

Stratfield

SCRAP METAL INDUSTRY AMENDMENT (REVIEW) BILL 2022

STATEMENT OF PUBLIC INTEREST

for  
Clerk of Parliaments

20 / 9 / 22

**Need: Why is the policy needed based on factual evidence and stakeholder input?**

This Bill implements the recommendations of the statutory review into the *Scrap Metal Industry Act 2016*. Broadly, this Bill will provide for more effective regulation of the scrap metal industry by clarifying who a scrap metal dealer is, enhancing existing powers to strengthen enforcement and improve administration of the Act, and by updating certain penalties to appropriately reflect their seriousness.

The statutory review was undertaken in 2020 by the New South Wales Police Force and completed in accordance with section 29 of the *Scrap Metal Industry Act 2016*. This involved extensive consultation with key industry and government stakeholders. The purpose of the statutory review was to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

While there are no express objects of the Act, the principal policy objective of the Act is to prevent property crime in NSW through the regulation of the scrap metal industry. This is primarily achieved through requiring scrap metal dealers to register as dealers, prohibiting the use of cash as payment for scrap metal, transparency and record-keeping requirements for scrap metal dealers, and the provision of appropriate powers for police to enforce the Act.

The statutory review found that the Act's policy objectives remain valid however, the industry has evolved and amendments are needed to address emerging issues and better realise the policy intent of the legislation. The traditional notion of dealers carrying on a business at a scrap metal yard no longer represents the industry reality.

Key issues raised by stakeholders – the industry stakeholders in particular – were the lack of adequate enforcement powers, ineffective penalties, and commercial detriment caused by the inability to compete with non-compliant scrap metal dealers. This Bill will deliver support to the industry by leveling the playing field, ensuring that non-compliant dealers can no longer avoid their obligations under the Act.

In total, 19 recommendations were made by the statutory review, of which 16 related to amendments to the *Scrap Metal Industry Act 2016* and *Scrap Metal Industry Regulation 2016*. This Bill implements all 16 recommendations to bolster NSW's regulation of the scrap metal industry and ensure legislation in NSW remains responsive to the emerging issues identified in the statutory review.

*Inadequate enforcement powers in the face of an evolving industry*

More scrap metal dealers are now carrying on scrap metal businesses using a motor vehicle, often with no business premises or scrap metal yard. Despite clearly carrying on a business in dealing in scrap metal, these dealers are typically not registered and efforts to enforce the Act are frustrated by the inability of police to stop and search vehicles for the purpose of compliance. Furthermore, the Act is currently drafted in a way which makes it challenging to determine whether someone is carrying on a business, especially when this occurs outside of scrap metal yards.

Among other things, this Bill will clarify who is a scrap metal dealer to include those who operate their business using a motor vehicle without a yard and will provide police appropriate powers to stop and search a vehicle to determine a compliance with or contravention of the Act. This is a natural extension of the existing powers in the Act which allow a police officer to enter a premises without a warrant where 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 Act. This power can only

be used if the officer reasonably believes the vehicle is being used for the purposes of carrying on a scrap metal business

#### *Ineffective penalties*

This Bill includes three increases to penalties in sections 5, 14, and 15(4), forming part of a holistic approach to address the issue of non-compliant dealers. The statutory review found that the existing penalties were insufficient to deter non-compliant dealers who could absorb these penalties as a mere cost of business, in exchange for access to the profitable black market. The penalties were also out of step with comparable regulated industries in NSW (for example, the motor dealers and repairer's industry).

Section 5 of the Act prohibits a person from carrying on a business of dealing in scrap metal unless the business is registered. The offence currently carries a maximum penalty of 100 penalty units where the penalty notice amount is \$2,200. The Bill will increase this to 500 penalty units, with a penalty notice amount payable of \$5,500. The new penalty is appropriate and in line with the comparable offence of carrying on a business without the appropriate licence under the *Motor Dealers and Repairers Act 2013*.

Section 14 of the Act prohibits a scrap metal dealer from buying, selling, or disposing of any scrap metal that consists of an unidentified motor vehicle, unless authorised by a police officer (unidentified means that the unique identifier for the motor vehicle has been removed, obliterated, defaced, or altered). The offence currently carries a maximum penalty of 100 penalty units, where the penalty notice amount is \$1,100. The Bill will increase this to 500 penalty units, with a penalty notice amount payable of \$5,500. The current penalty is disproportionate to the severity of the offending and has been found to provide a low-risk pathway to corollary crimes.

Section 15(1) of the Act prohibits a person from buying or disposing of suspected stolen scrap metal where a police officer reasonably suspects as having been stolen or otherwise unlawfully obtained. Section 15(4) of the Act requires the dealer to comply with an order served. The offence currently carries a maximum penalty of 50 penalty units, with a penalty notice amount payable is \$550. The Bill will increase this to 500 penalty units, with a penalty notice amount payable of \$5,500. The new penalty is equivalent to the offence in section 102 of the *Motor Dealers and Repairers Act 2013*, which also carries a maximum 500 penalty units (subsection 102(1) states an authorised officer may issue a non-disposal notice to the licence holder and subsection 102(4) states a licence holder, or an employee of a licence holder, must not contravene a notice given under this section).

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

The Bill will reduce property crime in NSW through more effective regulation of the scrap metal industry.

#### *Clarification of the definition of a scrap metal dealer*

The Bill closes a potential loop-hole for effective regulation under the Act by clarifying that a scrap metal dealer is a person who carries on the business of scrap metal whether or not the business is registered under the Act.

#### *Requirement for scrap metal businesses operating without a scrap yard to be registered*

This new requirement strengthens the objective of reducing property crime by requiring dealers operating out of homes and vehicles to also be registered

### *Increase in penalties*

The Bill introduces three increases in penalties to deter non-compliant rogue scrap metal dealers perpetuating property crime in NSW.

These are increases to the penalty for carrying on a business for dealing in scrap metal without being registered from 100 penalty units, buying or disposing a motor vehicle if the unique identifier has been removed from 100 penalty unit to 500 penalty units, and increasing the penalty for failing to comply with a police officer direction not to dispose of scrap metal from 50 penalty units to 500 penalty units.

### *Publish a register of convictions*

The new ability to publish convictions and penalty notices against the Act and regulations will act as a strong deterrent and will provide information to the public about rogue operators.

### *Empower the Commissioner to refuse to register a business or to suspend or revoke a registration where the dealer has or is likely to breach the Act or regulation*

This amendment will strengthen the policy objectives of the Act to reduce property crime by providing an avenue to keep non-compliant dealers from operating.

### *Introduction of a new offence to prohibit a scrap dealer from advertising cash for scrap metal*

One of the main kinds of theft the Act seeks to address is motor vehicle theft. Payment of cash for scrap metal is already prohibited under the Act as a way of reducing property crime. However industry stakeholders advise this still occurs. This amendment will address this issue.

## **Options: What alternative policies and mechanisms were considered in advance of the bill?**

These reforms arose out of the statutory review of the Scrap Metal Industry Act.

## **Analysis: What were the pros/cons and benefits/costs of each option considered?**

### *Clarification of the definition of a scrap metal dealer*

This amendment closes an existing loophole in the Act. It can only be achieved by legislative amendment.

### *Requirement for scrap metal businesses operating without a scrap yard to be registered*

This amendment closes an existing loophole in the Act. It can only be achieved by legislative amendment.

### *Increase in penalties*

In the statutory review a number of recommendations were made by industry stakeholders to increase penalties for non-compliance in order to improve compliance with the scheme. Each of these requests were considered on their merits, and the increases were recommended where the Government agreed the existing penalties did not reflect the seriousness of offending or act as an effective deterrent.

### *Publish a register of convictions*

The creation of a register of convictions was a recommendation from the statutory review. Similar registers such as "Name and Shame" Register published by the Food Authority and "Public Warnings" by NSW Fair trading have been effective.

*Empower the Commissioner to refuse to register a business or to suspend or revoke a registration where the dealer has or is likely to breach the Act or regulation*

The Act currently does not provide for any circumstances in which the Commissioner can suspend, revoke or refuse registration of scrap metal businesses. Similar regulatory schemes such as the Motor Dealers and Repair Act 2013 outlines provisions for refusing and suspending registration.

This is an appropriate disciplinary power for the Commissioner to have and can only be achieved by legislative amendment.

*Introduction of a new offence to prohibit a scrap dealer from advertising cash for scrap metal*

Whilst the current regime penalises paying cash for scrap metal, there is no ban on advertising cash for scrap metal. This has proved a problem with industry reporting that rogue traders are advertising for cash and operational police finding it difficult to prove the cash transactions had occurred. This amendment closes this loophole and can only be made by legislation.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

The Bill will commence on proclamation.

The NSW Police Force administers the legislation on behalf of the Minister for Police. The NSW Police Force will require approximately three months to update internal systems and policies to give effect to the amendments.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

Yes, the NSW Government has consulted with stakeholders during the statutory review of the Act.

Consultation included seeking the public's views via a public discussion paper released in 2020. In total, 11 submissions were received from industry stakeholders. Further targeted consultations were undertaken with key industry and government stakeholders, including a round-table discussion with industry stakeholders. Government agencies who were consulted include the Department of Customer Service, NSW Fair Trading, NSW Environment Protection Authority and the Department of Communities and Justice. Key industry stakeholders who participated in consultation include Waste Contractors and Recyclers Association, InfraBuild Recycling, Sims Metal and Southern Cross Metals.