



Scrap Metal Industry Act 2016

Statutory Review

Discussion Paper



NSW Police Force
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Document Properties

Title	Statutory Review of the <i>Scrap Metal Industry Act 2016</i> Discussion Paper
Subject	Regulation of the Scrap Metal Industry
Command responsible	Legislation and Policy Branch
Authorisation	Minister for Police and Emergency Services
Security Classification / Protective Markings	Unofficial
Publication date	
Current version number	
Review date	
Document number	
Copyright statement	Copyright of this document is vested in the Commissioner of Police © 2020
Suitable for Public Disclosure	YES

Modification History

Version #	Version approval date	Author/Position	Summary of changes
0.1		S Nataraj- Hansen	

Contents

Document Properties	2
Modification History	2
Foreword.....	4
How to make a Submission	5
Background and Context.....	6
Part 1 – Preliminary	7
Part 2 – Regulation of the Scrap Metal Industry	8
Part 3 – Enforcement.....	10
Part 4 – Miscellaneous	11
Part 5 – Scrap Metal Industry Regulation 2016.....	12

Foreword



Thank you for taking the time to contribute to the statutory review of the *Scrap Metal Industry Act 2016* (the Act).

The Act commenced in two parts with most provisions in force by March 2017. The Act regulates the activities of persons or businesses that are involved in dealing with scrap metal. It is administered by me in my capacity as the Minister for Police and Emergency Services.

The Act assists the NSW Police Force address property crime, especially the theft and disposal of stolen motor vehicles, copper and other metal at scrap metal yards.

Section 29 requires that the Act be reviewed three years after commencement to determine whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

This discussion paper has been prepared to help your deliberations by posing specific questions. I encourage you to make a submission to the review. The NSW Government is interested to hear any concerns or comments in the way the Act operates, the intention of the provisions and any successes or possible shortcomings in the regulation of the industry.

The Hon. David Elliott MP

Minister for Police and Emergency Services

How to make a Submission

Submissions are sought on the operation of the *Scrap Metal Industry Act 2016* and consequently the *Scrap Metal Industry Regulation 2016* as part of the statutory review of the Act. The discussion paper is a guide to the purpose and sections of the Act and asks specific questions about the current provisions.

Stakeholders are invited to answer any or all of the questions and are welcome to make any other comments that relate to the regulation of the scrap metal industry, the Act or its Regulation. Comments on parts of the Act for which there are no specific questions are also invited.

Submissions should be provided by **30 August 2020** and can be submitted by mail:

Legislation and Policy Branch
NSW Police Force
Locked Bag 5102
PARRAMATTA NSW 2124

Or by email:

legpol@police.nsw.gov.au

Discussion papers are available for download on the Have your Say and the NSW Police Force Websites here

<front page>

https://www.police.nsw.gov.au/online_services/scrap_metal_industry

The Act can be found here:

<https://www.legislation.nsw.gov.au/#/view/act/2016/42/full>

Background and Context

The *Scrap Metal Industry Act 2016* (the Act) regulates the scrap metal industry.

A scrap metal dealer is a person who carries on a business of dealing in scrap metal. Dealing includes buying, receiving and obtaining. Scrap metal dealers can purchase metal in various forms to sell for profit – either intact, crushed or for recycling into products with higher demand.

The scrap metal industry has a high turnover of materials and historically had little regulation so that dealers could buy scrap metals for cash without requiring the establishment of a person's identity or original ownership of the material.

The Act was introduced in 2016. The second reading speech that supported the introduction stated:

"Up until now, this trade has been largely unregulated and undocumented, making it extremely attractive to criminals as a way to make some quick cash." (Second Reading Speech, Hansard 24 August 2016).

Now, under the Act, only registered businesses are legally entitled to trade in metal and all trade is to take place electronically or by cheque, rather than by way of cash, cashable cheque, or in kind.

Moreover, there is a legal duty to report knowledge of any unlawfully obtained scrap metal. The second reading speech continued to say:

"...the regulatory model proposed through this bill will help to significantly prevent property crime in three major ways. First, it will close off scrap metal dealers as a source of quick cash. Secondly, it will ensure that the sales of stolen scrap metal to dealers are able to be traced through the keeping of clear records. Thirdly, it will provide powers of entry and inspection for police officers." (Second Reading Speech, Hansard 24 August 2016).

Section 29 of the Act requires the Minister to review the Act as soon as possible after the period of three years from the commencement of the Act, and a report is to be tabled in Parliament within 12 months after the end of the period of three years. The Act commenced in part on 16 December 2016.

The purpose of this discussion paper is to facilitate consultation with stakeholders on the operation of the Act for the statutory review.

Part 1 – Preliminary

This Part sets up the Act, including section 3, which defines key terms and concepts used throughout the Act.

Question 1:

Are the current definitions still valid and appropriate?

Section 4 has a standalone definition for “carrying on a business” that includes “a reference to the person carrying on the business in partnership or by an employee, contractor, agent or other person.”

Question 2:

Does the definition of “carry on a business” capture the meaning of conducting a business in scrap metals?

Part 2 – Regulation of the Scrap Metal Industry

This Part encompasses two divisions dealing with the regulation of the industry.

Division 1 outlines the legal requirement for a business to be registered, what it means to be registered, what information is required for registration and fees payable.

The information that is required by the Commissioner to register a dealer is:

- name of dealer and business
- dealer's ABN
- address of each scrap metal yard used by the dealer
- if the business is carried on by a corporation; name of corporation and manager's name of each scrap metal yard used by the dealer
- other information as prescribed by the regulations (section 6).

The Act requires that a scrap metal dealer must notify the Commissioner within 14 days of any change in registration information (section 8).

Section 10 provides that the Commissioner is to keep the publicly accessible register of scrap metal businesses. Offences of providing false information when registering with the Commissioner is detailed at section 11.

The register is maintained by the NSW Police Force Security Licensing and Enforcement Directorate and is available through the NSW Police Force website.

As at 15 January 2020, there were 435 parties listed on the NSW Police Force website as being registered.

The current registration fees payable are \$210 for three years.

Question 3:

Are the current registration requirements appropriate including:

- 3.1 The fees applicable for registering as a scrap metal dealer
- 3.2 The 14-day notification period to change registration information?

Question 4:

Is registrable information sufficient to maintain confidence in the industry?

Question 5:

Is 50 penalty units (\$5,500), as per section 11 of the Act, appropriate for providing false or misleading information?

Division 2 prescribes obligations and duties of scrap metal dealers.

This includes a prohibition on:

- the use of cash to trade
- trading unidentified motor vehicles
- the disposal of suspected stolen scrap metal (section 12).

The Division establishes a duty on scrap metal dealers to report stolen scrap metal (section 13), prohibits buying and selling of unidentified motor vehicles (section 14), and prohibits scrap metal dealers from disposing of suspected stolen scrap metal (section 15).

This Division also requires scrap metal dealers to keep a record of all transactions including prescribed details such as date, parties involved, details of the scrap metal and method of payment. These records are required to be kept for three years (section 16).

Question 6:

Are these duties and obligations still appropriate?

Part 3 – Enforcement

This Part of the Act provides the Commissioner and Courts with powers to enforce sanctions on those who contravene their responsibilities as traders of scrap metal.

Division 1 provides the Commissioner with the power to close premises on an interim basis if the Commissioner is satisfied that a scrap metal business is unregistered, or a serious criminal offence is being committed (section 17). The Local Court has the power to make a closure order on a longer-term basis (section 18).

This Division also prescribes penalties for non-compliance with a closure order (section 19).

Division 2 outlines power of entry and inspection. Police officers have the power to enter a scrap metal dealership, without a warrant, to determine whether there has been compliance with the Act (section 21). A police officer can apply to an authorised officer for a search warrant if the police officer believes on reasonable grounds that the Act is being contravened (section 22).

This Division also outlines the powers that police have on entry which are:

- examine any document on the premises
- make a copy on the premises of any document and retain that copy
- require any person to make a copy on the premises of any document and give that copy to the police officer to retain
- take photographs, films, audio, video or other recordings as a police officer considers necessary
- require any person to produce any document on the premises
- require any person to answer any question relating to any document or any other relevant matter
- take any document from the premises for the purposes of copying it
- seize any document or any other thing that the officer believes on reasonable grounds is connected with an offence against this Act or the regulations (section 23).

Question 7:

Are the enforcement powers appropriate?

Part 4 – Miscellaneous

This Part of the Act provides for other provisions such as evidence by a certificate in proceedings, penalty notices, the making of regulations and the review of the Act.

Section 26 sets out that all proceedings will be dealt with summarily before the Local Court.

Section 27 provides that penalty notices may be issued by a police officer, if a penalty notice offence (as per the Regulation) is detected.

Part 5 – Scrap Metal Industry Regulation 2016

The Regulation has ten clauses that pertain to certain sections of the Act. These are summarised in the table below.

The Regulation can be found at:

<https://www.legislation.nsw.gov.au/#/view/regulation/2016/776/full>

Clause	Title	Content
1	Name of regulation	
2	Commencement	Clauses 8-10 commenced on 1 March 2017
3	Definition	'The Act' means the <i>Scrap Metal Industry Act 2016</i>
4	Objects that are not scrap metal	Exempts the trade of aluminium cans to fall within the obligations of the Act
5	Prescribed registration information	The registration information for a business carried on by a scrap metal dealer includes, in the case where the business is carried on by an individual or in partnership, the name of the manager (if any) of each scrap metal yard used by the dealer
6	Prescribed registration fees	The prescribed fee is \$210 for three years
7	Particulars to be included in certificate of registration	<p>The following particulars are prescribed:</p> <ul style="list-style-type: none"> - the registration number allocated to the certificate of registration - the date on which the business carried on by the scrap metal dealer was registered
8	Display of certificate of registration	A scrap metal dealer must ensure that a copy of the certificate of registration for the business carried on by the dealer is conspicuously displayed in the main office of each scrap metal yard used by the dealer in carrying on that business
9	Photo identification	<p>The following documents are prescribed:</p> <ul style="list-style-type: none"> - an Australian driver licence within the meaning of the <i>Road Transport Act 2013</i>; or one issued by another Australian jurisdiction - NSW Photo Card issued under the <i>Photo Card Act 2005</i> - a foreign driver licence, with some requirements
10	Exemption from record keeping requirement	A scrap metal dealer is exempt from the requirement of recording the unique identifier of a motor vehicle under section 16(1)(e) of the Act if the motor vehicle was crushed, cubed or shredded before the transaction that relates to that motor vehicle occurred

Question 8:

Is the Regulation appropriate and fit for purpose?

Question 9:

Pertaining to specific clauses:

- 9.1 Clause 4 – Should aluminium cans remain exempt? Should other metals be exempt?
- 9.2 Clause 5 – Are the current prescriptions suitable? Should more information be required for registration?
- 9.3 Clause 6 – Is the fee of \$210 appropriate for business registration?
- 9.4 Clause 7 – Are date and registration number sufficient to include on the certificate?
- 9.5 Clause 10 – Is the exemption of record keeping appropriate?

The Regulation sets out a penalty schedule for contravening sections of the Act as follows:

Obligation	Section	Penalty
	Offences under the Act	
Requirement of business to be registered	Section 5	\$2,200
Requirement to notify changes in registration information	Section 8	\$220
Prohibition on paying cash etc. for scrap metal	Section 12	\$1,100
Duty to report stolen scrap metal	Section 13	\$550
Prohibitions on buying or disposing of unidentified motor vehicles	Section 14	\$1,100
Prohibition in disposal of suspected stolen scrap metal	Section 15(4)	\$550
Transaction records	Section 16(1), (2) and (4)	\$550
Prohibition on carrying on scrap metal business on premises subject to closure order	Section 19(1)	\$2,200
Hindering or obstructing police officer	Section 24	\$550
Display of certificate of registration	Clause 8	\$220

Question 10:

Are the penalties in the Regulation appropriate for offences?