

Geoff Gwilym
EXECUTIVE DIRECTOR



**Victorian Automobile
Chamber of Commerce**

ABN 63 009 478 209

VACC House
464 St Kilda Road
Melbourne 3004

P: 03 9829 1103
E: ggwilym@vacc.com.au

17 April 2018

Mr Simon Cohen
Deputy Secretary, Regulation and Director Consumer Affairs Victoria
GPO Box 123
MELBOURNE VIC 3001

Dear Simon

Proposed Second-Hand Dealers and Pawnbrokers (General Exemption and Record Keeping) Regulations 2018.

VACC thanks Consumer Affairs Victoria (CAV) for the opportunity to review the draft version of the Proposed Second-Hand Dealers and Pawnbrokers (General Exemption and Record Keeping) Regulations 2018. VACC supports the remake of the Regulations. It is essential that the proposed changes act as a deterrent for illegitimate business and do not penalise legitimate, registered businesses.

A meeting between VACC and CAV was held on 6 April 2018 and I am informed the meeting was useful and that there were positive amendments contained within the new Regulations. However, I have also been advised that there are amendments that will adversely impact the automotive Dismantling and Recycling Industry.

VACC members offer the following comments in relation to proposed draft regulations.

Attachment A

1. Prescribed things that are not scrap metal (Regulation 6)

VACC recommends an increase in percentage from 2% to 85% by weight so that high risk stolen goods are captured, while low-risk goods can still be processed without a seven-day retention.

The proposed 2% will prohibit the retailing of low risk, basic automotive components such as wiper motors, alternators and starter motors; items that are not prone to be at the epicentre of theft.

2. Remove Scrap Metal from the list of goods that are exempt from the list of goods that are exempt from the application of the Act (Schedule 1 - Exempt Goods)

- VACC supports the amendments to the list of goods exempt from the application of the Act.
- VACC also supports the requirement for Scrap Metal Dealers to become registered Second-Hand Dealers from 1 September 2018.



3. Interim Exemption from Registration requirements for scrap metal dealers (Sub-regulation 7 (5))

In an attempt to curtail motor vehicle theft and associated crime, VACC offers the following commentary on amended exemptions:

- VACC recommends that any exporters purchasing Second-Hand goods, scrap metals, whole vehicles and vehicle parts must be registered in Victoria.
- VACC supports the ban of cash for scrap payments from a Scrap Metal Dealer from 30 May 2018.
- VACC supports the commencement exemption referred to in Sub-regulation 7(5).

4. Exempt Second-Hand dealers from the requirement to retain scrap metal for seven days

VACC understands that the purpose of the seven-day retention is to facilitate and assist Victoria Police recover stolen goods which may come into the possession of a Second-Hand dealer.

VACC supports the exemption from seven-day retention for ferrous and nonferrous scrap metals.

The use of the seven-day retention needs to be balanced against workplace safety and environmental concerns and cannot be permitted to unnecessarily hold up the processing of cars that are deemed to be at the end their useful life.

VACC Dismantler and Recycler members acquire vehicle stock that is recycled and dismantled on a continuing basis. Most run lean businesses and cannot have vehicle stock accumulation or stock piling situations which will preclude them from obtaining insurance cover. A seven-day retention of vehicles or vehicle parts is not acceptable to VACC and its members.

Support for the VACC position has been gained from WorkSafe and EPA Victoria. We also note that the stockpiling of recyclable products and materials has resulted in an increased frequency of fire at industrial businesses, which is presently at the forefront of a current and very public, Victorian Government Taskforce. These events are also of particular concern to the insurance industry, to the point where some recycling businesses will not be able to secure business insurance cover.

VACC recommends:

- That an exemption is created where a dismantler records and retains photographic evidence of the identified vehicle. These records will assist industry in continuous processing of vehicles and avoid risk/hazard of over stockpiling and accumulation.

5. Prescribed information to be recorded relating to scrap metal transactions (Regulation 15)

VACC supports the reporting requirements contained in Regulation 15. Further reinforcing of Regulation 15 should include the following recommendations:

- VACC recommends that a Second-Hand Dealer's licence be a compulsory requirement to book an export shipping container which contains Second-Hand goods, scrap metal or vehicles covered by the Act.
- VACC recommends that a Second-Hand Dealer's licence be a prescribed requirement on all export shipping papers related to a container which has Second-Hand goods, scrap metal or vehicles.

6. Prescribed record keeping requirements for scrap metal received in a lot or parcel (Sub-regulations 15(2) and 15(4))

VACC agrees the process where bundles or parcels of scrap metal can be treated as a singular item exempting the obligation for items of over \$100 value to be declared separately.

7. Exempt Second-Hand dealers from the application of Section 19(1) of the Act if the person is a body corporate and has provided its certificate of incorporation (Sub-regulation 7(2))

VACC supports the exemption for Second-Hand dealers from the application of Section 19(1) of the Act if the person is a body corporate and has provided its certificate of incorporation (Sub-regulation 7(2)).

8. Exempt second hand goods that have been used in the course of a rental business conducted by the Second-Hand dealer (Sub-regulation 10 (2))

VACC notes that this amendment has been supported by the Regulator under the premise that similar or same legislation exists in other states. VACC would hope that further changes such as those adopted in NSW will be created locally to help bolster these Regulations.

9. Prescribe a number of additional offences for which infringement notices may be issued

VACC notes Section 19 (B) of the Act allows for 'prohibition on buying, possessing or selling cars for scrap metal where the vehicle identifier has been removed etc.'

- VACC recommends industry guidance be produced that advises industry on a procedure to be followed when these vehicles are presented for buying, selling or possessing. Guidance to include whether electronic permission such as email will be acceptable.

Other issues

Retention of records duration by Second Hand Dealers

VACC recommends the following for prescribed record retention by Second Hand Dealers:

- Five years as per ATO provisions, or
- Six years as per Motor Car Traders Regulations

Second-Hand goods purchased at auction or imported

Section 17(1)(a) creates an unrealistic requirement for a receipt to be signed by disposer, seller or originator.

- VACC recommends that reference is sought from the Electronic Transactions (Vic) Act 2000 for relief for the physical requirement of signature from any Regulation.
- VACC recommends that if this Regulation is prescribed, then the impost for providing the document with applicable signature must be solely the responsibility of auction houses.

Participation in production of educational material featured on CAV website

VACC recommends the production of educational material to stream from the CAV website that stipulates the following:

Obligations of disposer/seller/originator

- Provide Proof of Purchase or Registration of property or Authority to Dispose
- Meet ID requirements - outline acceptable ID
- Payment will be made by bank transfer/cheque
- Provision of Signature (optional)
- Request a recipient created tax invoice from the dealer as proof of sale
- Warning - Selling other property and obtaining property by deception will result in criminal action

Obligations of Second Hand Dealer:

- Record details of transaction accurately
- Record ID requirements
- Make payment by Bank transfer/cheque
- Record of signature optional
- Issue, a recipient, created tax invoice to the customer
- Warning – failure to record transaction and other fines apply for non-compliance of Act and Regulations

VACC will assist CAV in the distribution of this material.

Improved Website listing of Second-Hand Dealers (ordered by suburb/postcode)

The Real Estate Agents listing via CAV website is a vast improvement on Second Hand Dealers and Licensed Motor Car Traders search option.

- VACC recommends that Consumer Affairs look to replicate the search functionality that is enjoyed by the Real Estate Agents industry.

Compulsory requirement to include Second-Hand Dealers licence numbering all advertising (minimum 10-point font)

- VACC recommends that, where applicable, similar to Motor Car Traders Regulations 2008 Part 4 19 (1) and (3) that any advertising of goods for sale or purchase from Second-Hand Dealers to include the licence number of that business to be advertised.

Compliance with Road Safety Regulations (Written-off Vehicles) Notifications

All business dismantling, demolishing and exporting vehicles must lodge VINs with VicRoads in accordance with Road Safety Act & Regulations (Written off Vehicles).

Vehicles lodged under this reporting requirement be screened for theft after the event and stolen vehicle identified during this review be referred to Crime Stoppers for follow up with the Second-Hand Dealer Regulation penalties for failure to lodge apply – currently 20 Penalty units.

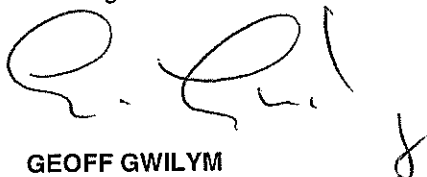
Review Period

VACC recommends that a review of Regulations be undertaken in March 2019 and September 2019 to address any unintended consequences which may arise.

VACC will host an industry evening 9 May 2018 at VACC House for CAV to advise industry directly of upcoming changes.

VACC members of the dismantling and recycling industry are available for further consultation.

Kind regards



GEOFF GWILYM

Attached: Summary of amendments to the Proposed Second-Hand Dealers and Pawnbrokers (General, Exemption, and Record-Keeping) Regulations 2008

Summary of amendments to the Proposed Second-Hand Dealers and Pawnbrokers (General, Exemption and Record-Keeping) Regulations 2018

1. **Prescribe things that are not scrap metal (regulation 6)**

This proposed amendment supports amendments to the *Second-Hand Dealers and Pawnbrokers Act 1989* (Act) that introduce a new definition for scrap metal. This new definition will commence on 30 May 2018 as part of the ban on cash for scrap reforms. It defines scrap metal as 'any thing of commercial value that: a) is made from or contains metal; and b) is sold or obtained as scrap for recycling or reprocessing of the metal, but does not include any thing prescribed not to be scrap metal'.

Proposed regulation 6 prescribes things containing more than two per cent by weight of copper, gold or silver not to be scrap metal. Any reference to scrap metal in the proposed Regulations can therefore be taken to exclude these things. Second-hand goods containing copper, gold or silver are treated differently from other ferrous and non-ferrous metals as they are valued more highly and are thus at greater risk of theft. Such goods are still classed as second-hand goods and are therefore subject to the Act and the Regulations, but are not subject to the provisions that apply only to scrap metal.

2. **Remove scrap metal from the list of goods that are exempt from the application of the whole of the Act (Schedule 1 – Exempt goods)**

Under the current Second-Hand Dealers and Pawnbrokers (Exemption) Regulations 2008, ferrous and non-ferrous scrap metal (excluding goods containing copper, gold and silver) are specified on the list of goods that are exempt from the application of the whole of the Act.

It is proposed to remove ferrous and non-ferrous scrap metal from the list of exempt goods. This means that second-hand dealers dealing in scrap metal (scrap metal dealers) will be subject to all of the requirements of the Act. This means that scrap metal dealers will be required to become registered second-hand dealers. The Regulations propose 1 September 2018 as the date for commencement of registration requirements for scrap metal dealers.

3. **Interim exemption from registration requirements for scrap metal dealers (subregulation 7(5))**

A staged approach to implementation is proposed to give scrap metal dealers time to prepare for any changes they may need to make to their business practices as a result of the proposed amendments to the Regulations. Scrap metal dealers will be required to comply with record-keeping requirements and the ban on paying cash-for-scrap from 30 May 2018. This is to comply with the ban on cash for scrap reforms to the Act that have a default commencement date of 30 May 2018. It is proposed that scrap metal dealers will continue to be exempted from the requirement to be registered until 1 September 2018, to provide time for them to become registered second-hand dealers.

4. **Exempt second-hand dealers from the requirement to retain scrap metal for seven days (subregulation 10(4)(c))**

Under section 21(1) of the Act, second-hand dealers are required to retain second-hand goods for a period of seven days between receiving and selling the goods. This is to facilitate police recovery of stolen goods that may come into the possession of second-hand dealers.

The current exemption for scrap metal from the application of the whole of the Act means that second-hand dealers are not required to retain scrap metal for seven days (unless it contains copper, gold or silver). However, when amendments to the Act come into operation on 30 May 2018, second-hand dealers will be automatically subject to the requirement to retain scrap metal for seven days.

In recognition of the significant burden this would impose on scrap metal dealers, it is proposed to specifically exempt scrap metal from the application of section 21(1) of the Act (retention of

9. ***Prescribe a number of additional offences for which infringement notices may be issued (regulation 26)***

A number of strict liability offences contained in the Act and Regulations are proposed to be added to the list of offences for which police can issue infringement notices. These include offences against:

- sections 5(1) and 5(1A) of the Act (requirement to be registered as a second-hand dealer or authorised pawnbroker before carrying on business)
- sections 19A(1) and 19A(2) of the Act (ban on cash-for-scrap and requirement to pay for scrap via cheque or electronic transfer)
- section 19(B) of the Act (prohibition on buying, possessing or selling cars for scrap metal where the vehicle identifier has been removed, etc.)
- section 26(4) of the Act (complying with a notice served by a police officer prohibiting second-hand dealers from altering or disposing of goods suspected of being stolen)
- regulation 19 (second-hand dealer must not remove an identifying mark or number affixed to goods), and
- regulation 20(3) (pawnbroker must not charge a fee to issue a pawn ticket).