



New South Wales

# Scrap Metal Industry Amendment (Review) Bill 2022

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Scrap Metal Industry Act 2016* (the *Principal Act*) and the *Scrap Metal Industry Regulation 2016* following a statutory review of the Principal Act.

## Outline of provisions

**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 the date of assent to the proposed Act.

## Schedule 1      Amendment of Scrap Metal Industry Act 2016 No 42

**Schedule 1[2]** clarifies that a *scrap metal dealer* is a person who carries on a business of dealing in scrap metal, whether or not the business is registered under the Principal Act.

**Schedule 1[3]** exempts a person carrying on a business as a collection point operator within the meaning of the *Waste Avoidance and Resource Recovery Act 2001*, Part 5 or under a licence within the meaning of the *Pawnbrokers and Second-hand Dealers Act 1996*, to the extent the business involves dealing in gold or silver, from being a person *carrying on a business* of dealing in scrap metal. The proposed section also clarifies that carrying on a business includes carrying on a business from a location other than a scrap metal yard. **Schedule 1[1]** makes a consequential amendment.

**Schedule 1[4]** creates a rebuttable presumption that a person who deals in scrap metal on more than the prescribed number of days in a 12-month period is carrying on a business of dealing in scrap metal.

**Schedule 1[5]** increases the penalty for carrying on a business of dealing in scrap metal without being registered from 100 penalty units to 500 penalty units.

**Schedule 1[7] and [8]** amend the definition of *registration information* to include the address of premises other than a scrap metal yard and the registration number of a vehicle, if the scrap metal dealer deals in scrap metal from the premises or vehicle, whether a scrap metal dealer holds a licence under the *Motor Dealers and Repairers Act 2013* or the *Tow Truck Industry Act 1998*, and whether any necessary approvals have been obtained to use premises as a scrap metal yard.

**Schedule 1[10]** empowers the Commissioner of Police (the *Commissioner*) to refuse to register a business under the Principal Act, or suspend or revoke a registration, in prescribed circumstances. **Schedule 1[6]** makes a consequential amendment to section 6(1), providing that a business is not registered under the Principal Act until the Commissioner issues the business with a certificate of registration. **Schedule 1[9]** makes a consequential amendment to section 9(1), providing that the Commissioner must provide a certificate of registration to a scrap metal dealer who has complied with section 6(1)(a) and (b).

**Schedule 1[11]** prohibits a scrap metal dealer from advertising that the dealer will pay for scrap metal with cash, by cheque payable to cash, or in kind with goods or services.

**Schedule 1[12]** increases the penalty for buying or disposing of a motor vehicle if the unique identifier for the vehicle has been removed, obliterated, defaced or altered from 100 penalty units to 500 penalty units.

**Schedule 1[13]** increases the penalty for failing to comply with a police officer's order not to alter the form or dispose of scrap metal in the dealer's possession from 50 penalty units to 500 penalty units.

**Schedule 1[14]** requires a scrap metal dealer who deals in scrap metal only from a motor vehicle to keep transaction records in the motor vehicle.

**Schedule 1[15] and [16]** empower the Local Court to, on the application of the Commissioner, order that specified premises be closed on the basis that there has been repeated non-compliance at or in connection with the premises. *Repeated non-compliance* means the commission of 6 or more offences against the Principal Act or the regulations, or alleged contraventions for which a penalty notice is issued, within 12 months.

**Schedule 1[17]** empowers a police officer to stop and search a motor vehicle without a warrant for the purposes of determining whether there has been compliance with, or a contravention of, the Principal Act or the regulations if the officer reasonably believes the vehicle is being used for the purposes of carrying on a scrap metal business.

**Schedule 1[18]** empowers the Commissioner to keep a register of information about convictions for offences against the Principal Act or the regulations and penalty notices issued for alleged offences. The Commissioner may publish the information contained in the register. **Schedule 1[1]** makes a consequential amendment.

## **Schedule 2      Amendment of Scrap Metal Industry Regulation 2016**

**Schedule 2[1]** removes the exclusion of aluminium cans from the definition of *scrap metal* in the Principal Act and prescribes 6 days for the purposes of the rebuttable presumption in **Schedule 1[4]**.

**Schedule 2[2] and [8]** provide for the annual automatic indexation of the prescribed fee for registration under the Principal Act in accordance with the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics.

**Schedule 2[3]** prescribes the circumstances in which the Commissioner may refuse, suspend or revoke registration under the Principal Act.

**Schedule 2[4]** is a transitional provision relating to the contraventions register.

**Schedule 2[5]** increases the amount payable under a penalty notice issued for an alleged offence against the Principal Act, section 5, 14 or 15(4) to \$5,500.

**Schedule 2[6]** prescribes the Principal Act, proposed section 12A as a penalty notice offence and prescribes a penalty amount of \$220.

**Schedule 2[7]** removes the Principal Act, section 16(4) from the list of penalty notice offences.



New South Wales

# Scrap Metal Industry Amendment (Review) Bill 2022

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New South Wales

# Scrap Metal Industry Amendment (Review) Bill 2022

No           , 2022

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## **A Bill for**

An Act to make miscellaneous amendments to the *Scrap Metal Industry Act 2016* and the *Scrap Metal Industry Regulation 2016* following a statutory review of the Act.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Scrap Metal Industry Amendment (Review) Act 2022*.

3

**2 Commencement**

4

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

5

<b>Schedule 1</b>	<b>Amendment of Scrap Metal Industry Act 2016 No 42</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Insert in alphabetical order in section 3(1)—	4
	<i>carrying on a business</i> —see section 4.	5
	<i>contraventions register</i> , for Part 3, Division 3—see section 24A(1).	6
<b>[2] Section 3(1), definition of “scrap metal dealer”</b>		7
	Insert “, whether or not the business is registered under this Act” after “in scrap metal”.	8
<b>[3] Section 4</b>		9
	Omit the section. Insert instead—	10
	<b>4 Meaning of “carrying on a business”</b>	11
	In this Act, <i>carrying on a business</i> of dealing in scrap metal—	12
	(a) includes carrying on a business—	13
	(i) in partnership or by an employee, contractor, agent or other person, and	14
	(ii) from any location, whether or not a scrap metal yard, including a motor vehicle or residential premises, and	16
	(b) does not include carrying on a business—	18
	(i) as a collection point operator within the meaning of the <i>Waste Avoidance and Resource Recovery Act 2001</i> , Part 5, or	19
	(ii) under a licence within the meaning of the <i>Pawnbrokers and Second-hand Dealers Act 1996</i> , to the extent the business involves dealing in gold or silver.	21
<b>[4] Section 4A</b>		24
	Insert after section 4—	25
	<b>4A Presumption of carrying on a business</b>	26
	There is a rebuttable presumption that a person who deals in scrap metal on more than the prescribed number of days in a 12-month period is carrying on a business of dealing in scrap metal.	27
<b>[5] Section 5 Requirement for business to be registered</b>		30
	Omit “100 penalty units”. Insert instead “500 penalty units”.	31
<b>[6] Section 6 Registration of business</b>		32
	Insert at the end of section 6(1)(b)—	33
	, and	34
	(c) the Commissioner issues the scrap metal dealer with a certificate of registration under section 9.	35
<b>[7] Section 6(2)(c) and (c1)</b>		37
	Omit section 6(2)(c). Insert instead—	38
	(c) if the dealer carries on the business from a scrap metal yard—the address of the scrap metal yard,	39
		40

(c1)	if the dealer carries on the business from—	1
(i)	premises other than a scrap metal yard—the address of the premises, and	2
(ii)	a motor vehicle—the registration number of the vehicle,	3
		4
<b>[8]</b>	<b>Section 6(2)(d1) and (d2)</b>	5
	Insert after section 6(2)(d)—	6
(d1)	whether the scrap metal dealer holds a licence within the meaning of one or both of—	7
(i)	the <i>Motor Dealers and Repairers Act 2013</i> , or	8
(ii)	the <i>Tow Truck Industry Act 1998</i> ,	9
(d2)	if an approval is required by another Act or law to use premises specified in paragraph (c) as a scrap metal yard—whether the approval has been obtained,	10
		11
		12
		13
<b>[9]</b>	<b>Section 9 Certificate of registration</b>	14
	Omit section 9(1). Insert instead—	15
(1)	The Commissioner must provide a scrap metal dealer who has complied with section 6(1)(a) and (b) with a certificate of registration that includes—	16
(a)	the registration information for the business carried on by the dealer, and	17
(b)	other information required by the regulations.	18
		19
		20
<b>[10]</b>	<b>Section 11A</b>	21
	Insert after section 11—	22
<b>11A</b>	<b>Commissioner may refuse, suspend or revoke registration</b>	23
(1)	The Commissioner may, in circumstances prescribed by the regulations—	24
(a)	refuse to issue a certificate of registration under section 9, or	25
(b)	suspend the registration of a business under this Act, or	26
(c)	revoke the registration of a business under this Act.	27
(2)	If the registration of a business is suspended or revoked—	28
(a)	the Commissioner must remove the registration information for the business from the register kept under section 10, and	29
(b)	the scrap metal dealer carrying on the business must surrender the registration certificate to the Commissioner.	30
		31
		32
<b>[11]</b>	<b>Section 12A</b>	33
	Insert after section 12—	34
<b>12A</b>	<b>Prohibition on advertising cash payment for scrap metal</b>	35
	A scrap metal dealer must not advertise that the dealer will pay for scrap metal—	36
(a)	with cash, or	37
(b)	by cheque payable to cash, or	38
(c)	in kind with goods or services.	39
	Maximum penalty—20 penalty units.	40
		41



<b>[12] Section 14 Prohibitions on buying or disposing of unidentified motor vehicles</b>	1
Omit “100 penalty units”. Insert instead “500 penalty units”.	2
<b>[13] Section 15 Prohibition on disposal of suspected stolen scrap metal</b>	3
Omit “50 penalty units” from section 15(4). Insert insert “500 penalty units”.	4
<b>[14] Section 16 Transaction records</b>	5
Omit section 16(2). Insert instead—	6
(2) The scrap metal dealer must keep the record—	7
(a) at a premises at which the dealer carries on the business of dealing in scrap metal, or	8
(b) if the dealer carries on a business of dealing in scrap metal only from a motor vehicle—in the motor vehicle.	9
(2A) The scrap metal dealer must keep the record for 3 years after the record is made.	10
	11
	12
	13
<b>[15] Section 18 Long-term closure of premises</b>	14
Insert at the end of section 18(1)(b)—	15
, or	16
(c) there has been repeated non-compliance at or in connection with the premises.	17
	18
<b>[16] Section 18(4)</b>	19
Insert after section 18(3)—	20
(4) In this section—	21
<i>repeated non-compliance</i> means the commission of 6 or more of the following in a 12-month period—	22
(a) an offence against this Act or the regulations,	23
(b) an alleged offence against this Act or the regulations for which a penalty notice is issued.	24
	25
	26
<b>[17] Section 22A</b>	27
Insert after section 22—	28
<b>22A Power to stop and search motor vehicles without warrant</b>	29
If a police officer reasonably believes a motor vehicle is being used for the purposes of carrying on a business of dealing in scrap metal, the officer may stop and search the vehicle without a warrant for the purposes of determining whether there has been compliance with, or a contravention of, this Act or the regulations.	30
	31
	32
	33
	34
<b>[18] Part 3, Division 3</b>	35
Insert after Part 3, Division 2—	36
<b>Division 3 Contraventions register</b>	37
<b>22A Commissioner may keep contraventions register</b>	38
(1) The Commissioner may keep a register of information (the <i>contraventions register</i> ) about—	39
	40

(a)	convictions for offences against this Act or the regulations, and	1
(b)	penalty notices issued for alleged offences under this Act or the regulations.	2 3
(2)	The Commissioner may include the following particulars on the contraventions register—	4 5
(a)	identifying information about a person or business convicted of an offence or issued with a penalty notice,	6 7
(b)	details of the registration of a scrap metal business under this Act,	8
(c)	the location of an offence or alleged offence,	9
(d)	other particulars the Commissioner considers appropriate.	10
(3)	The Commissioner may keep the contraventions register in a form the Commissioner considers appropriate.	11 12
<b>24B</b>	<b>Publication of contraventions register</b>	13
(1)	The Commissioner may—	14
(a)	publish information contained in the contraventions register, and	15
(b)	provide a member of the public with information contained in the contraventions register in a way the Commissioner considers appropriate.	16 17 18
(2)	Information relating to a penalty notice issued to a person must not be published or provided to a member of the public unless—	19 20
(a)	the amount payable under the penalty notice has been fully or partly paid, or	21 22
(b)	a penalty notice enforcement order under the <i>Fines Act 1996</i> , Part 3 has been issued in relation to the penalty notice, or	23 24
(c)	at least 70 days have elapsed since the penalty notice was issued and the penalty notice is unresolved.	25 26
(3)	For this section, a penalty notice is <i>unresolved</i> until one of the following occurs—	27 28
(a)	the amount payable under the penalty notice is fully or partly paid,	29
(b)	a penalty notice enforcement order under the <i>Fines Act 1996</i> , Part 3 is issued in relation to the penalty notice,	30 31
(c)	the person issued with the penalty notice elects to have the matter determined by a court in accordance with the <i>Fines Act 1996</i> , Part 3,	32 33
(d)	the enforcement agency or other body under the direction of which, or on behalf of whom, the penalty notice was issued decides not to enforce the penalty notice,	34 35 36
(e)	a penalty reminder notice in relation to the offence is withdrawn under the <i>Fines Act 1996</i> .	37 38
(4)	No liability, including liability in defamation, is incurred for information published under this section in good faith.	39 40

<b>Schedule 2</b>	<b>Amendment of Scrap Metal Industry Regulation 2016</b>	1
		2
<b>[1] Clause 4</b>		3
	Omit the clause. Insert instead—	4
	<b>4 Prescribed number of days for rebuttable presumption—the Act, s 4A</b>	5
	For the Act, section 4A, the prescribed number of days is 6 days.	6
<b>[2] Clause 6</b>		7
	Omit the clause. Insert instead—	8
	<b>6 Prescribed registration fee—the Act, s 7</b>	9
	(1) For the Act, section 7, the prescribed fee is 1 fee unit.	10
	(2) In this clause—	11
	<i>fee unit</i> —see Schedule 2, clause 1.	12
<b>[3] Clause 7A</b>		13
	Insert after clause 7—	14
	<b>7A Circumstances in which registration may be refused, suspended or revoked—the Act, s 11A</b>	15
		16
	(1) For the Act, section 11A(1), the prescribed circumstances are that—	17
	(a) the scrap metal dealer has committed an offence against this Act or the regulations, or	18
		19
	(b) the Commissioner believes on reasonable grounds that the scrap metal dealer is likely to commit an offence against this Act or the regulations, or	20
		21
		22
	(c) if the scrap metal dealer is a corporation—	23
	(i) an officer of the corporation has committed an offence against this Act or the regulations, or	24
		25
	(ii) the Commissioner believes on reasonable grounds that an officer of the corporation is likely to commit an offence against this Act or the regulations.	26
		27
		28
	(2) In this clause—	29
	<i>officer</i> has the same meaning as in the <i>Corporations Act 2001</i> of the Commonwealth.	30
		31
<b>[4] Clause 11</b>		32
	Insert after clause 10—	33
	<b>11 Transitional provision—contraventions register—the Act, s 28(4)</b>	34
	The contraventions register may include information held by the Commissioner before the commencement of the <i>Scrap Metal Industry Amendment (Review) Act 2022</i> , Schedule 1, item [18].	35
		36
		37
<b>[5] Schedule 1 Penalty notice offences</b>		38
	Omit the matters relating to sections 5, 14 and 15(4).	39
	Insert in appropriate order—	40

Section 5	\$5,500	
Section 14	\$5,500	
Section 15(4)	\$5,500	
<b>[6] Schedule 1, Table</b>		1
Insert in appropriate order—		2
Section 12A	\$220	
<b>[7] Schedule 1, Table, Column 1</b>		3
Omit “Section 16 (1), (2) and (4)”. Insert instead “Section 16(1) and (2)”.		4
<b>[8] Schedule 2</b>		5
Insert after Schedule 1—		6
<b>Schedule 2 Calculation of fee unit</b>		7
	clause 6	8
<b>1 Definitions</b>		9
In this Schedule—		10
<i>CPI number</i> means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.		11 12 13
<i>fee unit</i> —see clause 2.		14
<i>financial year</i> means a period of 12 months commencing on 1 July.		15
<b>2 Calculation of registration fee</b>		16
(1) For the purposes of this Regulation, a <i>fee unit</i> is—		17
(a) in the financial year 2022–23—\$210, and		18
(b) in each subsequent financial year—the amount calculated as follows—		19
$\$210 \times \frac{A}{B}$		
where—		20
<i>A</i> is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.		21 22 23
<i>B</i> is the CPI number for the March quarter of 2022.		24
(2) The amount of a fee unit is to be rounded to the nearest cent and an amount of 0.5 cent is to be rounded down.		25 26
(3) However, if the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.		27 28 29

<b>3</b>	<b>Rounding of fee amounts and contributions</b>	1
	The amount of a fee calculated by reference to a fee unit is to be rounded to the nearest dollar and an amount of 50 cents is to be rounded down.	2 3
<b>4</b>	<b>Notice of indexed fees</b>	4
(1)	As soon as practicable after the CPI number for the March quarter is first published by the Australian Bureau of Statistics, the Commissioner must—	5 6
(a)	notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of the amount may be published on the NSW legislation website, and	7 8 9
(b)	give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.	10 11 12
(2)	This Part operates to change an amount of a fee that is calculated by reference to a fee unit and the change is not dependent on the notification or other notice required by this clause.	13 14 15