in force under Part 3-3 of Schedule 2 to the *Competition and Consumer Act 2010* applies to the tobacco;
  - (f) in the case of buying or selling—the price of the tobacco, or the advertised or offered price for the tobacco, is less than the sum of the following amounts:
    - (i) the lower of the amount of \*excise duty or \*customs duty that would apply to the tobacco, assuming that such duty were applicable to the tobacco and that no exemption or reduction of such duty were applicable;
    - (ii) the amount of \*GST that would apply to the sale of the tobacco, assuming that GST were applicable to the sale;
  - (g) in the case of buying or selling:
    - (i) a law of a State or Territory that applies to the buying or selling of the tobacco makes it unlawful to buy or sell tobacco in certain circumstances; and
    - (ii) the buying or selling happens in such circumstances;
  - (h) the person has not provided any of the following:
    - (i) a \*tax invoice indicating how the person obtained the tobacco;
    - (ii) a bill of lading indicating how the person obtained the tobacco;
    - (iii) a customs declaration indicating how the person obtained the tobacco;
  - (i) the person:
    - (i) has stated that the possession, selling or buying was engaged in on behalf of or at the request of another person; and
    - (ii) has not provided information enabling the other person to be identified and located;
  - (j) in the case of selling:
    - (i) the \*GST law requires the person to give the buyer of the tobacco a tax invoice in respect of the sale; and
    - (ii) the person fails to meet that requirement;
  - (k) the tobacco is tobacco leaf that:
    - (i) has not been subjected to any process; or

- (ii) has been subjected only to the process of curing the leaf as stripped from the plant.
- (2) To avoid doubt, subsection (1) does not apply for the purposes of subsections 308-10(10), 308-15(10), 308-20(10), 308-25(10), 308-30(10), 308-35(10), 308-40(10), 308-45(10) and 308-50(10).

### **Subdivision 308-B—Fault-based offences of possession, production and manufacture**

#### **Guide to Subdivision 308-B**

##### **308-105 What this Subdivision is about**

This Subdivision sets out offences for the possession, manufacturing or production of tobacco of various quantities where:

- (a) the tobacco is excisable goods, tobacco seed or tobacco plant, or tobacco leaf that has not been subjected to any relevant process; and
- (b) if excise duty is payable on the tobacco, the full amount of that excise duty has not been paid.

This Subdivision sets out defences to those offences, such as where an accused person has a relevant permission or licence under excise or customs legislation.

##### **Table of sections**

308-110	Possession of tobacco (500 kg or above)—fault-based offence
308-115	Possession of tobacco (100 kg or above)—fault-based offence
308-120	Possession of tobacco (5 kg or above)—fault-based offence
308-125	Manufacture or production of tobacco (500 kg or above)—fault-based offence
308-130	Manufacture or production of tobacco (100 kg or above)—fault-based offence
308-135	Manufacture or production of tobacco (5 kg or above)—fault-based offence

**308-110 Possession of tobacco (500 kg or above)—fault-based offence**

- (1) A person commits an offence if:
- (a) the person possesses a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  - (d) the tobacco is:
    - (i) \*excisable goods; or
    - (ii) tobacco seed or tobacco plant; or
    - (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  - (e) in a case where the tobacco is excisable goods:
    - (i) \*excise duty is payable on the tobacco; and
    - (ii) the full amount of excise duty has not been paid on the tobacco; and
  - (f) the weight of the tobacco is 500 kilograms or above.

Penalty: 10 years imprisonment or the greater of the following, or both 10 years imprisonment and the greater of the following:

- (a) 1,500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:
    - (i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for

- home consumption on the day mentioned in subsection (3); or
- (ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
- (c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
- (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(f).
- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
- (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).
- (7) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
- (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
- (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- (8) Subsection (1) does not apply if:
-

- (a) the person has permission (within the meaning of the *Excise Act 1901*):
  - (i) to possess the tobacco; or
  - (ii) to move the tobacco; or
- (b) the tobacco is covered by an authority under section 55 of that Act; or
- (c) the tobacco has been deemed to be entered for home consumption under subsection 61C(2) of that Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

**308-115 Possession of tobacco (100 kg or above)—fault-based offence**

- (1) A person commits an offence if:
  - (a) the person possesses a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  - (d) the tobacco is:
    - (i) \*excisable goods; or
    - (ii) tobacco seed or tobacco plant; or
    - (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  - (e) in a case where the tobacco is excisable goods:
    - (i) \*excise duty is payable on the tobacco; and
    - (ii) the full amount of excise duty has not been paid on the tobacco; and
  - (f) the weight of the tobacco is 100 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

- (a) 1,000 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:

- (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:
    - (i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
    - (ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(f).
- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).
- (7) Subsection (1) does not apply if:
-



- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
- (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
- (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if the person has permission (within the meaning of the *Excise Act 1901*):
  - (a) to possess the tobacco; or
  - (b) to move the tobacco; or
  - (c) to deliver the tobacco for home consumption without entering it for that purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

### **308-120 Possession of tobacco (5 kg or above)—fault-based offence**

- (1) A person commits an offence if:
  - (a) the person possesses a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person possesses the tobacco is in Australia but not in an external Territory; and
  - (d) the tobacco is:
    - (i) \*excisable goods; or
    - (ii) tobacco seed or tobacco plant; or
    - (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  - (e) in a case where the tobacco is excisable goods:
    - (i) \*excise duty is payable on the tobacco; and
    - (ii) the full amount of excise duty has not been paid on the tobacco; and
  - (f) the weight of the tobacco is 5 kilograms or above.

Penalty: The greater of the following:

- (a) 500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:
    - (i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
    - (ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(f).
- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.
-

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) Subsection (1) does not apply if the person has permission (within the meaning of the *Excise Act 1901*):
- (a) to possess the tobacco; or
  - (b) to move the tobacco; or
  - (c) to deliver the tobacco for home consumption without entering it for that purpose.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

### **308-125 Manufacture or production of tobacco (500 kg or above)— fault-based offence**

- (1) A person commits an offence if:
- (a) the person manufactures or produces a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person manufactures or produces the tobacco is in Australia but not in an external Territory; and
  - (d) the tobacco is:
    - (i) \*excisable goods; or
    - (ii) tobacco seed or tobacco plant; or
    - (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  - (e) in a case where the tobacco is excisable goods:
    - (i) \*excise duty is payable on the tobacco; and

- (ii) the full amount of excise duty has not been paid on the tobacco; and
  - (f) the weight of the tobacco is 500 kilograms or above.
- Penalty: 10 years imprisonment or the greater of the following, or both 10 years imprisonment and the greater of the following:
  - (a) 1,500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
  - (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:
    - (i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
    - (ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
  - (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(f).

- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
  - (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

### **308-130 Manufacture or production of tobacco (100 kg or above)— fault-based offence**

- (1) A person commits an offence if:
- (a) the person manufactures or produces a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person manufactures or produces the tobacco is in Australia but not in an external Territory; and
  - (d) the tobacco is:
    - (i) \*excisable goods; or
    - (ii) tobacco seed or tobacco plant; or
    - (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  - (e) in a case where the tobacco is excisable goods:
    - (i) \*excise duty is payable on the tobacco; and
    - (ii) the full amount of excise duty has not been paid on the tobacco; and

(f) the weight of the tobacco is 100 kilograms or above.

Penalty: 5 years imprisonment or the greater of the following, or both 5 years imprisonment and the greater of the following:

- (a) 1,000 penalty units;
- (b) the amount mentioned in subsection (2) multiplied by 5.

(2) For the purposes of the penalty in subsection (1), the amount is:

- (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
- (b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:
  - (i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
- (c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.

(3) For the purposes of subsection (2), the day is:

- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
- (b) otherwise—the day on which the prosecution for the offence is instituted.

(4) Absolute liability applies to paragraph (1)(c).

(5) Absolute liability applies to paragraph (1)(f).

(6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:

- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or
- (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (1) does not apply if:
  - (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

### **308-135 Manufacture or production of tobacco (5 kg or above)— fault-based offence**

- (1) A person commits an offence if:
  - (a) the person manufactures or produces a thing; and
  - (b) the thing is tobacco; and
  - (c) the place in which the person manufactures or produces the tobacco is in Australia but not in an external Territory; and
  - (d) the tobacco is:
    - (i) \*excisable goods; or
    - (ii) tobacco seed or tobacco plant; or
    - (iii) tobacco leaf that has not been subjected to any process, or has been subjected only to the process of curing the leaf as stripped from the plant; and
  - (e) in a case where the tobacco is excisable goods:
    - (i) \*excise duty is payable on the tobacco; and
    - (ii) the full amount of excise duty has not been paid on the tobacco; and
  - (f) the weight of the tobacco is 5 kilograms or above.

- Penalty: The greater of the following:
- (a) 500 penalty units;
  - (b) the amount mentioned in subsection (2) multiplied by 5.
- (2) For the purposes of the penalty in subsection (1), the amount is:
- (a) for tobacco (other than tobacco plant or tobacco leaf)—the amount of excise duty that would be payable assuming that the tobacco were \*excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (b) for tobacco plant or tobacco leaf, if regulations have been made for the purposes of this paragraph—the amount of excise duty that would be payable, as worked out under the regulations, assuming that:
    - (i) for tobacco plant—the weight of the tobacco were equal to the potential weight of tobacco that could be produced from the plant if it were fully grown and it had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
    - (ii) for tobacco leaf—the tobacco had been manufactured into excisable goods and entered for home consumption on the day mentioned in subsection (3); or
  - (c) for tobacco plant or tobacco leaf, if regulations have not been made for the purposes of paragraph (b)—nil.
- (3) For the purposes of subsection (2), the day is:
- (a) if the Court knows the day, or days, on which the offence was committed—that day, or the earliest of those days; or
  - (b) otherwise—the day on which the prosecution for the offence is instituted.
- (4) Absolute liability applies to paragraph (1)(c).
- (5) Absolute liability applies to paragraph (1)(f).
- (6) Subsection (1) does not apply if the tobacco is kept or stored at premises specified in:
- (a) a licence (within the meaning of the *Excise Act 1901*) that relates to tobacco; or



- (b) a depot licence (within the meaning of the *Customs Act 1901*), or a warehouse licence (within the meaning of that Act), that relates to tobacco.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) Subsection (1) does not apply if:
- (a) the person is specified in a movement permission under section 44 of the *Excise Act 1901* in relation to tobacco; or
  - (b) the person is specified in a permission under section 71E of the *Customs Act 1901* in relation to tobacco; or
  - (c) the person has an authority to take the tobacco into warehousing under subsection 71DJ(4) of the *Customs Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

## **Subdivision 308-C—Offences relating to equipment relating to the manufacture or production of tobacco**

### **Guide to Subdivision 308-C**

#### **308-200 What this Subdivision is about**

This Subdivision sets out offences for the possession of equipment for use in illegal manufacture or production of tobacco, or of equipment designed or adapted to manufacture or produce tobacco.

#### **Table of sections**

308-205	Possession of equipment for use in illegal manufacture or production of tobacco
308-210	Possession of equipment designed or adapted to manufacture or produce tobacco

#### **308-205 Possession of equipment for use in illegal manufacture or production of tobacco**

- (1) A person (the *first person*) commits an offence if:
- (a) the first person possesses equipment at a time; and

- (b) the place in which the first person possesses the equipment is in Australia but not in an external Territory; and
- (c) the first person is reckless as to whether a particular person (whether or not the first person) will, at a later time, use the equipment to manufacture or produce tobacco; and
- (d) the first person intends to possess the equipment at that later time; and
- (e) that manufacture or production by that particular person at that later time would constitute an offence against any of the following provisions:
  - (i) section 308-125, 308-130 or 308-135;
  - (ii) section 25 or 28 of the *Excise Act 1901*.

Penalty: Imprisonment for 12 months or 120 penalty units, or both.

- (2) Absolute liability applies to paragraph (1)(b).
- (3) Absolute liability applies to paragraph (1)(e).
- (4) Subsection (1) does not apply if the first person has no reasonable ground to consider that the manufacture or production by the particular person at the later time would constitute an offence against any of the provisions mentioned in paragraph (1)(e).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

### **308-210 Possession of equipment designed or adapted to manufacture or produce tobacco**

- (1) A person commits an offence if:
  - (a) the person possesses equipment at a time; and
  - (b) the place in which the person possesses the equipment is in Australia but not in an external Territory; and
  - (c) a reasonable person, with a full knowledge and understanding of the functioning of the equipment, would conclude that the equipment is designed or adapted specifically to manufacture or produce tobacco; and
  - (d) on the assumption that, at the time mentioned in paragraph (a), the person used the equipment to manufacture

or produce tobacco, the person would commit an offence against any of the following provisions:

- (i) section 308-125, 308-130 or 308-135;
- (ii) section 25 or 28 of the *Excise Act 1901*.

Penalty: Imprisonment for 12 months or 120 penalty units, or both.

- (2) Absolute liability applies to paragraph (1)(b).
- (3) Absolute liability applies to paragraph (1)(d).
- (4) Subsection (1) does not apply if the person possesses the equipment:
  - (a) for the sole purpose of the disposal or destruction of the equipment; or
  - (b) for the sole purpose of the export of the equipment.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).
- (5) Subsection (1) does not apply if:
  - (a) the person possesses the equipment on behalf of another person; and
  - (b) assuming that, at the time mentioned in paragraph (a), the other person used the equipment in Australia (but not in an external Territory) to manufacture or produce tobacco, the other person would *not* commit an offence under any of the following provisions:
    - (i) section 308-125, 308-130 or 308-135;
    - (ii) section 25 or 28 of the *Excise Act 1901*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

## Subdivision 308-E—Other provisions

### Guide to Subdivision 308-E

#### 308-500 What this Subdivision is about

This Subdivision sets out various miscellaneous rules that relate to the offences in other provisions of this Division, including rules that treat certain things as tobacco and certain matters as possession.

#### Table of sections

308-505	Things treated as tobacco
308-510	Matters treated as possession
308-515	Where excise duty or customs duty is treated as not payable for the purpose of the reasonable suspicion offences
308-520	Section 8ZD does not apply to this Division

#### 308-505 Things treated as tobacco

- (1) For the purposes of this Division, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.
- (2) To avoid doubt, for the purposes of this Division:
  - (a) treat tobacco seed, tobacco plant (whether or not in the ground) and tobacco leaf as tobacco; and
  - (b) treat cigars, cigarettes and snuff as tobacco.

#### 308-510 Matters treated as possession

- (1) For the purposes of this Division, treat a person as possessing a thing if the person:
  - (a) receives or obtains possession of the thing; or
  - (b) has control over the disposition of the thing (whether or not the thing is in the custody of the person); or
  - (c) has joint possession of the thing with one or more other persons.

- (2) To avoid doubt, subsection (1) does not limit, for the purposes of this Division, when a person possesses a thing.
- (3) For the purposes of this Division, a person may possess tobacco plant even if the plant is in the ground.

**308-515 Where excise duty or customs duty is treated as not payable for the purpose of the reasonable suspicion offences**

- (1) For the purposes of Subdivision 308-A, treat \*excise duty as not payable on tobacco because of an exemption under a law of the Commonwealth if:
  - (a) a “free” rate of \*excise duty applies on the tobacco; or
  - (b) there is a remission of all of the excise duty payable on the tobacco.
- (2) For the purposes of Subdivision 308-A, treat \*customs duty as not payable on tobacco because of an exemption under a law of the Commonwealth if:
  - (a) a “free” rate of \*customs duty applies on the tobacco; or
  - (b) there is a remission of all of the customs duty payable on the tobacco.
- (3) To avoid doubt, subsections (1) and (2) do not limit, for the purposes of Subdivision 308-A, when \*excise duty or \*customs duty is not payable on tobacco because of an exemption under a law of the Commonwealth.

**308-520 Section 8ZD does not apply to this Division**

Section 8ZD does not apply for the purposes of this Division.

## Part 2—Forfeiture amendments

### *Excise Act 1901*

#### **7 Section 107AA (definition of *offence*)**

Repeal the definition, substitute:

*offence* means any of the following:

- (a) an offence against this Act;
- (b) an offence against a provision in Division 308 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **8 After section 107AA**

Insert:

##### **107AAA Extension of Division to civil penalty for possession of tobacco without relevant documentation etc.**

- (1) For the purposes of this Division:
  - (a) treat a civil penalty under subsection 295-75(1) in Schedule 1 to the *Taxation Administration Act 1953* as an offence against this Act; and
  - (b) treat a contravention of that subsection as the commission of an offence against this Act; and
  - (c) treat the commencement of proceedings against a person for a contravention of that subsection as the charging of that person with an offence against this Act.
- (2) To avoid doubt, subsection (1) has effect for the purposes of subsection 107FF(9).

#### **9 After paragraph 116(1)(a)**

Insert:

- (aa) all tobacco in respect of which a person:
  - (i) commits an offence against this Act or an offence against a provision in Division 308 in Schedule 1 to the *Taxation Administration Act 1953*; or

- (ii) contravenes subsection 295-75(1) in Schedule 1 to the  
*Taxation Administration Act 1953*;

**10 After paragraph 116(1)(c)**

Insert:

- (ca) without limiting paragraph (c), equipment in respect of which  
a person commits an offence against section 308-205 or  
308-210 in Schedule 1 to the *Taxation Administration Act*  
*1953*;

## Part 3—Consequential amendments

### *Excise Act 1901*

#### **11 Paragraph 39K(4)(e)**

After “manufacturer licence,” insert “storage licence,”.

#### **12 Subsection 39M(2)**

Repeal the subsection.

#### **13 Section 68 (heading)**

Repeal the heading, substitute:

#### **68 Tobacco not manufactured in certain circumstances**

#### **14 Paragraph 87AA(b)**

Repeal the paragraph, substitute:

- (b) the conveyance has been used, is being used or is intended to be used in the commission of an offence against:
  - (i) a provision of the Excise Acts; or
  - (ii) section 6 of the *Crimes Act 1914*; or
  - (iii) section 11.1, 11.2, 11.2A or 11.5 of the *Criminal Code*; or
  - (iv) a provision of Division 308 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **15 Section 91**

Before “Any officer”, insert “(1)”.

#### **16 At the end of section 91**

Add:

- (2) For the purposes of subsection (1), treat all tobacco as excisable goods.

#### **17 Section 106**

Before “Samples”, insert “(1)”.

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**18 At the end of section 106**

Add:

- (2) For the purposes of subsection (1), treat all tobacco as excisable goods.

**19 Section 107**

Before “Any officer”, insert “(1)”.

**20 At the end of section 107**

Add:

- (2) For the purposes of subsection (1), treat all tobacco as excisable goods.

**21 Sections 117C, 117E, 117F, 117G and 117H**

Repeal the sections.

**22 Subparagraph 127A(a)(ii)**

Omit “117C, 117D, 117E, 117F, 117G, 117H”, substitute “117D”.

## **Part 4—Meaning of tobacco**

### *Excise Act 1901*

#### **23 Subsection 4(1)**

Insert:

*tobacco* has a meaning affected by subsection (6).

#### **24 At the end of section 4**

Add:

- (6) For the purposes of this Act, treat as tobacco any thing (including moisture) added to the tobacco leaf during manufacturing or processing.

## **Part 5—Application provisions**

### **25 Application**

- (1) The amendments made by Part 1 of this Schedule, to the extent that they relate to section 295-75 in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by that Part) apply to possession of a thing on or after the commencement of this item.
- (2) The amendments made by Part 1 of this Schedule, to the extent that they relate to Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by that Part) apply to possession, sale or purchase of a thing on or after the commencement of this item.
- (3) The amendments made by Part 1 of this Schedule, to the extent that they relate to Subdivision 308-B in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by that Part) apply to possession, manufacture or production of a thing on or after the commencement of this item.
- (4) The amendments made by Part 1 of this Schedule, to the extent that they relate to Subdivision 308-C in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by that Part), apply to possession of equipment on or after the commencement of this item.
- (5) The amendments made by Part 2 of this Schedule apply in relation to:
  - (a) contraventions of subsection 295-75(1) in Schedule 1 to the *Taxation Administration Act 1953* on or after the commencement of this item; and
  - (b) offences committed against a provision of Division 308 in that Schedule on or after the commencement of this item.
- (6) The amendments made by Part 3 of this Schedule apply on and after the commencement of this item.
- (7) To avoid doubt, the repeal of sections 117C, 117E, 117F, 117G and 117H of the *Excise Act 1901* by Part 3 of this Schedule does not, on or after the commencement of this item:
  - (a) affect liability for an offence committed under any of those sections before the commencement of this item; and

**Schedule 1** Amendments  
**Part 5** Application provisions

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- (b) prevent or otherwise affect a prosecution for such an offence committed under any of those sections before the commencement of this item.
  - (8) The amendments made by Part 4 of this Schedule apply:
    - (a) unless paragraph (b) applies—in relation to goods that are entered for home consumption after the commencement of this item; or
    - (b) to the extent that those amendments apply in relation to a provision included in another Part of this Schedule—in the same way as that other provision applies as a result of this item.
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*[Minister's second reading speech made in—  
House of Representatives on 15 February 2018  
Senate on 19 March 2018]*

(28/18)

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