



New South Wales

Scrap Metal Industry Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to regulate the scrap metal industry as follows:

- (a) to require persons who carry on a business of dealing in scrap metal (*scrap metal dealers*) to register the business with the Commissioner of Police,
- (b) to prohibit scrap metal dealers from paying cash for scrap metal,
- (c) to require scrap metal dealers to keep and maintain records of transactions for buying scrap metal, including details of the person selling the scrap metal,
- (d) to require scrap metal dealers to report suspicious transactions to the police,
- (e) to prohibit scrap metal dealers from accepting a motor vehicle (or any motor vehicle body, engine or chassis) as scrap metal if it does not display its identification details,
- (f) to provide for short-term and long-term closure orders in respect of premises at which a scrap metal business is being carried on if the business is not registered under the proposed Act or serious criminal offences have been committed on the premises,
- (g) to authorise police officers without a warrant to enter premises at which a scrap metal business is being carried on to investigate contraventions of the proposed Act and to search, take photographs and recordings and seize and copy records,
- (h) to provide for other regulatory measures in respect of the scrap metal industry.

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 on a day or days to be appointed by proclamation.

Clause 3 defines terms used in the proposed Act. *Scrap metal* is defined to mean any object of commercial value that is made from or contains metal and is sold or obtained as scrap for recycling or reprocessing of the metal, but will not include an object of a kind prescribed by the regulations.

Clause 4 defines the phrase *carrying on a business* so as to include 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

Clause 5 makes it an offence to carry on a business of dealing in scrap metal unless the business is registered under the proposed Act. The maximum penalty will be 100 penalty units (currently \$11,000).

Clause 6 provides that a business is registered under the proposed Act if the scrap metal dealer carrying on the business provides the Commissioner with the registration information specified in the provision and any fee required to be paid by the dealer is paid. The registration information includes the name of the business and address of each scrap metal yard used by the scrap metal dealer in carrying on the business.

Clause 7 requires a scrap metal dealer to pay a fee prescribed by the regulations at the time the registration information for the business is provided and before the end of each following 3-year period.

Clause 8 requires a scrap metal dealer to notify the Commissioner of any change in the registration information for the dealer's business within 14 days of the change occurring. The maximum penalty for failing to do so will be 10 penalty units (currently \$1,100).

Clause 9 provides for the Commissioner to provide a scrap metal dealer whose business is registered with a certificate of registration (showing the registration information for the business) and provides for the issue of a replacement certificate if the certificate is lost, stolen, damaged or destroyed or the registration information for the business changes.

Clause 10 requires the Commissioner to keep and maintain a register containing the registration information for each registered business and to make that register publicly accessible.

Clause 11 makes it an offence to knowingly provide any false or misleading registration information, or details about a change in that information, to the Commissioner. The maximum penalty will be 50 penalty units (currently \$5,500).

Division 2 Obligations and duties of scrap metal dealers

Clause 12 makes it an offence for a scrap metal dealer to pay for any scrap metal in cash (including cash cheque) or in kind with goods or services. The maximum penalty will be 100 penalty units.

Clause 13 requires a scrap metal dealer to report to a police officer any scrap metal in the dealer's possession that the dealer suspects may have been stolen or otherwise unlawfully obtained. The maximum penalty for failing to do so will be 50 penalty units.

Clause 14 makes it an offence for a scrap metal dealer to buy any scrap metal that consists of a motor vehicle, or the body, engine or chassis of a motor vehicle, if the dealer is aware that the identification details of the motor vehicle, body, engine or chassis have been unlawfully removed,

obliterated, defaced or altered. The proposed section also makes it an offence for a scrap metal dealer to sell or dispose of any unidentified motor vehicle, or unidentified body, engine or chassis of a motor vehicle, in the dealer's possession unless authorised to do so by a police officer by order in writing. The maximum penalty for both offences will be 100 penalty units.

Clause 15 provides that a police officer may serve an order in writing on a scrap metal dealer prohibiting the dealer from altering the form of scrap metal suspected of having been stolen, or from disposing of it, for a period of 14 days. The maximum penalty for not complying with the order will be 50 penalty units.

Clause 16 requires a scrap metal dealer to keep a record of certain details in respect of each transaction entered into by the dealer for buying scrap metal, including the identification details of the person who sold the scrap metal, a description of the scrap metal (including the quantity) and the method of payment. The maximum penalty for failing to do so will be 50 penalty units.

Part 3 Enforcement

Division 1 Closure orders

Clause 17 authorises the Commissioner to order the closure of premises if a scrap metal business that is not registered is being carried on at those premises or if the Commissioner reasonably suspects that a serious criminal offence is being committed at the premises. Any such interim closure order takes effect from the time it is served or posted and has effect for a period of 72 hours, unless sooner repealed or revoked.

Clause 18 provides for the long-term closure of premises by the Local Court, on the application of the Commissioner, if the Court is satisfied that a scrap metal business that is not registered is being carried on at those premises or there have been, or there are likely to be, serious criminal offences committed, at or in connection with the premises.

Clause 19 makes it an offence for a person to carry on a business of dealing in scrap metal at premises if a closure order under the proposed Division applies to the premises. The maximum penalty will be 100 penalty units.

Clause 20 provides that compensation is not payable for the closure of premises pursuant to an order under the proposed Division.

Division 2 Powers of entry and inspection

Clause 21 provides that a police officer may, without a warrant and at any reasonable time, enter any premises at which a business of dealing in scrap metal is being carried on or at which 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, the proposed Act.

Clause 22 provides for the issue of search warrants on the application of a police officer who believes on reasonable grounds that any provision of the proposed Act is being or has been contravened on any premises.

Clause 23 lists the powers that may be exercised by police officers at any premises lawfully entered under the proposed Act.

Clause 24 makes it an offence for a person, without reasonable excuse, to obstruct, hinder or interfere with a police officer in the exercise of a function under the proposed Division or fail to comply with any requirement made of the person by a police officer in the exercise of a function under the proposed Division. The maximum penalty will be 50 penalty units.

Part 4 Miscellaneous

Clause 25 provides for the Commissioner to provide certificates as to certain matters and which are admissible as evidence of those matters.

Clause 26 provides that proceedings for an offence under the proposed Act may be dealt with summarily before the Local Court.

Clause 27 provides for the issue of penalty notices by a police officer for offences against the proposed Act.

Clause 28 provides for the Governor to make regulations, including regulations of a savings or transitional nature consequent on the enactment of the proposed Act or any Act that amends the proposed Act.

Clause 29 requires the Minister to review the proposed Act.



New South Wales

Scrap Metal Industry Bill 2016

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New South Wales

Scrap Metal Industry Bill 2016

No. , 2016

A Bill for

An Act to provide for the regulation of the scrap metal industry.

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Scrap Metal Industry Act 2016</i> .	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Definitions	7
(1) In this Act:	8
approved means approved by the Commissioner.	9
buy includes any of the following:	10
(a) buy under an agreement to sell,	11
(b) receive under an agreement to sell,	12
(c) accept under an agreement to sell,	13
(d) offer to receive or accept under an agreement to sell,	14
(e) cause or allow to be received or accepted under an agreement to sell.	15
closure order means an order made under Division 1 of Part 3.	16
Commissioner means the Commissioner of Police.	17
dealing in includes buying, receiving and obtaining.	18
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.	19
motor vehicle means a motor vehicle (other than a light rail vehicle) or trailer within the meaning of the <i>Road Transport Act 2013</i> and includes the body, engine or chassis of a motor vehicle.	20
registered —see section 6 (1).	21
registration information —see section 6 (2).	22
scrap metal means any object of commercial value that:	23
(a) is made from or contains metal, and	24
(b) is sold or obtained as scrap for recycling or reprocessing of the metal,	25
but does not include an object of a kind prescribed by the regulations.	26
scrap metal dealer means a person who carries on a business of dealing in scrap metal.	27
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.	28
sell includes any of the following:	29
(a) sell by wholesale, retail, auction or tender,	30
(b) barter or exchange,	31
(c) supply for profit or gain,	32
(d) offer for sale, receive for sale or expose for sale,	33
(e) consign or deliver for sale,	34
(f) have in possession for sale,	35
(g) cause or allow any of the above to be done.	36

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.

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

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

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

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4 Meaning of “carrying on a business”

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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.

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Part 2	Regulation of scrap metal industry	1
Division 1	Registration of scrap metal businesses	2
5	Requirement for business to be registered	3
	A person must not carry on a business of dealing in scrap metal unless the business is registered.	4
	Maximum penalty: 100 penalty units.	5
6	Registration of business	7
(1)	A business is <i>registered</i> if:	8
(a)	the scrap metal dealer carrying on the business provides the Commissioner, in the approved form, with the registration information for the business, and	9
(b)	any fee required to be paid under section 7 by the dealer in respect of the business is paid to the Commissioner.	10
(2)	The <i>registration information</i> for a business comprises the following:	11
(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,	12
(b)	the dealer's ABN,	13
(c)	the address of each scrap metal yard used by the dealer,	14
(d)	if the business is carried on by a corporation:	15
(i)	the corporation's business address if different from the address of any scrap metal yard used by the dealer, and	16
(ii)	the name of the manager of each scrap metal yard used by the dealer,	17
(e)	such other information as may be prescribed by the regulations.	18
7	Registration fees payable	19
	A person carrying on a business of dealing in scrap metal is required to pay a fee prescribed by the regulations:	20
(a)	at the time the registration information for the business is provided under section 6, and	21
(b)	before the end of each period of 3 years following the date on which the fee was first paid.	22
8	Requirement to notify changes in registration information	23
	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.	24
	Maximum penalty: 10 penalty units.	25
9	Certificate of registration	26
(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.	27
(2)	The Commissioner may issue a replacement certificate of registration if:	28
(a)	the certificate of registration is lost, stolen, damaged or destroyed, or	29
(b)	the registration information for the business changes.	30

(3)	The Commissioner may charge a fee (as determined by the Commissioner) for the issue of a replacement certificate of registration.	1 2
10	Register of scrap metal businesses	3
(1)	The Commissioner is to keep, in the approved form and manner, a register containing the registration information for each registered business.	4 5
(2)	The Commissioner is to ensure that the register is publicly accessible.	6
11	False or misleading information	7
	A person must not:	8
(a)	in providing the Commissioner with the registration information for a business, or	9 10
(b)	in notifying the Commissioner of any change in the registration information for a business,	11 12
	make or furnish any statement that the person knows is false or misleading.	13
	Maximum penalty: 50 penalty units.	14
Division 2	Obligations and duties of scrap metal dealers	15
12	Prohibition on paying cash etc for scrap metal	16
	A scrap metal dealer must not, in buying any scrap metal, pay for the scrap metal:	17
(a)	with cash, or	18
(b)	by cheque payable to cash, or	19
(c)	in kind with goods or services.	20
	Maximum penalty: 100 penalty units.	21
13	Duty to report stolen scrap metal	22
	If a scrap metal dealer suspects for any reason that:	23
(a)	any scrap metal in the dealer's possession, or	24
(b)	any scrap metal sold to the dealer,	25
	may have been stolen or otherwise unlawfully obtained, the dealer must without unreasonable delay inform a police officer of the suspicion.	26 27
	Maximum penalty: 50 penalty units.	28
14	Prohibitions on buying or disposing of unidentified motor vehicles	29
(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.	30 31 32
(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.	33 34 35 36
	Maximum penalty: 100 penalty units.	37
15	Prohibition on disposal of suspected stolen scrap metal	38
(1)	This section applies to any scrap metal that a police officer reasonably suspects as having been stolen or otherwise unlawfully obtained.	39 40

- (2) A police officer may, by order in writing served on a scrap metal dealer, prohibit the dealer: 1
2
(a) from altering the form of any scrap metal to which this section applies that is 3
in the dealer's possession, or 4
(b) from disposing of it in any way, 5
for a period of 14 days after service of the order. 6
- (3) An order under subsection (2) may be reissued once for a further period of 14 days 7
commencing on the expiry of the first order. 8
- (4) A scrap metal dealer must comply with an order served on the dealer under this 9
section. 10
Maximum penalty: 50 penalty units. 11

16 Transaction records 12

- (1) A scrap metal dealer must keep a record, in the approved form and manner, of the 13
following details in respect of each transaction entered into by the dealer for buying 14
scrap metal: 15
(a) the date of the transaction, 16
(b) if the scrap metal is sold by an individual (including an individual acting as 17
agent for the seller): 18
(i) the name, residential address and date of birth of the individual as 19
shown on the individual's photo identification (being a document of the 20
kind prescribed by the regulations), and 21
(ii) such other details relating to the identity of the individual as may be 22
required by the regulations, 23
(c) if the sale is conducted by a corporation—the name, business address and 24
ABN of the corporation and a statement signed by an executive officer of the 25
corporation, or an employee authorised in writing by an executive officer of 26
the corporation, consenting to the sale, 27
(d) a description of the scrap metal and its quantity or weight (or both if 28
applicable), 29
(e) if the scrap metal consists of a motor vehicle, the unique identifier of the motor 30
vehicle, 31
(f) the method of payment. 32
- (2) A scrap metal dealer must keep the record on the premises at which the dealer carries 33
on business for a period of 3 years after it is made. 34
- (3) A scrap metal dealer must not, in any record required to be kept under this section, 35
make a statement that the dealer knows is false or misleading. 36
- (4) A person must not, in purported compliance with any requirement reasonably made 37
of the person by a scrap metal dealer for the purposes of the dealer's compliance with 38
this section, furnish information or make any statement knowing that it is false or 39
misleading. 40
Maximum penalty: 50 penalty units. 41

Part 3	Enforcement	1
Division 1	Closure orders	2
17	Interim closure of premises	3
(1)	The Commissioner may make an order that specified premises be closed (an <i>interim closure order</i>) if the Commissioner:	4
(a)	is satisfied that a scrap metal business that is not registered is being carried on at the premises, or	5
(b)	reasonably suspects that a serious criminal offence is being committed at the premises.	6
(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.	7
(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.	8
(4)	More than one interim closure order closing the same premises may not be made under this section in any period of 7 days.	9
18	Long-term closure of premises	10
(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:	11
(a)	a scrap metal business that is not registered is being carried on at the premises, or	12
(b)	there have been, or there are likely to be, serious criminal offences committed at or in connection with the premises.	13
(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.	14
(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.	15
19	Prohibition on carrying on scrap metal business on premises subject to closure order	16
(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.	17
(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.	18
20	Compensation not payable for closure of premises	19
(1)	Compensation is not payable to any person for the closure of premises pursuant to an order under this Division.	20
(2)	In this section: <i>compensation</i> includes damages and any other form of monetary compensation.	21

Division 2	Powers of entry and inspection	1
21	Power to enter premises without warrant	2
(1)	A police officer may at any reasonable time enter any premises at which:	3
(a)	a business of dealing in scrap metal is being carried on, or	4
(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.	5 6 7
(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.	8 9 10
22	Power to enter premises with warrant	11
(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.	12 13 14
(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.	15 16 17
(3)	A police officer executing a search warrant issued under this section may:	18
(a)	enter the premises specified in the warrant, and	19
(b)	search the premises for evidence of a contravention of this Act, and	20
(c)	exercise any other function of a police officer under this Division.	21
(4)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	22 23
(5)	In this section:	24
	authorised officer has the same meaning as it has in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	25 26
23	Powers that may be exercised by police officers on entry	27
(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:	28 29 30
(a)	examine any document on the premises,	31
(b)	make a copy on the premises of any document and retain that copy,	32
(c)	require any person to make a copy on the premises of any document and give that copy to the police officer to retain,	33 34
(d)	take such photographs, films, audio, video or other recordings as the police officer considers necessary,	35 36
(e)	require any person to produce any document on the premises,	37
(f)	require any person to answer any question relating to any document or any other relevant matter,	38 39
(g)	take any document from the premises for the purposes of copying it,	40
(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.	41 42 43

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| (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. | 1
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| (3) | Any document taken only for the purpose of copying the document must be returned when that copying is completed. | 3
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24 Hindering or obstructing police officer 5

A person must not, without reasonable excuse: 6

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|-----|---|---------|
| (a) | obstruct, hinder or interfere with a police officer in the exercise of a function under this Division, or | 7
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| (b) | fail to comply with any requirement made of the person by a police officer in the exercise of a function under this Division. | 9
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Maximum penalty: 50 penalty units. 11

Part 4	Miscellaneous	1
25	Certificate evidence	2
	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:	3
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	(a) that on a specified day, or during a specified period, a business of dealing in scrap metal was or was not registered,	6
		7
	(b) that on a specified day, or during a specified period, specified premises were subject to a closure order.	8
		9
26	Nature of proceedings for offences	10
	Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court.	11
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27	Penalty notices	13
(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.	14
		15
(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.	16
		17
(3)	The <i>Fines Act 1996</i> applies to a penalty notice issued under this section.	18
	Note. The <i>Fines Act 1996</i> 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.	19
		20
		21
(4)	The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations.	22
		23
(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.	24
		25
28	Regulations	26
(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.	27
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(2)	In particular, the regulations may make provision for or with respect to the following:	31
	(a) exemptions from the operation of this Act or specified provisions of this Act,	32
	(b) requiring the display of certificates of registration at scrap metal yards,	33
	(c) providing for the content of advertisements by scrap metal dealers, including requiring the inclusion of specified information in advertisements.	34
		35
(3)	The regulations may create offences punishable by a penalty not exceeding 10 penalty units.	36
		37
(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.	38
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(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.	40
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(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:	42
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| (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 | 1
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| (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. | 4
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| 29 | Review of Act | 7 |
| (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. | 8
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| (2) | The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Act. | 11
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| (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. | 13
14 |
| (4) | In subsection (1), <i>the Act</i> includes the regulations under the Act. | 15 |