

Let's talk shop.

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

April 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to the Senate Legal and Constitutional Affairs Committee on the *Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026 (the Bill)*.

ARC represents the Australian retail sector. Valued at \$444 billion and employing more than 1.4 million Australians, or one in ten workers, retail is the largest private sector employer in the country and a cornerstone of the Australian economy, contributing 18 per cent to national GDP.

Our membership spans the full breadth of Australian retail: from family-owned small and independent retailers, comprising 95 per cent of our membership, to large national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

Australian retailers are a critical contributor to the economy and deliver widespread benefits to all Australians. A significant portion of every dollar spent in retail flows back to employees, suppliers, superannuation funds and local communities. ARC is committed to supporting Australian retailers by collaborating and advocating for policy and reforms that drive growth, resilience and long-term prosperity for Australian retail and the millions who rely on it.

Executive Summary

Counterfeit goods are a significant challenge for Australian retailers. They confuse consumers, undermine local businesses and distort competition by creating an uneven playing field, particularly where falsely branded goods are sold at very low prices through online platforms.

Counterfeit goods also potentially pose a risk to consumer safety. ARC members have highlighted concerns about misleading compatibility claims, including products marketed as “suitable for” branded goods where consumers may assume they are genuine, equivalent or supported by the original brand. This is especially concerning in higher-risk product categories such as lithium-ion batteries and chargers, where product failure can be catastrophic.

To address the challenges of counterfeit goods, ARC supports measures that strengthen enforcement processes at the border and set out more practical consequences for the importation of goods bearing false trade marks.

As a tool to strengthen the current framework, improve deterrence and provide a more practical enforcement response, ARC supports this Bill, particularly:

- the new strict liability offence;
- its incorporation within the Customs Infringement Notice Scheme; and
- the issue of infringement notices as an alternative to prosecution.

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To support effective implementation, ARC recommends the development of guidance to accompany the Bill setting out how the new regime will operate and interact with the existing Notice of Objection process. Key issues recommended for inclusion in the guidance are outlined below.

Additionally, ARC recommends that this Committee consider this Bill in the broader context of offshore e-commerce and the importance of a level playing field between Australian retailers and offshore sellers. Complementary measures may be needed to address deceptive compatibility-based products in higher-risk categories.

The Bill

ARC supports the Bill as a sensible and practical addition to the existing framework. The creation of a strict liability offence is welcome, and the infringement notice mechanism provides a more direct consequence than seizure alone.

The current Notice of Objection scheme allows goods to be seized, but the burden of pursuing further action can then fall to the rights holder, requiring them to pursue costly civil action to protect their business. In many cases, counterfeit goods are simply forfeited or abandoned, and the matter goes no further. The Bill addresses that gap by enabling the Australian Border Force (ABF) to issue infringement notices where goods bearing false trade marks are imported.

Importance to Consumers and Retailers

Australian consumers need to be confident that goods entering the Australian market are what they claim to be. Compliance with laws, including by all retailers that sell into the Australian market, protects consumers, helps ensure products and workplaces are safe, and upholds fair trade and market integrity. The importation of counterfeit goods undermines those laws, damaging consumer confidence, rights holders and retailers.

The importation of counterfeit goods allows bad actors to trade off the reputation and compliance efforts of legitimate businesses without meeting the same standards. This creates an uneven playing field and can distort competition, particularly where falsely branded goods are sold at very low prices through online channels.

Counterfeit goods also raise significant consumer safety concerns, particularly where misleading compatibility claims are made about products marketed as “suitable for” branded goods. Consumers may assume such products are genuine, equivalent or supported by the original brand, when that may not be the case. This is especially concerning in higher-risk product categories such as lithium-ion batteries and chargers, where product failure may have serious consequences.

Implementation and Guidance

ARC considers implementation by the ABF will be critical to achieving the purpose of the Bill, namely strengthening the legal framework and curbing the importation of counterfeit goods. Ensuring that enforcement agencies, importers, retailers and rights holders understand their rights and obligations under the new regime, including how it interacts with the existing Notice of Objection process is essential. Clear ABF guidance will support consistent administration and provide confidence that the regime remains focused on goods bearing false trade marks.

ARC recommends the new regime is supported by practical operational guidance, setting out:



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- the types of conduct and goods likely to attract infringement notices;
- how the infringement notice scheme will operate alongside existing customs and trade mark processes;
- the role of rights holders within that process; and
- how the regime interacts with compatibility claims or other representations that may create a false association with branded goods, particularly in higher-risk categories.

ARC also encourages consideration of whether complementary measures may be needed to address deceptive compatibility-based products in higher-risk categories.

Conclusion

ARC supports the *Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026*.

The Bill is a practical measure to strengthen the current enforcement framework and improve deterrence against counterfeit imports. If well implemented it will better support legitimate businesses, strengthen consumer confidence and reduce the extent to which rights holders are left to rely on costly civil action.

ARC appreciates the opportunity to provide this submission and would welcome further engagement with the Committee. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.