





# **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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# Customs Amendment (Illicit Tobacco Offences) Act 2018

No. 89, 2018

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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*.

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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.

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<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.	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)

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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **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:

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(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:

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- (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.

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

(58/18)

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