



New South Wales

Scrap Metal Industry Act 2016 No 42

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New South Wales

Scrap Metal Industry Act 2016 No 42

Act No 42, 2016

An Act to provide for the regulation of the scrap metal industry. [Assented to 21 September 2016]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Scrap Metal Industry Act 2016*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

approved means approved by the Commissioner.

buy includes any of the following:

- (a) buy under an agreement to sell,
- (b) receive under an agreement to sell,
- (c) accept under an agreement to sell,
- (d) offer to receive or accept under an agreement to sell,
- (e) cause or allow to be received or accepted under an agreement to sell.

closure order means an order made under Division 1 of Part 3.

Commissioner means the Commissioner of Police.

dealing in includes buying, receiving and obtaining.

manager of a scrap metal yard means the individual who has responsibility for the day-to-day control and management of activities at the scrap metal yard.

motor vehicle means a motor vehicle (other than a light rail vehicle) or trailer within the meaning of the *Road Transport Act 2013* and includes the body, engine or chassis of a motor vehicle.

registered—see section 6 (1).

registration information—see section 6 (2).

scrap metal means any object of commercial value that:

- (a) is made from or contains metal, and
 - (b) is sold or obtained as scrap for recycling or reprocessing of the metal,
- but does not include an object of a kind prescribed by the regulations.

scrap metal dealer means a person who carries on a business of dealing in scrap metal.

scrap metal yard means premises at which scrap metal is received or kept in the course of carrying on a business of dealing in scrap metal.

sell includes any of the following:

- (a) sell by wholesale, retail, auction or tender,
- (b) barter or exchange,
- (c) supply for profit or gain,
- (d) offer for sale, receive for sale or expose for sale,
- (e) consign or deliver for sale,
- (f) have in possession for sale,
- (g) cause or allow any of the above to be done.

serious criminal offence means an offence committed in New South Wales that is punishable by imprisonment for 2 years or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.

unique identifier, in relation to a motor vehicle, has the same meaning as in section 154E of the *Crimes Act 1900*.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

4 Meaning of “carrying on a business”

In this Act, a reference to a person *carrying on a business* includes a reference to the person carrying on the business in partnership or by an employee, contractor, agent or other person.

Part 2 Regulation of scrap metal industry

Division 1 Registration of scrap metal businesses

5 Requirement for business to be registered

A person must not carry on a business of dealing in scrap metal unless the business is registered.

Maximum penalty: 100 penalty units.

6 Registration of business

- (1) A business is *registered* if:
 - (a) the scrap metal dealer carrying on the business provides the Commissioner, in the approved form, with the registration information for the business, and
 - (b) any fee required to be paid under section 7 by the dealer in respect of the business is paid to the Commissioner.
- (2) The *registration information* for a business comprises the following:
 - (a) the name of the business and the name of the scrap metal dealer carrying on the business if the dealer's name is different from the business name,
 - (b) the dealer's ABN,
 - (c) the address of each scrap metal yard used by the dealer,
 - (d) if the business is carried on by a corporation:
 - (i) the corporation's business address if different from the address of any scrap metal yard used by the dealer, and
 - (ii) the name of the manager of each scrap metal yard used by the dealer,
 - (e) such other information as may be prescribed by the regulations.

7 Registration fees payable

A person carrying on a business of dealing in scrap metal is required to pay a fee prescribed by the regulations:

- (a) at the time the registration information for the business is provided under section 6, and
- (b) before the end of each period of 3 years following the date on which the fee was first paid.

8 Requirement to notify changes in registration information

A scrap metal dealer must, within 14 days of any change occurring in the registration information for the business carried on by the dealer, notify the Commissioner in the approved form of the change.

Maximum penalty: 10 penalty units.

9 Certificate of registration

- (1) If the business carried on by a scrap metal dealer is registered under this Act, the Commissioner is to provide the scrap metal dealer with a certificate of registration for the business, showing the registration information for the business and such other particulars as may be prescribed by the regulations.
- (2) The Commissioner may issue a replacement certificate of registration if:
 - (a) the certificate of registration is lost, stolen, damaged or destroyed, or
 - (b) the registration information for the business changes.

- (3) The Commissioner may charge a fee (as determined by the Commissioner) for the issue of a replacement certificate of registration.

10 Register of scrap metal businesses

- (1) The Commissioner is to keep, in the approved form and manner, a register containing the registration information for each registered business.
- (2) The Commissioner is to ensure that the register is publicly accessible.

11 False or misleading information

A person must not:

- (a) in providing the Commissioner with the registration information for a business, or
- (b) in notifying the Commissioner of any change in the registration information for a business,

make or furnish any statement that the person knows is false or misleading.

Maximum penalty: 50 penalty units.

Division 2 Obligations and duties of scrap metal dealers

12 Prohibition on paying cash etc for scrap metal

A scrap metal dealer must not, in buying any scrap metal, pay for the scrap metal:

- (a) with cash, or
- (b) by cheque payable to cash, or
- (c) in kind with goods or services.

Maximum penalty: 100 penalty units.

13 Duty to report stolen scrap metal

If a scrap metal dealer suspects for any reason that:

- (a) any scrap metal in the dealer's possession, or
- (b) any scrap metal sold to the dealer,

may have been stolen or otherwise unlawfully obtained, the dealer must without unreasonable delay inform a police officer of the suspicion.

Maximum penalty: 50 penalty units.

14 Prohibitions on buying or disposing of unidentified motor vehicles

- (1) A scrap metal dealer must not buy any scrap metal that consists of a motor vehicle if the unique identifier for the motor vehicle has been removed, obliterated, defaced or altered.
- (2) A scrap metal dealer who receives or is in possession of a motor vehicle in respect of which the unique identifier has been removed, obliterated, defaced or altered must not sell or dispose of the motor vehicle unless authorised to do so by a police officer by order in writing.

Maximum penalty: 100 penalty units.

15 Prohibition on disposal of suspected stolen scrap metal

- (1) This section applies to any scrap metal that a police officer reasonably suspects as having been stolen or otherwise unlawfully obtained.

- (2) A police officer may, by order in writing served on a scrap metal dealer, prohibit the dealer:
 - (a) from altering the form of any scrap metal to which this section applies that is in the dealer's possession, or
 - (b) from disposing of it in any way,
for a period of 14 days after service of the order.
- (3) An order under subsection (2) may be reissued once for a further period of 14 days commencing on the expiry of the first order.
- (4) A scrap metal dealer must comply with an order served on the dealer under this section.
Maximum penalty: 50 penalty units.

16 Transaction records

- (1) A scrap metal dealer must keep a record, in the approved form and manner, of the following details in respect of each transaction entered into by the dealer for buying scrap metal:
 - (a) the date of the transaction,
 - (b) if the scrap metal is sold by an individual (including an individual acting as agent for the seller):
 - (i) the name, residential address and date of birth of the individual as shown on the individual's photo identification (being a document of the kind prescribed by the regulations), and
 - (ii) such other details relating to the identity of the individual as may be required by the regulations,
 - (c) if the sale is conducted by a corporation—the name, business address and ABN of the corporation and a statement signed by an executive officer of the corporation, or an employee authorised in writing by an executive officer of the corporation, consenting to the sale,
 - (d) a description of the scrap metal and its quantity or weight (or both if applicable),
 - (e) if the scrap metal consists of a motor vehicle, the unique identifier of the motor vehicle,
 - (f) the method of payment.
- (2) A scrap metal dealer must keep the record on the premises at which the dealer carries on business for a period of 3 years after it is made.
- (3) A scrap metal dealer must not, in any record required to be kept under this section, make a statement that the dealer knows is false or misleading.
- (4) A person must not, in purported compliance with any requirement reasonably made of the person by a scrap metal dealer for the purposes of the dealer's compliance with this section, furnish information or make any statement knowing that it is false or misleading.
Maximum penalty: 50 penalty units.

Part 3 Enforcement

Division 1 Closure orders

17 Interim closure of premises

- (1) The Commissioner may make an order that specified premises be closed (an *interim closure order*) if the Commissioner:
 - (a) is satisfied that a scrap metal business that is not registered is being carried on at the premises, or
 - (b) reasonably suspects that a serious criminal offence is being committed at the premises.
- (2) An interim closure order must be served on the person apparently in charge of the premises or be posted in a conspicuous place at the entrance to the premises.
- (3) An interim closure order takes effect from the time it is so served or posted and has effect for a period of 72 hours, unless sooner repealed or revoked.
- (4) More than one interim closure order closing the same premises may not be made under this section in any period of 7 days.

18 Long-term closure of premises

- (1) The Local Court may, on the application of the Commissioner, order that specified premises be closed for such period or until such time as the Court considers appropriate if the Court is satisfied that:
 - (a) a scrap metal business that is not registered is being carried on at the premises, or
 - (b) there have been, or there are likely to be, serious criminal offences committed at or in connection with the premises.
- (2) An application may be made under this section regardless of whether an interim closure order is (or has been) in force with respect to the premises.
- (3) If an interim closure order is in force with respect to premises when an application is made under this section, the Local Court may revoke the order if the Court considers that the order should not have been made or that there are no longer sufficient grounds for the order to continue in force.

19 Prohibition on carrying on scrap metal business on premises subject to closure order

- (1) A person must not, while a closure order is in force with respect to premises, carry on a business of dealing in scrap metal at the premises.
Maximum penalty: 100 penalty units.
- (2) It is a defence in proceedings for an offence against this section if the person satisfies the court that the person did not know, and could not reasonably have been expected to know, that a closure order was in force with respect to the premises.

20 Compensation not payable for closure of premises

- (1) Compensation is not payable to any person for the closure of premises pursuant to an order under this Division.
- (2) In this section:
compensation includes damages and any other form of monetary compensation.

Division 2 Powers of entry and inspection

21 Power to enter premises without warrant

- (1) A police officer may at any reasonable time enter any premises at which:
 - (a) a business of dealing in scrap metal is being carried on, or
 - (b) the police officer reasonably believes such a business is being carried on, for the purposes of determining whether there has been compliance with, or a contravention of, this Act.
- (2) This section does not confer a power to enter any premises or part of premises that are used only for residential purposes without the permission of the occupier or the authority of a search warrant.

22 Power to enter premises with warrant

- (1) A police officer may apply to an authorised officer for the issue of a search warrant if the police officer believes on reasonable grounds that any provision of this Act is being or has been contravened on any premises.
- (2) An authorised officer to whom any such application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any police officer to enter and search the premises.
- (3) A police officer executing a search warrant issued under this section may:
 - (a) enter the premises specified in the warrant, and
 - (b) search the premises for evidence of a contravention of this Act, and
 - (c) exercise any other function of a police officer under this Division.
- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:
authorised officer has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

23 Powers that may be exercised by police officers on entry

- (1) A police officer may, at any premises lawfully entered under this Division for the purposes of determining whether there has been compliance with, or a contravention of, this Act, do any or all of the following:
 - (a) examine any document on the premises,
 - (b) make a copy on the premises of any document and retain that copy,
 - (c) require any person to make a copy on the premises of any document and give that copy to the police officer to retain,
 - (d) take such photographs, films, audio, video or other recordings as the police officer considers necessary,
 - (e) require any person to produce any document on the premises,
 - (f) require any person to answer any question relating to any document or any other relevant matter,
 - (g) take any document from the premises for the purposes of copying it,
 - (h) seize any document or any other thing that the police officer believes on reasonable grounds is connected with an offence against this Act or the regulations.

- (2) The power to seize anything connected with an offence includes a power to seize anything that will provide evidence of the commission of an offence.
- (3) Any document taken only for the purpose of copying the document must be returned when that copying is completed.

24 Hindering or obstructing police officer

A person must not, without reasonable excuse:

- (a) obstruct, hinder or interfere with a police officer in the exercise of a function under this Division, or
- (b) fail to comply with any requirement made of the person by a police officer in the exercise of a function under this Division.

Maximum penalty: 50 penalty units.

Part 4 Miscellaneous

25 Certificate evidence

A certificate purporting to have been signed by the Commissioner and stating any of the following is admissible in evidence in any proceedings and is evidence of the matters stated:

- (a) that on a specified day, or during a specified period, a business of dealing in scrap metal was or was not registered,
- (b) that on a specified day, or during a specified period, specified premises were subject to a closure order.

26 Nature of proceedings for offences

Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court.

27 Penalty notices

- (1) A police officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

28 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) exemptions from the operation of this Act or specified provisions of this Act,
 - (b) requiring the display of certificates of registration at scrap metal yards,
 - (c) providing for the content of advertisements by scrap metal dealers, including requiring the inclusion of specified information in advertisements.
- (3) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.
- (4) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (5) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (6) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

29 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.
- (4) In subsection (1), *the Act* includes the regulations under the Act.

[Second reading speech made in—
Legislative Assembly on 24 August 2016
Legislative Council on 14 September 2016]