



Customs Amendment (Illicit Tobacco Offences) Act 2018

No. 89, 2018

An Act to amend the *Customs Act 1901*, 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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No. 89, 2018

An Act to amend the *Customs Act 1901*, and for related purposes

[Assented to 31 August 2018]

The Parliament of Australia enacts:

1 Short title

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

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	31 August 2018
2. Schedule 1	The day after this Act receives the Royal Assent.	1 September 2018
3. Schedule 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 September 2018 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Offences

Part 1—Main amendments

Customs Act 1901

1 Section 233BABAD (heading)

Repeal the heading, substitute:

233BABAD Offences involving tobacco products

2 After subsection 233BABAD(2)

Insert:

- (2A) A person commits an offence if:
- (a) the person imports goods; and
 - (b) the goods are tobacco products; and
 - (c) the person imports the goods reckless as to whether there would be defrauding of the revenue.
- (2B) A person commits an offence if:
- (a) the person conveys, or has in the person's possession, goods; and
 - (b) the goods are tobacco products; and
 - (c) the person is reckless as to whether the goods were imported with intent to defraud the revenue.

3 Subsection 233BABAD(3)

After “subsection (2)”, insert “or (2B)”.

4 After subsection 233BABAD(4)

Insert:

- (4A) An offence against subsection (2A) or (2B) is punishable on conviction by imprisonment for not more than 5 years, a fine not exceeding the amount worked out under subsection (5A), or both.

5 After subsection 233BABAD(5)

Insert:

(5A) For the purposes of subsection (4A), the amount is:

- (a) if the Court can determine the amount of the duty that would have been payable on the goods if the goods had been entered for home consumption on:
 - (i) if the day on which the offence was committed is known to the Court—that day; or
 - (ii) if that day is not known to the Court—the day on which the prosecution for the offence was instituted;3 times the amount of that duty; or
- (b) otherwise—500 penalty units.

6 Subsection 233BABAD(6)

Omit “subsection (1) or (2)”, substitute “subsection (1), (2), (2A) or (2B)”.

7 Application provision

Subsections 233BABAD(2A) and (2B) of the *Customs Act 1901*, as inserted by this Part, apply in relation to goods imported on or after the commencement of this item.

Part 2—Consequential amendments

Customs Act 1901

8 Subparagraph 210(1)(a)(iii)

Omit “233BABAD(1) or (2)”, substitute “233BABAD(1), (2), (2A) or (2B)”.

Schedule 2—Powers of officers

Customs Act 1901

1 Subsection 183UA(1) (paragraph (b) of the definition of *authorised person*)

Omit “paragraph (a)”, substitute “subparagraph (a)(i)”.

2 Subsection 183UA(1) (paragraph (c) of the definition of *authorised person*)

Omit “paragraph (c)”, substitute “subparagraph (a)(ii) or paragraph (b)”.

3 Subsection 183UA(1) (definition of *forfeited goods*)

Repeal the definition, substitute:

forfeited goods means:

(a) goods described as forfeited to the Crown under:

(i) section 228, 228A, 228B, 229, 229A or 230 of this Act;
or

(ii) section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*; or

(b) tobacco forfeited to the Crown under paragraph 116(1)(aa) of the *Excise Act 1901* in respect of an offence committed against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*.

4 Subsection 183UA(1) (at the end of the definition of *offence*)

Add:

; or (d) an offence against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*.

5 Subparagraph 210(1)(a)(vi)

Omit “and”.

6 At the end of paragraph 210(1)(a)

Add:

- (vii) an offence against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953*; and

7 Application provision

The amendments made by this Schedule apply in relation to offences committed against a provision in Subdivision 308-A in Schedule 1 to the *Taxation Administration Act 1953* on or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 24 March 2018
Senate on 14 August 2018]*

(58/18)
