LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 14 of 2025

11 November 2025

www.parliament.nsw.gov.au

Delegated Legislation Committee

Delegated Legislation Monitor No. 14 of 2025

Ordered to be printed Tuesday 11 November 2025

New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 14 of 2025

'November 2025'

Chair: Hon Natasha Maclaren-Jones MLC

ISSN: 2982-0111

Table of contents

Committee details

Committee members

Hon Natasha Maclaren-Jones MLC	Liberal Party	*Chair*
Ms Abigail Boyd MLC	The Greens	*Deputy Chair*
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	

Contact details

Website	www.parliament.nsw.gov.au
Email	dlc@parliament.nsw.gov.au
Telephone	02 9230 3050

Hon Natasha Maclaren-Jones MLC
Committee Chair

Secretariat

Noora Hijazi, Principal Council Officer
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. 14 of 2025

1.11 For this monitor, the Committee has reviewed 35 instruments published on the NSW legislation website or in the NSW Government Gazette between 22 August 2025 and 24 October 2025. The Committee has:

- concluded its scrutiny of five instruments, as set out in Chapter 1,
- concluded that 27 instruments raise no scrutiny concerns, as set out in Chapter 2, and
- raised scrutiny concerns in relation to three instruments, for consideration in a future monitor, as set out in Chapter 3.

1.12 A further 10 instruments notified between 13 October 2025 and 31 October 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).

Law Enforcement (Controlled Operations) Regulation 2025

SI number	2025 No 431
Published on Legislation Website	22/08/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

1.1 The *Law Enforcement (Controlled Operations) Regulation 2025* (the regulation) repeals and remakes, with minor amendments, the *Law Enforcement (Controlled Operations) Regulation 2017,* which would otherwise be repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2), to, among other matters:

- prescribe certain Commonwealth agencies as law enforcement agencies for the purposes of the *Law Enforcement (Controlled Operations) Act 1997*, and
- enable the delegation of the functions of a chief executive officer under the Act to certain persons.

1.2 The regulation was made under various provisions of the *Law Enforcement (Controlled Operations) Act 1997* (the Act) including section 29(2)(b) and the general regulation-making power, section 31. The regulation commenced on 22 August 2025.

1.3 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the regulation by letter sent to the Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP, on 25 September 2025. The Acting Minister for Police and Counter-terrorism, the Hon Ryan Park MP, responded on 9 October 2025. The Committee sent further correspondence to the Minister on 13 October 2025. The Minister provided a further response on 28 October 2025. All correspondence is included in Appendix 1.

Scrutiny concerns

The regulation may not have been within the general objects of the legislation under which it was made, that the regulation duplicates, overlaps or conflicts with any other regulation or Act and the form or intention of the regulation calls for elucidation [4]

1.4 Under this ground, the Committee is required to scrutinise the regulation to consider the following:

- whether the provisions are consistent with the objects of the Act under which it is made and the degree to which the regulation as a whole, or specific provisions of it, conforms with those objects,
- whether it, or part of it, duplicates, overlaps or conflicts with any other regulation or Act, and
- clarity and certainty in delegated legislation and whether any matters require clarification.

1.5 The Act, section 29(2)(b), provides that a chief executive officer of a law enforcement agency other than the NSW Police Force may delegate any of the chief executive officer's functions under the Act (except the power of delegation in section 29), to a person for the time being holding a position prescribed by the regulations as a position which functions under the Act may be delegated.

1.6 The Act, section 29(4), also provides that (emphasis added):

> No more than one delegation may be in force under subsection (2)(b) at any one time, and ***no more than one position may be prescribed at any one time*** as a position to which functions under this Act may be delegated.

1.7 However, the regulation, section 8 provides the following:

> *For the Act, section 29(2)(b), the following positions are prescribed—*
>
> …
>
> *(e) for the Commonwealth Department of Home Affairs—both of the following, within the meaning of the Australian Border Force Act 2015 of the Commonwealth—*
>
> *(i) the Australian Border Force Commissioner,*
>
> *(ii) an Immigration and Border Protection worker in the Operations Group or Support Group of the Australian Border Force with the classification of Senior Executive Service Band 3.*

---

4 The Committee's original letter to the Minister for Police and Counter-terrorism stated that the Committee had scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) (that the form or intention of the regulation calls for elucidation). Based on the information provided by the Acting Minister, the Committee's primary concerns are 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) and subsection (vi) (that the regulation duplicates, overlaps or conflicts with any other regulation or Act).

1.8 Considering that the regulation, section 8(e), prescribes two positions for the Commonwealth Department of Home Affairs under the Act, section 29(2)(b), to which functions under the Act are being delegated, the Committee sought clarification from the Minister regarding the basis of a power to delegate these functions to more than one position.

1.9 In response to the Committee, the Acting Minister stated the following:

> The Regulation was remade with minor amendments which primarily reflect the Parliamentary Counsel's drafting approach i.e. in accordance with their guidelines and style. Amendments to section 8 in particular included updating the *'Commonwealth Department of Immigration and Border Protection'* from section 14(f) of the repealed Regulation to instead refer to *'the Commonwealth Department of Home Affairs'* and combining former subsections (i) and (ii) into one subsection. As such, no substantive changes have been made to section 8(e) of the Regulation.
>
> I further note that more than one position has been prescribed for agencies which preceded the current Commonwealth Department of Home Affairs, since the *Law Enforcement (Controlled Operations) Regulation 2012*. There may be many reasons for this, including the number of machinery of government changes the Commonwealth Department of Home Affairs has seen over the years.
>
> The NSW Police Force will make further enquiries with the Commonwealth Department of Home Affairs regarding the number of positions delegated under section 8(e) of the Regulation, noting that a response to these enquiries will require further time beyond 9 October 2025. Consideration will be given as to whether amendments to the *Law Enforcement (Controlled Operations) Act 1997* may be required to support appropriate delegations in the regulation.

1.10 While the Committee appreciated the Acting Minister's commitment to arrange for the NSW Police Force to make further enquiries with the Commonwealth Department of Home Affairs, the Committee's scrutiny concerns remained outstanding, and were at this point held under both the *Legislation Review Act 1987*, section 9(1)(b)(vii) and subsections (iii) and (vi).

1.11 In particular, the Committee considered that section 8(e) arguably conflicted with and was not within the general objects of the Act, section 29(2)(b). Therefore, the Committee requested one of the following methods of action from the Minister:

- a fulsome explanation of the reasons that the prescribing of two positions under section 29(2)(b) for the Commonwealth Department of Home Affairs is legally permissible, or
- an undertaking to amend the regulation, section 8(e) so that only one position is prescribed, or
- an undertaking to amend the Act, section 29(4) so as to allow the prescribing of two positions for the Commonwealth Department of Home Affairs.

1.12 In response to the Committee, the Minister stated the following:

> I have been advised that the NSW Police Force has made enquires with the Commonwealth Department of Home Affairs (the Department).
>
> The Department has advised that within the timeframe it has not been possible to determine the reason why multiple positions are prescribed under section 8(e) of the

> Regulation. However, the Department have agreed that section 8(e) of the Regulation can be amended to only prescribe the position of 'the Australian Border Force Commissioner'.
>
> Accordingly, I will instruct the NSW Police Force to amend section 8(e) of the Regulation so that only one position is prescribed. The Regulation will be amended as soon as practicable.

Committee conclusion

1.13 The Committee appreciates the considered engagement by both the Acting Minister and the Minister with the scrutiny concerns raised by the Committee, particularly the commitment to amend the regulation, section 8(e). While the Committee appreciated the willingness of both Ministers to seek further advice on the basis of a power to prescribe more than one position in the regulation, section 8(e), and whether the Act should be amended to support multiple delegations, the Committee agrees that the prudent course of action at this stage is to amend section 8(e) so that only one position is prescribed.

1.14 The Committee accepts the Minister's undertaking to amend the regulation, section 8(e) to prescribe only one position, being 'the Australian Border Force Commissioner'. This undertaking will be published on the Committee's webpage, and the entry will be updated when the relevant undertaking has been implemented.

1.15 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 (vi) have been appropriately addressed. The Committee concludes its scrutiny of the *Law Enforcement (Controlled Operations) Regulation 2025*.

Mental Health Regulation 2025

SI number	2025 No 432
Published on Legislation Website	22/08/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

1.16 The *Mental Health Regulation 2025* (the regulation) remade the *Mental Health Regulation 2019,* which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989,* section 10(2).

1.17 As set out in the explanatory note, the regulation deals with admission to and care in mental health facilities, community treatment orders, psychosurgery and electro convulsive therapy, official visitors to mental health facilities, the Mental Health Review Tribunal, interstate patients and mental health laws, and funds and accounts for patients in mental health facilities.

1.18 The regulation was made under various powers under the Act including, relevantly, sections 91, 96 and 196, the general regulation-making power. The regulation commenced on 1 September 2025.

1.19 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(v) in relation to the regulation by letter sent to the Minister for Mental Health, the Hon Rose Jackson MLC, on 26 September 2025. The Minister responded on 22 October 2025. All correspondence is included in Appendix 1.

Scrutiny concerns

The objective of the regulation could have been achieved by alternative and more effective means

1.20 Under this ground the Committee will consider whether the legislative 'means' of a regulation are the most appropriate legislative means to achieve its objectives.

1.21 The Committee's concern was in relation to the accuracy of the information contained in the regulation, Schedule 1, Form 5 about consent to electro convulsive therapy insofar as the information relates to involuntary patients.

1.22 The *Mental Health Act 2007* (the Act), section 94(1) provides that:

> (1) Electro convulsive therapy may be administered to an involuntary patient or a person who is under the age of 16 years in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry.

1.23 Section 96(2) provides that the Mental Health Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to the involuntary patient.

1.24 Section 96(3) relates to ECT determinations that enable treatment of involuntary patients other than persons under 16. It provides:

> (3) An ECT determination for an involuntary patient (other than a person under the age of 16 years) is a determination—
>
> (a) that the patient is capable of giving informed consent to the electro convulsive therapy and has given that consent, or
>
> (b) that—
>
> (i) the patient is incapable of giving informed consent or is capable of giving informed consent to the electro convulsive therapy but has refused, or has neither consented nor refused, to have the treatment administered, and
>
> (ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the patient.

1.25 The effect of section 96(3) appeared to the Committee to be that, in some circumstances, an involuntary patient may receive electro convulsive therapy despite being capable of giving informed consent to the therapy and refusing that consent.

1.26 The regulation, Schedule 1, Form 5, parts 1, 2 and 3 appear to be taken together as one form which is given to both voluntary and involuntary patients for the purposes of explaining electro convulsive therapy and obtaining consent for the carrying out of electro convulsive therapy on the patient. Part 1 sets out information to consider before signing. Part 2 is an acknowledgement of consent for voluntary patients. Part 3 is an acknowledgement of consent for involuntary patients.

1.27 The Committee was concerned about two sections of Form 5 which could be misleading for involuntary patients for the reasons set out below

1.28 First, the section "Consent to treatment" in Part 1 states (emphasis added):

> This treatment cannot be carried out without your consent (see Part 2 below), **unless you are an involuntary patient at the mental health facility.** If you are an involuntary patient, the treatment can only be carried out in accordance with an order made by the Mental Health Review Tribunal.
>
> Before giving this consent you may ask your doctor any questions relating to the techniques or procedures to be followed.
>
> **You may also withdraw your consent and discontinue this treatment AT ANY TIME.**

1.29 The Committee was concerned that this section does not adequately explain that, for an involuntary patient, the Tribunal can, in effect, overrule the patient's refusal of consent. While the first paragraph does imply that treatment can be carried out without consent, it does not explicitly state that treatment can be carried out despite the patient's refusal of consent. The paragraph also does not explain the nature of the orders that may be made by the Tribunal, but merely states that treatment of involuntary patients can only be carried out 'in accordance with' an order.

1.30 Further, the bold text in the third paragraph, which does not distinguish between voluntary and involuntary patients, arguably gives the impression that an involuntary patient always has the option of withdrawing consent and discontinuing treatment.

1.31 Secondly, Form 5, Part 3 (Consent to electro convulsive therapy for involuntary patients) states:

> I UNDERSTAND that I am free at any time to change my mind and withdraw from the course of treatment if I so desire.

1.32 Similarly, the Committee was concerned that this text arguably gives the impression to involuntary patients that their refusal of consent will determine whether or not they receive treatment.

1.33 Furthermore, there is no explanation that the Tribunal can override the patient's refusal of consent, other than the following words which, in the Committee's view, are ambiguous and do not explicitly state what the outcome of the Tribunal's review may be:

> I UNDERSTAND that my consent will be reviewed by the Mental Health Review Tribunal.

1.34 The Committee noted that the Act, section 4(1) defines ***involuntary patient*** to mean:

> (a) a person who is ordered to be detained as an involuntary patient after a mental health inquiry or otherwise by the Tribunal, or
>
> (b) a forensic patient who is re-classified as an involuntary patient under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, or
>
> (c) a correctional patient who is re-classified as an involuntary patient under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

1.35 Given the acute vulnerability of involuntary patients in mental health facilities, the Committee considers any potential to cause confusion in relation to the rights of an involuntary patient to refuse or withdraw from electro convulsive therapy to be highly problematic.

1.36 The Committee was particularly concerned about the potential distress caused to involuntary patients who are given Form 5 and who either refuse consent or are determined to be incapable of consenting and who are later surprised to learn that they may be required to receive electro convulsive therapy pursuant to a Tribunal determination despite not consenting to the treatment.

1.37 The Committee therefore suggested to the Minister that a separate consent form should be created for involuntary patients, that the form should only contain information relevant to those patients and that the form should clearly state the potential for the Tribunal to decide that electro convulsive therapy should be carried out despite the patient not consenting.

1.38 The Committee also noted to the Minister that similar issues may arise in relation to patients under 16, for which there are specific provisions under the Act, section 96, and similarly suggested that a separate form be created specific to those patients.

1.39 In response to the Committee, the Minister stated the following:

> In line with good practice, the NSW Ministry of Health will generally consult with key stakeholders on any regulatory changes. The Ministry's Mental Health Branch conducted targeted consultation on the Regulation with key stakeholders. This includes all local health districts and specialty health networks, Mental Health Coordinating Council, Mental Health Commission, Mental Health Review Tribunal, Official Visitors Program, Transcultural Mental Health, Mental Health Advocacy Services, BEING and Mental Health Carers NSW.
>
> I am advised that no concerns were raised about the consent information in Form 5.
>
> I note that the information about consent to electro convulsive therapy in Form 5 of the Regulation remains unchanged from the 2019 version of the Regulation. I am advised that the Ministry has not received any concerns about potential ambiguity of the consent information in Form 5 to date.
>
> I agree that further consideration should be given to the consent information in Form 5 to determine whether it can be made clearer.
>
> The Ministry will further consider the issues raised in your letter, including whether separate consent forms for voluntary patients, and involuntary patients both over and under 16 years of age should be created, and more generally whether the consent information in Form 5 could be made clearer.
>
> This will involve consultation with key stakeholders, including mental health clinicians, to determine what, if any, changes are required.

Committee conclusion

1.40 The Committee appreciates the Minister's thoughtful and considered engagement with the Committee's concerns. In particular, the Committee appreciates the Minister's commitment to ensure that the Ministry of Health 'further consider[s] the issues raised in [the Committee's] letter, including whether separate consent forms for voluntary patients, and involuntary patients both over and under 16 years of age should be created, and more generally whether the consent information in Form 5 could be made clearer', and notes the Minister's advice that '[t]his will involve consultation with key stakeholders, including mental health clinicians, to determine what, if any, changes are required'.

1.41 The Committee will record this as an undertaking given by the Minister. The undertaking will be published on the Committee's webpage, and the entry will be updated when the relevant undertaking has been implemented. The Committee expects to receive an update within 6 months and, if it does not, the Committee will follow up on the status of the undertaking.

1.42 In the meantime, the Committee reiterates its concern about the accuracy of the information in Form 5 insofar as it relates to involuntary patients, and the potential of the form to cause confusion among a vulnerable cohort.

1.43 For the purposes of assisting with the further consultation to be conducted by the Ministry of Health, the Committee notes that there are in fact differences between the *Mental Health Regulation 2019*, Form 5 and the *Mental Health Regulation 2025*, Form 5. The changes are limited to Part 1 of the Form, which contains the explanatory material titled "Information to consider before signing". The Committee does not suggest that the fact that the 2019 and 2025 versions of Form 5 are different is itself necessarily significant, nor does it suggest that one version of the form is more or less accurate than the other. However, the Committee is concerned that targeted consultation may not have been adequately carried out in relation to the 2025 version of Form 5 because of the erroneous belief that there had been no changes from the 2019 version. The Committee strongly suggests that a comparison between the two versions of the form, along with the Committee's specific concerns, be put to stakeholders in the course of the planned consultation.

1.44 In light of the Minister's undertaking, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(v) have been appropriately addressed. The Committee concludes its scrutiny of the *Mental Health Regulation 2025*.

Retirement Villages Regulation 2025

SI number	2025 No 436
Published on Legislation Website	22/08/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

1.45 The *Retirement Villages Regulation 2025* (the regulation) remakes, with minor changes, the *Retirement Villages Regulation 2017*, which was repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

1.46 As detailed in the explanatory note, the regulation provides for various matters relating to retirement villages, including arrangements for annual management meetings and the form of certain documents, such as condition reports.

1.47 The regulation was made under various provisions of the *Retirement Villages Act 1999* (the Act) signposted in the heading or body of each section of the regulation. The regulation commenced on 1 September 2025.

1.48 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(v) and (vii) in relation to the regulation by letter sent to the Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, on 1 October 2025. The Minister responded on 15 October 2025. All correspondence is included in Appendix 1.

Scrutiny concerns

That the form or intention of the regulation calls for elucidation

1.49 Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.

1.50 The regulation, section 18(5) states that 'The person completing a condition report *must use due diligence* to be satisfied that the report is accurate' (emphasis added).

1.51 This is a more onerous obligation than what was included in the *Retirement Villages Regulation 2017,* section 15(4), which stated that 'The report must be completed *to the best of the operator's knowledge* (or, if the inspection is carried out by an agent or employee of the operator, to the best of that agent's or employee's knowledge)'' (emphasis added).

1.52 The regulation, section 18(2) requires the condition report to be in the form in Schedule 2.

1.53 Schedule 2, item 3, under the heading 'How to complete this report—' states that 'The report must be completed to the best of the operator's knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of the agent's or employee's knowledge).'

1.54 The Committee considered that the standard form condition report contained in Schedule 2 had not been updated to reflect the requirement that it be completed *using due diligence*, rather than merely *to the best of the operator's knowledge*.

1.55 As a result, the Committee was concerned that Schedule 2, item 3 may mislead prospective residents of retirement villages about their rights in relation to the standard to which a condition report must be completed by the village operator. The Committee suggested that Schedule 2, item 3 needs to be amended to reflect section 18(5).

1.56 In response to the Committee's suggestion, the Minister advised that:

> Section 18(5) of the Regulation requires a person completing a condition report to use due diligence to be satisfied that the report is accurate. I am advised that the standard form condition report in Schedule 2 of the Regulation should reflect this requirement. I have instructed NSW Fair Trading to update the Regulation to reflect this at the earliest available opportunity. I am advised NSW Fair Trading will also consider using available communication avenues to make residents and operators more aware that condition reports are required to be completed using due diligence.

That the objective of the regulation could have been achieved by alternative and more effective means

1.57 Under this scrutiny ground, the Committee will consider whether the legislative 'means' of a regulation are the most appropriate to achieve its objectives.

1.58 The Act, section 72B deals with questions to be answered at annual management meetings.

1.59 Section 72B(1) requires the chair of the meeting to 'ensure that residents of a retirement village have a reasonable opportunity to put questions to the operator of the retirement village or a representative of the operator at the meeting'.

1.60 Section 72B(3) provides that:

> (3) Nothing in this section requires the operator or a person representing the operator to—
>
> (a) answer an unreasonable question, or
> (b) answer a question relating to a matter that is prescribed by the regulations as an excluded matter for the purposes of this section.

1.61 The regulation, section 22 prescribes excluded matters for the purposes of section 72B(3)(b). Section 22(1)(a) and (b) prescribe:

> (a) the personal affairs of the operator, an employee of the operator or a contractor engaged by the operator,
> (b) a matter that is unrelated to the operation of the village,

1.62 The Committee advised the Minister that it understood why, in general, the operator should not be required to answer questions about personal affairs of the operator, employees or contractors.

1.63 However, the Committee noted that the Act, section 72B(3)(a) already provides that the operator is not required to answer unreasonable questions. Further, the regulation, section 22(1)(b) provides that the operator is not required to answer questions about matters that are unrelated to the operation of the village.

1.64 The Committee was concerned that section 22(1)(a) prevents residents from asking reasonable questions about the personal affairs of the operator, employees and contractors where those personal affairs may give rise to or reveal a conflict of interest for the operator or its staff.

1.65 The rules of conduct for operators prescribed for the Act, section 83B and contained in the regulation, Schedule 9 require operators to avoid, disclose, manage, resolve and keep records of conflicts of interest (see Part 4), including conflicts relating to the private interests of staff (see section 14(1) and (2)).

1.66 The Committee considered that residents would have a legitimate interest in ensuring that the operator is complying with those requirements. On this basis, the Committee sought confirmation on what the regulation, section 22(1)(a) is intended to cover that is not already covered by the Act, section 72B(3)(a) or the regulation, section 22(1)(b). The Committee also sought clarification on whether there is any avenue available for residents to ask, at annual management meetings, reasonable questions about private interests of the operator, employees or contractors that may reveal conflicts of interest.

1.67 The Committee noted that a similar issue arises in relation to the regulation, section 32, which relates to residents' meetings to consider and vote on variations to recurrent charges, and also seeks confirmation of the above questions in relation to section 32.

1.68 In response to the Committee's queries, the Minister advised that:

> Section 21 of the Regulation sets out the matters that must be discussed at an annual general meeting including actual versus budgeted expenditure, safety issues and the annual budget. I am advised that while section 72(3)(a) of the Retirement Villages Act 1999 (the Act) sets out that operators do not need to answer unreasonable questions at the annual general meeting, the personal affairs of operators have been explicitly excluded in section 22 of the Regulation to provide clarity and better support constructive and focused conversations at the annual general meeting.
>
> Section 32 of the Regulation is similarly looking to provide clarity and focus information requests to what is most relevant to residents' decision-making about variations to recurrent charges under section 107(4) of the Act.
>
> Further, under the rules of conduct in Schedule 9 of the Regulation, operators have obligations to disclose and manage conflicts of interest. Operators must:
>
> - give written notice to residents as soon as they become aware of a conflict of interest (section 15 of Schedule 9)
> - keep records of conflicts of interest including specific information and make this information available to residents and prospective residents within 5 business days of receiving a request for access to the records (section 18 of Schedule 9).

> Where residents are concerned that an operator is not complying with their conflicts of interest related obligations, they can raise concerns directly with the operator. Under Part 5 of Schedule 9 of the Regulation, operators must have complaint and internal dispute resolution processes and support residents to raise concerns. Residents can also lodge complaints with NSW Fair Trading about operators potentially breaching their obligations and NSW Fair Trading will consider if compliance action needs to be taken against the operator.

Committee conclusion

1.69 The Committee appreciates the Minister's considered engagement with the scrutiny concerns identified by the Committee.

1.70 The Committee notes the Minister's undertaking to amend the regulation, Schedule 2, item 3 to reflect the requirement in section 18(5) that the person completing the condition report must use due diligence to be satisfied the report is accurate. This amendment will ensure consistency in the regulation and clarifies the standard to which a condition report must be completed for prospective residents and operators. As with all undertakings made to the Committee, this undertaking will be included for monitoring on the Committee's Index of Undertakings.

1.71 In relation to the second issue, in undertaking its scrutiny function, the Committee is concerned with whether the drafting of a regulation effectively achieves the objectives of that regulation. The Committee recognises the need for focused discussion at an annual general meeting. The Committee maintains its view that the combined effect of the Act, section 72B(3)(a) and the regulation, section 22(1)(b) is likely sufficient to achieve this policy goal, and considers it unfortunate that residents of retirement villages are prohibited from asking reasonable questions about private interests of the operator, employees or contractors that may reveal conflicts of interest. However, the Committee appreciates that a policy decision has been made. The Committee is also satisfied that there appear to be other avenues available should a resident be concerned that an operator is not complying with their obligations relating to conflicts of interest.

1.72 In light of this, the Committee is of view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(v) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the *Retirement Villages Regulation 2025*.

Sydney Water Regulation 2025 and Water Management (Supply Authorities) Regulation 2025[5]

SI number	2025 No 437 2025 No 439
Published on Legislation Website	22/08/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

1.73 The *Sydney Water Regulation 2025* (the SW regulation) repeals, and remakes with some changes, the *Sydney Water Regulation 2017,* which would otherwise have been repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

1.74 The SW regulation, which commenced on 22 August 2025, provides for various matters to support Sydney Water to carry out obligations under the *Sydney Water Act 1994*. The regulation was made under the *Sydney Water Act 1994*, sections 48A, 50, 89, 99 and 106, the general regulation-making power.

1.75 The *Water Management (Water Supply Authorities) Regulation 2025* (the WSA regulation) repeals, and remakes with amendments, the part of the *Water Management (General) Regulation 2018* relating to water supply authorities. The WSA regulation commenced on 1 September 2025. The WSA regulation was made under various provisions of the *Water Management Act 2000*, as signposted in the heading or body of each section of the regulation.

1.76 Regarding the SW regulation, the Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(i), on the basis that the regulation trespasses unduly on personal rights and liberties. These scrutiny concerns were conveyed to the Minister for Water, the Hon Rose Jackson MLC, by letter on 29 September 2025. The Minister responded on 13 October 2025.

1.77 Regarding the WSA regulation, the Committee raised scrutiny concerns under the *Legislation Review Act 1987,* section 9(1)(b)(i) and (vii). These scrutiny concerns were conveyed to the Minister for Water by letter on 1 October 2025. The Minister responded on 15 October 2025.

1.78 Follow up correspondence dealing with both instruments together was sent to the Minister on 22 October 2025. The Minister responded on 30 October 2025. All correspondence can be found in Appendix 1.

---

5 While the Committee typically considers instruments in separate monitor entries, considering the significant overlap of scrutiny concerns identified by the Committee in relation to the *Sydney Water Regulation 2025* and *Water Management (Supply Authorities) Regulation 2025*, the Committee has considered both instruments in one entry.

Scrutiny concerns

Issue no. 1: SW regulation, section 35 and WSA regulation, section 58

That the regulation trespasses unduly on personal rights and liberties

1.79 Under this ground, the Committee is required to scrutinise each regulation to consider whether it trespasses unduly on personal rights and liberties. When exercising its scrutiny function, the Committee may take into account provisions affecting rights, freedoms and privileges recognised by the common law, and presumptions applicable to the making of legislation.

1.80 As part of its analysis, the Committee may also have regard to statutory rights, common law liberties and traditions, and the international conventions ratified by Australia. The Committee may draw to the attention of the House interferences with rights and liberties the Committee considers to be undue.

1.81 The SW regulation, section 35 provides as follows:

> **35 Persons must notify Corporation of damage to works and other property**
>
> For the Act, section 106(2)(b1), a person who damages a work or other property of the Corporation must immediately notify the Corporation of the damage.
>
> Maximum penalty—
>
> (a) for a corporation—200 penalty units, or
>
> (b) otherwise—100 penalty units.

1.82 The Committee noted that the regulation, section 12 creates an offence of causing damage to property of the Corporation in a controlled area. The Committee also noted that there may be other criminal offences that apply in relation to damaging Corporation property.

1.83 The Committee therefore considered that section 35(b), which relates to individuals rather than corporations, may infringe on the common law privilege against self-incrimination.

1.84 While the Committee considered this infringement to likely be justified, because there is a clear policy reason for requiring the Corporation to be notified of damage to its property as soon as possible, the Committee was concerned about how the information disclosed to the Corporation under section 35 may be used.

1.85 There does not appear to be any provision in the regulation or the *Sydney Water Act 1994* preventing or regulating the use of that information in criminal proceedings against the person disclosing it.

1.86 The Committee therefore sought confirmation of whether the policy intention was that information disclosed under section 35 could be passed on to a prosecuting authority for the purposes of prosecuting a property damage offence and whether there is anything preventing this from happening.

1.87 Furthermore, the Committee sought clarification as to whether, in the drafting of section 35, any consideration was given to whether restrictions should be placed on the use of information disclosed under the section (for example, a provision stating that the information is not admissible in evidence in criminal proceedings against the individual for the same property damage).

1.88 In response to the Committee's questions, the Minister advised that:

> It is a matter for Sydney Water as to how any information disclosed under section 35 is used, in accordance with law. Section 35 allows Sydney Water to effectively respond, limit damage to infrastructure and restore services as quickly as possible.
>
> …There is nothing in the Regulation to prevent [information being passed on to a prosecuting authority] from happening. In practice, it will be a matter for Sydney Water as to how they deal with any information disclosed under section 35, in accordance with law.

1.89 Furthermore, in regard to whether any restrictions on the use of the information were considered during drafting, the Minister stated:

> No consideration given to whether restrictions should be placed on the use of information disclosed under section 35 in the drafting of section 35. Section 35 substantially replicates clause 25 in the now-repealed *Sydney Water Regulation 2017*. Section 35 is a legacy provision in the Sydney Water Regulation since at least 1995 and has been remade multiple times without substantial amendments.

1.90 Similarly to the SW regulation, section 35, the WSA regulation, section 58 provides as follows:

> **58 Notification of damage during plumbing work**
>
> A person who, in the course of carrying out plumbing work, damages a work or other property of Essential Energy must immediately notify Essential Energy of the damage.
>
> Maximum penalty—20 penalty units.

1.91 As was the case with the SW regulation, section 35, the Committee also considered that this provision may infringe on the common law privilege against self-incrimination. The Committee considered that the infringement is likely justified on the basis that there is a clear policy reason for requiring Essential Energy to be notified of damage to its property as soon as possible.

1.92 As above, the Committee sought confirmation of whether:

- the intention was that information disclosed under section 58 could be passed on to a prosecuting authority for the purposes of prosecuting a property damage offence,
- there is anything preventing this from happening, and
- in the drafting of section 58, any consideration was given to whether restrictions should be placed on the use of information disclosed under the section, for example a provision stating that the information is not admissible in evidence in criminal proceedings against the individual for the same property damage.

1.93 In response to the Committee's questions, the Minister provided the following response:

> There is no provision in the Water Management Act 2000 or the Regulation preventing or regulating the use of that information in criminal proceedings against the person disclosing it. It is up to Essential Energy to decide whether the information is passed on to a prosecuting authority. In the drafting of section 58, no consideration was given regarding the placing of restrictions on the use of information, since this is a longstanding provision. We note the Committee's view this infringement is likely justified, because there is a clear policy reason for requiring Essential Energy to be notified of damage to its property as soon as possible.

1.94 The Committee did not consider the Minister's response in relation to either the SW Regulation, section 35 or the WSA Regulation, section 58 to be sufficient for the Committee's concerns to be resolved. By follow-up correspondence dealing with both regulations together, the Committee advised that it remained concerned that the provisions infringe the common law privilege against self-incrimination by requiring the self-reporting of property damage on pain of a criminal penalty without preventing disclosed information being used in criminal proceedings for property damage against the person who self-reported.

1.95 The Committee also requested that the following be provided:

(a) a fulsome explanation of why the Committee should not be concerned that these provisions infringe on the common law privilege against self-incrimination without placing restrictions on the use of information obtained by those infringing provisions, or

(b) an undertaking to amend the regulations to provide that information provided by a person under sections 35 and 58 is not admissible in evidence against the person in criminal proceedings for property damage offences related to that information.

1.96 The Committee also noted its view that the policy goals of ensuring Sydney Water and Essential Energy are promptly informed of any property damage, such that they can fix it, would likely be aided by a provision protecting persons self-reporting damage from prosecution.

1.97 In response, the Minister stated:

> I note that the Committee remains concerned that the SW Regulation, section 35 and the WSA Regulation 2025, section 58 infringe the common law privilege against self-incrimination by requiring the self-reporting of property damage on pain of a criminal penalty, without preventing disclosed information being used in criminal proceedings for property damage against the person who self-reported. The Committee seeks an undertaking to amend the regulations to provide that information provided by a person under sections 35 and 58 is not admissible in evidence against the person in criminal proceedings for property damage offences related to that information.
>
> I thank the Committee for bringing this issue to my attention and providing a suggested solution that furthers the policy intent of the provisions of ensuring Sydney Water and Essential Energy are promptly informed of any property damage so that it can be fixed as soon as possible. I am happy to undertake to amend the Regulations to address the Committee's concerns. The nature of those amendments will be determined following discussions with the Parliamentary Counsel but will make it clear that the provisions do not abrogate the privilege against self-incrimination.

Issue no. 2: WSA regulation, section 37

That the regulation trespasses unduly on personal rights and liberties

1.98 Under this ground, the Committee is required to scrutinise each regulation to consider whether it trespasses unduly on personal rights and liberties. When exercising its scrutiny function, the Committee may take into account provisions affecting rights, freedoms and privileges recognised by the common law, and presumptions applicable to the making of legislation.

1.99 As part of its analysis, the Committee may also have regard to statutory rights, common law liberties and traditions, and the international conventions ratified by Australia. The Committee may draw to the attention of the House interferences with rights and liberties the Committee considers to be undue.

1.100 The WSA regulation, section 37 provides as follows:

> **37 Restrictions on use of water for non-compliance**
>
> (1) A water supply authority may cut off or restrict the supply of water to land if the landholder fails to do the following—
>
> (a) pay a service charge or other charge by the due date,
>
> (b) do anything that, under the Act or this regulation, is required to be done to prevent waste, misuse, undue consumption, backflow or contamination of the water supplied by the authority,
>
> (c) comply with a notice given under section 36,
>
> (d) comply with a condition of the supply of water,
>
> (e) comply with a requirement relating to the installation, repair or alteration of a meter used to measure the supply of water,
>
> (f) comply with a requirement of the *Plumbing and Drainage Act 2011* or the regulations made under that Act relating to the installation, repair or alteration of water or sewerage connections, plumbing fittings or appliances connected, or intended to be connected, directly or indirectly to a water main or sewer main.

1.101 Section 37(2) requires the authority to notify a landholder who the restrictions are imposed on under the section. However, there is no specification as to how much notice must be given, and section 37(3) provides that 'failure to notify the landholder under subsection (2) does not affect the validity of anything done by the authority under this section'.

1.102 In the view of the Committee, neither the *Water Management Act 2000* nor the regulation seemed to provide for an objection, appeal or review process for landholders who believe that water has wrongly been cut off or restricted in relation to their land.

1.103 The Committee noted the punitive nature of section 37 and the severe consequences that may arise from water supply being cut off or restricted in relation to land. The Committee sought confirmation of the avenues of review available to landholders who have had the supply of water cut off or restricted in relation to their land.

1.104 In response to the Committee's queries, the Minister advised that:

> Water supply authorities (WSAs) have customer contracts that regulate cut off and restriction practices. The Energy & Water Ombudsman NSW (EWON) and NSW Ombudsman provides avenues for review for WSAs' customers.

1.105 The Committee did not consider this response to be sufficient for the Committee's concern to be resolved. In follow-up correspondence the Committee reiterated its concern that section 37 would allow the water supply to land to be restricted or cut off by a water supply authority for a significant number of reasons, with no legislated right of review or appeal of that decision.

1.106 The Committee also requested the following to be provided:

(a) a copy of an example customer contract that shows the cut off and restriction practices referred to in the letter, and

(b) a fulsome explanation of why the Committee should not be concerned about there being a legislated (rather than merely contractual) right to restrict or cut off water under section 37 and no corresponding legislated right of review or appeal of that decision,

or

an undertaking to amend the regulation to provide a legislated right of review of or appeal against a decision to cut off or restrict the supply of water under section 37.

1.107 In response, the Minister stated the following:

> I note that the Committee remains concerned that section 37 of the WSA Regulation would allow the water supply to land to be restricted or cut off by a water supply authority for a significant number of reasons, with no legislated right of review or appeal of that decision.
>
> As requested, a copy of an example of a customer contract that shows the cut off and restriction practices can be found on Essential Water's website at: https://essentialwater.com.au/media/dgldyg0k/ew-customer-charter.pdf
>
> This example is supported by a financial hardship support policy available at: https://essentialwater.com.au/bills-and-payments/financial-hardship-support/
>
> Information about financial hardship support and recourse to the Energy & Water Ombudsman NSW (EWON) is available on EWON's website at: https://www.ewon.com.au/page/customer-resources/disconnection-or-restriction.
>
> I have asked the Department of Climate Change, Energy, the Environment and Water to investigate and advise me on the application of section 37 and the options for a legislated right of review or appeal. This will require time to consult across a number of agencies, including the Department of Communities Justice, to develop options on how to establish and manage a legislated right of review or appeal against decisions.

> In the interim, I will write to the NSW Ombudsman to confirm its ability to receive complaints from customers of water supply authorities, including about actions taken by these authorities under section 37.

Issue no. 3: WSA Regulation, section 98

That the form or intention of the regulation calls for elucidation

1.108 Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.

1.109 Under the WSA regulation, section 98(1), a water supply authority must adjust a service charge levied on land if—

> (a) the service charge has been levied on the basis of an incorrect classification of the land, or
>
> (b) the land no longer belongs to the class of land on which the levy of the service charge was based, or
>
> (c) the amount of the service charge has been incorrectly recorded in the record of service charges kept by the authority.

1.110 Under section 98(2)(b), the adjustment may be made on the water supply authority's own initiative.

1.111 Section 98(3) states that '[f]or an adjustment under subsection (1)(b), the adjusted service charge must be calculated from the date on which the land stopped belonging to the class of land'. It was not clear to the Committee whether an adjustment under subsection (1)(a) or (c) could be calculated retrospectively, such that it would raise a debt payable by the landowner. Subsection (5), which provides for the refund or crediting of a service charge payable by a landholder where the water supply authority decreases the amount of the charge, suggests that an adjustment can generally be calculated retrospectively.

1.112 It appeared to the Committee that, under section 98, a service charge may be adjusted to retrospectively increase the amount of the service charge, and the reason for the adjustment may be the initial error of the water supply authority, with no wrongdoing by the landowner.

1.113 Under section 99(3), the landowner may only object on the grounds that (a) the classification of the land is incorrect, or (b) the land no longer belongs to the class of land on which the levy of the service charge was based.

1.114 The Committee sought confirmation as to whether it is the case that, under section 98, a service charge may be retrospectively increased on the water supply authority's own initiative, in circumstances where the adjustment is necessary only because of the water supply authority's error and not because of any conduct of the landowner.

1.115 If so, the Committee sought confirmation of whether there are any mechanisms in place to alleviate the burden on the landowner of paying the amount of the increase, for example:

- how quickly is payment of the increased amount required? The Committee noted that section 98(4) requires written notice of the adjustment to be given to the landholder, but does not specify how much notice is required.
- would these circumstances be 'special circumstances' for the purposes of section 101 (waiver or deferral of charges and fees), paragraph (b)?

1.116 In response to the Committee's queries, the Minister advised that:

> Yes, in the department's view a WSA may apply an increased service charge retrospectively, regardless of the reasons for that increase. A WSA has discretion to waive or defer part or all of a service charge, under section 101, if "special circumstances exist". It will be up to the WSA to decide whether special circumstances exist but in the department's view, a retrospective increase caused by the authority's error could constitute special circumstances. WSAs have mechanisms in place to alleviate burdens of payment through customer assistance programs, such as payment plan options. More information is available on these from WSAs and the Energy and Water Ombudsman NSW.

Committee conclusion

1.117 The Committee appreciates the Minister's engagement with the Committee's scrutiny concerns.

Issue no. 1: SW regulation, section 35 and WSA regulation, section 58

1.118 The Committee accepts the Minister's undertaking to amend the regulations to address the Committee's concerns and make clear that the provisions do not abrogate the privilege against self-incrimination. This undertaking will be published on the Committee's webpage, and the entry will be updated when the undertaking has been implemented.

Issue no. 2: WSA regulation, section 37

1.119 The Committee accepts the Minister's undertaking to obtain advice from the Department of Climate Change, Energy, the Environment and Water on the application of section 37 and the options for a legislated right of review or appeal, which will involve consultation across a number of agencies, including the Department of Communities and Justice, and the development of options on how to establish and manage a legislated right of review or appeal against decisions. The Committee also accepts the Minister's undertaking to write to the NSW Ombudsman to confirm its ability to receive complaints from customers of water supply authorities, including about actions taken by these authorities under section 37.

1.120 The undertakings will be published on the Committee's webpage, and the entry will be updated when the relevant undertaking has been implemented.

1.121 The Committee expects to receive an update within 6 months and, if it does not, the Committee will follow up on the status of the undertaking.

Issue no. 3: WSA Regulation, section 98

1.122 The Committee considers that its scrutiny concern has been sufficiently resolved because the intended effect of section 98 has been elucidated and is now a matter of public record.

1.123 The Committee also notes the department's view that a retrospective increase caused by the authority's own error could constitute special circumstances justifying the waiver or deferral of the charge under section 101.

1.124 However, the Committee strongly suggests that further consideration be given to including this situation as an example of 'special circumstances' for the purposes of section 101(b) (Waiver or deferral of charges and fees), or making other legislated amendments to alleviate, in a more concrete way, the burden on people who find themselves in this situation through no fault of their own.

1.125 The Committee notes the following advice from the Minister contained in the Minister's response to the Committee's follow-up correspondence:

> I note that the Committee's concerns relating to section 98 have been resolved. I also note the Committees recommendation to consider including an example in the WSA Regulation or making other legislated amendments to alleviate the burden on people affected by the application of this provision.
>
> I have asked the Department to seek advice from the Parliamentary Counsel to clarify this provision at the next available opportunity.

1.126 In sum, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(i) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the *Sydney Water Regulation 2025* and the *Water Management (Water Supply Authorities) Regulation 2025*.

Chapter 2 Instruments with no scrutiny concerns

The Committee has reviewed the following instruments and raised no scrutiny concerns:

Instrument	SI number/ GG reference
State Authorities Non-contributory Superannuation Regulation 2025	2025 No 462
State Authorities Superannuation Regulation 2025	2025 No 463
Water Management (General) Amendment (Water Return Flow Rules and Exemptions) Regulation 2025	2025 No 488
Casino Control Amendment (Manager Appointment Extension) Regulation (No 2) 2025	2025 No 498
Electricity Supply (General) Amendment (Scheduled Bidirectional Units Exclusion) Regulation 2025	2025 No 499
Environmental Planning and Assessment Amendment (Snowy Mountains) Regulation 2025	2025 No 501
Forestry Amendment (Energy Transmission Projects) Regulation 2025	2025 No 502
Government Sector Legislation Amendment (Reporting Requirements) Regulation 2025	2025 No 503
Natural Resources Access Regulator Amendment (Relevant Agencies) Regulation 2025	2025 No 504
Strata Schemes Legislation Amendment Regulation 2025	2025 No 505
Rail Safety National Law National Regulations (Safety Management System) Amendment Regulations 2025	2025 No 520
Industrial Relations (General) Amendment (Stop Bullying Order) Regulation 2025	2025 No 532
Child Protection (Working with Children) and Other Legislation Amendment (Children's Guardian Review Functions) Regulation 2025	2025 No 533
Centennial Park and Moore Park Trust Amendment (Events) Regulation 2025	2025 No 534
Work Health and Safety Amendment Regulation 2025	2025 No 536
Industrial Relations Commission (Amendment No 2) Rules 2025	2025 No 554
Assisted Reproductive Technology Amendment (Donated Gametes) Regulation 2025	2025 No 555
Environmental Planning and Assessment Amendment (Planning Proposal Authority) Regulation 2025	2025 No 556
Rail Safety (Adoption of National Law) Amendment Regulation 2025	2025 No 557

Instrument	SI number/ GG reference
Strata Schemes Legislation Amendment (Commencement) Regulation 2025	2025 No 558
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-400-1
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-400-2
Supreme Court Act 1970—Supreme Court Practice Note SC EQ 10 Supreme Court Equity Division – Revenue List	NSWGG-2025-405-1
Supreme Court Act 1970—Supreme Court Practice Note SC Eq 15 Supreme Court Equity Division – Applications List	NSWGG-2025-405-2
District Court Act 1973—District Court Civil Practice Note 17 Defamation List	NSWGG-2025-405-3
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-412-3
National Parks and Wildlife Act 1974—Notice of Reservation of a State Conservation Area	NSWGG-2025-437-2

Chapter 3 Instruments raising scrutiny concerns

The Committee has identified scrutiny concerns, and is engaging with the responsible minister or body, in relation to the instruments set out in the table below. The Committee will set out its conclusion on those scrutiny concerns in a future monitor, having regard to that engagement.

Responsible minister or body	Instrument	SI number / GG reference
Minister for Work Health and Safety	Work Health and Safety Regulation 2025	2025 No 440
Minister for the Environment	Protection from Harmful Radiation Regulation 2025	2025 No 461
Minister for Local Government	Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025	2025 No 475

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 25 September 2025 – Letter from Chair to Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP, regarding the *Law Enforcement (Controlled Operations) Regulation 2025*
- Sent 26 September 2025 – Letter from Chair to Minister for Mental Health, the Hon Rose Jackson MLC, regarding the *Mental Health Regulation 2025*
- Sent 29 September 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, regarding the *Sydney Water Regulation 2025*
- Sent 1 October 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, regarding the *Water Management (Water Supply Authorities) Regulation 2025*
- Sent 1 October 2025 – Letter from Chair to Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, regarding the *Retirement Villages Regulation 2025*
- Received 9 October 2025 – Letter to Chair from Acting Minister for Police and Counter-terrorism, the Hon Ryan Park MP, regarding the *Law Enforcement (Controlled Operations) Regulation 2025*
- Sent 13 October 2025 – Letter from Chair to Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP, regarding the *Law Enforcement (Controlled Operations) Regulation 2025*
- Received 13 October 2025 – Letter to Chair from Minister for Water, the Hon Rose Jackson MLC, regarding the *Sydney Water Regulation 2025*
- Received 15 October 2025 – Letter to Chair from Minister for Water, the Hon Rose Jackson MLC, regarding the *Water Management (Water Supply Authorities) Regulation 2025*
- Received 15 October 2025 – Letter to Chair from Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, regarding the *Retirement Villages Regulation 2025*
- Received 22 October 2025 – Letter to Chair from Minister for Mental Health, the Hon Rose Jackson MLC, regarding the *Mental Health Regulation 2025*
- Sent 22 October 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, regarding the *Sydney Water Regulation 2025* and the *Water Management (Water Supply Authorities) Regulation 2025*
- Received 28 October 2025 – Letter from Letter from Chair to Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP, regarding the *Law Enforcement (Controlled Operations) Regulation 2025*
- Received 30 October 2025 – Letter to Chair from Minister for Water, the Hon Rose Jackson MLC, regarding the *Sydney Water Regulation 2025* and the *Water Management (Water Supply Authorities) Regulation 2025*

25 September 2025

The Hon Yasmin Catley MP
Minister for Police and Counter-terrorism
Minister for the Hunter

D25/055943

By email: office@catley.minister.nsw.gov.au

Dear Minister

Law Enforcement (Controlled Operations) Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 9 September 2025:

- *Law Enforcement (Controlled Operations) Regulation 2025*

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 regulation calls for elucidation. I am writing to you as the responsible minister to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation 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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

Scrutiny concerns

	Provision	Issue
1	Section 8	The *Law Enforcement (Controlled Operations) Act 1997* (the ***Act***), section 29(2)(b) provides that: (2) A chief executive officer may delegate any of the chief executive officer's functions under this Act (except this power of delegation) as follows— … (b) in the case of any other law enforcement agency—to a person for the time being holding a position prescribed by the regulations as a position to which functions under this Act may be delegated. Section 29(4) also provides (emphasis added): (4) No more than one delegation may be in force under subsection (2)(b) at any one time, and **no more than one position may be prescribed at any one time as a position to which functions under this Act may be delegated**. The *Law Enforcement (Controlled Operations) Regulation 2025* (the ***regulation***), section 8 provides: For the Act, section 29(2)(b), the following positions are prescribed— … (e) for the Commonwealth Department of Home Affairs—both of the following, within the meaning of the *Australian Border Force Act 2015* of the Commonwealth— (i) the Australian Border Force Commissioner, (ii) an Immigration and Border Protection worker in the Operations Group or Support Group of the Australian Border Force with the classification of Senior Executive Service Band 3. The Committee anticipates that there may be a technical reason why multiple positions can be prescribed under section 29(2)(b) for the Commonwealth Department of Home Affairs, but the reason is not clear to the Committee on the face of the regulation or the Act. The Committee therefore seeks confirmation of the basis on which two positions have been prescribed under section 29(2)(b) for the Commonwealth Department of Home Affairs.

Please provide a response to the issue identified as no 1 by **9 October 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

26 September 2025

The Hon Rose Jackson MLC
Minister for Water
Minister for Housing
Minister for Homelessness
Minister for Mental Health
Minister for Youth

D25/057775

By email: office@jackson.minister.nsw.gov.au

Dear Minister

Mental Health Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 9 September 2025:

- *Mental Health Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(v), on the basis that the objective of the regulation could have been achieved by alternative and more effective means. I am writing to you as the responsible minister to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation 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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

Scrutiny concerns

	Provision	Issue
1	Schedule 1, Form 5	The Committee's concern relates to the accuracy of the information contained in the *Mental Health Regulation 2025* (the ***regulation***), Schedule 1, Form 5 about consent to electro convulsive therapy insofar as the information relates to involuntary patients. **<u>Provisions in the Act relating to ECT for involuntary patients</u>** The *Mental Health Act 2007* (the ***Act***), section 94(1) provides that: (1) Electro convulsive therapy may be administered to an involuntary patient or a person who is under the age of 16 years in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry. Section 96(2) provides that the Mental Health Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to the involuntary patient. Section 96(3) relates to ECT determinations that enable treatment of involuntary patients other than persons under 16. It provides (emphasis added): (3)… An ECT determination for an involuntary patient (other than a person under the age of 16 years) is a determination— (a) that the patient is capable of giving informed consent to the electro convulsive therapy and has given that consent, or (b) that— (i) the patient is incapable of giving informed consent or **is capable of giving informed consent to the electro convulsive therapy but has refused**, or has neither consented nor refused, to have the treatment administered, and (ii) after considering the medical opinions and other information placed before it, **the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the patient**. The effect of section 96(3) appears to the Committee to be that, in some circumstances, an involuntary patient may receive electro convulsive therapy despite being capable of giving informed consent to the therapy and refusing that consent. **<u>Forms in the regulation relating to consent to ECT</u>** The regulation, Schedule 1, Form 5, parts 1, 2 and 3 appear to be taken together as one form which is given to both voluntary and involuntary patients for the purposes of explaining electro convulsive therapy and obtaining consent for the carrying out of electro convulsive therapy on the patient.

Part 1 sets out information to consider before signing. Part 2 is an acknowledgement of consent for voluntary patients. Part 3 is an acknowledgement of consent for involuntary patients.

The Committee is concerned about two sections of Form 5 which are arguably misleading for involuntary patients.

1) The section "Consent to treatment" in Part 1 states (emphasis added):

> This treatment cannot be carried out without your consent (see Part 2 below), **unless you are an involuntary patient at the mental health facility.** If you are an involuntary patient, the treatment can only be carried out in accordance with an order made by the Mental Health Review Tribunal.
>
> Before giving this consent you may ask your doctor any questions relating to the techniques or procedures to be followed.
>
> **You may also withdraw your consent and discontinue this treatment AT ANY TIME.**

The Committee considers that this section does not adequately explain that, for an involuntary patient, the Tribunal can, in effect, overrule the patient's refusal of consent. While the first paragraph does imply that treatment can be carried out *without* consent, it does not explicitly state that treatment can be carried out *despite the patient's* ***refusal*** *of consent.* The paragraph also does not explain the nature of the orders that may be made by the Tribunal, but merely states that treatment of involuntary patients can only be carried out 'in accordance with' an order.

Further, the bold text in the third paragraph, which does not distinguish between voluntary and involuntary patients, gives the impression that an involuntary patient always has the option of withdrawing consent and discontinuing treatment.

2) Form 5, Part 3 (Consent to electro convulsive therapy for involuntary patients) states, before the space for the patient's signature:

> I UNDERSTAND that I am free at any time to change my mind and withdraw from the course of treatment if I so desire.

Again, the Committee's view is that this text gives the impression to involuntary patients that their refusal of consent will determine whether or not they receive treatment. It appears to the Committee that this text is only accurate in relation to an involuntary patient who chooses to consent to the treatment and for whom the Tribunal does not make an ECT determination under section 96(3)(b).

There is no explanation that the Tribunal can override the patient's refusal of consent, other than the following words which, in the Committee's view, are ambiguous and do not explicitly state what the outcome of the Tribunal's review may be:

> I UNDERSTAND that my consent will be reviewed by the Mental Health Review Tribunal.

The Committee's suggestions

<table>
<tr>
<td></td>
<td></td>
<td>
The Committee notes that the Act, section 4(1) defines involuntary patient to mean:
(a) a person who is ordered to be detained as an involuntary patient after a mental health inquiry or otherwise by the Tribunal, or
(b) a forensic patient who is re-classified as an involuntary patient under the Mental Health and Cognitive Impairment Forensic Provisions Act 2020, or
(c) a correctional patient who is re-classified as an involuntary patient under the Mental Health and Cognitive Impairment Forensic Provisions Act 2020.
Given the acute vulnerability of involuntary patients in mental health facilities, the Committee considers any potential to cause confusion in relation to the rights of an involuntary patient to refuse or withdraw from electro convulsive therapy to be highly problematic.
The Committee is particularly concerned about the potential distress caused to involuntary patients who are given Form 5 and who either refuse consent or are determined to be incapable of consenting and who are later surprised to learn that they may be required to receiver electro convulsive therapy pursuant to a Tribunal determination despite not consenting to the treatment.
The Committee therefore considers that a separate consent form should be created for involuntary patients. The form should only contain information relevant to those patients and the form should clearly state the potential for the Tribunal to decide that electro convulsive therapy should be carried out despite the patient not consenting.
The Committee also notes that similar issues may arise in relation to patients under 16, for which there are specific provisions under the Act, section 96, and similarly suggests that a separate form be created specific to those patients.
</td>
</tr>
</table>

Please provide a response to the issue identified as no 1 by **13 October 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

29 September 2025

The Hon Rose Jackson MLC
Minister for Water
Minister for Housing
Minister for Homelessness
Minister for Mental Health
Minister for Youth

D25/059108

By email: office@jackson.minister.nsw.gov.au

Dear Minister

Sydney Water Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 9 September 2025:

- *Sydney Water Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(i), on the basis that the regulation trespasses unduly on personal rights and liberties. I am writing to you as the responsible minister to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation 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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

Scrutiny concerns

<table>
<tr><th></th><th>Provision</th><th>Issue</th></tr>
<tr><td>1</td><td>Section 35</td><td>
The Sydney Water Regulation 2025 (the regulation), section 35 provides as follows:
35 Persons must notify Corporation of damage to works and other property
For the Act, section 106(2)(b1), a person who damages a work or other property of the Corporation must immediately notify the Corporation of the damage.
Maximum penalty—
(a) for a corporation—200 penalty units, or
(b) otherwise—100 penalty units.
The Committee notes that the regulation, section 12 creates an offence of causing damage to property of the Corporation in a controlled area. The Committee also notes that there may be other criminal offences that apply in relation to damaging Corporation property.
The Committee therefore considers that section 35(b) (relating to individuals) may infringe on the common law privilege against self-incrimination.
While the Committee considers this infringement to likely be justified, because there is a clear policy reason for requiring the Corporation to be notified of damage to its property as soon as possible, the Committee is concerned about how the information disclosed to the Corporation under section 35 may be used. There does not appear to be any provision in the regulation or the Sydney Water Act 1994 (the Act) preventing or regulating the use of that information in criminal proceedings against the person disclosing it.
The Committee therefore seeks confirmation of the following:

is the intention that information disclosed under section 35 could be passed on to a prosecuting authority for the purposes of prosecuting a property damage offence?
is there anything preventing this from happening?
in the drafting of section 35, was any consideration given to whether restrictions should be placed on the use of information disclosed under the section? For example, a provision stating that the information is not admissible in evidence in criminal proceedings against the individual for the same property damage.

</td></tr>
</table>

Please provide a response to the issue identified as no 1 by **14 October 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

1 October 2025

The Hon Rose Jackson MLC
Minister for Water
Minister for Housing
Minister for Homelessness
Minister for Mental Health
Minister for Youth

D25/060704

By email: office@jackson.minister.nsw.gov.au

Dear Minister

Water Management (Water Supply Authorities) Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 9 September 2025:

- *Water Management (Water Supply Authorities) Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(i) and (vii). I am writing to you as the responsible minister to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation 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 Delegated Legislation Committee's technical scrutiny function,* on the [NSW Parliament website](#).

Parliament House, Macquarie Street, Sydney NSW 2000 AUSTRALIA
Telephone (02) 9230 3050
dlc@parliament.nsw.gov.au

Scrutiny concerns

	Provision	Issue
1	Section 37	The *Water Management (Water Supply Authorities) Regulation 2025* (the ***regulation***), section 37 provides as follows: **37 Restrictions on use of water for non-compliance** (1) A water supply authority may cut off or restrict the supply of water to land if the landholder fails to do the following— (a) pay a service charge or other charge by the due date, (b) do anything that, under the Act or this regulation, is required to be done to prevent waste, misuse, undue consumption, backflow or contamination of the water supplied by the authority, (c) comply with a notice given under section 36, (d) comply with a condition of the supply of water, (e) comply with a requirement relating to the installation, repair or alteration of a meter used to measure the supply of water, (f) comply with a requirement of the *Plumbing and Drainage Act 2011* or the regulations made under that Act relating to the installation, repair or alteration of water or sewerage connections, plumbing fittings or appliances connected, or intended to be connected, directly or indirectly to a water main or sewer main. Section 37(2) requires the authority to notify a landholder who the restrictions are imposed on under the section. However, there is no specification as to how much notice must be given, and section 37(3) provides that "failure to notify the landholder under subsection (2) does not affect the validity of anything done by the authority under this section". Neither the *Water Management Act 2000* nor the regulation seem to provide for an objection, appeal or review process for landholders who believe that water has wrongly been cut off or restricted in relation to their land. The Committee notes the punitive nature of section 37 and the severe consequences that may arise from water supply being cut off or restricted in relation to land. The Committee seeks confirmation of the avenues of review available to landholders who have had the supply of water cut off or restricted in relation to their land.
2	Section 58	The regulation, section 58 provides as follows: **58 Notification of damage during plumbing work** A person who, in the course of carrying out plumbing work, damages a work or other property of Essential Energy must immediately notify Essential Energy of the damage. Maximum penalty—20 penalty units. The Committee considers that this provision may infringe on the common law privilege against self-incrimination. The Committee considers that the infringement is likely justified, because there is there is a clear policy reason

<table>
<tr><td></td><td></td><td>
for requiring Essential Energy to be notified of damage to its property as soon as possible
Similar to the Committee's query in its letter of 29 September 2025 in relation to the Sydney Water Regulation 2025, the Committee seeks confirmation of the following:

is the intention that information disclosed under section 58 could be passed on to a prosecuting authority for the purposes of prosecuting a property damage offence?
is there anything preventing this from happening?
in the drafting of section 58, was any consideration given to whether restrictions should be placed on the use of information disclosed under the section? For example, a provision stating that the information is not admissible in evidence in criminal proceedings against the individual for the same property damage.

</td></tr>
<tr><td>3</td><td>Section 98</td><td>
The regulation, section 98 allows a water supply authority to adjust a service charge levied on land if—
<blockquote>
"(a) the service charge has been levied on the basis of an incorrect classification of the land, or
(b) the land no longer belongs to the class of land on which the levy of the service charge was based, or
(c) the amount of the service charge has been incorrectly recorded in the record of service charges kept by the authority."
</blockquote>
Under section 98(2)(b), the adjustment may be made on the water supply authority's own initiative.
Section 98(3) states that '[f]or an adjustment under subsection (1)(b), the adjusted service charge must be calculated from the date on which the land stopped belonging to the class of land'. It is not clear to the Committee whether an adjustment under subsection (3)(a) or (c) could be calculated retrospectively, such that it would raise a debt payable by the landowner. Subsection (5), which provides for the refund or crediting of a service charge payable by a landholder where the water supply authority decreases the amount of the charge, suggests that an adjustment can generally be calculated retrospectively.
It appears to the Committee that, under section 98, a service charge may be adjusted to retrospectively increase the amount of the service charge, and the reason for the adjustment may be the initial error of the water supply authority, with no wrongdoing by the landowner.
Under section 99(3), the landowner may only object on the grounds that (a) the classification of the land is incorrect, or (b) the land no longer belongs to the class of land on which the levy of the service charge was based.
The Committee seeks confirmation of the following:

is it the case that, under section 98, a service charge may be retrospectively increased on the water supply authority's own initiative, in circumstances where the adjustment is necessary only

</td></tr>
</table>

		because of the water supply authority's error and not because of any conduct of the landowner?
		• if so, are there any mechanisms in place to alleviate the burden on the landowner of paying the amount of the increase? For example:
		  ○ how quickly is payment of the increased amount required? Section 98(4) requires written notice of the adjustment to be given to the landholder, but does not specify how much notice is required.
		  ○ would these circumstances be 'special circumstances' for the purposes of section 101(b)?

Please provide a response to the issue identified as nos 1, 2 and 3 by **15 October 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

1 October 2025

The Hon Anoulack Chanthivong MP
Minister for Better Regulation and Fair Trading
Minister for Industry and Trade
Minister for Innovation, Science and Technology
Minister for Building
Minister for Corrections

D25/060703

By email: office@chanthivong.minister.nsw.gov.au

Dear Minister

Retirement Villages Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 9 September 2025:

- *Retirement Villages Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(v) and (vii). I am writing to you as the responsible minister to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation 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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

Scrutiny concerns

<table>
<tr><th></th><th>Provision</th><th>Issue</th></tr>
<tr><td>1</td><td>Schedule 2</td><td>
The Retirement Villages Regulation 2025 (the regulation), section 18(5) states (emphasis added):
<blockquote>(5) The person completing a condition report must use due diligence to be satisfied that the report is accurate.</blockquote>
This is a more onerous obligation than what was included in the Retirement Villages Regulation 2017, section 15(4), which stated (emphasis added):
<blockquote>(4) The report must be completed to the best of the operator's knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of that agent's or employee's knowledge).</blockquote>
The regulation, section 18(2) requires the condition report to be in the form in Schedule 2.
Schedule 2, item 3, under the heading "How to complete this report—" states:
<blockquote>3 The report must be completed to the best of the operator's knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of the agent's or employee's knowledge).</blockquote>
It appears to the Committee that the standard form condition report contained in Schedule 2 has not been updated to reflect the requirement that it be completed using due diligence, rather than merely to the best of the operator's knowledge.
Schedule 2, item 3 may therefore mislead prospective residents of retirement villages about their rights in relation to the standard to which a condition report must be completed by the village operator.
The Committee suggests that Schedule 2, item 3 needs to be amended to reflect section 18(5).
</td></tr>
<tr><td>2</td><td>Sections 22 and 32</td><td>
The Retirement Villages Act 1999, section 72B deals with questions to be answered at annual management meetings.
Section 72B(1) requires the chair of the meeting to "ensure that residents of a retirement village have a reasonable opportunity to put questions to the operator of the retirement village or a representative of the operator at the meeting". Section 72B(3) provides that:
<blockquote>(3) Nothing in this section requires the operator or a person representing the operator to—
(a) answer an unreasonable question, or
(b) answer a question relating to a matter that is prescribed by the regulations as an excluded matter for the purposes of this section.</blockquote>
The regulation, section 22 prescribes excluded matters for the purposes of section 72B(3)(b). Section 22(1)(a) and (b) prescribe:
<blockquote>(a) the personal affairs of the operator, an employee of the operator or a contractor engaged by the operator,</blockquote>
</td></tr>
</table>

		(b) a matter that is unrelated to the operation of the village, The Committee understands why, in general, the operator should not be required to answer questions about personal affairs of the operator, employees or contractors. However, the Committee notes that the Act, section 72B(3)(a) already provides that the operator is not required to answer unreasonable questions. Further, the regulation, section 22(1)(b) provides that the operator is not required to answer questions about matters that are unrelated to the operation of the village. The Committee is concerned that section 22(1)(a) prevents residents from asking reasonable questions about the personal affairs of the operator, employees and contractors where those personal affairs may give rise to or reveal a conflict of interest for the operator or its staff. The rules of conduct for operators prescribed for the Act, section 83B and contained in the regulation, Schedule 9 require operators to avoid, disclose, manage, resolve and keep records of conflicts of interest (see Part 4), including conflicts relating to the private interests of staff (see section 14(1) and (2)). The Committee considers that residents would have a legitimate interest in ensuring that the operator is complying with those requirements. The Committee therefore seeks confirmation of the following: • what is the regulation, section 22(1)(a) intended to cover that is not already covered by the Act, section 72B(3)(a) or the regulation, section 22(1)(b)? • is there any avenue available for residents to ask, at annual management meetings, reasonable questions about private interests of the operator, employees or contractors that may reveal conflicts of interest? The Committee notes that a similar issue arises in relation to the regulation, section 32, which relates to residents' meetings to consider and vote on variations to recurrent charges, and also seeks confirmation of the above questions in relation to section 32.

Please provide a response to the issue identified as nos 1 and 2 by **<u>15 October 2025</u>**<u>, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.</u>

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

The Hon Yasmin Catley MP
Minister for Police and Counter-terrorism
Minister for the Hunter

Ref: MINS-522608304-23841
F/2025/63068

The Hon Natasha Maclaren-Jones MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

office.maclaren-jones@parliament.nsw.gov.au
dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones, Natasha

Thank you for your correspondence regarding *the Law Enforcement (Controlled Operations) Regulation 2025* (the Regulations).

I note that the Regulation repealed and replaced the *Law Enforcement (Controlled Operations) Regulation 2017* (the repealed Regulation) in accordance with the *Subordinate Legislation Act 1989.*

The Regulation was remade with minor amendments which primarily reflect the Parliamentary Counsel's drafting approach i.e. in accordance with their guidelines and style. Amendments to section 8 in particular included updating the *'Commonwealth Department of Immigration and Border Protection'* from section 14(f) of the repealed Regulation to instead refer *to 'the Commonwealth Department of Home Affairs'* and combining former subsections (i) and (ii) into one subsection. As such, no substantive changes have been made to section 8(e) of the Regulation.

I further note that more than one position has been prescribed for agencies which preceded the current Commonwealth Department of Home Affairs, since the *Law Enforcement (Controlled Operations) Regulation 2012*. There may be many reasons for this, including the number of machinery of government changes the Commonwealth Department of Home Affairs has seen over the years.

The NSW Police Force will make further enquiries with the Commonwealth Department of Home Affairs regarding the number of positions delegated under section 8(e) of the Regulation, noting that a response to these enquiries will require further time beyond 9 October 2025. Consideration will be given as to whether amendments to the *Law Enforcement (Controlled Operations) Act 1997* may be required to support appropriate delegations in the regulation.

Thank you for writing about this matter.

Sincerely,

Ryan Park MP
Acting Minister for Police and Counter-terrorism
Acting Minister for the Hunter

13 October 2025

The Hon Yasmin Catley MP
Minister for Police and Counter-terrorism
Minister for the Hunter

D25/066172

By email: office@catley.minister.nsw.gov.au

Dear Minister

Law Enforcement (Controlled Operations) Regulation 2025

Thank you for your correspondence of 9 October 2025. The Committee appreciates your response to its scrutiny concerns, and your commitment to:

- arrange for the NSW Police Force to make further enquiries with the Commonwealth Department of Home Affairs regarding the number of positions delegated under section 8(e) of the *Law Enforcement (Controlled Operations) Regulation 2025* (the ***regulation***), and
- consider whether amendments to the *Law Enforcement (Controlled Operations) Act 1997* (the ***Act***) may be required to support appropriate delegations in the regulation.

However, the Committee's scrutiny concern remains outstanding as it is still unclear on what basis the regulation, section 8(e) prescribes multiple positions under the Act, section 29(2)(b) for the Commonwealth Department of Home Affairs.

In the Committee's original correspondence, the Committee raised concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii), on the basis that the form or intention of the regulation calls for elucidation. In addition to this scrutiny ground, the Committee also now holds concerns under subparagraph (iii), as the regulation does not appear to be consistent with the object of the Act, section 29(4)) and subparagraph (vi), as the regulation appears to conflict with the Act, section 29(4)).

There are a number of ways in which the Committee's concern may be resolved, for example:

- a fulsome explanation of why prescribing two positions under section 29(2)(b) for the Commonwealth Department of Home Affairs is legally permissible,
- an undertaking to amend the regulation, section 8(e) so that only one position is prescribed, or
- an undertaking to amend the Act, section 29(4) so as to allow the prescribing of two positions for the Commonwealth Department of Home Affairs.

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.

Please provide a response to this letter by **27 October 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

The Hon Rose Jackson MLC
Minister for Water, Minister for Housing,
Minister for Homelessness
Minister for Mental Health, Minister for Youth

NSW GOVERNMENT

Our ref: MF25/2238
Your Ref: D25/059108

The Hon. Natasha Maclaren-Jones MLC
Committee Chair
Legislative Council Delegated Legislation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: dlc@parliament.nsw.gov.au

Dear Mrs Maclaren-Jones

Scrutiny questions identified on the Sydney Water Regulation

Thank you for your letter on the 29 September 2025, regarding the Delegated Legislation Committee's scrutiny questions on the *Sydney Water Regulation 2025*, identified under the *Legislation Review Act 1987*, section 9(1)(b).

Your letter sought confirmation on three points relating to Section 35 of the *Sydney Water Regulation 2025*:

1. **Is the intention that information disclosed under section 35 could be passed on to a prosecuting authority for the purposes of prosecuting a property damage offence?**

It is a matter for Sydney Water as to how any information disclosed under section 35 is used, in accordance with law. Section 35 allows Sydney Water to effectively respond, limit damage to infrastructure and restore services as quickly as possible.

2. **Is there anything preventing this from happening?**

There is nothing in the Regulation to prevent this from happening. In practice, it will be a matter for Sydney Water as to how they deal with any information disclosed under section 35, in accordance with law.

3. **In the drafting of section 35, was any consideration given to whether restrictions should be placed on the use of information disclosed under the section? For example, a provision stating that the information is not admissible in evidence in criminal proceedings against the individual for the same property damage.**

No consideration given to whether restrictions should be placed on the use of information disclosed under section 35 in the drafting of section 35. Section 35 substantially replicates clause 25 in the now-repealed *Sydney Water Regulation 2017*. Section 35 is a legacy provision in the Sydney Water Regulation since at least 1995 and has been remade multiple times without substantial amendments.

If you have any further questions or clarifications, please contact Mr Ashraf El-Sherbini, Executive Director, Operations and Resilience, Department of Climate Change, Energy, the Environment, and Water, at

.

Yours sincerely

Rose Jackson MLC
Minister for Water, Minister for Housing, Minister for Homelessness, Minister for Mental Health, Minister for Youth

Date: 13.10.25

The Hon Rose Jackson MLC
Minister for Water, Minister for Housing,
Minister for Homelessness
Minister for Mental Health, Minister for Youth

Our ref: MF25/2324
Your Ref: D25/060704

The Hon. Natasha Maclaren-Jones MLC
Chair of NSW LC Delegated Legislation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: dlc@parliament.nsw.gov.au

Dear Mrs Maclaren-Jones

Scrutiny questions identified on the *Water Management (Water Supply Authorities) Regulation 2025*

Thank you for your letter dated 1 October 2025 regarding the Delegated Legislation Committee's scrutiny questions on the Water Management (Water Supply Authorities) Regulation 2025, identified under the *Legislation Review Act 1987,* section 9(1)(b).

Your letter sought clarification on three questions:

1. In relation to section 37, confirmation of the avenues of review available to landholders who have had the supply of water cut off or restricted in relation to their land.

Water supply authorities (WSAs) have customer contracts that regulate cut off and restriction practices. The Energy & Water Ombudsman NSW (EWON) and NSW Ombudsman provide avenues for review for WSAs' customers.

2. On section 58, confirmation of the following:

    a. Is the intention that information disclosed under section 58 could be passed on to a prosecuting authority for the purposes of prosecuting a property damage offence?

    b. Is there anything preventing this from happening?

    c. In the drafting for section 58, was any consideration given to whether restrictions should be placed on the use of information disclosed under the section?

There is no provision in the *Water Management Act 2000* or the Regulation preventing or regulating the use of that information in criminal proceedings against the person disclosing it. It is up to Essential Energy to decide whether the information is passed on to a prosecuting authority. In the drafting of section 58, no consideration was given regarding the placing of restrictions on the use of information, since this is a longstanding provision. We note the Committee's view this infringement is likely justified, because there is a clear policy reason for requiring Essential Energy to be notified of damage to its property as soon as possible.

3. In relation to section 98, what mechanisms are in place to alleviate the burden on the landowner of paying an increased service charge where it is retrospectively increased because of a WSA's error and not due to landowner conduct?

Yes, in the department's view a WSA may apply an increased service charge retrospectively, regardless of the reasons for that increase. A WSA has discretion to waive or defer part or all of a service charge, under section 101, if "special circumstances exist". It will be up to the WSA to decide whether special circumstances exist but in the department's view, a retrospective increase caused by the authority's error could constitute special circumstances. WSAs have mechanisms in place to alleviate burdens of payment through customer assistance programs, such as payment plan options. More information is available on these from WSAs and the Energy and Water Ombudsman NSW.

If you have any further questions or clarifications, I have arranged for Ms Madeleine Mispel, A/Executive Director Water Strategy and Policy, Department of Climate Change, Energy, the Environment and Water to be available via email at

Yours sincerely

Rose Jackson MLC
Minister for Water, Minister for Housing, Minister for Homelessness,
Minister for Mental Health, Minister for Youth

Date: 13.10.23

The Hon Anoulack Chanthivong MP
Minister for Better Regulation and Fair Trading
Minister for Industry and Trade
Minister for Innovation, Science and Technology
Minister for Building
Minister for Corrections

NSW GOVERNMENT

Ref: COR-04735-2025
Your ref: D25/060703

The Hon Natasha Maclaren-Jones
Committee Chair
Delegated Legislation Committee
By email: dlc@parliament.nsw.gov.au

Dear ~~Ms Maclaren-Jones~~, Natasha

Thank you for your correspondence about the Retirement Villages Regulation 2025 (the Regulation). The Regulation has been remade and started 1 September 2025 after a public consultation process that was open between 23 January and 12 March 2025.

Standard form condition report

Section 18(5) of the Regulation requires a person completing a condition report to use due diligence to be satisfied that the report is accurate. I am advised that the standard form condition report in Schedule 2 of the Regulation should reflect this requirement. I have instructed NSW Fair Trading to update the Regulation to reflect this at the earliest available opportunity. I am advised NSW Fair Trading will also consider using available communication avenues to make residents and operators more aware that condition reports are required to be completed using due diligence.

Personal affairs of an operator, their employees or their contractors

Section 21 of the Regulation sets out the matters that must be discussed at an annual general meeting including actual versus budgeted expenditure, safety issues and the annual budget. I am advised that while section 72(3)(a) of the *Retirement Villages Act 1999* (the Act) sets out that operators do not need to answer unreasonable questions at the annual general meeting, the personal affairs of operators have been explicitly excluded in section 22 of the Regulation to provide clarity and better support constructive and focused conversations at the annual general meeting.

Section 32 of the Regulation is similarly looking to provide clarity and focus information requests to what is most relevant to residents' decision-making about variations to recurrent charges under section 107(4) of the Act.

Further, under the rules of conduct in Schedule 9 of the Regulation, operators have obligations to disclose and manage conflicts of interest. Operators must:

- give written notice to residents as soon as they become aware of a conflict of interest (section 15 of Schedule 9)
- keep records of conflicts of interest including specific information and make this information available to residents and prospective residents within 5 business days of receiving a request for access to the records (section 18 of Schedule 9).

Where residents are concerned that an operator is not complying with their conflicts of interest related obligations, they can raise concerns directly with the operator. Under Part 5 of Schedule 9 of the Regulation, operators must have complaint and internal dispute resolution processes and support residents to raise concerns. Residents can also lodge complaints with NSW Fair Trading about operators potentially breaching their obligations and NSW Fair Trading will consider if compliance action needs to be taken against the operator.

I appreciate the Committee's interest in these matters and trust these responses are of assistance.

Sincerely,

15·10·15

The Hon. Anoulack Chanthivong MP
Minister for Better Regulation and Fair Trading
Minister for Industry and Trade
Minister for Innovation, Science and Technology
Minister for Building
Minister for Corrections

The Hon Rose Jackson MLC
Minister for Water, Minister for Housing, Minister for Homelessness,
Minister for Mental Health, Minister for Youth

NSW GOVERNMENT

Ref: M25/6903

The Hon Natasha Maclaren-Jones MLC
Delegated Legislation Committee Chair
dlc@parliament.nsw.gov.au

Mental Health Regulation 2025

Dear ~~Chair~~ Natasha

Thank you for writing about issues identified in the Mental Health Regulation 2025 by the Delegated Legislation Committee.

I acknowledge the concerns raised and appreciate your advocacy on this matter.

Involuntary patients are often an acutely vulnerable cohort, especially for the administration of electro convulsive therapy.

It is important to recognise the potential vulnerability of these patients. Every effort is made to mitigate potential distress in situations where the patient's treating team, and the Mental Health Review Tribunal, consider that electro convulsive therapy is the appropriate course of action for the safety or welfare of the patient.

Under the Subordinate Legislation Act, regulations do not require a regulatory impact statement to be prepared where the regulation falls within one of the bases under Schedule 3., this has been confirmed with parliamentary counsel. This includes where the regulation is a matter of a machinery nature or is not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

In line with good practice, the NSW Ministry of Health will generally consult with key stakeholders on any regulatory changes. The Ministry's Mental Health Branch conducted targeted consultation on the Regulation with key stakeholders. This includes all local health districts and specialty health networks, Mental Health Coordinating Council, Mental Health Commission, Mental Health Review Tribunal, Official Visitors Program, Transcultural Mental Health, Mental Health Advocacy Services, BEING and Mental Health Carers NSW.

I am advised that no concerns were raised about the consent information in Form 5.

I note that the information about consent to electro convulsive therapy in Form 5 of the Regulation remains unchanged from the 2019 version of the Regulation. I am advised that the Ministry has not received any concerns about potential ambiguity of the consent information in Form 5 to date.

I agree that further consideration should be given to the consent information in Form 5 to determine whether it can be made clearer.

The Ministry will further consider the issues raised in your letter, including whether separate consent forms for voluntary patients, and involuntary patients both over and under 16 years of age should be created, and more generally whether the consent information in Form 5 could be made clearer.

This will involve consultation with key stakeholders, including mental health clinicians, to determine what, if any, changes are required.

Thank you again for writing. For more information, please contact Ms Harriet Alexander, Principal Legal Officer, Legal and Regulatory Services, NSW Ministry of Health, at

Yours sincerely

Thanks for raising these suggestions - the form remains unchanged from 2019 and no issues have been raised as part of our stakeholder consultation - but I will consider these suggestions going forward.

R.

Rose Jackson MLC
Minister for Water, Minister for Housing, Minister for Homelessness, Minister for Mental Health, Minister for Youth

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

22 October 2025

The Hon Rose Jackson MLC
Minister for Water
Minister for Housing
Minister for Homelessness
Minister for Mental Health
Minister for Youth

D25/073116

By email: office@jackson.minister.nsw.gov.au

Dear Minister

Sydney Water Regulation 2025

Water Management (Water Supply Authorities) Regulation 2025

Thank you for your correspondence of 13 October 2025 in relation to the *Sydney Water Regulation 2025* and 15 October 2025 in relation to the *Water Management (Water Supply Authorities) Regulation 2025*. The Committee appreciates your timely responses to its queries.

However, at this stage, the Committee is of the view that the answers provided have not yet resolved the identified scrutiny issues relating to trespasses on personal rights and liabilities, and in some instances, have led to other related scrutiny issues being illuminated. Therefore, some of the Committee's scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(i) remain outstanding.

As stated in its letters of 29 September 2025 and 1 October 2025, and 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.

The below table sets out the Committee's response to each of the answers provided, indicating whether the relevant scrutiny concern has been resolved and, where the concern has not been resolved, suggesting responses that would resolve the Committee's concern.

Committee consideration of answers

Issue	Suggested response
Issue no. 1 in the Committee's letter of 29 September 2025 relating to the *Sydney Water Regulation 2025* and issue	***Scrutiny concern not resolved*** The Committee remains concerned that the *Sydney Water Regulation 2025,* section 35 and the *Water Management (Water Supply Authorities) Regulation 2025*, section 58 infringe the common law privilege

no. 2 in the Committee's letter of 1 October 2025 relating to the *Water Management (Water Supply Authorities) Regulation 2025*	against self-incrimination by requiring the self-reporting of property damage on pain of a criminal penalty without preventing disclosed information being used in criminal proceedings for property damage against the person who self-reported. The letters of 13 and 15 October 2025 confirm that "no consideration" was given to whether restrictions should be placed on the use of disclosed information. The letters also seem to indicate that the information disclosed under these provisions may indeed be used in prosecutions against persons who have disclosed information under section 35 or section 58. On the basis of these outstanding concerns, the Committee requests that the following be provided: • a fulsome explanation of why the Committee should not be concerned that these provisions infringe on the common law privilege against self-incrimination without placing restrictions on the use of information obtained by those infringing provisions, or • an undertaking to amend the regulations to provide that information provided by a person under sections 35 and 58 is not admissible in evidence against the person in criminal proceedings for property damage offences related to that information. The Committee also notes that the policy goals of ensuring Sydney Water and Essential Energy are promptly informed of any property damage, such that they can fix it, would likely be aided by a provision protecting persons self-reporting damage from prosecution.
Issue no. 1 in the Committee's letter of 1 October 2025 relating to the *Water Management (Water Supply Authorities) Regulation 2025*	***Scrutiny concern not resolved*** The Committee remains concerned that section 37 would allow the water supply to land to be restricted or cut off by a water supply authority for a significant number of reasons, with no legislated right of review or appeal of that decision. The letter of 15 October 2025 states that: > Water supply authorities (WSAs) have customer contracts that regulate cut off and restriction practices. The energy & Water Ombudsman NSW (EWON) and NSW Ombudsman provide avenues for review for WSA's customers. On the basis of these remaining concerns, the Committee requests the following be provided: • a copy of an example customer contract that shows the cut off and restriction practices referred to in the letter, and • a fulsome explanation of why the Committee should not be concerned about there being a legislated (rather than merely

	contractual) right to restrict or cut off water under section 37 and no corresponding legislated right of review or appeal of that decision, or • an undertaking to amend the regulation to provide a legislated right of review of or appeal against a decision to cut off or restrict the supply of water under section 37.
Issue no. 3 in the Committee's letter of 1 October 2025 relating to the *Water Management (Water Supply Authorities) Regulation 2025*	***Scrutiny concern resolved*** The Committee's concern was that, under section 98, it appeared that a service charge may be adjusted to retrospectively increase the amount of the service charge where the reason for the adjustment is the initial error of the water supply authority, with no wrongdoing by the landowner. The Committee was concerned about the burden on persons who must pay the increased charge in these circumstances. The letter of 15 October 2025 confirms that "[y]es, in the department's view a [water supply authority] may apply an increased service charge retrospectively, regardless of the reasons for that increase". The letter also states: > It will be up to the WSA to decide whether special circumstances exist but in the department's view, a retrospective increase caused by the authority's error could constitute special circumstances. WSAs have mechanisms in place to alleviate burdens of payment through customer assistance programs, such as payment plan options. The Committee considers that its scrutiny concern has been sufficiently resolved because the intended effect of section 98 has been elucidated and is now a matter of public record. The Committee also notes the department's view that a retrospective increase caused by the authority's own error could constitute special circumstances justifying the waiver or deferral of the charge under section 101. However, the Committee strongly suggests that further consideration be given to including this situation as an example in section 101, or making other legislated amendments to alleviate, in a more concrete way, the burden on people who find themselves in this situation through no fault of their own.

Please provide a response to this letter by **5.00 pm Friday 31 October 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation Monitor.

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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

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

The Hon Natasha Maclaren-Jones MLC
Committee Chair

The Hon Yasmin Catley MP
Minister for Police and Counter-terrorism
Minister for the Hunter

Ref: MINS-522608304-23841
F/2025/69444

The Hon Natasha Maclaren-Jones MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

office.maclaren-jones@parliament.nsw.gov.au
dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones,

Thank you for your further correspondence dated 13 October in relation to the ***Law Enforcement (Controlled Operations) Regulation 2025*** (**the Regulation**).

I have been advised that the NSW Police Force has made enquires with the Commonwealth Department of Home Affairs (**the Department**).

The Department has advised that within the timeframe it has not been possible to determine the reason why multiple positions are prescribed under section 8(e) of the Regulation. However, the Department have agreed that section 8(e) of the Regulation can be amended to only prescribe the position of 'the Australian Border Force Commissioner'.

Accordingly, I will instruct the NSW Police Force to amend section 8(e) of the Regulation so that only one position is prescribed. The Regulation will be amended as soon as practicable.

Sincerely,

Yasmin Catley MP
Minister for Police and Counter-terrorism
Minister for the Hunter

The Hon Rose Jackson MLC
Minister for Water, Minister for Housing,
Minister for Homelessness
Minister for Mental Health, Minister for Youth

NSW GOVERNMENT

Our ref: MF25/2387
Your Ref: D25/073116

The Hon. Natasha Maclaren-Jones MLC
Committee Chair
Legislative Council Delegated Legislation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: dlc@parliament.nsw.gov.au

Dear Mrs Maclaren-Jones

Sydney Water Regulation 2025
Water Management (Water Supply Authorities) Regulation 2025

Thank you for your letter of 22 October 2025. I note that the Delegated Legislation Committee remains concerned in relation to some provisions of the Sydney Water Regulation 2025 (SW Regulation) and the Water Management (Water Supply Authorities) Regulation 2025 (WSA Regulation). In particular:

<u>Section 35 SW Regulation and section 58 WSA Regulation</u>

I note that the Committee remains concerned that the SW Regulation, section 35 and the WSA Regulation 2025, section 58 infringe the common law privilege against self-incrimination by requiring the self-reporting of property damage on pain of a criminal penalty, without preventing disclosed information being used in criminal proceedings for property damage against the person who self-reported. The Committee seeks an undertaking to amend the regulations to provide that information provided by a person under sections 35 and 58 is not admissible in evidence against the person in criminal proceedings for property damage offences related to that information.

I thank the Committee for bringing this issue to my attention and providing a suggested solution that furthers the policy intent of the provisions of ensuring Sydney Water and Essential Energy are promptly informed of any property damage so that it can be fixed as soon as possible. I am happy to undertake to amend the Regulations to address the Committee's concerns. The nature of those amendments will be determined following discussions with the Parliamentary Counsel but will make it clear that the provisions do not abrogate the privilege against self-incrimination.

<u>Section 37 of the WSA Regulation</u>

I note that the Committee remains concerned that section 37 of the WSA Regulation would allow the water supply to land to be restricted or cut off by a water supply authority for a significant number of reasons, with no legislated right of review or appeal of that decision.

As requested, a copy of an example of a customer contract that shows the cut off and restriction practices can be found on Essential Water's website at:
https://essentialwater.com.au/media/dgldyg0k/ew-customer-charter.pdf
This example is supported by a financial hardship support policy available at:
https://essentialwater.com.au/bills-and-payments/financial-hardship-support/
Information about financial hardship support and recourse to the Energy & Water Ombudsman NSW (EWON) is available on EWON's website at:
https://www.ewon.com.au/page/customer-resources/disconnection-or-restriction.

I have asked the Department of Climate Change, Energy, the Environment and Water to investigate and advise me on the application of section 37 and the options for a legislated right of review or appeal. This will require time to consult across a number of agencies, including the Department of Communities Justice, to develop options on how to establish and manage a legislated right of review or appeal against decisions.

In the interim, I will write to the NSW Ombudsman to confirm its ability to receive complaints from customers of water supply authorities, including about actions taken by these authorities under section 37.

Section 98 WSA Regulation

I note that the Committee's concerns relating to section 98 have been resolved. I also note the Committees recommendation to consider including an example in the WSA Regulation or making other legislated amendments to alleviate the burden on people affected by the application of this provision.

I have asked the Department to seek advice from the Parliamentary Counsel to clarify this provision at the next available opportunity.

Yours sincerely

Thanks for your engagement on these issues, your feedback is valued and we're committed to working through these issues.
R.

Rose Jackson MLC
Minister for Water, Minister for Housing, Minister for Homelessness,
Minister for Mental Health, Minister for Youth

Date: 29.10.25

52 Martin Place Sydney NSW 2000
GPO Box 5341 Sydney NSW 2001

02 7225 6190
nsw.gov.au/ministerjackson