



New South Wales

# Securing NSW Steel Industry Bill 2017

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to ensure, as far as practicable, that steel used in public works or infrastructure constructed by or on behalf of public authorities is manufactured in Australia.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act 3 months after the date of assent to this Act unless commenced sooner by proclamation.

**Clause 3** specifies the object of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act.

### Part 2 Australian Steel to be used in public works and infrastructure

**Clause 5** provides that a public authority must not construct any public works involving the use of more than 2 tonnes of steel (*relevant public works*) unless 90 percent of the steel is manufactured in Australia.

**Clause 6** provides that a public authority must not contract with another party who undertakes to construct any relevant public works on behalf of the public authority (a *relevant contract*) unless

the contract contains a provision requiring 90 percent of the steel used in the construction of the works to be manufactured in Australia.

**Clause 7** provides that any party to a relevant contract who undertakes to construct any relevant public works on behalf of a public authority is required to provide a report to the public authority and the Independent Pricing and Regulatory Tribunal (*IPART*) verifying the quantity and origins of any steel used under the contract.

**Clause 8** requires a public authority that constructs any relevant public works or is a party to a relevant contract to ensure, as far as is practicable, that the requirements of the proposed Act are complied with.

### **Part 3 NSW Steel Industry Advocate**

**Clause 9** enables the Governor to appoint a NSW Steel Industry Advocate with a principal office in the Illawarra region.

**Clause 10** sets out the functions of the Advocate, which include monitoring compliance with the proposed Act and conducting a review of the steel manufacturing sector.

**Clause 11** requires the Advocate to report to Parliament on various matters.

**Clause 12** provides for the employment of staff and the delegation of the Advocate's functions to staff.

### **Part 4 Miscellaneous**

**Clause 13** requires IPART to prepare an annual report regarding the effectiveness of the proposed Act in achieving its objective.

**Clause 14** provides that the proposed Act binds the Crown.

**Clause 15** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 16** provides for the review of the proposed Act in 5 years.



New South Wales

# Securing NSW Steel Industry Bill 2017

## Contents

---

	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Object of Act	2
4 Definitions	2
<b>Part 2 Australian steel to be used in public works and infrastructure</b>	
5 Relevant public works carried out by public authority	4
6 Relevant contracts	4
7 Cumulative steel usage reports	4
8 Obligations of public authorities	5
<b>Part 3 NSW Steel Industry Advocate</b>	
9 NSW Steel Industry Advocate	6
10 Functions of NSW Steel Industry Advocate	6
11 NSW Steel Industry Advocate required to report to Parliament	7
12 Staff of NSW Steel Industry Advocate and delegation	7
<b>Part 4 Miscellaneous</b>	
13 Annual report by IPART	9
14 Act to bind Crown	9

---

---

	Page
15 Regulations	9
16 Review of Act	9



New South Wales

# Securing NSW Steel Industry Bill 2017

No. , 2017

---

## **A Bill for**

An Act to ensure that Australian steel is used in infrastructure or public works constructed by or on behalf of public authorities.

---

<b>The Legislature of New South Wales enacts:</b>	1
<b>Part 1 Preliminary</b>	2
<b>1 Name of Act</b>	3
This Act is the <i>Securing NSW Steel Industry Act 2017</i> .	4
<b>2 Commencement</b>	5
This Act commences 3 months after the date of assent to this Act, unless commenced sooner by proclamation.	6 7
<b>3 Object of Act</b>	8
The object of this Act is to ensure, as far as practicable, that at least 90 percent of the steel used in public works or infrastructure constructed by or on behalf of public authorities is manufactured in Australia.	9 10 11
<b>4 Definitions</b>	12
In this Act:	13
<i>excluded steel</i> means:	14
(a) any kind of steel that is not manufactured at any location in Australia and, in relation to a particular public works project, could not be manufactured in Australia for the purposes of that project:	15 16 17
(i) at a reasonable cost, or	18
(ii) within a reasonable time, or	19
(b) any item made in Australia that is required to be made from a special kind of steel that:	20 21
(i) is not manufactured in Australia, and	22
(ii) could not be manufactured in Australia for a reasonable cost, or	23
(c) any steel not manufactured in Australia where the unit price for that steel (if it were manufactured in Australia) would be higher than the global steel price by either of the following:	24 25 26
(i) 20 percent,	27
(ii) any percentage higher than 20 percent which, in the opinion of IPART, represents the net value of the benefits derived from the continued operation of the Australian steel industry.	28 29 30
<i>global steel price</i> means the relevant price for steel specified by MEPS International Ltd or another price for steel specified by a global steel price indicator prescribed by the regulations.	31 32 33
<i>IPART</i> means the Independent Pricing and Regulatory Tribunal established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> .	34 35
<i>public authority</i> means any of the following:	36
(a) a NSW government agency,	37
(b) a Public Service agency,	38
(c) a local council,	39
(d) a State owned corporation,	40
(e) any other person or body that is prescribed by the regulations to be a public authority for the purposes of this Act.	41 42

<b><i>reasonable cost</i></b> means any cost price of steel that does not exceed 20 percent of the base cost of the steel if manufactured in Australia.	1 2
<b><i>relevant contract</i></b> means a contract under which a public authority contracts with another party who undertakes to construct any relevant public works on behalf of the public authority.	3 4 5
<b><i>relevant public works</i></b> means public works and infrastructure (including housing, transport, utilities and public buildings) that:	6 7
(a) involve the use of more than 2 tonnes of steel, and	8
(b) are to be constructed by or on behalf of a public authority, and	9
(c) are to be paid for, in part or in full, by the public authority.	10
<b>Note.</b> The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	11 12

<b>Part 2</b>	<b>Australian steel to be used in public works and infrastructure</b>	1
		2
<b>5</b>	<b>Relevant public works carried out by public authority</b>	3
	A public authority must not construct any relevant public works unless at least 90 percent of the steel (other than excluded steel) used in the construction of the works is manufactured in a blast furnace or an electric arc furnace that is located in Australia.	4 5 6 7
<b>6</b>	<b>Relevant contracts</b>	8
(1)	A public authority must not enter into a relevant contract unless the contract contains the following:	9 10
(a)	a provision that requires at least 90 percent of the steel (other than excluded steel) used in the construction of the works under the contract to be manufactured in a blast furnace or an electric arc furnace that is located in Australia (the <i>steel requirement provision</i> ),	11 12 13 14
(b)	a provision that imposes a financial penalty on any party to the contract who fails to comply with the steel requirement provision,	15 16
(c)	a provision that requires any party to the contract who undertakes to construct any relevant public works on behalf of a public authority to provide a cumulative steel usage report to the public authority before the public authority makes any progress payment or final payment under the contract,	17 18 19 20
(d)	a provision that enables the public authority to arrange for an independent audit of any cumulative steel usage report provided to the authority by a party to the contract.	21 22 23
(2)	In this section: <i>cumulative steel usage report</i> means a report prepared under section 7. <i>financial penalty</i> means a monetary penalty that is to be calculated for the purposes of this section as the total quantity of steel used under the contract that fails to comply with the steel requirement provision multiplied by the prescribed amount. <i>prescribed amount</i> means the amount (not less than \$1,000) prescribed by the regulations for the purposes of this section.	24 25 26 27 28 29 30
<b>7</b>	<b>Cumulative steel usage reports</b>	31
(1)	Any party to a relevant contract who undertakes to construct any relevant public works on behalf of a public authority is required to prepare a cumulative steel usage report.	32 33 34
(2)	Before the public authority makes any progress payment or final payment under the contract, that party is to provide the report and any other information prescribed by the regulations to:	35 36 37
(a)	the public authority, and	38
(b)	IPART.	39
(3)	A cumulative steel usage report is to include the following:	40
(a)	the quantity of any steel used under the contract,	41
(b)	the origins of any steel used under the contract,	42
(c)	evidence verifying the information referred to in paragraphs (a) and (b).	43

<b>8</b>	<b>Obligations of public authorities</b>	1
(1)	A public authority that carries out the construction of relevant public works is to ensure, as far as practicable, that:	2
		3
	(a) the construction complies with the requirements of this Act, and	4
	(b) there is an accurate method for the measurement of the quantity and origins of any steel used in the construction.	5
		6
(2)	A public authority that is a party to a relevant contract is to ensure, as far as practicable, that:	7
		8
	(a) any relevant contract entered into by the public authority complies with the requirements of this Act, and	9
		10
	(b) any information contained in a cumulative steel usage report provided to the public authority under a relevant contract is accurate.	11
		12
(3)	A public authority that carries out the construction of relevant public works or is a party to a relevant contract is, as soon as practicable after the end of the financial year in which the construction of the relevant public works is completed, to provide the Minister with a signed declaration certifying that the public authority has complied with this section.	13
		14
		15
		16
		17

## **Part 3 NSW Steel Industry Advocate**

### **9 NSW Steel Industry Advocate**

- (1) The Governor may appoint a NSW Steel Industry Advocate. 3
- (2) The principal office of the Advocate is to be located within the Illawarra region. 4
- (3) The Advocate may be removed from office by the Governor on the address of both Houses of Parliament. 5  
6
- (4) The office of Advocate is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister. 7  
8
- (5) The office of Advocate is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office (except as provided by this section). 9  
10  
11
- (6) The Advocate holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 12  
13  
14
- (7) The office of Advocate becomes vacant if the holder: 15
  - (a) dies, or 16
  - (b) completes a term of office and is not re-appointed, or 17
  - (c) resigns the office by instrument in writing addressed to the Governor, or 18
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 19  
20  
21
  - (e) becomes a mentally incapacitated person, or 22
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or 23  
24  
25  
26
  - (g) is removed from office under subsection (3). 27
- (8) The following provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the Advocate (but, in the application of those provisions, a reference to the employer of any such executive is to be read as a reference to the Minister): 28  
29  
30  
31
  - (a) provisions relating to the band in which an executive is to be employed, 32
  - (b) provisions relating to the contract of employment of an executive, 33
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive. 34  
35

### **10 Functions of NSW Steel Industry Advocate**

- (1) The NSW Steel Industry Advocate has the following functions: 37
  - (a) to monitor compliance with the requirements of this Act, 38
  - (b) to monitor whether steel (other than excluded steel) required by this Act to be used in the construction of relevant public works is manufactured to appropriate Australian Standards, 39  
40  
41
  - (c) to conduct a review of the steel manufacturing and fabrication sector with particular focus on the following: 42  
43
    - (i) the supply chain capabilities of the sector, 44

(ii)	the co-ordination by the sector of research and development and innovation,	1
		2
(iii)	the investment in the sector of plant and equipment,	3
(d)	to prepare reports in accordance with this Act.	4
(2)	The Advocate may, in connection with the exercise of the functions of the Advocate under this Act, make such inquiries and undertake such investigations as the Advocate considers necessary.	5
		6
		7
(3)	The Advocate may, by notice in writing, request that any person provide, or require any public authority to provide, the Advocate with information (including documents) relevant to the exercise of the functions of the Advocate under this Act.	8
		9
		10
<b>11</b>	<b>NSW Steel Industry Advocate required to report to Parliament</b>	<b>11</b>
(1)	The NSW Steel Industry Advocate is required to prepare, at least once every 12 months, a report setting out a State infrastructure plan that identifies future relevant public works, and the steel requirements of those works, and to furnish the report to the Presiding Officer of each House of Parliament.	12
		13
		14
		15
(2)	The Advocate is required to prepare, at least once every 2 years, a report on the procurement policies of the State, and whether those policies adequately take into account all costs and benefits related to steel procurement (including costs and benefits related to transport, insurance, maintenance and repair, the environment, employment and regional development), and to furnish the report to the Presiding Officer of each House of Parliament.	16
		17
		18
		19
		20
		21
(3)	The Advocate may, at any time, make a report on any other matter arising in connection with the exercise of the functions of the Advocate and furnish the report to the Presiding Officer of each House of Parliament.	22
		23
		24
(4)	A copy of a report furnished to the Presiding Officer of a House of Parliament under this section is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.	25
		26
		27
(5)	The Advocate may include in a report a recommendation that the report be made public immediately.	28
		29
(6)	If a report includes a recommendation by the Advocate that the report be made public immediately, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.	30
		31
		32
		33
(7)	If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.	34
		35
		36
(8)	A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied regarding a report purported to have been made and furnished in accordance with this Act.	37
		38
		39
<b>12</b>	<b>Staff of NSW Steel Industry Advocate and delegation</b>	<b>40</b>
(1)	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the NSW Steel Industry Advocate to exercise his or her functions.	41
		42
		43
(2)	The Advocate may arrange for the use of the services of any staff or facilities of a NSW Government agency and may, subject to the regulations, engage such consultants or contractors as are necessary for the purposes of this Act.	44
		45
		46

- (3) The Advocate may delegate the exercise of any function of the Advocate (other than this power of delegation) to any person referred to in this section.

1  
2

<b>Part 4</b>	<b>Miscellaneous</b>	1
<b>13</b>	<b>Annual report by IPART</b>	2
(1)	IPART is to prepare, within the period of 6 months after 30 June in each year, an annual report regarding the effectiveness of this Act in achieving its objective during the year that ended on that 30 June.	3 4 5
(2)	A report by IPART under this section is to include the following information:	6
(a)	the percentage of steel sourced from within Australia that is used in the construction of relevant public works carried out by or on behalf of a public authority,	7 8 9
(b)	the percentage of steel sourced from outside Australia that is used in the construction of relevant public works carried out by or on behalf of a public authority,	10 11 12
(c)	the estimated additional cost of steel incurred by public authorities as a result of the operation this Act.	13 14
(3)	The Minister is, as soon as practicable, to cause a copy of the report to be tabled in each House of Parliament.	15 16
<b>14</b>	<b>Act to bind Crown</b>	17
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	18 19 20
<b>15</b>	<b>Regulations</b>	21
	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.	22 23 24 25
<b>16</b>	<b>Review of Act</b>	26
(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.	27 28 29
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.	30 31
(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 5 years.	32 33