



Bills Digest | 8 May 2026

Combatting Illicit Tobacco Bill 2026

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Key points

- The [Combatting Illicit Tobacco Bill 2026](#) (the Bill) will expand law enforcement powers to investigate illicit tobacco related offending and increase the penalties and consequences for persons involved in illicit tobacco offending.
- Key measures in the Bill include:
 - increasing criminal penalties for the importation, possession, buying, selling, supply, production or manufacture of illicit tobacco (**Schedule 1**)
 - enabling the use of telecommunications access powers under the [Telecommunications \(Interception and Access\) Act 1979](#) in relation to illicit tobacco related offences (**Schedule 2**)
 - amendments to the regime established under the [Proceeds of Crime Act 2002](#), including expanding the grounds for making a non-publication order (**Schedule 3, Part 1**), expanding the search warrant powers (**Schedule 3, Part 2**), expanding the availability of examination orders (**Schedule 3, Part 3**), expanding the grounds for information disclosures (**Schedule 3, Part 4**), amending the equitable sharing arrangements to include jurisdictions party to the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth (**Schedule 3, Part 5**), removing the requirement to make preliminary unexplained wealth orders (**Schedule 3, Part 6**) and allowing for the postal or electronic service of documents (**Schedule 3, Part 7**)
- The [Senate Standing Committee for the Scrutiny of Bills](#) and the [Parliamentary Joint Committee on Human Rights](#) have raised concerns with the Bill, including in relation to significant increases in penalties, privacy impacts and the expansion of search warrant powers.
- At the time of writing, the Bill had not been referred to a parliamentary committee for inquiry.

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Date of introduction: 26 March 2026

House introduced in: House of Representatives

Portfolio: Home Affairs

Commencement: Sections 1 to 3 commence on Royal Assent. Schedules 1 and 2, and Schedule 3 (Parts 1 to 4, Part 6) commence the day after Royal Assent. Schedule 3, Part 5 commences on the earlier of Proclamation or 12 months after Royal Assent. Schedule 3, Part 7 commences 28 days after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the [Bill's home page](#), or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

All hyperlinks in this Bills Digest are correct as of May 2026.

Purpose of the Bill

The purpose of the [Combatting Illicit Tobacco Bill 2026](#) (the Bill) is to amend a number of Commonwealth Acts to expand law enforcement powers to investigate illicit tobacco related offending and increase the penalties and consequences for persons involved in illicit tobacco offending.

Structure of the Bill

The Bill contains 3 Schedules:

- **Schedule 1** amends the [Customs Act 1901](#), the [Excise Act 1901](#), the [Taxation Administration Act 1953](#) (TAA) and the [Taxation Administration Regulations 2017](#) to increase penalties for offences under those Acts in relation to the importation, possession, buying, selling, supply, production or manufacture of illicit tobacco. Increasing the penalties for these offences will enable the use of broader investigatory powers, including computer access and surveillance capabilities under the [Surveillance Devices Act 2004](#) (SD Act).
- **Schedule 2** amends the [Telecommunications \(Interception and Access\) Act 1979](#) (TIA Act) to insert illicit tobacco related offences under the definition of ‘serious offence’. This will allow the use of telecommunications access powers under the TIA Act in relation to illicit tobacco related offences.
- **Schedule 3** amends the [Proceeds of Crime Act 2002](#) (POCA) and related legislation to make the proceeds of crime regime more effective to pursue the confiscation of the proceeds, instruments and benefits of crime to undermine the profitability of the illicit tobacco market. **Part 1** introduces additional grounds for making a non-publication order and expands the types of information and documents that can be protected under a non-publication order. **Part 2** introduces a person search warrant to align with the equivalent provisions under the [Crimes Act 1914](#) in respect of the person search warrant and search warrant provisions regarding electronic devices and data. **Part 3** introduces examination orders in relation to an application for a forfeiture order, pecuniary penalty order, literary proceeds order, or unexplained wealth order where there is no restraining order in force. **Part 4** allows for information obtained using POCA powers to be shared with other Commonwealth authorities for specified regulatory purposes. **Part 5** amends the definition of ‘non-referring signatory state’ to enable a jurisdiction that has signed up to the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth to participate in equitable sharing arrangements under Division 2 of Part 4-3 of the POCA. **Part 6** removes the requirement for the court to make a preliminary unexplained wealth order prior to considering the proceeds of crime authority’s application for an unexplained wealth order. **Part 7** allows for the postal or electronic service of documents to a person.

Background

Tobacco is [considered to be illicit](#) when it is grown, manufactured and/or produced in Australia or where it is imported into the domestic market without customs or [excise duties](#) being paid. (Noting that [currently there is no legal tobacco manufacture occurring in Australia](#).) Illicit tobacco products may include cigarettes, cigars, loose tobacco or tobacco leaf and plant matter. Consequently, the Customs Act, the Excise Act and the TAA each contain offences concerning the importation, possession, buying, selling, supply, production or manufacture of illicit tobacco.

The tobacco excise seeks to [make tobacco products less affordable](#), with the intention that it will reduce tobacco use in Australia. According to [decades of research](#), ‘significantly increasing the excise tax and price of tobacco products is the single most consistently effective tool for reducing tobacco use’ (p. 10). However, there have been recent calls to reduce the tobacco excise based on an argument that [doing so](#) ‘would stabilise the legal cigarette market’ which would subsequently curb the illicit tobacco market.

NSW Police Deputy Commissioner David Hudson has [stated](#) that ‘increases to the tobacco tax rate had contributed to growth in the illicit market’ with economist Chris Richardson echoing the critique of the increase in excise, stating that ‘If your target is better health, we’re missing that ... If your target is to raise some money, we’ve blown that up. If your target is to subsidise organised crime, well, we’ve hit that KPI’.

However, the Government has [rejected calls](#) for a reduction in the tobacco excise, with Treasurer Jim Chalmers stating on behalf of the Government that ‘[w]e don’t believe a tobacco tax cut, as British American Tobacco and some others have proposed to us, will fix the problem’.

The tobacco excise [increases twice annually](#) and currently adds an additional \$1.53 to the cost of each tobacco stick or \$2,445.26 per kilo of tobacco not in ‘stick form’. However, while a legal pack of 20 cigarettes in Australia will typically cost over \$40, [illicit packs can cost as little as \\$10](#).

As a result of the increasing market share of illicit cigarettes in Australia, in the 2024–2025 financial year alone, [between \\$7.7 billion and \\$11.8 billion](#) of government revenue was lost (p. 14). This reduces revenue that can [fund the public health system](#) in treating smoking-relating illnesses, with [tobacco being a leading cause of disease](#) in Australia.

An additional issue associated with the illicit tobacco industry is the increasing prevalence of violent attacks, as criminal syndicates fight for control over the market. According to the Illegal Tobacco and E-cigarette Commissioner, the [‘growth of the illicit market has been accompanied by highly visible incidents of violence.’](#) (p. 7)

Sources of Illicit Tobacco

Most illicit tobacco in Australia is sourced from overseas and imported illegally. Despite federal authorities seizing 2.6 billion cigarettes in the last financial year, which is triple that of 4 years ago, the government has [‘admitted it cannot solve the problem at the border’](#). Instead, it has been suggested that imposing harsher penalties would contribute to greater deterrence by adjusting the risk to reward ratio for persons involved in the illicit tobacco trade (p. 18).

According to conservative estimates published in the [2024–25 Illicit Tobacco and E-cigarette Commissioner Report](#), the illicit tobacco market accounts for at least 50% of the overall tobacco market in Australia in 2024–2025, worth roughly \$4.1 billion (p. 13). The Commissioner Report recommended (p. 18):

Actions to create stronger consequences would contribute to a greater deterrence effect, rebalancing the risk to reward ratio for illicit actors ... This could include enhancing Australia’s legislative and regulatory framework by optimising existing powers, **aligning penalties with severity of offences** ... [emphasis added]

Key players in the illicit tobacco industry

The Australian Government established the [Illicit Tobacco Taskforce](#) (ITTF) in July 2018 to protect Commonwealth revenue by proactively targeting, disrupting and dismantling serious actors and organised crime syndicates that deal in illicit tobacco. Criminal syndicates play a large role in the illicit tobacco industry in Australia including by setting up and running [domestic tobacco growing operations](#) and by targeting tobacco retailers across Australia to [buy and sell illegally grown tobacco](#) known as ‘under the counter’ or ‘black market’ tobacco. Black market tobacco can be highly lucrative, which has sometimes led to violence between criminal syndicates.

According to Australian Federal Police (AFP) Commissioner Krissy Barrett, her ‘[number one target](#)’ in relation to illicit tobacco in Australia is Kazem Hamad. While [Hamad was deported from Australia in 2023](#), police allege that Hamad has [orchestrated a series of fire bombings](#) and violent attacks across Australia in recent years.

In February 2026, Hamad was arrested in Iraq on charges of ‘[importing large quantities of drugs into Iraq and Australia, as well as smuggling heroin](#)’. In response to Hamad’s arrest, Australian authorities are on ‘[high alert](#)’ for any violence between rival gangs in the illicit tobacco industry, which may seek to ‘[expand their reach and control](#)’ over the market, during this perceived instability.

On 17 September 2025, an ABF media release stated that 2 men with ‘[links to serious organised crime entities and outlaw motorcycle gangs](#)’ had been sentenced for importing and distributing over 10.6 million illicit cigarettes with an estimated duty evasion of over \$13 million. This media release reinforces the involvement of serious organised crime syndicates in the illicit tobacco market.

On 14 April 2026 the Australian Transaction Reports and Analytics Centre (AUSTRAC) [reported that banks](#) had taken action to strengthen monitoring and reporting under their existing anti-money laundering and counter terrorism financing (AML/CTF) obligations to disrupt the financial flows underpinning Australia’s illicit tobacco trade.

In November 2025 [AUSTRAC](#) provided banks with a unique reference code to use in suspicious matter reports to enable illicit tobacco activity to be more easily identified, tracked and disrupted. From November 2025 until April 2026 AUSTRAC received 337 suspicious matter reports using that code, which AUSTRAC reported had improved the intelligence available to law enforcement to disrupt criminal supply chains and money flows.

Policy position of non-government parties/independents

At the time of writing, limited commentary on the Bill from non-government parties or independents was identified. Mr Pat Conaghan, the Nationals Member for Cowper, [spoke on the introduction of the Bill](#):

This bill does nothing. It tinkers around the edges of penalties ... We don't need to tinker around the edges of penalties ... We need to develop a strategy that supports the law enforcement agencies, and

we need an agency that has direct sight of these people, these criminals who are bringing these products into Australia ...

On 27 November 2025 the Senate referred an [inquiry into illegal tobacco](#) to the Legal and Constitutional Affairs References Committee for inquiry and report, with the report due on 30 June 2026. The Terms of Reference provide that the Committee should consider:

- the scale and nature of the illegal tobacco market and the involvement of transnational serious and organised crime (TSOC) groups
- the impact of illegal tobacco on public health and government revenue
- law enforcement, intelligence and regulatory responses, including the adequacy of penalties and deterrence measures
- the social and economic impacts
- forecasts, modelling and plausible future scenarios concerning the potential evolution of the illicit tobacco threat
- options for reform and any other related matters.

At the time of publication, the Committee has received 81 [submissions](#).

Several submitters advocated for reform of legislation which targets the illegal tobacco industry. The Australian Federal Police advised it had provided support to Home Affairs in the development of the Bill ([p. 10](#)) and commented that:

Illicit tobacco is currently regulated through a complex framework spanning customs, excise, taxation and criminal legislation. Penalties vary between jurisdictions and are not consistently aligned to reflect the seriousness of serious organised crime-linked offending. Limits to early intervention powers constrain the AFP's ability to disrupt illicit tobacco activity in early stages. The AFP considers there is opportunity to strengthen national consistency and penalties for large scale offending. ([p. 9](#))

Conversely, the Alcohol and Other Drug Consumer & Community Coalition (AODCCC) in its [submission](#) to the inquiry stated that its members had expressed clear support for regulatory reform instead of increased penalties ([p. 5](#)). The AODCCC stated that:

Smart regulation offers the most effective path forward. Strengthened supply chain controls including track and trace systems, fit and proper tests for wholesalers, and regulatory clarity, paired with accessible and affordable cessation supports will deliver greater impact than escalating penalties. ([p. 6](#))

Key issues and provisions

Schedule 1 – Amendments relating to customs, excise and other taxation legislation

Part 1 – Customs Act 1901

Part 1 of Schedule 1 amends [section 233BABAD](#) of the Customs Act to increase penalties for the following offences involving tobacco products:

- the importation of tobacco products with the intention of defrauding the revenue (subsection 233BABAD(1))
- the conveyance or possession of tobacco products with knowledge that the goods were imported with intent to defraud the revenue (subsection 233BABAD(2))
- the importation of tobacco products with recklessness as to whether there would be defrauding of the revenue (subsection 233BABAD(2A))
- the conveyance or possession of tobacco products with recklessness as to whether the goods were imported with intent to defraud the revenue (subsection 233BABAD(2B)).

Each offence has a corresponding penalty provision which sets out a maximum term of imprisonment, a fine, or both. The fine may be calculated as either:

- a multiple of the amount of duty that would have been payable on the goods if they had been entered for home consumption¹ on:
 - the day the offence was committed, if that date is known or
 - the day on which the prosecution for the offence was instituted
- a maximum amount of penalty units.

A penalty unit is currently \$330, subject to indexation every three years from 1 July 2026 (Crimes Act, [section 4AA](#)).

Item 1 amends subsection 233BABAD(4) to increase the maximum penalty for an offence against subsection 233BABAD(1) or 233BABAD(2) from 10 years to 15 years imprisonment.

Item 2 amends subsection 233BABAD(4A) to increase the maximum penalty for an offence against subsection 233BABAD(2A) or 233BABAD(2B) from 5 years to 10 years imprisonment.

Item 3 amends paragraph 233BABAD(5)(a) to increase the maximum fine for an offence against subsection 233BABAD(1) or 233BABAD(2) from 5 times the amount of the duty to 30 times that duty.

Item 4 amends paragraph 233BABAD(5)(b) to increase the maximum fine for an offence against subsection 233BABAD(1) or 233BABAD(2) from 1,000 penalty units to 12,000 penalty units (from \$330,000 to \$3.96 million).

1. Entering goods for 'home consumption' means releasing imported goods from customs control. This is the point at which any customs duties become payable.

Item 5 amends paragraph 233BABAD(5A)(a) to increase the maximum fine for an offence against subsection 233BABAD(2A) or 233BABAD(2B) from 3 times the amount of the duty to 20 times that duty.

Item 6 amends paragraph 233BABAD(5A)(b) to increase the maximum fine for an offence against subsection 233BABAD(2A) or 233BABAD(2B) from 500 penalty units to 8,000 penalty units (from \$165,000 to \$2.64 million).

Part 2 – Excise Act 1901

Part 2 of Schedule 1 amends the Excise Act to increase penalties for [fault-based](#) and [strict liability](#) offences relating to the dealing in, manufacture, storage and production of illicit tobacco; fault-based and strict liability offences relating to making or using counterfeit tobacco bale labels; and infringement notices.

Part 2 of Schedule 1 will also introduce aggravated offences into the Excise Act. **Item 7** introduces the definition for **aggravated offence** as having the meaning given under **proposed sections 25(4)** and **117C** (at **items 10** and **43** of Schedule 1, respectively). As noted in the [Explanatory Memorandum](#):

Aggravated offence is used to differentiate the penalties relating to tobacco from the underlying offences relating to other excisable goods such as fuel and alcohol to which sections 25, 117, 117A, and 117B would otherwise apply. This ensures that higher penalties apply to offences related to tobacco given the significant harm arising from tobacco related offences. (p. 11)

The provisions which establish penalties for **fault-based offences** generally prescribe:

- a maximum term of imprisonment or a maximum amount of penalty units where the offence relates to **tobacco seed or tobacco plant**
- a maximum term of imprisonment or a maximum pecuniary penalty that is the greater of:
 - an amount of penalty units or
 - a multiple of the amount of duty that would have been payable if the tobacco leaf had been manufactured into excisable good and entered for home consumption, calculated on the penalty day

where the offence relates to **tobacco leaf**.

The penalty provisions for **strict liability offences** generally prescribe a maximum amount of penalty units.

Part 2 of Schedule 2 increases the maximum term of imprisonment and amount of penalty units for fault-based offences which relate to tobacco seed, tobacco plant or tobacco leaf, and increases the maximum amount of penalty units for strict liability offences.

[Section 25](#) makes it an offence to manufacture excisable goods without a licence.

Item 10 inserts an **aggravated offence for tobacco** as an offence against subsections 25(1) or 25(2) where the offence relates to excisable goods that are tobacco.

Item 8 amends subsection 25(1) to increase the maximum penalty for the **fault-based offence**, where the offence is an aggravated offence, from 2 years imprisonment to 7 years imprisonment and from 500 penalty units to 5,000 penalty units (from \$165,000 to \$1.65 million).

Item 9 amends subsection 25(2) to increase the penalty for the **strict liability offence**, where the offence is an aggravated offence, from 100 penalty units to 500 penalty units (from \$33,000 to \$165,000).

[Section 28](#) makes it an offence to produce material that is tobacco seed, tobacco plant or tobacco leaf without a producer licence.

[Section 30](#) makes it an offence to keep or store material that is tobacco seed, tobacco plant or tobacco leaf at unlicensed premises.

[Section 31](#) makes it an offence for a licensed producer to produce material that is tobacco seed, tobacco plant or tobacco leaf at unlicensed premises.

[Section 33](#) makes it an offence for a person who does not hold a licence to deal in material that is tobacco seed, tobacco plant or tobacco leaf.

[Section 35](#) makes it an offence for a licensed dealer to keep or store material that is tobacco seed, tobacco plant or tobacco leaf at premises that are not covered by the dealer licence.

Items 11, 17, 21, 25 and 31 amend paragraphs 28(1)(a), 30(1)(a), 31(1)(a), 33(1)(a) and 35(1)(a) to increase the maximum penalties for the **fault-based offences** from 2 years imprisonment or 500 penalty units to 7 years imprisonment or 5,000 penalty units where the offence is in relation to tobacco seed or tobacco plant.

Items 12, 13, 18, 19, 22, 23, 26, 27, 32 and 33 amend paragraphs 28(1)(b), 30(1)(b), 31(1)(b), 33(1)(b) and 35(1)(b) to increase the maximum penalties for the **fault-based offences** from 2 years to 7 years imprisonment and from 500 penalty units to 5,000 penalty units where the offence is in relation to tobacco leaf.

Items 14, 20, 24, 28 and 34 amend subsections 28(2), 30(2), 31(2), 33(2) and 35(2) to increase the maximum penalties for the **strict liability offences** from 100 penalty units to 500 penalty units.

[Section 29](#) makes it an offence for a licensed producer to produce tobacco seed, tobacco plant or tobacco leaf in a manner which contravenes the Act or the producer licence.

[Section 34](#) makes it an offence for a licensed dealer to deal in tobacco seed, tobacco plant or tobacco leaf in a manner which contravenes the Act or the dealer licence.

[Section 36](#) makes it an offence for a licensed dealer to carry on a business at premises that are not covered by the dealer licence.

Items 15, 29 and 35 increase the maximum penalties for the **fault-based offences** under subsections 29(1), 34(1) and 36(1) from 2 years imprisonment or 500 penalty units to 7 years imprisonment or 5,000 penalty units.

Items 16, 30 and 36 amend subsections 29(2), 34(2) and 36(2) to increase the maximum penalties for the **strict liability offences** from 100 penalty units to 500 penalty units.

[Section 117](#) creates an offence for the unlawful possession of excisable goods.

[Section 117A](#) makes it an offence to unlawfully move excisable goods on which excise duty has not been paid.

[Section 117B](#) makes it an offence to unlawfully sell excisable goods on which excise duty has not been paid.

Item 43 inserts **proposed section 117C** to establish an **aggravated offence** for offences against subsections 117(1), 117(2), 117A(1), 117A(2), 117B(1) or 117B(2) where the offence relates to excisable goods that are tobacco.

Items 37 to 42 amend sections 117, 117A and 117B to introduce separate penalty provisions for **fault-based** and **strict liability offences** where the offence is an aggravated offence. The maximum penalty for **fault-based** aggravated offence will be 7 years imprisonment or the greater of the prescribed amount of penalty units (5,000 penalty units) or 5 times the amount of duty. The penalty for the **strict liability offence** aggravated offence will be 500 penalty units.

[Section 117D](#) makes it an offence to unlawfully move tobacco seed, tobacco plant or tobacco leaf.

Item 44 amends subsection 117D(1) to increase the maximum penalty for the **fault-based offence** from 2 years imprisonment or 500 penalty units to 7 years imprisonment or 5,000 penalty units where the offence is in relation to tobacco seed or tobacco plant.

Items 45 and 46 amend paragraph 117D(1)(b) to increase the maximum penalty for the **fault-based offence** where the offence is in relation to tobacco leaf from 2 years to 7 years imprisonment and from 500 penalty units to 5,000 penalty units.

Item 47 amends subsection 117D(2) to increase the maximum penalty for the **strict liability offence** from 100 penalty units to 500 penalty units.

[Section 117I](#) makes it an offence to manufacture or use counterfeit tobacco bale labels.

Item 48 amends section 117I(1) to increase the maximum penalty for the **fault-based offence** for making counterfeit tobacco bale labels from 500 penalty units to 2,000 penalty units.

Item 49 amends section 117I(2) to increase the maximum penalty for the **fault-based offence** for using counterfeit tobacco bale labels from 500 penalty units to 2,000 penalty units.

Item 50 amends section 117I(3) to increase the maximum penalty for the **strict liability offence** for using counterfeit tobacco bale labels from 100 penalty units to 500 penalty units.

Items 51 and 52 amend [sections 129A](#) and [129B](#) respectively to allow for infringement notices to be issued for offences committed under subsection 117A(2).

Item 53 amends paragraph 129C(1)(d) to increase the maximum penalty payable under an infringement notice from 20 penalty units to 60 penalty units (from \$6,600 to \$19,800).

Part 3 – Taxation Administration Act 1953

Part 3 of Schedule 1 amends Schedule 1 to the Taxation Administration Act to:

- increase the penalties for the reasonable suspicion and fault-based offences for the possession, sale or purchase of tobacco of various quantities where excise or customs duty has not been paid
- extend the operation of offences for the sale of illicit tobacco to include the supply of the illicit tobacco
- introduce an additional threshold quantity of 10 kilograms or more for reasonable suspicion and fault-based tobacco offences.

- increase the penalties for the possession of equipment for use in the illegal manufacture or production of tobacco and
- increase the civil penalty for possession of tobacco without relevant documentation.

Item 54 amends [subsection 295-75\(3\)](#) to increase the civil penalty for possession of 2 or more kilograms of tobacco without the relevant documentation from 100 penalty units to 2,000 penalty units (from \$33,000 to \$660,000).

Items 55, 63, 64, 67, 68, 72 and 73 extend the operation of offences for the sale of illicit tobacco to include the supply of the illicit tobacco.

The **reasonable suspicion** offences for the possession, sale or purchase of tobacco under the TAA Act are as follows and prescribe a penalty based on the respective amounts of tobacco (500 kilograms or more, 100 kilograms or more and 5 kilograms or more):

- **possession** of tobacco with the reasonable suspicion the excise or customs duty is payable and has not been paid ([section 308-10](#), [section 308-15](#) and [section 308-20](#))
- **sale** of tobacco with the reasonable suspicion the excise or customs duty is payable and has not been paid ([section 308-25](#), [section 308-30](#) and [section 308-35](#))
- **purchase** of tobacco with the reasonable suspicion the excise or customs duty is payable and has not been paid ([section 308-40](#), [section 308-45](#) and [section 308-50](#)).

Items 56, 57, 65, 66, 76 and 77 amend subsections 308-10(1), 308-25(1) and 308-40(1) to increase the maximum penalties where the weight is 500 kilograms or more from 5 years imprisonment to 10 years imprisonment and from 1,000 penalty units to 8,000 penalty units (from \$330,000 to \$2.64 million).

Items 58, 59, 69, 70, 78 and 79 amend subsections 308-15(1), 308-30(1) and 308-45(1) to increase the maximum penalties where the weight is 100 kilograms or more from 2 years imprisonment to 5 years imprisonment and from 500 penalty units to 6,000 penalty units (from \$165,000 to \$1.98 million).

Items 61, 62, 74, 75, 81 and 82 amend subsections 308-20(1), 308-35(1) and 308-50(1) to increase the maximum penalties where the weight is 5 kilograms or more from the greater of 200 penalty units or the amount of excise duty that would have been payable on the tobacco multiplied by 5 to:

- 2 years imprisonment and/ or the greater of the following:
 - 3,000 penalty units or
 - 5 times the amount of excise duty that would have been payable on the tobacco.

Items 60, 71 and 80 introduce new reasonable suspicion offences (**proposed sections 308-18, 308-33 and 308-48**) for the possession, sale, supply or purchase of tobacco where the weight is 10 kilograms or more. These new offences broadly mirror the existing offences (outlined above). The proposed maximum penalties for these offences are:

- 3 years imprisonment and/or the greater of the following:
 - 4,000 penalty units or
 - 5 times the amount of excise duty that would have been payable on the tobacco (other than tobacco leaf), or for tobacco leaf the excise duty that would be payable under the regulations, if the tobacco had been entered for home consumption. The amount of

excise duty is to be calculated by reference to the day the offence was committed (if known), or otherwise the day on which prosecution for the offence is instituted.

Items 83 to 98 make minor amendments which are consequential to the insertion of the reasonable suspicion offences for 10 kilograms or more and to the extension of the operation of offences for the sale of illicit tobacco to include the supply of the illicit tobacco.

The TAA Act includes **fault-based offences** for the possession, manufacture or production of tobacco of various quantities where the tobacco is excisable goods and the excise or customs duty has not been paid. These offences prescribe a maximum penalty based on the following amounts of tobacco (respectively 500 kilograms or more, 100 kilograms or more and 5 kilograms or more):

- **possession** of tobacco that is excisable goods and the excise duty has not been paid in full, or the possession of tobacco that is tobacco seed, tobacco plant or tobacco leaf ([section 308-110](#), [section 308-115](#) and [section 308-120](#))
- **manufacture or production** of tobacco that is excisable goods and the excise duty has not been paid in full, or the manufacture or production of tobacco that is tobacco seed, tobacco plant or tobacco leaf ([section 308-125](#), [section 308-130](#) and [section 308-135](#)).

Items 99, 100, 106 and 107 amend subsections 308-110(1) and 308-125(1) to increase the maximum penalties where the weight is 500 kilograms or more from 10 years imprisonment to 15 years imprisonment and from 1,500 penalty units to 12,000 penalty units (from \$495,000 to \$3.96 million).

Items 101, 102, 108 and 109 amend subsections 308-115(1) and 308-130(1) to increase the maximum penalties where the weight is 100 kilograms or more from 5 years imprisonment to 10 years imprisonment and from 1,000 penalty units to 8,000 penalty units.

Items 104, 105, 111 and 112 amend subsections 308-120(1) and 308-135(1) to increase the maximum penalties where the weight is 5 kilograms or more from the greater of 500 penalty units or the amount of excise duty that would have been payable on the tobacco multiplied by 5 to:

- 3 years imprisonment and/ or the greater of the following:
 - 4,000 penalty units or
 - 5 times the amount of excise duty that would have been payable on the tobacco (other than tobacco plant or leaf), or for tobacco plant or leaf the excise duty that would be payable under the regulations, if the tobacco had entered for home consumption.

Items 103 and 110 introduce new fault-based offences (**proposed sections 308-115 (possession) and 308-133 (manufacture or production)**) for the possession, manufacture or production of tobacco where the weight is 10 kilograms or more. These new offences broadly mirror existing offences (discussed above). The proposed maximum penalties for each offence are:

- 5 years imprisonment and/or the greater of the following:
 - 6,000 penalty units or
 - 5 times the amount of excise duty that would have been payable on the tobacco (other than tobacco plant or leaf), or for tobacco plant or leaf the excise duty that would be payable under the regulations, if the tobacco had entered for home consumption.

Items 114 and 116 amend sections 308-205 and 308-210 to increase the maximum penalties for the possession of equipment for use in the illegal manufacture or production of tobacco and the possession of equipment designed or adapted to manufacture or produce tobacco respectively from 12 months imprisonment or 120 penalty units or both, to 2 years imprisonment or 1,000 penalty units or both.

Items 113, 115 and 117 to 121 make minor amendments which are consequential to the insertion of the new offences for the possession, manufacture or production of tobacco where the weight is 10 kilograms or more.

Investigatory powers for illicit tobacco offences

The [Surveillance Devices Act 2004](#) (SD Act) provides exceptions to [prohibitions on the use of surveillance devices](#) to allow authorised law enforcement agencies to apply for warrants and seek authorisations to use tracking and surveillance devices, access data held in a computer, disrupt data held in a computer and obtain information about criminal networks.

Law enforcement agencies may only seek to obtain a warrant under the SD Act for certain ['relevant offences'](#). The definition of a 'relevant offence' in [section 6](#) of the SD Act includes:

- a Commonwealth offence that is punishable by a maximum term of imprisonment of 3 years or more
- a state offence that has a federal aspect and is punishable by a maximum term of imprisonment of 3 years or more.

The amendments to the Customs Act, the Excise Act and the TAA to increase the penalties for specified criminal offences in relation to illicit tobacco under Schedule 1 will enable the use of wider investigatory powers on a broader range of illicit tobacco offences. This will include the use of investigatory powers under the SD Act, including surveillance device warrants and computer access warrants.

Schedule 2 – Telecommunications (Interception and Access) Act 1979

The [Telecommunications \(Interception and Access\) Act 1979](#) (TIA Act) [prohibits](#) the interception of live telecommunications and the accessing of stored communications. However, the TIA Act allows for authorised law enforcement agencies to apply for warrants where the information that would be likely to be obtained from the warrant would be likely to assist in the investigation of a **serious offence** or **serious offences**. The TIA Act specifies certain offences under [section 5D](#) as serious offences.

The types of warrants that may be obtained in relation to serious offences include:

- telecommunications service warrants ([section 46](#))
- named person warrants ([section 46A](#)) and
- entry on premises warrants ([section 48](#)).

A **telecommunications service warrant** enables the interception of the communications of a person who is involved in the commission of a serious offence or the interception of the communications of a person who is communicating with a person suspected of involvement in a serious offence.

A **named person warrant** may authorise the interception of multiple telecommunications services or devices that relate to a specific person ([p. 25](#)).

An **entry on premises warrant** is an interception warrant that authorises entry on a premises ([p. 18](#)). Such a warrant may only be issued where the issuing authority is satisfied that it would be impractical or inappropriate to intercept communications other than by the use of equipment installed on those premises ([p. 18](#)).

Item 1 amends the definition of **serious offence** under section 5D of the TIA Act to include several illicit tobacco related offences, including offences under the Customs Act, the TAA and the Excise Act as amended in Schedule 1 of the Bill.

The effect of the amendment is to allow agencies to apply for the use of a range of telecommunications access powers under the TIA Act in relation to specified illicit tobacco offences. This includes the power to apply for the issue of a telecommunications warrant, a named person warrant or an entry on premises warrant for the purpose of investigating illicit tobacco offences that are defined as a serious offence under the TIA Act.

Schedule 3 – Proceeds of Crime Act 2002

The [Proceeds of Crime Act 2002](#) (POCA) establishes a scheme to enable the confiscation of the [proceeds of crime](#) and allows for the confiscated funds to be used to benefit the community. The [scheme](#) seeks to disrupt, deter and reduce crime by undermining the profitability of criminal enterprises by depriving persons of the benefits derived from crime and preventing reinvestment of the proceeds in future criminal activity.

Part 1 – Protective Order Powers

Part 2-1 of the POCA provides for the making of restraining orders against property, in relation to certain offences, on grounds that relate to possible forfeiture or confiscation orders relating to those offences ([section 16](#)). [Section 28A](#) of the POCA provides the court with the authority to prohibit or restrict the publication of evidence contained in affidavits supporting a restraining order application.

Item 2 repeals subsections 28A(1) and (2) and inserts new provisions to expand the grounds under which the court may make a non-publication order. The current provision allows for the making of a non-publication order where it appears to be necessary in order to prevent prejudice to the administration of justice.

Proposed subsection 28A(2) allows the court to make an order prohibiting or restricting the publication of information relating to the application or the restraining order where the court considers it appropriate in order to:

- protect the integrity of any investigation or prosecution
- prevent prejudice to the administration of justice
- protect the safety of any person
- avoid causing undue distress or embarrassment to a party to or witness to a proceeding involving an offence of a sexual nature or
- prevent the prejudice to the interests of the Commonwealth or a state or territory in relation to national or international security.

[Section 319A](#) of the POCA provides the court with the authority to make a closed court order if the court considers that the order is **necessary to prevent interference with the administration of criminal justice**. The order may be made to hold the proceedings in whole, or in part, in closed court.

Item 5 amends section 319A to expand the grounds on which a closed court order may be made in POCA proceedings to mirror the grounds for the making of a non-publication order under **proposed subsection 28A(2)**.

Part 2 – Search Warrant Framework

Items 7 to 15 make minor amendments to the [International Criminal Court Act 2002](#), the [International War Crimes Tribunals Act 1995](#) and the [Mutual Assistance in Criminal Matters Act 1987](#) to align those Acts with the proposed amendments to the POCA in relation to search warrants, discussed below.

Item 18 inserts **proposed subsection 225(1A)** of the POCA to establish search warrant provisions relating to a person. The amendment will allow a magistrate to issue a warrant allowing an ordinary search or a frisk search of a person where the magistrate is satisfied that there are reasonable grounds for suspecting that the person has in their possession, or within the next 72 hours will have in their possession, any tainted property or evidential material.

Item 36 inserts **proposed subsection 228(1A)** to provide for the things that will be authorised by a search warrant relating to a person. A search warrant relating to a person will authorise the executing officer or a person assisting to:

- search the person as specified in the warrant, things found in the possession of the person, and any ‘recently used conveyance’, for any kind of tainted property or evidential material specified in the warrant (**item 87** defines **recently used conveyance** to mean a conveyance (which includes an aircraft, vehicle or vessel) that the person who is the subject of the warrant had operated or occupied at any time in the 24 hours prior to the commencement of the search)
- seize any items identified as tainted property or evidential material of the kind specified in the warrant, record fingerprints from things or take forensic samples from things found during the search
- seize other things found during the search on or in the possession of the person, or in the conveyance, that the executing officer or a person assisting believes on reasonable grounds to be tainted property or evidential material to which the warrant relates or which relates to an indictable offence
 - these items may only be seized where the executing officer or person assisting believes on reasonable grounds that the seizure of things is necessary to prevent their concealment, loss or destruction or to prevent their use in the commission of an offence.
- seize other things found in the course of the search that the executing officer or a person assisting believes on reasonable grounds to be things relevant to unexplained wealth order proceedings.

These amendments broadly reflect the person search warrant powers under [subsection 3F\(2\)](#) of the Crimes Act.

Item 50 amends section 240 to require the executing officer or a person assisting in the execution of a search warrant relating to a person to provide the person who is the subject of the search warrant with a copy of the warrant and requires the executing officer to identify themselves to the person at the premises or the person being searched.

Item 28 inserts **proposed subsections 227(1A) and (1B)** to require a search warrant issued under the POCA to specifically state that other things may be seized under a search warrant relating to either the premises or a person respectively.

Item 89 inserts **proposed section 228AA** which authorises the use of electronic equipment under a search warrant to access data held in a computer or device, including cloud-based data, to determine if that data is tainted property or evidential material. Data is defined in section 338 of the POCA to mean information in any form; or any program (or part of a program).

If necessary to determine if the data is tainted property or evidential material the person executing the warrant is authorised to add, copy, delete or alter data. However, such actions are not permitted where they would materially interfere with, interrupt or obstruct:

- a communication in transit or
- the lawful use of a computer by other persons

unless that action is necessary to do a thing specified in the warrant.

Such an action is also prohibited where it would cause any material loss or damage to other persons lawfully using a computer. **Proposed section 228AA** broadly mirrors subsections [3F\(2A\) to \(2E\)](#) of the Crimes Act.

Item 95 inserts **proposed subsection 228A(3A)** to authorise the use of electronic equipment under a search warrant for the purpose of attaining access to ‘account-based data’ to determine if the data suggests the existence of a digital asset that may be seized under the warrant. **Proposed section 250B**, at **item 128**, defines **account-based data**. **Proposed subsection 228A(3A)** broadly mirrors [subsection 3FA\(5\)](#) of the Crimes Act and is intended to be the digital asset specific equivalent of **proposed subsection 228AA(2)**.

Item 107 inserts **proposed section 244A** to expressly allow for the use of electronic equipment to examine or process a computer or storage device found during a search authorised under a warrant to obtain access to data to determine whether the computer or storage device is a thing that may be seized under the warrant or a thing that suggests the existence of a digital asset that may be seized under a warrant. **Proposed section 244A** broadly mirrors [subsections 3K\(5\) to \(9\)](#) of the Crimes Act.

Item 113 inserts **proposed section 245A** to allow an executing officer or a person assisting to operate electronic equipment to access data or account-based data where that equipment had been seized and moved under a search warrant under section 244.

Item 124 repeals subsection 246(3) and substitutes two new offence provisions for persons who fail to comply with an order to provide information or assistance to allow an authorised officer to access data held in or accessible from a computer, copy data to a storage device, or convert the data into documentary form. The current maximum penalty is 6 months imprisonment, or 30 penalty units, or both.

The new provisions propose a graduated penalty structure for failure to comply with an assistance order. The maximum penalty for the base offence is 5 years imprisonment, 300

penalty units or both. Where the offence to which the warrant relates is a serious offence the maximum penalty is 10 years imprisonment, 600 penalty units, or both.

Item 127 inserts **proposed section 250A** which requires that data copied or seized under a search warrant is removed and destroyed once the head of the law enforcement agency is satisfied that the data is no longer required.

Part 3 – Examination orders

Under the POCA, ‘a proceeds of crime authority (either the Director of Public Prosecutions or the Commissioner of the Australian Federal Police) may apply to the court for an examination order. If the examination order is made, an approved examiner may issue an examination notice summoning people to appear before an examination. An examiner is not limited to summoning only people whose assets are the subject of the relevant restraining order—they could also summon, for example, an accountant who is able to answer questions about the financial affairs of such a person. The examiner may compel people to answer questions or produce documents relevant to the affairs of a suspect, a person who claims an interest in property that is the subject of a restraining order, and/or the spouse or de facto partner of the aforementioned people. Evidence gathered from the examination may be used as evidence when seeking a subsequent order under the POCA’ ([pp. 1-2](#)).

Items 135 to 138 provide that an application for a forfeiture order, a pecuniary penalty order, a literary proceeds order, or an unexplained wealth order must not be heard until the responsible authority has had reasonable opportunity to conduct examinations in relation to the application.

Item 139 inserts **proposed sections 180AA and 180AB** to allow the court to make examination orders in relation to applications for the exclusion of property from restraining orders that have been applied for and in relation to applications for confiscation orders that have been made.

Proposed section 180AA will enable a responsible authority to gather relevant information about a person who has applied to exclude their specified interest in property from a restraining order that has been applied for but not yet made, prior to the hearing of the exclusion application. Similarly, **proposed section 180AB** will allow the court to make an examination order where an application for a confiscation order has been made.

Part 4 - Information disclosure

Item 145 repeals and replaces table item 3 in subsection 266A(2) to expand the types of Commonwealth authorities to which POCA information may be disclosed and specifies for which purposes such information may be disclosed, which is broadly for a purpose which would assist the Commonwealth Authority to perform its functions under an Act. However, it provides that a disclosure may not be made to a Commonwealth Authority for the purpose of assisting in the prevention, investigation or prosecution of an offence, as disclosure for these purposes is covered by existing disclosure provisions (see item 2 and 2D). Currently table item 3 only allows for the disclosure of information to the Australian Taxation Office for the protection of public revenue.

Part 5 – Equitable sharing

Item 150 amends the title of Division 2 of Part 4-3 of the POCA to include ‘and criminal asset confiscation’ to clarify that the National Cooperative Scheme on Unexplained Wealth (the Scheme) applies to asset confiscation that is not just related to unexplained wealth.

Item 151 inserts definitions for *non-referring signatory state* and *NCSUW agreement*. A non-referring signatory state is defined as a state that is not a ‘participating state’ or a ‘cooperating state’ and is a party to the NCSUW agreement. The NCSUW agreement is the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth and Criminal Asset Confiscation.

The purpose of this amendment is to enable a jurisdiction that has signed up to the NCSUW to participate in equitable sharing arrangements under Division 2 of Part 4-3 of the POCA which allow for the sharing of confiscated assets among jurisdictions. Under current legislation a state or territory cannot be considered a ‘participating state’ or a ‘cooperating state’ for the purposes of the Scheme unless it enacts legislation ([EM](#), p. 68). Consequently, a jurisdiction is unable to participate in equitable sharing under the Scheme ([EM](#), p. 68). This reflects amendments proposed by the [Review of the Intergovernmental Agreement on the National Cooperative Scheme on Unexplained Wealth](#) (p. 49).

Part 6 – Preliminary unexplained wealth orders

Part 6 of Schedule 3 of the Bill proposes to remove the requirement for the court to make a preliminary unexplained wealth order prior to considering the proceeds of crime authority’s application for an unexplained wealth order. Currently, to make an unexplained wealth order under [section 179E](#) the court has to have made a preliminary unexplained wealth order in relation to the person under [section 179B](#).

Item 180 repeals sections 179B to 179D which establish the mechanisms relating to preliminary unexplained wealth orders.

Item 181 repeals and replaces subsection 179E(1) which sets out the process for making an unexplained wealth order to remove the requirement for the court to have made a preliminary unexplained wealth order.

Item 192 provides transitional arrangements for commencement in relation to preliminary unexplained wealth orders. It provides that Part 2-6 and section 335 as in force immediately before Part 6 of Schedule 3 commences, will continue to apply on and after commencement in relation to an application for an unexplained wealth order that was made, but not finally determined, before commencement. Furthermore, a preliminary unexplained wealth order that was in force immediately before commencement will also continue to apply on and after commencement of the Bill.

Part 7 – Uniform service provisions

Item 194 inserts **proposed section 315D** to provide requirements for the service of documents under the POCA by certain persons.

Proposed subsection 315D(1) provides that the section applies where a provision of the POCA requires or permits certain persons to give, send, present, serve or otherwise provide a document.

Proposed subsection 315D(2) sets out the requirements for the service of documents where the person to be given the document is a natural person. **Proposed subsection 315D(3)** sets out the requirements for service of documents where the recipient of the document is not a natural person. Notably, these provisions allow for the postal and electronic service of documents.

Item 195 inserts a definition of *electronic communication* to mean a communication of information in the form of data, text or images by means of electromagnetic energy.

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