

Passed by both Houses



New South Wales

Scrap Metal Industry Amendment (Review) Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Scrap Metal Industry Amendment (Review) Bill 2022

Act No _____, 2022

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

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

Schedule 1 Amendment of Scrap Metal Industry Act 2016 No 42

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

carrying on a business—see section 4.

contraventions register, for Part 3, Division 3—see section 24A(1).

[2] Section 3(1), definition of “scrap metal dealer”

Insert “, whether or not the business is registered under this Act” after “in scrap metal”.

[3] Section 4

Omit the section. Insert instead—

4 Meaning of “carrying on a business”

In this Act, *carrying on a business* of dealing in scrap metal—

(a) includes carrying on a business—

(i) in partnership or by an employee, contractor, agent or other person, and

(ii) from any location, whether or not a scrap metal yard, including a motor vehicle or residential premises, and

(b) does not include carrying on a business—

(i) as a collection point operator within the meaning of the *Waste Avoidance and Resource Recovery Act 2001*, Part 5, or

(ii) 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.

[4] Section 4A

Insert after section 4—

4A Presumption of carrying on a business

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.

[5] Section 5 Requirement for business to be registered

Omit “100 penalty units”. Insert instead “500 penalty units”.

[6] Section 6 Registration of business

Insert at the end of section 6(1)(b)—

, and

(c) the Commissioner issues the scrap metal dealer with a certificate of registration under section 9.

[7] Section 6(2)(c) and (c1)

Omit section 6(2)(c). Insert instead—

(c) if the dealer carries on the business from a scrap metal yard—the address of the scrap metal yard,

- (c1) if the dealer carries on the business from—
 - (i) premises other than a scrap metal yard—the address of the premises, and
 - (ii) a motor vehicle—the registration number of the vehicle,

[8] Section 6(2)(d1) and (d2)

Insert after section 6(2)(d)—

- (d1) whether the scrap metal dealer holds a licence within the meaning of one or both of—
 - (i) the *Motor Dealers and Repairers Act 2013*, or
 - (ii) the *Tow Truck Industry Act 1998*,
- (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,

[9] Section 9 Certificate of registration

Omit section 9(1). Insert instead—

- (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—
 - (a) the registration information for the business carried on by the dealer, and
 - (b) other information required by the regulations.

[10] Section 11A

Insert after section 11—

11A Commissioner may refuse, suspend or revoke registration

- (1) The Commissioner may, in circumstances prescribed by the regulations—
 - (a) refuse to issue a certificate of registration under section 9, or
 - (b) suspend the registration of a business under this Act, or
 - (c) revoke the registration of a business under this Act.
- (2) If the registration of a business is suspended or revoked—
 - (a) the Commissioner must remove the registration information for the business from the register kept under section 10, and
 - (b) the scrap metal dealer carrying on the business must surrender the registration certificate to the Commissioner.

[11] Section 12A

Insert after section 12—

12A Prohibition on advertising cash payment for scrap metal

A scrap metal dealer must not advertise that the dealer will pay for scrap metal—

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

Maximum penalty—20 penalty units.

[12] Section 14 Prohibitions on buying or disposing of unidentified motor vehicles

Omit “100 penalty units”. Insert instead “500 penalty units”.

[13] Section 15 Prohibition on disposal of suspected stolen scrap metal

Omit “50 penalty units” from section 15(4). Insert insert “500 penalty units”.

[14] Section 16 Transaction records

Omit section 16(2). Insert instead—

- (2) The scrap metal dealer must keep the record—
 - (a) at a premises at which the dealer carries on the business of dealing in scrap metal, or
 - (b) if the dealer carries on a business of dealing in scrap metal only from a motor vehicle—in the motor vehicle.
- (2A) The scrap metal dealer must keep the record for 3 years after the record is made.

[15] Section 18 Long-term closure of premises

Insert at the end of section 18(1)(b)—

, or

- (c) there has been repeated non-compliance at or in connection with the premises.

[16] Section 18(4)

Insert after section 18(3)—

- (4) In this section—
 - repeated non-compliance* means the commission of 6 or more of the following in a 12-month period—
 - (a) an offence against this Act or the regulations,
 - (b) an alleged offence against this Act or the regulations for which a penalty notice is issued.

[17] Section 22A

Insert after section 22—

22A Power to stop and search motor vehicles without warrant

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.

[18] Part 3, Division 3

Insert after Part 3, Division 2—

Division 3 Contraventions register

22A Commissioner may keep contraventions register

- (1) The Commissioner may keep a register of information (the *contraventions register*) about—

- (a) convictions for offences against this Act or the regulations, and
 - (b) penalty notices issued for alleged offences under this Act or the regulations.
- (2) The Commissioner may include the following particulars on the contraventions register—
- (a) identifying information about a person or business convicted of an offence or issued with a penalty notice,
 - (b) details of the registration of a scrap metal business under this Act,
 - (c) the location of an offence or alleged offence,
 - (d) other particulars the Commissioner considers appropriate.
- (3) The Commissioner may keep the contraventions register in a form the Commissioner considers appropriate.

24B Publication of contraventions register

- (1) The Commissioner may—
- (a) publish information contained in the contraventions register, and
 - (b) provide a member of the public with information contained in the contraventions register in a way the Commissioner considers appropriate.
- (2) Information relating to a penalty notice issued to a person must not be published or provided to a member of the public unless—
- (a) the amount payable under the penalty notice has been fully or partly paid, or
 - (b) a penalty notice enforcement order under the *Fines Act 1996*, Part 3 has been issued in relation to the penalty notice, or
 - (c) at least 70 days have elapsed since the penalty notice was issued and the penalty notice is unresolved.
- (3) For this section, a penalty notice is *unresolved* until one of the following occurs—
- (a) the amount payable under the penalty notice is fully or partly paid,
 - (b) a penalty notice enforcement order under the *Fines Act 1996*, Part 3 is issued in relation to the penalty notice,
 - (c) the person issued with the penalty notice elects to have the matter determined by a court in accordance with the *Fines Act 1996*, Part 3,
 - (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,
 - (e) a penalty reminder notice in relation to the offence is withdrawn under the *Fines Act 1996*.
- (4) No liability, including liability in defamation, is incurred for information published under this section in good faith.

Schedule 2 Amendment of Scrap Metal Industry Regulation 2016

[1] **Clause 4**

Omit the clause. Insert instead—

4 Prescribed number of days for rebuttable presumption—the Act, s 4A

For the Act, section 4A, the prescribed number of days is 6 days.

[2] **Clause 6**

Omit the clause. Insert instead—

6 Prescribed registration fee—the Act, s 7

(1) For the Act, section 7, the prescribed fee is 1 fee unit.

(2) In this clause—
fee unit—see Schedule 2, clause 1.

[3] **Clause 7A**

Insert after clause 7—

7A Circumstances in which registration may be refused, suspended or revoked—the Act, s 11A

- (1) For the Act, section 11A(1), the prescribed circumstances are that—
- (a) the scrap metal dealer has committed an offence against this Act or the regulations, or
 - (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
 - (c) if the scrap metal dealer is a corporation—
 - (i) an officer of the corporation has committed an offence against this Act or the regulations, or
 - (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.
- (2) In this clause—
officer has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

[4] **Clause 11**

Insert after clause 10—

11 Transitional provision—contraventions register—the Act, s 28(4)

The contraventions register may include information held by the Commissioner before the commencement of the *Scrap Metal Industry Amendment (Review) Act 2022*, Schedule 1, item [18].

[5] **Schedule 1 Penalty notice offences**

Omit the matters relating to sections 5, 14 and 15(4).

Insert in appropriate order—

Section 5	\$5,500
Section 14	\$5,500
Section 15(4)	\$5,500

[6] Schedule 1, Table

Insert in appropriate order—

Section 12A	\$220
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[7] Schedule 1, Table, Column 1

Omit “Section 16 (1), (2) and (4)”. Insert instead “Section 16(1) and (2)”.

[8] Schedule 2

Insert after Schedule 1—

Schedule 2 Calculation of fee unit

clause 6

1 Definitions

In this Schedule—

CPI number 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.

fee unit—see clause 2.

financial year means a period of 12 months commencing on 1 July.

2 Calculation of registration fee

- (1) For the purposes of this Regulation, a ***fee unit*** is—
 - (a) in the financial year 2022–23—\$210, and
 - (b) in each subsequent financial year—the amount calculated as follows—

$$\$210 \times \frac{A}{B}$$

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2022.

- (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.
- (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.

3 Rounding of fee amounts and contributions

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.

4 Notice of indexed fees

- (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—
 - (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
 - (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.
- (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.