



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 16 of 2025

25 November 2025



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Delegated Legislation Committee

Delegated Legislation Monitor No. 16 of 2025

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New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 16 of 2025

'November 2025'

Chair: Hon Natasha Maclaren-Jones MLC

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Committee details

Committee members

Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Chair</i>
Ms Abigail Boyd MLC	The Greens	<i>Deputy Chair</i>
Hon Susan Carter MLC	Liberal Party	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Tania Mihailuk MLC	Independent	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	

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Committee Chair

Secretariat

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Rebecca Mahony, Principal Council Officer
Bethanie Patch, Principal Council Officer
Madeleine Dowd, Director

Overview of the Delegated Legislation Monitor

Operation of the Committee's technical scrutiny function

- 1.1 The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.¹ The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.²
- 1.2 On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in Legislation Review Act 1987, section 9(1)(b) on a 12-month trial basis from the first sitting day in 2024.³
- 1.3 On 12 February 2025, the Legislative Council resolved to amend the resolution establishing the Regulation Committee to permanently expand the Committee to include the technical review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). The House also resolved to change the name of the Regulation Committee to the Delegated Legislation Committee to more accurately reflect the Committee's role and remit.
- 1.4 Paragraph (3) of the amended resolution requires that:

The committee is:
 - (a) to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in section 9(1)(b) of the *Legislation Review Act 1987*.
 - (b) may report on such instruments as it thinks necessary, including setting out its opinion that an instrument or portion of an instrument ought to be disallowed and the grounds on which it has formed that opinion, and
 - (c) may consider and report on an instrument after it has ceased to be subject to disallowance if the committee resolves to do so while the instrument is subject to disallowance."
- 1.5 In accordance with paragraph (3), the Committee considers any instrument that is disallowable, during the period within which it may be disallowed. This includes 'statutory rules', within the meaning of the *Interpretation Act 1987*, that are disallowable by virtue of section 41 of that Act. It also includes other instruments to which section 41 applies indirectly, i.e., where the Act under which an instrument is made provides it is to be treated as if it were a statutory rule for the purposes of section 41.
- 1.6 A list of instruments that are subject to disallowance is published on the Parliament's website on the first Tuesday of each month and each Tuesday when the Legislative Council is sitting.

¹ *Minutes*, NSW Legislative Council, 23 November 2017, pp 2327-2329.

² *Minutes*, NSW Legislative Council, 10 May 2023, pp 37-39.

³ *Minutes*, NSW Legislative Council, 19 October 2023, pp 639-640.

- 1.7** With regard to the scrutiny principles the Committee is required to assess instruments against, the *Legislation Review Act 1987*, section 9(1)(b) sets out eight grounds of scrutiny as follows:
- (i) that the regulation trespasses unduly on personal rights and liberties
 - (ii) that the regulation may have an adverse impact on the business community
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.
- 1.8** The Committee has published guidelines on its webpage that provide an overview of its intended approach to its technical scrutiny function and specific guidance in respect of each of these eight grounds.
- 1.9** Each sitting week, the Committee publishes a Delegated Legislation Monitor setting out its progress and conclusions relating to the technical scrutiny of disallowable instruments. The monitor sets out matters where the Committee has sought further information from the responsible minister, department or other body, the Committee's conclusions in relation to instruments where concerns have been raised and a list of those instruments the Committee has reviewed which have not raised scrutiny concerns.
- 1.10** In addition to the regular publication of monitors the Committee may, from time to time and under paragraph (2) of the resolution establishing it, inquire into and report on:
- (a) any instrument of a legislative nature regardless of its form, including the policy or substantive content of the instrument,
 - (b) draft delegated legislation, and
 - (c) trends or issues in relation to delegated legislation.

Conclusions and structure of Monitor No. 16 of 2025

- 1.11** For this monitor, the Committee has concluded its scrutiny of one instrument, as set out in Chapter 1, published in the NSW Government Gazette on 13 October 2025.
- 1.12** A further 11 instruments notified between 31 October 2025 and 14 November 2025 remain under review, for consideration in a future monitor.

Chapter 1 Concluded scrutiny matters

This chapter details the Committee's concluding comments on statutory instruments which raise scrutiny concerns relating to the grounds set out in the *Legislation Review Act 1987*, section 9(1)(b).

Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1

Government Gazette reference	NSWGG-2025-421-1
Published in the Government Gazette	13/10/2025
Tabled in Legislative Council	21/10/2025
Last date of notice for disallowance motion	10/02/2026

Overview

- 1.1 The [*Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1*](#) (the Practice Note) amends the original version of the Practice Note which commenced on 1 July 2024, as provided in paragraph 1, and applies to all criminal proceedings commenced in the Court pursuant to section 229B(1)(b) of the *Work Health and Safety Act 2011*. The purpose of the Practice Note is to explain the administrative and case management procedures followed in the Court for WHS prosecutions.
- 1.2 The Practice Note was made under the *Industrial Relations Act 1996*, section 185A. The current amendment of the Practice Note has been in effect since 13 October 2025.
- 1.3 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the Practice Note by letter sent to the President of the Industrial Court of New South Wales, Justice Ingmar Taylor, on 7 November 2025. The Acting Registrar General of the Industrial Relations Commission of New South Wales, Monique Welch, responded on 14 November 2025. All correspondence is included in Appendix 1.

Scrutiny concerns

*That the regulation may not have been within the general objects of the legislation under which it was made and that the form or intention of the regulation calls for elucidation*⁴

- 1.4 Under the first ground, the Committee considers the consistency of an instrument with the objects of the statute under which it is made and the degree to which the instrument as a whole,

⁴ The Committee's original letter to the President of the Industrial Court of New South Wales stated that the Committee had scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii)

or specific provisions of it, conforms with those objects. Under the second ground, the Committee is concerned with clarity and certainty in delegated legislation and whether any matters require clarification.

1.5 The *Industrial Relations Act 1996* (the Act), section 185A, provides that:

- (1) Subject to rules of the Commission, the President may issue practice notes with respect to any matter for which rules may be made.
- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the [*Interpretation Act 1987*](#) apply to a practice note in the same way as they apply to a statutory rule.

1.6 The Committee made the following observations in relation to the publication history of the Practice Note in the Gazette:

- (a) the Commencement provision, paragraph 1, provides that the Practice Note commenced on 1 July 2024, however, the Committee was unable to locate the original version published in the Gazette said to have commenced on 1 July 2024, and
- (b) since publication in the Gazette of the amending Practice Note on 27 September 2024, the Committee had located a further amendment said to have commenced on 5 April 2025, however, the Committee was unable to locate this version of the Practice Note in the Gazette.

1.7 Given the statutory responsibility under the Act, section 185A(2) to ensure that practice notes are published in the Gazette, the Committee had concerns that the two versions of the Practice Note identified in (a) and (b) above had not been published in the Gazette. The Committee also had concerns as to whether there were any other versions that had been in force during a particular period that had not been gazetted.

1.8 The Committee sought clarification from the President of the Industrial Court in relation to the gazettal of the previous versions of the Practice Note, noting that any previous version that had been in force during a particular period and not yet published should be published as soon as practicable. The Committee also suggested that best practice for drafting a commencement provision in an amending practice note is to explicitly include a reference to which version of the practice note is being replaced. For example, including the publication date of the most recent version of the practice note that is being replaced.

1.9 In response to the Committee, the Acting Registrar General of the Industrial Relations Commission stated the following:

Gazetting historical versions of the Industrial Court Criminal Practice Note No.

1

(that the form or intention of the regulation calls for elucidation). Based on the information provided by the Acting Registrar General of the Industrial Relations Commission, that the Practice Notes had not been published in the Gazette in error, and given the statutory requirement for publication under the Act, section 185A(2), the Committee's primary concern is now under the *Legislation Review Act 1987*, section 9(1)(b)(iii)(that the regulation may not have been within the general objects of the legislation under which it was made).

Earlier iterations of the Practice Note were not gazetted due to an administrative oversight. To address this, both the version of Industrial Court Criminal Practice Note No. 1 published on 1 July 2024 and the amended version published on 4 April 2025 were submitted for gazettal on 7 November 2025. The expected publication date is 14 November 2025, the earliest available date.

The Commission acknowledges its statutory obligation under section 185A of the *Industrial Relations Act 1996* to ensure that practice notes are gazetted. A review of all current and former practice notes is being undertaken to confirm compliance, and the Commission will ensure that any future amendments are promptly published in the Gazette. We will write to the Committee again once the review has been completed.

Best practice recommendation for amending practice notes

On 7 November 2025, a memorandum was prepared for the Industrial Relations Commission Rules Committee recommending adoption of a practice as proposed in your correspondence.

The memorandum recommends that the Commission adopt the approach used by the Supreme Court, whereby an amendment history is included at the conclusion of each practice note which outlines the commencement date of the new practice note and specify the version it replaces. This will be considered at the next scheduled Rules Committee meeting.

Committee conclusion

- 1.10** The Committee appreciates the Acting Registrar General's considered engagement with the scrutiny concerns raised by the Committee, particularly the advice provided that the Commission has now submitted the previous versions of the Practice Note for gazettal on 7 November 2025. The Committee confirms that the original Practice Note on 1 July 2024 and the amending Practice Note on 5 April 2025 were published in the Gazette on 14 November 2025.⁵
- 1.11** In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the *Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1*.

⁵ Available here: [GG No 474 of 14/11/2025, NSWGG-2025-474-1 and NSWGG-2025-474-2](#).

Appendix 1 Correspondence

Appendix 1 contains the following items of correspondence sent to, and received from, ministers or bodies regarding instruments referred to in this monitor:

- Sent 7 November 2025 – Letter from Chair to President of the Industrial Court of New South Wales, Justice Ingmar Taylor, regarding the *Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1*
- Received 14 November 2025 – Letter to Chair from Acting Registrar General of the Industrial Relations Commission of New South Wales, Monique Welch, regarding the *Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1*



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

7 November 2025

Justice Ingmar Taylor
President
Industrial Court of New South Wales

D25/081096

By email: chambers.taylor@courts.nsw.gov.au

Dear Justice Taylor,

Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1

As you are aware, on 19 October 2023, the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b).

The Committee is now required to review all statutory rules that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was published on the NSW Legislation website on 13 October 2025 and was tabled in Parliament on 21 October 2025:

- *Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(vii) on the basis that the form or intention of the instrument requires clarification. I am writing to you as the President of the Industrial Court of New South Wales to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Monitor. Consistent with its establishing resolution, the Committee may, if it has outstanding concerns, draw the instrument to the attention of the House or recommend to the House that the instrument, or part of the instrument be disallowed. In certain circumstances, the Committee may seek further clarification.

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](https://www.parliament.nsw.gov.au).

Scrutiny concerns

	Provision	Issue
1	<i>Industrial Court Act 1996</i> , section 185A, Practice Notes	The <i>Industrial Relations Act 1996</i> (the Act), section 185A, provides that: (1) Subject to rules of the Commission, the President may issue practice notes with respect to any matter for which rules may be made. (2) A practice note must be published in the Gazette. (3) Sections 40 and 41 of the Interpretation Act 1987 apply to a practice note in the same way as they apply to a statutory rule. The Committee makes the following observations in relation to the history of the <i>Industrial Court Criminal Practice Note No. 1</i> (the Practice Note) and whether all previous versions of the Practice Note have been published in the Gazette: • The Commencement provision, paragraph 1, of this Practice Note provides that this Practice Note commenced on 1 July 2024. The Committee notes that it has been unable to locate the original publication of this Practice Note in the Gazette on or around 1 July 2024. • Since publication in the Gazette of the amending Practice Note on 27 September 2024, the Committee has located a further amendment of this Practice Note, dated 5 April 2025. The amendment inserted the following words at the end of paragraph (4)—'Any Application to Commence Proceedings for a Summary Offence' filed after 4pm on any business day will not be considered by a Judge before the following business day.' The Committee notes that it has been unable to locate this version of the Practice Note in the Gazette. The Committee has concerns that the original version said to have commenced on 1 July 2024 and the amendment said to have been effective from 5 April 2025 have not been published in the Gazette. The Committee also has concerns that there may be other versions that were in force during a particular period that have also not been gazetted. The Committee reiterates the statutory responsibility of the President and the Commission under the Act, section 185A(2) to ensure that practice notes are published in the Gazette. Therefore, the Committee's view is that any previous version of the <i>Industrial Criminal Court Practice Note No. 1</i> that was in force during a particular period and has not yet been published in the Gazette should be published as soon as practicable. The Committee also suggests that best practice for drafting a commencement provision in an amending Practice Note is to explicitly include a reference to which version of the Practice Note is being replaced i.e. the publication date of the most recent Practice Note that is now being replaced. The Committee seeks a response from the President in relation to the Committee's concerns set out above.

2	Expert Evidence, paragraph 34	Expert Evidence, paragraph 34 provides that— 34. The provisions of Part 31 rules 23 and 27 <i>Uniform Civil Procedure Rules 2005</i> apply to the evidence of expert witnesses and any report of an expert witness. The Committee notes that the <i>Uniform Civil Procedure Rules 2005</i>, Part 31 Evidence does not contain rules nos 23 and 27 (as it contains rules nos 31.1 to 31.64). To avoid any confusion, the Committee suggests that the correct rule numbers intended to be referenced replace 'rules 23 and 27'.
.3	Preparation for Defended Hearings, paragraph 36	Preparation for Defended Hearings, paragraph 36 provides that— 36. The parties will be required to conduct a preliminary conference pursuant to s 247G of the WHSA ... The Committee notes that there is no section numbered 247G in the <i>Work Health and Safety Act 2011</i>. The Committee is of the view that paragraph 36 should be amended to correct the Act reference. The Committee suggests that this may have been the <i>Criminal Procedure Act 1986</i>, section 247G, which provides that the court may order the prosecutor and the defendant to attend one or more preliminary hearings before the court.

Please provide a response to the issue identified as no 1 by **21 November 2025, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.**

The issues identified as nos 2 and 3 are for information and noting only and do not require a response.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

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The Hon Natasha Maclaren-Jones MLC
Committee Chair



**Industrial Relations
Commission
of New South Wales**

Reply to
Monique Welch
A/Industrial Registrar
E industrial.registrar@courts.nsw.gov.au
T 02 8688 3589

47 Bridge Street
Sydney NSW 2000

14 November 2025

The Hon Natasha Maclaren-Jones MLC
Delegated Legislation Committee
6 Macquarie Street
SYDNEY NSW 2000

Via email correspondence

Dear Committee Chair,

SCRUTINY REGARDING INDUSTRIAL COURT CRIMINAL PRACTICE NOTE NO. 1

Thank you for your correspondence to Justice Taylor, President of the Industrial Relations Commission, dated 7 November 2025 regarding the Committee's review of delegated legislation in accordance with the scrutiny principles prescribed by section 9(1)(b) of the *Legislation Review Act 1987*.

We appreciate the Committee bringing these issues to the attention of the Commission. The President has asked me to respond on behalf of the Commission.

Gazetting historical versions of the Industrial Court Criminal Practice Note No. 1

Earlier iterations of the Practice Note were not gazetted due to an administrative oversight. To address this, both the version of Industrial Court Criminal Practice Note No. 1 published on 1 July 2024 and the amended version published on 4 April 2025 were submitted for gazettal on 7 November 2025. The expected publication date is 14 November 2025, the earliest available date.

The Commission acknowledges its statutory obligation under section 185A of the *Industrial Relations Act 1996* to ensure that practice notes are gazetted. A review of all current and former practice notes is being undertaken to confirm compliance, and the Commission will ensure that any future amendments are promptly published in the Gazette. We will write to the Committee again once the review has been completed.

Best practice recommendation for amending practice notes

On 7 November 2025, a memorandum was prepared for the Industrial Relations Commission Rules Committee recommending adoption of a practice as proposed in your correspondence.

The memorandum recommends that the Commission adopt the approach used by the Supreme Court, whereby an amendment history is included at the conclusion of each practice



note which outlines the commencement date of the new practice note and specify the version it replaces. This will be considered at the next scheduled Rules Committee meeting.

Issues 2 and 3 – Errors in Practice Notes 34 and 35

Although your correspondence indicates that a response to issues 2 and 3 is not required, we wish to advise that on 7 November 2025 a memorandum was prepared for consideration by the Industrial Relations Commission Rules Committee proposing the amendments outlined by the Committee. It will be considered at the next scheduled Rules Committee Meeting.

Subject to approval, the amended practice notes will be gazetted in accordance with statutory requirements.

Correspondence regarding Practice Notes 34 and 35

We refer separately to your correspondence concerning Practice Notes 34 and 35. While a response was not requested, we wish to advise that recommendations to amend the identified practice notes have been submitted to the Commission's Rules Committee for consideration at the next scheduled Rules Committee Meeting.

Subject to approval, the amended practice notes will be gazetted in accordance with statutory requirements.

Thank you for bringing these issues to the attention of the Commission.

Yours sincerely,

MONIQUE WELCH
A/INDUSTRIAL REGISTRAR
INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

