



Bills Digest | 30 March 2026

Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026

Parliamentary Library
Bills Digest No. 57, 2025–26

Key points

- The [Customs Legislation Amendment \(False Trade Marks Infringement Notices\) Bill 2026](#) (the Bill) amends the [Commerce \(Trade Descriptions\) Act 1905](#) and the [Customs Regulation 2015](#) to:
 - establish a new strict liability offence for the importation of goods bearing false trade marks
 - prescribe the new offence in the Customs [Infringement Notice Scheme](#).
- The proposed amendments will enable the Comptroller-General of Customs (and delegates in the Australian Border Force (ABF)) to issue infringement notices for the importation of goods that infringe a registered trade mark (counterfeits) as an alternative to prosecution for the offence.
- The financial deterrent under the proposed framework is intended to complement the existing [Notice of Objection](#) scheme under the [Trade Marks Act 1995](#), which allows the ABF to seize imported goods that infringe intellectual property rights.
- At the time of writing, the Bill had not been referred to or reported on by any parliamentary committees.

Confidential, Impartial, Timely

Contents

Purpose of the Bill.....	2
Structure of the Bill	3
Background.....	3
Policy position of non-government parties/independents.....	5
Key issues and provisions	5
Offence of importing goods with false trade marks	6
Infringement Notice Scheme.....	7

Date of introduction: 25 March 2026

House introduced in: House of Representatives

Portfolio: Home Affairs

Commencement: On the earlier of Proclamation or 6 months 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 March 2026.

Purpose of the Bill

The purpose of the [Customs Legislation Amendment \(False Trade Marks Infringement Notices\) Bill 2026](#) (the Bill) is to amend the:

- [Commerce \(Trade Descriptions\) Act 1905](#) (the CTD Act) to establish a new strict liability offence for the importation of goods bearing false trade marks
- [Customs Regulation 2015](#) to prescribe the new offence in the Customs [Infringement Notice Scheme](#).

Structure of the Bill

The Bill is comprised of a single Schedule, which

- establishes a new strict liability offence for the importation of goods bearing false trade marks
- prescribes the new offence in the Customs Infringement Notice Scheme, enabling the Comptroller-General of Customs (and delegates in the Australian Border Force (ABF)) to issue infringement notices as an alternative to prosecution for the offence.

Background

The [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (TRIPS Agreement), which Australia is a [party](#) to, defines ‘counterfeit trademark goods’ as

any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation. (fn 14, p. 24)

According to a [2025 joint report](#) of the Organisation for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO), counterfeit and pirated goods valued at approximately US\$467 billion accounted for up to 2.3% of global trade in 2021 (p. 8).

In Australia, the value of counterfeit and pirated goods was estimated to be A\$4,979.7 million in 2023–24 (p. 16). The ABF reportedly seized over 700,000 individual counterfeit items (worth over A\$35 million if genuine) at the border in the 2024-25 financial year (p. 16).

The [OECD/EUIPO report](#) found that counterfeiting affects nearly 50 out of 96 distinct product categories reported in global seizure data, with high-value goods such as clothing, footwear, leather goods and electronics ranking highly as the primary targets of counterfeiters (pp. 7, 17). The report further notes a ‘worrying increase in the trade of dangerous goods such as counterfeit automotive parts and pharmaceuticals’ (p. 8) and warns that

... trade in counterfeit goods poses a threat to economic growth and innovation, while also threatening public health, safety, and the rule of law. Furthermore, counterfeit trade fuels corruption and organised crime, establishing a vicious cycle where innovation is stifled, consumer trust is eroded, and resources are diverted from legitimate businesses to illicit operations. (p. 40)

Several laws regulate the importation of counterfeit goods in Australia, including the CTD Act, the [Trade Marks Act 1995](#) and the [Copyright Act 1968](#). Import provisions under this legislation give rise to Australia's [Notice of Objection](#) Scheme, which allows the ABF to seize imported goods that infringe intellectual property rights.

[Part 13](#) of the Trade Marks Act regulates the importation of goods infringing Australian trade marks. Under [section 132](#), the registered owner of a registered trade mark who is concerned about potential damage from the importation of infringing goods may lodge a [Notice of](#)

[Objection](#) with the ABF. A Notice of Objection is valid for 4 years and must be accompanied by a [Deed of Undertaking](#) in which the right holder (known as the ‘objector’) agrees to repay the costs resulting from any seizures made (subsections 132(4)–(5); [section 133](#)).

Once a Notice of Objection is in place and the [ABF has detained the goods](#), the ABF notifies the importer and the objector or legal representative. The importer must make a claim for the release of the seized goods within 10 working days from the date of notification (the claim period) failing which the goods are deemed forfeited.

If the importer makes a claim for release of the goods within the claim period, the objector will be notified and have 10 working days from the date of notification (the action period) to either commence legal action or consent to the release of the goods to the importer. If the objector does not commence legal action within the action period, the ABF must release the goods to the importer subject to all other legislative requirements being met.

According to the [Explanatory Memorandum](#) (EM),

... The intellectual property rights holder remains responsible for any subsequent legal action against the importer under civil prosecution. Once the ABF refers the matter to the intellectual property rights holder, it no longer has authority to take action against the importer.

In the majority of cases where counterfeit and pirated goods are seized, the importer forfeits or abandons the goods. When this occurs, the Commonwealth is unable to pursue the importer through fines or prosecution. The only consequence to the importer is the financial loss of the value of the seized counterfeit goods. (p. 3)

With the average cost of full legal proceedings somewhere between \$200,000 and \$500,000 ([EM](#), p. 14), pursuing legal action against importers of counterfeit goods can often be [expensive for small and medium business owners](#). More so as the award of damages is considered insufficient to impact the business model of counterfeiters ([EM](#), p. 14).

It would seem that the Department of Home Affairs undertook consultation on the proposed amendments in 2020. According to a [submission](#) by the Law Council of Australia, the department indicated that the intention was for an infringement notice to be issued under the Customs Infringement Notice Scheme in two circumstances only:

- after the claim period has passed without the designated owner of the goods making a claim for the release of the goods under [section 136](#) of the Trade Marks Act, or where the designated owner consents to the forfeiture of the seized goods under [section 135](#) of the Act
- if the court makes a finding of infringement in an action instituted by the registered owner of the trade mark where the designated owner has made a claim for the release of the seized goods. Infringement notices would not be issued if the owner of the registered trade mark did not institute infringement proceedings after the designated owner makes a claim for the release of the seized goods (pp. 1–2[4]).

The Law Council of Australia supported the proposal in principle but recommended issuing infringement notices ‘at the time the seizure notice is issued under [section 134](#) of the Trade Marks Act to avoid the unintended consequence of encouraging the importers to make a claim for the release of the goods’ ([p. 2\[6\]](#)).

Policy position of non-government parties/independents

At the time of writing there does not appear to be any comment from non-government parties or independents on the Bill.

Key issues and provisions

[Part III](#) of the CTD Act and [Part 2](#) of the [Commerce \(Trade Descriptions\) Regulation 2016](#) require [certain goods to be correctly labelled](#) with a trade description before they can be imported into Australia. Importing goods bearing a [false trade description](#) or not bearing a prescribed trade description is prohibited under the CTD Act.

The term ‘trade description’ as defined in the CTD Act is distinct from the meaning of ‘trade marks’ as used in the Trade Marks Act. Under the CTD Act, ‘trade description’, in relation to any goods, generally refers to any description, statement, indication, or suggestion, direct or indirect as to the nature, origin and characteristics of the goods ([section 3](#)). A ‘trade mark’ on the other hand is ‘a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person’ (Trade Marks Act, [section 17](#)).

[Section 2](#) of the CTD Act incorporates that Act into the [Customs Act 1901](#) and, by extension, the Infringement Notice Scheme established under [Division 5](#) of Part XIII of the Customs Act ([EM](#), p. 5). [Section 243X](#) of the Customs Act provides that

[a] regulation may make provision enabling a person who is alleged to have committed an offence of **strict liability** or of absolute liability against [the] Act to pay to the Commonwealth a penalty specified in a notice (an **infringement notice**) as an alternative to prosecution. (emphasis added)

[Section 135](#) of the Customs Regulation sets out that [Schedule 8](#) prescribes provisions of the Customs Act that are subject to an infringement notice.

As the CTD Act does not currently regulate the importation of goods with false trade marks and the Trade Marks Act does not provide for an infringement notice scheme, the current primary deterrents against importation of counterfeit goods are forfeiture of the goods or an infringement action instituted by the holder of the relevant trade mark rights ([EM](#), p. 5).

Currently, importing goods with false trade marks into Australia for the purpose of trade or manufacture is an indictable offence punishable by a maximum penalty of imprisonment for 5 years or 550 penalty units (\$181,500), or both (Trade Marks Act, [subsection 148\(1\)](#)). It is also a summary offence punishable by a maximum penalty of imprisonment for 12 months or 60 penalty units (\$19,800), or both (Trade Marks Act, [subsection 148\(2\)](#)).

Offence of importing goods with false trade marks

Item 2 inserts a new strict liability offence for importing goods with false trade marks into the CTD Act. The proposed offence is targeted at those who import commercial quantities of high-risk consumer products rather than the general public ([p. 16](#); [EM](#), p. 8).

Proposed subsection 10AB(1) provides that a person commits an offence of strict liability if the person imports goods into Australia and:

- there is a registered trade mark on the goods
- there is a mark or sign on the goods that is substantially identical to a registered trade mark, or
- a registered trade mark on the goods has been altered, defaced, added to, wholly or partly removed, erased or obliterated.

This offence is punishable by a maximum penalty of 60 penalty units (\$19,800), which is less than the existing maximum 100 penalty units (\$33,000) for the offence of importing goods bearing a false trade description under [section 9](#). While the [EM](#) (p. 7) notes that the penalty is consistent with other penalties in the CTD Act, the Act prescribes 10 penalty units for failing to give notice of intention to export specified goods and 100 penalty units for applying false trade description to exports (sections [6](#) and [12](#)). The maximum penalty that can be prescribed under the [Commerce \(Trade Descriptions\) Regulation 2016](#) is 50 penalty units ([section 17](#)).

The [EM](#) further notes that the proposed penalty is ‘consistent with existing penalties that may be prescribed in relation to offences concerning the importation of such goods under the Customs Act’ (p. 7). [Subsection 243X\(2\)](#) of the Customs Act provides that the penalty specified in an infringement notice must not exceed either:

- one-quarter of the maximum fine that a court could impose on the person as a penalty for that offence, or
- 15 penalty units for an individual or 75 penalty units for a body corporate.

As the new offence is intended to complement the existing Notice of Objection scheme, the Department of Home Affairs believes that the penalty would act as a deterrent even though a lower penalty could be applied in an infringement notice issued under section 243X. This is because of the possibility that the value of seized counterfeit goods, together with the financial penalty could potentially exceed the profits realised from any consignments of infringing goods that escape detection ([EM](#), p. 7).

The financial deterrent is also expected to ‘retain customer confidence’ in the retail sector and ‘reduce the financial burden that small and medium businesses must bear to bring expensive civil litigation’ ([p. 17](#)).

As a [strict liability](#) offence, the prosecution would only be required to prove the physical elements of the offence and not fault elements such as intention, knowledge, recklessness or negligence. In view of the public interest and safety risks associated with counterfeit goods, strict liability is considered necessary to ‘enhance the effectiveness of the enforcement regime in deterring the importation of counterfeit goods’ ([EM](#), p. 9). The defence of honest and reasonable mistake of fact under [section 9.2](#) of the Criminal Code would be available to the defendant.

Defences

The new offence would not apply if either of the following circumstances exist:

- the registered trade mark, or mark or sign, was applied, altered, defaced, added to, wholly or partly removed, erased or obliterated, as the case requires, with the permission of the registered owner, or an authorised user, of the trade mark (**proposed subsection 10AB(2)**)
- the application of the registered trade mark, or mark or sign, was required or authorised by the Trade Marks Act, a direction of the Registrar or an order of a court (**proposed subsection 10AB(3)**).

As such matters would be within the knowledge of the defendant, the defendant will bear the evidential burden of proof (see Criminal Code, [section 13.3](#)).

To ensure alignment with related provisions in the Trade Marks Act, **proposed subsection 10AB(4)** provides that the expressions used in the new offence provision have the same meaning as in the Trade Marks Act. This includes terms such as '[authorised user](#)', '[registered owner](#)', '[registered trade mark](#)', '[Registrar](#)', '[sign](#)' and 'trade mark'.

Infringement Notice Scheme

Further to section 2 of the CTD Act which incorporates that Act with the Customs Act, **items 3-5** amend section 135 and Schedule 8 of the Customs Regulation to prescribe the proposed strict liability offence as one to which the Infringement Notice Scheme applies.

Licence

© Commonwealth of Australia



Creative Commons

With the exception of the Commonwealth Coat of Arms, and to the extent that copyright subsists in a third party, this publication, its logo and front page design are licensed under a [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia](#) licence.

In essence, you are free to copy and communicate this work in its current form for all non-commercial purposes, as long as you attribute the work to the author and abide by the other licence terms. The work cannot be adapted or modified in any way. Content from this publication should be attributed in the following way: Author(s), Title of publication, Series Name and No, Publisher, Date.

To the extent that copyright subsists in third party quotes it remains with the original owner and permission may be required to reuse the material.

Inquiries regarding the licence and any use of the publication are welcome to webmanager@aph.gov.au.

Disclaimer

Bills Digests are prepared to support the work of the Australian Parliament. They are produced under time and resource constraints and aim to be available in time for debate in the Chambers. The views expressed in Bills Digests do not reflect an official position of the Australian Parliamentary Library, nor do they constitute professional legal opinion. Bills Digests reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. Other sources should be consulted to determine the official status of the Bill.

Any concerns or complaints should be directed to the Parliamentary Librarian at webmanager@aph.gov.au. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Enquiry Point for referral.

Acknowledgement of Country

We acknowledge the traditional owners and custodians of country throughout Australia and acknowledge their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the elders past, present and emerging.


The Parliamentary Library of Australia was established in 1901 and serves as a trusted source of information, analysis and advice for the Australian Parliament. The Library is part of the Department of Parliamentary Services.

Our services are confidential, impartial, and offered on an equal basis to all parliamentarians, parliamentary committees, and to staff acting on their behalf.

Our published material is available to everyone at:

 aph.gov.au/library

 Australian Parliamentary Library

 @ParLibrary



Confidential, Impartial, Timely

ISSN 1328-8091