

Customs Amendment (Illicit Tobacco Offences) Act 2018

No. 89, 2018

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

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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 *Treasury Laws Amendment (Illicit Tobacco Offences) Act 2018*.  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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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)