



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

# Delegated Legislation Monitor No. 8 of 2025

24 June 2025



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Delegated Legislation Committee

# **Delegated Legislation Monitor No. 8 of 2025**

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**New South Wales Parliament Legislative Council Delegated Legislation Committee**

Delegated Legislation Monitor No. 8 of 2025

'June 2025'

Chair: Hon Natasha Maclaren-Jones MLC

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## Committee details

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### Committee members

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

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Hon Natasha Maclaren-Jones MLC  
**Committee Chair**

### Secretariat

Noora Hijazi, Principal Council Officer  
Rebecca Mahony, Principal Council Officer  
Bethanie Patch, A/Principal Council Officer  
Landen Simpson, 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.<sup>1</sup> The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.<sup>2</sup>
- 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.<sup>3</sup>
- 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.

<sup>1</sup> *Minutes*, NSW Legislative Council, 23 November 2017, pp 2327-2329.

<sup>2</sup> *Minutes*, NSW Legislative Council, 10 May 2023, pp 37-39.

<sup>3</sup> *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. 8 of 2025

- 1.11** For this monitor, the Committee has reviewed 13 instruments published on the NSW legislation website or in the NSW Government Gazette between 2 April 2025 and 30 May 2025. The Committee has:
- concluded its scrutiny of one instrument, as set out in Chapter 1,
  - concluded that eight instruments raise no scrutiny concerns, as set out in Chapter 2, and
  - raised scrutiny concerns in relation to four instruments, for consideration in a future monitor, as set out in Chapter 3.
- 1.12** A further nine instruments notified between 16 May 2025 and 16 June 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).

### Electricity Infrastructure Investment Amendment Regulation 2025

SI number	2025 No 199
Published on Legislation Website/	09/05/2025
Tabled in Legislative Council	27/05/2025
Last date of notice for disallowance motion	16/09/2025

#### Overview

- 1.1 The *Electricity Infrastructure Investment Amendment Regulation 2025* (amending regulation) makes amendments to the *Electricity Infrastructure Regulation 2021* to, amongst other matters, broaden the matters the consumer trustee must consider when assessing a tender bid for a long-term energy service agreement for firming infrastructure or long-duration storage infrastructure, and to prescribe additional functions to the infrastructure planner for a renewable energy zone to which an access scheme applies.
- 1.2 The amending regulation was made under various provisions of the *Electricity Infrastructure Investment Act 2020* (the Act) and commenced on publication on the NSW legislation website on 9 May 2025.
- 1.3 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, sections 9(1)(b)(vi) and (vii) in relation to the amending regulation by letter sent to the Minister for Energy on 30 May 2025. The Minister responded by letter on 13 June 2025. This correspondence is included in Appendix 2.

#### Scrutiny concerns

##### *The regulation duplicates, overlaps or conflicts with any other regulation or Act*

- 1.4 Under this ground, the Committee is required to consider whether a regulation duplicates, overlaps or conflicts with any other regulation or Act. To ensure that persons subject to regulation can easily discern understand and comply with any obligations imposed upon them, the Committee may draw attention to statutory rules which may replicate a matter that is already provided for in the Act under which it is made.
- 1.5 The amending regulation, Schedule 1[3], clause 42D(2)(a) provides that the infrastructure planner for a renewable energy zone to which an access scheme applies has, amongst other

functions, the function 'to coordinate the construction of generation, storage and network infrastructure in the renewable energy zone'.

**1.6** Clause 42D(1) provides that this function only applies if:

- (a) the Energy Corporation is appointed as the infrastructure planner for a renewable energy zone, and
- (b) the Minister has declared, in accordance with the Act, section 24(1), the access scheme that applies in the renewable energy zone or part of the renewable energy zone'.

**1.7** The Act, sections 63(4)(b) and (c) provide that, subject to limitations in the instrument of appointment, an infrastructure planner has the following functions:

- (b) to investigate, plan, **co-ordinate** and carry out planning and design **of generation infrastructure,**
- (c) to investigate, plan, **co-ordinate** and carry out planning, **design, construction and operation of storage and network infrastructure.** (emphasis added)

**1.8** The Committee raised concerns about potential duplication and overlap of the functions of the infrastructure planner set out in the Act, section 63(4)(b) and (c) and the regulation, clause 42D(2)(a), as inserted by the amending regulation.

**1.9** In particular, it appeared to the Committee that the function of coordinating the construction of storage and network infrastructure was provided for in the Act, section 63(4)(b) and (c). The Committee also considered that the amending regulation, proposed clause 42D(2)(a), introduced a new function of coordinating the construction of generation infrastructure, which was not provided for in the Act.

**1.10** The Committee sought clarification from the Minister on the intended interaction between section 63(4)(b) and (c) and clause 42D(2)(a) and the rationale to include functions of the infrastructure planner in the regulation which appear to duplicate those provided for in the Act.

**1.11** In response to the Committee, the Minister stated the following:

Clause 42D(2)(a) of the regulation creates a new function for an infrastructure planner of a renewable energy zone (if it is the Energy Corporation of NSW), to which an access scheme applies, to co-ordinate the construction of generation, storage and network infrastructure.

This will enable the infrastructure planner to coordinate, for example, the construction of generation infrastructure occurring at the same time as construction of network infrastructure. This is to enable an infrastructure planner to facilitate efficient construction of generation and storage infrastructure with construction of network infrastructure in a renewable energy zone with an access scheme.

The provision has been drafted in this way to avoid the risk of an interpretation that the Energy Corporation of NSW could only coordinate the construction of storage and network infrastructure together (under the Act, s 63(4)(c)) and then, separately, coordinate the construction of generation infrastructure in isolation (under the regulations).

***The form or intention of the regulation calls for elucidation***

- 1.12 Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.
- 1.13 The amending regulation, Schedule 1[1], clause 26(4A)(a)(i) includes a reference to the term 'the 2034 objective investment period' which has not been defined in the *Electricity Infrastructure Regulation 2021*.
- 1.14 The Act, section 44(1)(c) defines the term as the 'the period ending on 31 December 2033' and this definition is contained within the definition of ***infrastructure investment objectives***. While the definition of ***infrastructure investment objectives*** appears in the Act, Dictionary, the term 'the 2034 objective investment period' is not included in the Dictionary and is referenced in section 44(1)(c) of the Act only.
- 1.15 The Committee sought confirmation from the Minister that the meaning of the term 'the 2034 objective investment period' was intended to be the same as in the Act, section 44(1)(c). In its request for confirmation, the Committee noted that the amending regulation was made under the Act, section 47, and that the *Interpretation Act 1987*, section 11, provides that '[w]ords and expressions that occur in an instrument have the same meanings as they have in the Act, or in the relevant provisions of the Act, under which the instrument is made'.
- 1.16 The Committee further noted that the absence of the term in the Dictionary arguably makes it difficult for readers to locate the definition of the term.
- 1.17 In response to the Committee, the Minister advised that:

I confirm the term '2034 objective investment period' in clause 26(4A)(a)(i) is intended to refer to 'the period ending on 31 December 2033 (the 2034 objective investment period)' as defined in section 44(1)(c) of the Electricity Infrastructure Act 2020 (the Act).

As noted by the Committee, terms used in an instrument have the same meaning as in the Act under which the instrument is made. Clause 26(4A)(a)(i) of the regulation is consistent with this approach. There is nothing in the Act that relevantly limits the application of the definition of '2034 objective investment period' such that section 11 of the Interpretation Act 1987 would not apply.

**Committee conclusion**

- 1.18 The Committee appreciates the Minister's considered engagement with the scrutiny concerns raised by the Committee.
- 1.19 The Committee acknowledges the confirmation that the definition of the term 'the 2034 objective investment period' was intended to have the same meaning as the Act, section 44(1)(c). To assist readers in locating the definition, the Minister may wish to consider adding the term '2034 objective investment period' to the Act, Dictionary.
- 1.20 The Committee also appreciates the clarification provided by the Minister that the rationale of clause 42D(2)(a) was to introduce a new function of an infrastructure planner to coordinate the

construction of generation infrastructure, and that this function may be exercised concurrently with the function of coordinating the construction of storage and network infrastructure, which is provided for in the Act, section 63(4)(b) and (c). To avoid replication of the functions of the infrastructure planner, the Minister may wish to consider updating the Act to comprehensively list the functions of the infrastructure planner.

- 1.21** In light of the above, the Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, sections 9(1)(b)(vi) and (vii) have been appropriately addressed. Therefore, the Committee concludes its scrutiny of the *Electricity Infrastructure Investment Amendment Regulation 2025*.

## Chapter 2 Instruments with no scrutiny concerns

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

<b>Instrument</b>	<b>SI number/ GG reference</b>
Local Government (General) Amendment (De-amalgamations) Regulation 2025	2025 No 223
Energy and Utilities Administration Amendment Regulation 2025	2025 No 226
Health Practitioner Regulation (Adoption of National Law) Regulation 2025	2025 No 227
Local Government (General) Amendment (Rural and Remote Councils) Regulation 2025	2025 No 228
Children (Interstate Transfer of Offenders) Regulation 2025	2025 No 239
Health Records and Information Privacy Amendment (Single Digital Patient Record) Regulation 2025	2025 No 240
Mining Amendment (Small-scale Titles) Regulation 2025	2025 No 241
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-209-1





## 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 Better Regulation and Fair Trading	Residential Tenancies Amendment Regulation 2025	2025 No 139
Minister for the Environment	Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025	2025 No 198
Minister for Better Regulation and Fair Trading	Uncollected Goods Regulation 2025	2025 No 243
Presiding Member, Legal Profession Admission Board	NSW Admission Board Second Amendment Rule 2025	NSWGG-2025-180-1



# Appendix 1 Minutes

## Draft minutes no. 25

Monday 23 June 2025

Delegated Legislation Committee

Room 1136, Parliament House, Sydney, 12.29 pm

### 1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

Mr Donnelly

Dr Kaine *(via teleconference)*

Ms Mihailuk *(via teleconference)*

Mr Murphy

Mr Nanva *(via teleconference)*

### 2. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 24 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### ***Sent:***

- 23 May 2025 – Letter from Chair to Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, regarding scrutiny concerns identified in the *Residential Tenancies Amendment Regulation 2025*
- 29 May 2025 – Letter from Chair to Chief Judge of the District Court of NSW, the Hon Justice S Huggett, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 6 of 2025
- 30 May 2025 – Letter from Chair to Minister for Energy, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *Electricity Infrastructure Investment Amendment Regulation 2025*
- 30 May 2025 – Letter from Chair to Presiding Member of the Legal Profession Admission Board, the Hon Justice Anthony Payne, regarding scrutiny concerns identified in the NSW Admission Board Second Amendment Rule
- 30 May 2025 – Letter from Chair to Minister for Agriculture, the Hon Tara Moriarty MLC, regarding minor issues identified in the *Fisheries Management (Spring Creek Reservoir Possession Limit) Order 2025*
- 6 June 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*
- 18 June 2025 – Letter from Chair to Chair of the Legislation Review Committee, Ms Lynda Voltz MP, regarding the inquiry of the Delegated Legislation Committee into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and *Legislation Review Act 1987* relating to delegated legislation

- 18 June 2025 – Letter from Chair to the Minister for Better Regulation and Fair Trading, the Hon. Anoulack Chanthivong MP, regarding scrutiny concerns identified in the *Uncollected Goods Regulation 2025*

**Received:**

- 12 June 2025 – Letter from Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, responding to correspondence from the Chair regarding scrutiny concerns identified by the Committee in the *Residential Tenancies Amendment Regulation 2025*
- 13 June 2025 – Letter from Minister for Energy, the Hon Penny Sharpe MLC, responding to correspondence from the Chair regarding scrutiny concerns identified by the Committee in the *Electricity Infrastructure Investment Amendment Regulation 2025*
- 16 June 2025 – Letter from Chief Judge of the District Court of NSW, the Hon Justice Sarah Huggett, responding to correspondence from the Chair regarding the gazettal and disallowance of criminal practice notes issued by the District Court
- 17 June 2025 – Letter from Presiding Member of the Legal Profession Admission Board, the Hon Justice Anthony Payne, responding to correspondence from the Chair regarding scrutiny concerns identified by the Committee in the *NSW Admission Board Second Amendment Rule*
- 18 June 2025 - Letter from Minister for Energy, the Hon Penny Sharpe MLC, referring to Monitor No. 1 of 2025 and the repeal of clause 5 of the *Energy and Utilities Administration Amendment (Abolition of Net Zero Board) Regulation 2024* by the *Energy and Utilities Administration Amendment Regulation 2025*

**4. Consideration of Chair's draft report**

The Chair submitted her draft report entitled Delegated Legislation Monitor No. 8 of 2025, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Donnelly: That

The draft report be the report of the Committee and that the Committee present the report to the House;

The Committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The Committee secretariat be authorised to update the report where necessary to reflect changes to Committee conclusions or new Committee conclusions resolved by the Committee;

Correspondence sent to, and received from, relevant ministers or bodies that is referred to in the Monitor, will be published as an appendix to the Monitor;

The report be tabled in the House on Tuesday 24 June 2025.

**5. Inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation****5.1 Discussion paper outline**

Committee noted that, at its last meeting, the Committee resolved to authorise the secretariat to prepare a discussion paper for the inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and *Legislation Review Act 1987* relating to delegated legislation.

Resolved, on the motion of Mr Donnelly: That the Committee authorise the secretariat to prepare a discussion paper for inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and *Legislation Review Act 1987* relating to delegated legislation in accordance with the discussion paper outline circulated by the secretariat.

### **5.2 Proposed timeline for consideration of the discussion paper**

Committee noted that, at its last meeting, the Committee resolved that the discussion paper be considered for adoption and publication by the Committee on 4 August 2025. At the meeting, the Committee also resolved that, once the discussion paper has been adopted and published by the Committee, submissions will open on 4 August 2025 and the discussion paper is to be provided to stakeholders when they are invited to make a submission to the inquiry.

Resolved, on the motion of Mr Murphy: That the Committee adopt the following timeline for the circulation of the discussion paper:

- 29 July 2025 – Draft discussion paper circulated to Committee
- 4 August 2025 – Draft discussion paper considered for adoption and publication by the Committee
- 11 August 2025 – Stakeholders invited to make a submission, and provided with the discussion paper and submissions portal opens.

### **6. Update on recommendations made in the Committee's report entitled 'Evaluation of the Regulation Committee's technical scrutiny function'**

Committee noted the below status update of the seven recommendations arising out of the Committee's report entitled 'Evaluation of the Regulation Committee's technical scrutiny function', tabled on 10 February 2025:

Number	Recommendation	Status
1	That the Legislative Council amend the resolution establishing the Regulation Committee to permanently expand the Committee's functions to include technical review of delegated legislation against the scrutiny principles set out in the Legislation Review Act 1987, section 9(1)(b).	Finalised. House agreed to amending the Committee's establishing resolution on 12 February 2025.
2	That the Regulation Committee continue to develop a positive and productive working relationship with ministers and bodies which promotes an understanding of the Committee and its technical scrutiny function.	Ongoing on an informal basis.
3	That the Regulation Committee seek advice from the Clerk of the Parliaments on the potential use of protective disallowance notices of motions as a mechanism to provide the Committee with additional time to resolve scrutiny concerns with responsible ministers and bodies.	No action to date.
4	That the NSW Government, via the responsible minister or body, notify the Regulation Committee within five business days of an undertaking made to the Committee being implemented.	Government's response received 12 May 2025 accepting this recommendation.
5	That the Legislative Council amend the resolution establishing the Regulation Committee to change the Committee's name to the Delegated Legislation Committee, to more accurately reflect the Committee's role and remit.	Finalised. House agreed to amending the Committee's establishing resolution on 12 February 2025.
6	That the Regulation Committee conduct an inquiry in 2025 into explanatory notes accompanying delegated legislation in New South Wales to consider potential options for reform in this area.	To be conducted following the conclusion of the inquiry into the consolidation of the provisions of the three acts relating to delegated legislation.
7	That the Regulation Committee conduct an inquiry in 2025 into the consolidation of the provisions of the Interpretation Act 1987, Subordinate Legislation Act 1989 and the Legislation Review Act 1987.	Committee resolved to adopt terms of reference to conduct inquiry. Secretariat preparing discussion paper and submissions to open following the publication of the discussion paper (August 2025). Report to be tabled in April 2026.

**8. Adjournment**

The Committee adjourned at 12.39 pm.

**9. Next Meeting**

Monday 4 August 2025, 12.30 pm, Room 1136 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 9 of 2025').

Madeleine Dowd  
**Committee Clerk**

## Appendix 2 Correspondence

Appendix 2 contains the following items of correspondence sent to, and received from, ministers or bodies regarding instruments referred to in this monitor:

- Sent 30 May 2025 – Letter from Chair to Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Electricity Infrastructure Investment Amendment Regulation 2025*
- Received 13 June 2025 – Letter from Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Electricity Infrastructure Investment Amendment Regulation 2025*.





LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

30 May 2025

The Hon Penny Sharpe MLC  
Minister for Climate Change  
Minister for Energy  
Minister for the Environment  
Minister for Heritage

D25/025196

By email:

Dear Minister

### **Electricity Infrastructure Investment Amendment 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 27 May 2025:

- *Electricity Infrastructure Investment Amendment Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(vi) 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](https://www.parliament.nsw.gov.au).

## Scrutiny concerns

	Provision	Issue
1	Schedule 1[1], clause 26(4A)(a)(i)	<p>Clause 26(4A)(a)(i), as inserted by the <i>Electricity Infrastructure Investment Amendment Regulation 2025</i> (the <b>amending regulation</b>), refers to 'the 2034 objective investment period'. There does not appear to be definition for this term in the <i>Electricity Infrastructure Regulation 2021</i> (the <b>regulation</b>).</p> <p>The <i>Electricity Infrastructure Act 2020</i>, section 44(1)(c) defines the term as the 'the period ending on 31 December 2033'. This definition is contained within the definition for <b>infrastructure investment objectives</b>. While the definition for this term appears in the Act, Dictionary, the term <b>2034 objective investment period</b> is only referenced in section 44(1)(c) and not included in the Dictionary.</p> <p>The Committee seeks confirmation that the meaning of the term 'the 2034 objective investment period' is intended to be the same as what appears in the Act, noting that the term not being in the Dictionary may suggest that it applies only to the division in which it appears, being the only division in which the term <b>infrastructure investment objectives</b> is used. The Committee notes the amending regulation is made under the Act, section 47, and that the <i>Interpretation Act 1987</i>, section 11 provides that '[w]ords and expressions that occur in an instrument have the same meanings as they have in the Act, or in the relevant provisions of the Act, under which the instrument is made'.</p> <p>In addition, the Committee considers that absence of the term in the Dictionary may make it difficult for the reader to locate.</p>
2	Schedule 1[3], clause 42D(2)(a)	<p>The Act, section 63 provides for the appointment of a person as the infrastructure planner. Section 63(4)(b) and (c) provides that, subject to limitations in the instrument of appointment, an infrastructure planner has the following functions—</p> <ul style="list-style-type: none"> <li>(b) to investigate, plan, co-ordinate and carry out planning and design of generation infrastructure,</li> <li>(c) to investigate, plan, co-ordinate and carry out planning, design, construction and operation of storage and network infrastructure.</li> </ul> <p>Clause 42D(2)(a), as inserted by the amending regulation, Schedule 1[3], provides that '[t]he infrastructure planner for a renewable energy zone to which an access scheme applies has the following functions—(a) to coordinate the construction of generation, storage and network infrastructure in the renewable energy zone...'. Clause 42D(1) provides that this function only 'applies if—(a) the Energy Corporation is appointed as the infrastructure planner for a renewable energy zone, and (b) the Minister has declared, in accordance with the Act, section 24(1), the access scheme that applies in the renewable energy zone or part of the renewable energy zone'.</p> <p>The Committee considers that there is potential duplication and overlap of the functions of the infrastructure planner set out in the Act, section 63(4)(b) and (c) and the regulation, clause 42D(2)(a). Section 63(4)(b) and (c) appears to already prescribe that an infrastructure planner has the function of coordinating the construction of storage and network infrastructure. Clause</p>

	<p>42D(2)(a) appears to only introduce the function of coordinating the construction of generation infrastructure, which does not seem to be covered by the Act.</p> <p>Given the potential confusion that may occur with the overlap of the provisions, the Committee seeks clarification on the intended interaction between section 63(4)(b) and (c) and clause 42D(2)(a) and the rationale to include functions of the infrastructure planner in the regulation which appear to duplicate those prescribed in the Act.</p>
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Please provide a response to the issue identified as nos 1 and 2 by **16 June 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](mailto:dlc@parliament.nsw.gov.au).

Kind regards

The Hon Natasha Maclaren-Jones MLC  
Committee Chair

## The Hon Penny Sharpe MLC

Minister for Climate Change, Minister for Energy,  
Minister for the Environment, Minister for Heritage,  
Leader of the Government in the Legislative Council



Your Ref: D25/025196  
Our Ref: MD25/3089

The Hon Natasha Maclaren-Jones MLC

Email:

Dear Ms Maclaren-Jones *Natasha,*

Thank you for your letter regarding the Regulation Committee's concerns with recent amendments to the Electricity Infrastructure Investment Regulation 2021 (the Regulation) by the Electricity Infrastructure Investment Amendment Regulation 2025.

I write to clarify the two issues of concern to the Committee.

### 1. Schedule 1[1], clause 26(4A)(a)(i)

I confirm the term '2034 objective investment period' in clause 26(4A)(a)(i) is intended to refer to 'the period ending on 31 December 2033 (the 2034 objective investment period)' as defined in section 44(1)(c) of the *Electricity Infrastructure Act 2020* (the Act).

As noted by the Committee, terms used in an instrument have the same meaning as in the Act under which the instrument is made. Clause 26(4A)(a)(i) of the regulation is consistent with this approach. There is nothing in the Act that relevantly limits the application of the definition of '2034 objective investment period' such that section 11 of the *Interpretation Act 1987* would not apply.

### 2. Schedule 1[3], clause 42D(2)(a)

Clause 42D(2)(a) of the regulation creates a new function for an infrastructure planner of a renewable energy zone (if it is the Energy Corporation of NSW), to which an access scheme applies, to co-ordinate the construction of generation, storage and network infrastructure.

This will enable the infrastructure planner to coordinate, for example, the construction of generation infrastructure occurring at the same time as construction of network infrastructure. This is to enable an infrastructure planner to facilitate efficient construction of generation and storage infrastructure with construction of network infrastructure in a renewable energy zone with an access scheme.

The provision has been drafted in this way to avoid the risk of an interpretation that the Energy Corporation of NSW could only coordinate the construction of storage and network infrastructure together (under the Act, s 63(4)(c)) and then, separately, coordinate the construction of generation infrastructure in isolation (under the regulations).

Thank you to you and the other members of the Committee for discharging your duty to review and scrutinise delegated legislation so diligently.

Sincerely

**Penny Sharpe MLC**

Minister for Climate Change, Minister for Energy,  
Minister for the Environment, Minister for Heritage

*12/6/25*



