



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 13 of 2025

21 October 2025



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Delegated Legislation Committee

Delegated Legislation Monitor No. 13 of 2025

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New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 13 of 2025

'October 2025'

Chair: Hon Natasha Maclaren-Jones MLC

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Committee details

Committee members

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

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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. 13 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 4 July 2025 and 12 September 2025. The Committee has:
- concluded its scrutiny of one instrument, as set out in Chapter 1,
 - concluded that 29 instruments raise no scrutiny concerns, as set out in Chapter 2, and
 - raised scrutiny concerns in relation to five instruments, for consideration in a future monitor, as set out in Chapter 3.
- 1.12** A further 25 instruments notified between 29 August 2025 and 10 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).

National Parks and Wildlife Amendment Regulation 2025

SI number	2025 No 329
Published on Legislation Website	4/07/2025
Tabled in Legislative Council	5/08/2025
Last date of notice for disallowance motion	11/11/2025

Overview

- 1.1** The [National Parks and Wildlife Amendment Regulation 2025](#) (the amending regulation) amends the *National Parks and Wildlife Regulation 2019* (the regulation) to, among other things:
- (a) enable a park authority to close a park, or part of a park, by publishing an online notice,
 - (b) broaden the scope of a direction a designated officer may give under section 8 (Removal of persons by direction), so that the direction:
 - (i) may be given to someone who has not yet, but is about to, contravene the *National Parks and Wildlife Act* (the Act) or the regulation, and
 - (ii) may specify a period of up to 28 days during which the person must not return to the park or part of the park, and
 - (iii) may also specify one or more nearby parks that the person must not enter during that period, and
 - (c) insert a definition of **organise** into section 25, which prohibits certain sporting, recreational and other activities in national parks.
- 1.2** The amending regulation commenced on 4 July 2025.
- 1.3** The amending regulation largely does not specify under which provisions of the Act it was made, but the relevant provisions appear to have been made under the Act, section 155(2).
- 1.4** The Committee raised three scrutiny concerns in relation to the amending regulation, being that the amending regulation:
- (a) would create a situation in which a person could commit a criminal offence by entering a park or part of a park that had been closed by publication of an online notice but for which no signs or notices had been erected indicating that the park was closed (*issue no. 1*),

- (b) allowed a designated officer to direct someone to leave a park or part of a park and, potentially, to stay out of nearby parks, for a significant period, but only required the direction to be given orally rather than in written form (*issue no.2*), and
- (c) inserted an in-line definition of *prohibited event* in section 25 in a location that could cause confusion (*issue no.3*).

1.5 The Committee raised the concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vi) and (vii) by letter sent to the Minister for the Environment, the Honourable Penny Sharpe MLC, on 24 July 2025. The Minister responded on 12 August 2025. The Committee sent further correspondence to the Minister on 28 August 2025. The Minister provided a further response on 11 September 2025. All correspondence is included in Appendix 2.

Scrutiny concerns

Issue no. 1

That the regulation trespasses unduly on personal rights and liberties

- 1.6 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.
- 1.7 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.
- 1.8 The amending regulation inserted a new clause 6(1A) and (1B) into the regulation. They provide as follows:
- (1A) A park authority may close a park, or part of a park, by publishing a public notice on a website maintained by the Service.
 - (1B) If a park authority publishes a notice under subclause (1A), the authority must, as soon as practicable, display a notice about the closure in, or at the boundary of, the park or part of the park to which the notice relates.
- 1.9 The existing clause 6(2)(a) creates an offence of entering a park or part of a park that is closed to the public in accordance with the clause, with a maximum penalty of 30 penalty units.
- 1.10 The amending regulation also inserted a new clause 6(2A), which provides as follows:
- (2A) Subclause (2)(a) applies whether or not a notice has been displayed in accordance with subclause (1B).
- 1.11 The Committee initially sought confirmation of the intended combined effect of clause 6(2)(a) and 6(2A) in circumstances where an individual enters a park, or part of a park, for which a notice of closure has been displayed online under clause 6(1A) but that had not yet been marked

as being closed to the public. In particular, the Committee sought confirmation of the following, noting that mobile phone reception coverage may not always be available in national parks for an individual to frequently check for online notices of closure:

- (a) is a grace period intended to apply in relation to an individual who enters a park or part of a park shortly after an online notice of closure is displayed and for which no notice of closure is displayed in the park?
- (b) is a defence of honest and reasonable mistake of fact intended to be available to that individual?

1.12 In response, the Minister stated the following:

Park closures are primarily used to protect public safety during emergencies (e.g. wildfires, storms and floods) and during routine park management operations that may pose a risk to visitors (e.g. bushfire hazard reduction burns, road repairs, feral animal control programs). In some emergency situations it may not be possible for extended periods to physically access a park to install signs indicating that the park (or part of a park) is closed.

The change to clause 6 made by the Amendment Regulation is therefore an important public safety mechanism. It enables a park to be quickly and officially closed by publishing a website notice, followed up by the placement of signs in appropriate locations in the park, or on the park boundary, as soon as practicable.

In response to the Committee's queries regarding the closure of parks by website notice, and related enforcement matters, I can advise:

- (a) a formal compliance 'grace period' is not considered necessary, nor is it proposed to be applied as standard practice. Consistent with existing compliance and enforcement training and guidelines that apply to all potential offences within national parks, National Parks and Wildlife Service (NPWS) officers will continue to apply discretion based on individual circumstances and available information. Similar discretion has long been successfully and sensibly exercised in relation to park closures that previously occurred only by on-ground signage, when dealing with persons that may have already been in the park when the signs were erected (and hence were unaware the park was closed), or did not see them as they entered the park.
- (b) the defence of honest and reasonable mistake of fact is not intended to be excluded by the Amendment Regulation. The drafting of clause 6 is consistent with this intention.

1.13 In its follow-up letter, the Committee acknowledged the cogent policy reasons for facilitating park closures by online notices in emergency situations. However, the application of clause 6(1A), (1B) and (2A) did not appear to be limited to emergencies.

1.14 The Committee remained concerned that, in a non-emergency situation, a person could commit an offence against clause 6(2)(a) by unknowingly entering a park or part of a park closed to the public under subclause (1A) and for which a closure notice has not been displayed at the boundary of the park or part of the park under subclause (1B). Given that there was nothing in clause 6 to prevent an online closure notice from taking immediate effect, the Committee noted

that this issue could even occur in circumstances where the person had checked the National Parks and Wildlife Service website earlier that day. The Committee also reiterated its concerns regarding the availability of mobile phone reception to enable periodic checking of the Service's website for closure notices throughout the day.

1.15 In addition, the Committee:

- sought clarification about whether and how the general public had been made aware that they must now check the Service's website for closure notices before entering a park or part of a park,
- noted that, while the guidelines that apply to NPWS officers may encourage discretion in non-emergency situations, the guidelines are not referred to in the regulation and there was no guarantee that a person acting honestly and reasonably would be protected from criminal liability at the discretion of an NPWS officer, and
- in relation to the defence of honest and reasonable mistake of fact, noted that it is arguable whether this defence would be useful for a person at risk of contravening clause 6(2)(a) in the circumstances described above. Being unaware that a closure notice was in effect may be treated as ignorance of the law rather than a mistake of fact. In that instance, the person's ignorance (however reasonable) would not enliven the defence, and in any case the purpose of clause 6(2A) seemed to be to specifically exclude ignorance of the notice as a defence even if it were characterised as a mistake of fact.

1.16 The Minister stated the following in response:

I have considered, and support, the Committee's suggestion that the relevant provisions of the Regulation should be revised to clarify that the power to use website notifications to close parks is limited to emergency circumstances. I have instructed the Department to amend the Regulation to give effect to this clarification at the earliest available opportunity or (at the latest) during the scheduled remake of the Regulation by September 2026.

In the meantime, as also indicated in my previous letter, the Department will continue to apply discretion when ensuring compliance with park closures, and the defence of honest and reasonable mistake of fact remains available where relevant.

I am also advised that planned closures (such as for routine road maintenance and pest species control programs) will continue to be supported by both on-ground signage and website notifications, through alerts listed on the NPWS website at www.nationalparks.nsw.gov.au.

Depending on the type and length of planned closure, additional steps may be taken to notify local communities, commercial operators and park neighbours about planned closures, such as phone calls, direct emails or letters, social media, SMS messaging, community newsletters and media releases.

Issue no. 2

That the form or intention of the regulation calls for elucidation

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

- 1.18** The amending regulation, Schedule 1[8] inserts a new clause 8(2)-(5F) into the regulation. Clause 8 now provides that a designated officer may direct a person to leave a park or any part of the park if, in the officer's reasonable opinion, the person is trespassing, causing a nuisance or inconvenience to any other person in the park, or has contravened, or is about to contravene, the Act or the regulation.
- 1.19** Under clause 8(3) the direction may be given orally to the person or by written notice served on the person.
- 1.20** Clause 8(2) provides that in giving a direction, the designated officer must specify (a) the period within which the person must leave the area to which the direction relates, and (b) the period, not exceeding 28 days, during which the person must not return to the park, or part of the park.
- 1.21** Under clause 8(4), the direction may also provide that a person must not enter one or more nearby parks during the period specified in clause 8(2)(b), if the designated officer is satisfied it is necessary for one or more listed reasons.
- 1.22** The Committee noted that a direction given under clause 8(2) may therefore apply to an individual for up to 28 days and in relation to multiple parks. Under clause 8(5E), there is a maximum penalty of 50 penalty units for remaining on, entering or returning to a specified area in contravention of a direction given under clause 8.
- 1.23** The Committee queried whether, for directions that apply for multiple days and/or to multiple parks, there should be a requirement that the individual to whom the direction applies be served a written notice of the direction rather than be given an oral direction, in order to assist the individual in complying with the precise terms of the direction, and to establish a written record of the direction for evidentiary purposes.
- 1.24** In response to the Committee's queries, the Minister responded with the following, noting the practical reasons for the oral directions:

I note the Committee's query about the issue of a written notice in place of oral directions under clause 8, particularly with respect to directions that apply to multiple days and/or multiple parks, and the value of written notices for evidentiary purposes.

The changes to clause 8 made by the Amendment Regulation address a significant and continuing increase in antisocial behaviour and illegal activities in parks that pose a risk to NPWS staff, visitors and the environment.

Requiring a written notice to be issued on all occasions where the direction under clause 8 applies to multiple days or for multiple parks is not considered practicable or necessary. In these infrequent circumstances, where staff may often be in remote locations with limited connectivity, there is reasonable likelihood that there will be a significant risk to safety or the environment that warrants an immediate oral direction to be issued under clause 8.

The benefits of being able to direct the removal of persons by oral direction in these circumstances are therefore considered to outweigh the benefits any potential mandatory requirement to issue a written notice may have in enabling the recipient to comply. It is particularly important that NPWS compliance staff have the opportunity to exercise discretion to decide whether to issue an oral or written direction, based on

consideration of on-ground circumstances (including assessment of safety matters) and applying a risk management approach.

Further information about the application of these powers is being developed for NPWS staff, to support a consistent approach to compliance. This will include matters related to determining the appropriate length of a time a direction should cover (noting that clause 8(5) of the National Parks and Wildlife Regulation 2019 (NPW Regulation) already requires officers to consider the seriousness and persistence of a person's conduct), the locations the direction should apply to, and the circumstances under which oral directions should be followed up with a written notice.

I have also considered the points raised by the Committee about the role of written records for evidentiary purposes. I am satisfied that this is addressed by the established practice of NPWS officers recording oral directions in official notebooks, the increasing use of body-worn cameras to record interactions with alleged offenders, and the option to issue written directions either immediately (where practicable and safe to do so) or in subsequent follow-up actions.

Issue no.3

That the form or intention of the regulation calls for elucidation

- 1.25** Under this scrutiny ground, the Committee may request elucidation where ambiguity or uncertainty is identified, including the appropriate use of definitions to define key terms.
- 1.26** The regulation, clause 25(1)(b) provides that a person must not in a park:
- (b) organise, attend or participate in any concert, public meeting, function, demonstration, group activity or gathering (a ***prohibited event***) involving more than 40 persons or such other number of persons as is stated in a plan of management for the park, or stated in a notice erected in the park or given to a park user, whichever is the lesser, or
- 1.27** The amending regulation, Schedule 1[27] inserted the words '(a ***prohibited event***)' into clause 25(1)(b), and Schedule 1[29] inserts a definition of “organise”, being:
- organise*** includes possessing or leaving in a park equipment related to a sporting activity, ***prohibited event***, manoeuvre, course of training, activity or recreational pursuit. (emphasis added)
- 1.28** The Committee questioned whether '(a ***prohibited event***)' should have been inserted at the end of clause 25(1)(b) rather than after 'gathering'. This is because what makes the event a prohibited event is that it involves more than 40 persons or such other relevant number of persons. The intention did not appear to be that concerts, public meetings, functions, demonstrations, group activities and gatherings would otherwise be prohibited events.
- 1.29** The Committee also expressed concern that, because the term “prohibited event” is used in the definition of “organise”, there could be confusion as to whether possessing or leaving in a park equipment relating to a concert, public meeting, function, demonstration, group activity or gathering involving fewer than 40 persons (or such other relevant number) would cause a person to contravene clause 25(1)(b).
- 1.30** In response to the Committee's query, the Minister advised that:

I note the Committee's concerns that the placement of the words 'prohibited event' in clause 25, together with the drafting of the definition of the term 'organise', may have the unintended consequence of making the clause less clear than it could be.

For improved clarity and to avoid any confusion, I have instructed the Department of Climate Change, Energy, the Environment and Water to clarify this at the earliest available opportunity. That will preferably be through inclusion in any appropriate upcoming legislative amendments, or (at the latest) during the scheduled remake of the NPW Regulation by September 2026.

Committee conclusion

- 1.31 The Committee appreciates the Minister's thoughtful and considered engagement with the Committee's scrutiny concerns.

Issue no. 1

- 1.32 The Committee accepts the Minister's undertaking to amend the regulation to clarify that the power to use website notifications to close parks is limited to emergency situations. This undertaking will be published on the Committee's webpage, and the entry will be updated when the relevant undertaking has been implemented. The Committee also welcomes the Minister's advice about the additional measures that will be taken to inform the public of planned closures.

Issue no. 2

- 1.33 The Committee appreciates the practical reasons for being able to direct the removal of persons by oral direction and Committee has no further comment on this matter. The Committee acknowledges that information about the application of the clause 8 is currently being developed for NSW National Parks and Wildlife Service staff, to support a consistent approach to compliance.

Issue no. 3

- 1.34 The Committee welcomes the Minister's undertaking to amend the regulation, clause 25(1)(b) to clarify the definition of a ***prohibited event***. Noting the intention to amend the provision through the statutory repeal process, the Committee advises the Minister that its current practice is to send follow-up correspondence where an undertaking has not been implemented within six months.
- 1.35 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.

Chapter 2 Instruments with no scrutiny concerns

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

Instrument	SI number/ GG reference
Industrial Relations Commission (Amendment No 1) Rules 2025	2025 No 412
Water Management (General) Regulation 2025	2025 No 438
Child Protection (Offenders Registration) Amendment Regulation 2025	2025 No 446
Child Protection (Offenders Registration) Regulation 2025	2025 No 447
Fines Regulation 2025	2025 No 450
Health Legislation Amendment (Fees) Regulation 2025	2025 No 452
Legal Profession Uniform Law Application Regulation 2025	2025 No 453
Local Government Legislation Amendment (Repeals) Regulation 2025	2025 No 454
Meat Industry (Meat Industry Levy) Regulation 2025	2025 No 455
Mining Amendment (Arbitration) Regulation 2025	2025 No 456
Motor Accidents (Lifetime Care and Support) Regulation 2025	2025 No 457
Motor Dealers and Repairers Regulation 2025	2025 No 458
Motor Vehicle Sports (Public Safety) Regulation 2025	2025 No 459
Police Superannuation Regulation 2025	2025 No 460
Valuation of Land Regulation 2025	2025 No 464
Zoological Parks Regulation 2025	2025 No 465
Local Government (General) Amendment (Model Code of Meeting Practice) Regulation 2025	2025 No 474
Surveillance Devices Amendment (ICAC) Regulation 2025	2025 No 487
Major Events Regulation 2025	2025 No 489
Supreme Court Act 1970—Supreme Court Practice Note SC Gen 22 Pronunciation of Names, Forms of Address, and Cultural Protocols for Deceased First Nations People in Proceedings	NSWGG-2025-341-2
Public Notaries Act 1997—Public Notaries Appointment Second Amendment Rule 2025	NSWGG-2025-351-12

Instrument	SI number/ GG reference
Public Notaries Act 1997—Erratum for Public Notaries Appointment Amendment Rule 2025	NSWGG-2025-351-20
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Fifth Amendment Rule 2025	NSWGG-2025-351-14
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Seventh Amendment Rule 2025	NSWGG-2025-351-16
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Sixth Amendment Rule 2025	NSWGG-2025-351-15
Children’s Court Act 1987—Practice Note 20 Bail Proceedings	NSWGG-2025-352-1
Local Court Act 2007—Practice Note – Temporary Court Closure AVL Proceedings	NSWGG-2025-352-5
Civil Procedure Act 2005 and Industrial Relations Act 1996—Industrial Relations Commission of New South Wales Practice Note No. 14B	NSWGG-2025-362-1
District Court Act 1973—District Court Criminal Practice Note 34	NSWGG-2025-374-1

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 Police and Counter-terrorism	Law Enforcement (Controlled Operations) Regulation 2025	2025 No 431
Minister for Mental Health	Mental Health Regulation 2025	2025 No 432
Minister for Better Regulation and Fair Trading	Retirement Villages Regulation 2025	2025 No 436
Minister for Water	Sydney Water Regulation 2025	2025 No 437
Minister for Water	Water Management (Water Supply Authorities) Regulation 2025	2025 No 439

Appendix 1 Minutes

Draft minutes no. 30

Monday 20 October 2025

Delegated Legislation Committee

Room 1136, Parliament House, Sydney, 12.32 pm

1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

Mrs Carter

Mr Donnelly

Mr Murphy

Mr Nanva (*via teleconference*)

2. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 29 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 13 October 2025 – Letter from Chair to Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP, regarding scrutiny concerns identified in the *Law Enforcement (Controlled Operations) Regulation 2025*
- 13 October 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *National Parks and Wildlife Act 1974—Erratum*
- 14 October 2025 – Letter from Chair to Attorney General, the Hon Michael Daley MP, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 12 of 2025

Received:

- 9 October 2025 – Letter from Acting Minister for Police and Counter-terrorism, the Hon Ryan Park MP, regarding scrutiny concerns identified in the *Law Enforcement (Controlled Operations) Regulation 2025*
- 13 October 2025 – Letter from Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns identified in the *Sydney Water Regulation 2025*
- 15 October 2025 – Letter from Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns identified in the *Water Management (Water Supply Authorities) Regulation 2025*
- 15 October 2025 – Letter from Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, regarding scrutiny concerns identified in the *Retirement Villages Regulation 2025*

4. Consideration of Chair's draft report

The Chair submitted her draft report entitled Delegated Legislation Monitor No. 13 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 21 October 2025.

5. *Sydney Water Regulation 2025 and Water Management (Water Supply Authorities) Regulation 2025*

Dr Ellen Rock, legal advisor to the Delegated Legislation Committee, provided an overview of the scrutiny concerns identified in the *Sydney Water Regulation 2025* and the *Water Management (Water Supply Authorities) Regulation 2025*, and the responses from the Minister for Water regarding those concerns dated 13 and 15 October 2025.

Resolved, on the motion of Mrs Carter: That the Chair of the Delegated Legislation Committee respond to the Minister for Water and

- outline that the Committee's concerns remain unresolved
- request a fulsome explanation in regard to the Committee's concerns, and
- reiterate that, 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.

6. *Adjournment*

The Committee adjourned at 12.44 pm.

7. *Next Meeting*

Monday 10 November 2025, 12.30 pm, Room 1136 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 14 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 24 July 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding the *National Parks and Wildlife Amendment Regulation 2025*
- Received 12 August 2025 – Letter from Minister for the Environment, the Hon Penny Sharpe MLC, regarding the *National Parks and Wildlife Amendment Regulation 2025*
- Sent 28 August 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding the *National Parks and Wildlife Amendment Regulation 2025*
- Received 11 September 2025 – Letter from Minister for the Environment, the Hon Penny Sharpe MLC, regarding the *National Parks and Wildlife Amendment Regulation 2025*.



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

24 July 2025

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

D25/042163

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

Dear Minister

National Parks and Wildlife 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 is to be tabled in Parliament on 5 August 2025:

- *National Parks and Wildlife Amendment 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](https://www.parliament.nsw.gov.au).

Scrutiny concerns

	Provision	Issue
1	Schedule 1[5], clause 6(2A)	<p>Schedule 1[4] inserts new subclauses (1A) and (1B) into clause 6 of the <i>National Parks and Wildlife Amendment Regulation 2025 (the regulation)</i>. Clause 6(1A) provides that "[a] park authority may close a park, or part of a park, by publishing a public notice on a website maintained by the Service". Clause 6(1B) requires the authority to display a notice about the closure in, or at the boundary of, the park or part of the park to which the notice relates, as soon as practicable after publishing the online notice under subclause (1A).</p> <p>Clause 6(2)(a) creates an offence of entering a park or part of a park that is closed to the public in accordance with the clause, with a maximum penalty of 30 penalty units.</p> <p>Schedule 1[5] inserts a new clause 6(2A), which provides that clause 6(2)(a) "applies whether or not a notice has been displayed in accordance with subclause (1B)".</p> <p>The Committee seeks confirmation of the intended effect of clause 6(2)(a) and (2A) in circumstances where an individual enters a park, or part of a park, for which a notice of closure has been displayed online under clause 6(1A) but that is not yet marked as being closed to the public.</p> <p>In particular, the Committee seeks confirmation of the following, noting that mobile phone reception coverage may not always be available in national parks for an individual to frequently check for online notices of closure:</p> <p>(a) is a grace period intended to apply in relation to an individual who enters a park or part of a park shortly after an online notice of closure is displayed and for which no notice of closure is displayed in the park?</p> <p>(b) is a defence of honest and reasonable mistake of fact intended to be available to that individual?</p>
2	Schedule 1[8], clause 8(3)	<p>Schedule 1[8] inserts a new clause 8(2)-(5F) into the regulation. Clause 8 now provides that a designated officer may direct a person to leave a park or any part of the park if, in the officer's reasonable opinion, the person is trespassing, causing a nuisance or inconvenience to any other person in the park, or has contravened, or is about to contravene, the Act or the regulation.</p> <p>Under clause 8(3), the direction may be given orally to the person or by written notice served on the person.</p> <p>Clause 8(2) provides that in giving a direction the designated officer must specify (a) the period within which the person must leave the area to which the direction relates, and (b) the period, not exceeding 28 days, during which the person must not return to the park, or part of the park. Under clause 8(4), the direction may also provide that a person must not enter one or more nearby parks during the period specified in clause 8(2)(b), if the designated officer is satisfied it is necessary for one or more listed reasons.</p> <p>The Committee notes that a direction given under clause 8(2) may therefore apply to an individual for up to 28 days and in relation to multiple parks. Under clause 8(5E), there is a maximum penalty of 50 penalty units for remaining on, entering or returning to a specified area in contravention of a direction given under clause 8.</p> <p>The Committee queries whether, for directions that apply for multiple days and/or to multiple parks, there should be a requirement that the individual</p>

		to whom the direction applies be served a written notice of the direction rather than be given an oral direction, in order to assist the individual in complying with the precise terms of the direction, and to establish a written record of the direction for evidentiary purposes.
3	Schedule 1[27], clause 25(1)(b)	<p>Clause 25(1)(b) of the regulation provides that a person must not in a park:</p> <p>(b) organise, attend or participate in any concert, public meeting, function, demonstration, group activity or gathering (a <i>prohibited event</i>) involving more than 40 persons or such other number of persons as is stated in a plan of management for the park, or stated in a notice erected in the park or given to a park user, whichever is the lesser, or</p> <p>Schedule 1[27] inserted the words "(a <i>prohibited event</i>)" into clause 25(1)(b), and Schedule 1[29] inserts a definition of <i>organise</i>, being:</p> <p><i>organise</i> includes possessing or leaving in a park equipment related to a sporting activity, <u>prohibited event</u>, manoeuvre, course of training, activity or recreational pursuit.</p> <p>The Committee queries whether "(a <i>prohibited event</i>)" should have been inserted at the end of clause 25(1)(b) rather than after "gathering". This is because what makes the event a prohibited event is that it involves more than 40 persons or such other relevant number of persons. The intention does not appear to be that concerts, public meetings, functions, demonstrations, group activities and gatherings would otherwise be prohibited events.</p> <p>The Committee is also concerned that, because the term <i>prohibited event</i> is used in the definition of <i>organise</i>, there could be confusion as to whether possessing or leaving in a park equipment relating to a concert, public meeting, function, demonstration, group activity or gathering involving fewer than 40 persons (or such other relevant number) would cause a person to contravene clause 25(1)(b).</p>

Please provide a response to the issues identified as 1, 2 and 3 by 7 August 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 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: D25/042163
Our ref: MD25/4415

The Hon Natasha Maclaren-Jones MLC
Committee Chair
Delegated Legislation Committee

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

Dear Ms Maclaren-Jones

Thank you for your letter regarding the National Parks and Wildlife Amendment Regulation 2025 (Amendment Regulation). I appreciate you bringing the Committee's concerns to my attention, and my responses to the issues raised by the Committee are set out below.

Issue 1 – Clause 6 – Regulation by public or written notices

Park closures are primarily used to protect public safety during emergencies (e.g. wildfires, storms and floods) and during routine park management operations that may pose a risk to visitors (e.g. bushfire hazard reduction burns, road repairs, feral animal control programs). In some emergency situations it may not be possible for extended periods to physically access a park to install signs indicating that the park (or part of a park) is closed.

The change to clause 6 made by the Amendment Regulation is therefore an important public safety mechanism. It enables a park to be quickly and officially closed by publishing a website notice, followed up by the placement of signs in appropriate locations in the park, or on the park boundary, as soon as practicable.

In response to the Committee's queries regarding the closure of parks by website notice, and related enforcement matters, I can advise:

- (a) a formal compliance 'grace period' is not considered necessary, nor is it proposed to be applied as standard practice. Consistent with existing compliance and enforcement training and guidelines that apply to all potential offences within national parks, National Parks and Wildlife Service (NPWS) officers will continue to apply discretion based on individual circumstances and available information. Similar discretion has long been successfully and sensibly exercised in relation to park closures that previously occurred only by on-ground signage, when dealing with persons that may have already been in the park when the signs were erected (and hence were unaware the park was closed), or did not see them as they entered the park.
- (b) the defence of honest and reasonable mistake of fact is not intended to be excluded by the Amendment Regulation. The drafting of clause 6 is consistent with this intention.

Issue 2 – Clause 8 – Removal of person by direction

I note the Committee's query about the issue of a written notice in place of oral directions under clause 8, particularly with respect to directions that apply to multiple days and/or multiple parks, and the value of written notices for evidentiary purposes.

The changes to clause 8 made by the Amendment Regulation address a significant and continuing increase in antisocial behaviour and illegal activities in parks that pose a risk to NPWS staff, visitors and the environment.

Requiring a written notice to be issued on all occasions where the direction under clause 8 applies to multiple days or for multiple parks is not considered practicable or necessary. In these infrequent circumstances, where staff may often be in remote locations with limited connectivity, there is reasonable likelihood that there will be a significant risk to safety or the environment that warrants an immediate oral direction to be issued under clause 8.

The benefits of being able to direct the removal of persons by oral direction in these circumstances are therefore considered to outweigh the benefits any potential mandatory requirement to issue a written notice may have in enabling the recipient to comply. It is particularly important that NPWS compliance staff have the opportunity to exercise discretion to decide whether to issue an oral or written direction, based on consideration of on-ground circumstances (including assessment of safety matters) and applying a risk management approach.

Further information about the application of these powers is being developed for NPWS staff, to support a consistent approach to compliance. This will include matters related to determining the appropriate length of a time a direction should cover (noting that clause 8(5) of the National Parks and Wildlife Regulation 2019 (NPW Regulation) already requires officers to consider the seriousness and persistence of a person's conduct), the locations the direction should apply to, and the circumstances under which oral directions should be followed up with a written notice.

I have also considered the points raised by the Committee about the role of written records for evidentiary purposes. I am satisfied that this is addressed by the established practice of NPWS officers recording oral directions in official notebooks, the increasing use of body-worn cameras to record interactions with alleged offenders, and the option to issue written directions either immediately (where practicable and safe to do so) or in subsequent follow-up actions.

Issue 3 – Clause 25 – Sporting, recreational and other activities

I note the Committee's concerns that the placement of the words 'prohibited event' in clause 25, together with the drafting of the definition of the term 'organise', may have the unintended consequence of making the clause less clear than it could be.

For improved clarity and to avoid any confusion, I have instructed the Department of Climate Change, Energy, the Environment and Water to clarify this at the earliest available opportunity. That will preferably be through inclusion in any appropriate upcoming legislative amendments, or (at the latest) during the scheduled remake of the NPW Regulation by September 2026.

If the Committee requires further clarification, please do not hesitate to contact me again.

Sincerely

Penny Sharpe MLC

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

12/8/25



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

28 August 2025

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

D25/049667

By email: office@sharpeminister.nsw.gov.au

Dear Minister

National Parks and Wildlife Amendment Regulation 2025

Thank you for your letter of 12 August 2025, and for your considered engagement with the Committee's concerns relating to the *National Parks and Wildlife Amendment Regulation 2025*.

The Committee is satisfied that the scrutiny concerns identified as item nos 2 and 3 have been appropriately addressed, and will include the advice that you have instructed the Department of Climate Change, Energy, the Environment and Water to clarify clause 25 of the *National Parks and Wildlife Regulation 2019* (the **regulation**) in response to the Committee's concerns as an undertaking for monitoring on the Committee's index of undertakings.

In relation to the scrutiny concern identified as item no 1, the Committee still holds concerns under the *Legislation Review Act 1987*, section 9(1)(b)(i), on the basis that the regulation, clause 6, may trespass unduly on personal rights and liberties.

Scrutiny concerns relating to clause 6

The Committee acknowledges the cogent policy reasons for facilitating park closures by online notice in emergency situations such as wildfires, storms and floods. In these cases, the justification for imposing liability on a person who unknowingly enters a park closed by online notice is relatively clear, as the person's presence in the park is likely to cause public safety risks, and it may be impractical for physical notices to be displayed. However, the application of clause 6(1A), (1B) and (2A) does not appear to be not limited to emergencies.

The Committee remains concerned that, in a non-emergency situation, a person could commit an offence against clause 6(2)(a) by unknowingly entering a park or part of a park closed to the public under subclause (1A) and for which a closure notice has not been displayed at the boundary of the park or part of the park under subclause (1B). Given that there is nothing in clause 6 to prevent an online closure notice from taking immediate effect, the Committee notes that this issue could even occur in circumstances where the person had checked the National Parks and Wildlife Service website earlier that day. In addition to this, the Committee reiterates its concerns regarding the

availability of mobile phone reception to enable periodic checking of the Service's website for closure notices throughout the day.

The Committee also seeks clarification about whether and how the general public has been made aware that they must now check the Service's website for closure notices before entering a park or part of a park.

The Committee notes that, while the guidelines that apply to National Parks and Wildlife Service officers may encourage discretion in non-emergency situations, the guidelines are not referred to in the regulation and there is no guarantee that a person acting honestly and reasonably would be protected from criminal liability at the discretion of an NPWS officer.

Further, in relation to the defence of honest and reasonable mistake of fact, while the Committee appreciates confirmation that the defence is not intended to be excluded in relation to clause 6, the Committee notes that it is arguable whether this defence would be useful for a person at risk of contravening clause 6(2)(a) in the circumstances described above. Being unaware that a closure notice was in effect may be treated as ignorance of the law rather than a mistake of fact. In that case, the person's ignorance (however reasonable) would not enliven the defence, and in any case the purpose of clause 6(2A) seems to be to specifically exclude ignorance of the notice as a defence even if it were characterised as a mistake of fact.

Suggested amendments

The Committee is of the view that, if the purpose of clause 6(1A), (1B) and (2A) is to deal with emergency situations, then those provisions should be drafted to reflect, and be limited to addressing, that specific policy concern. The provisions, in their current form, arguably confer a much broader power on park authorities than appears to be necessary or intended. Alternatively, the provisions could be amended to incorporate an element which limits their application to persons who have notice of the closure order. See, for example, the *Public Health Act 2010*, section 10.

The Committee seeks your views on the concerns outlined in this letter and is also open to any suggestions you may have regarding potential amendments to clause 6 to address the concerns of the Committee.

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.

Please provide a response to this letter by **11 September 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 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: D25/049667
Our ref: MD25/5154

The Hon Natasha Maclaren-Jones MLC
Committee Chair
Delegated Legislation Committee

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

Dear Ms Maclaren-Jones

Thank you for your further letter regarding the National Parks and Wildlife Amendment Regulation 2025 (Regulation). I appreciate you bringing the Committee's ongoing concerns to my attention.

As you note, my previous letter outlined the policy reasons for enabling park closures to be given effect by notification on the Department of Climate Change, Energy, the Environment and Water's website. I welcome the Committee's support for enabling immediate park closures during emergencies. This policy is vital for protecting public safety, especially when on-ground signage cannot be deployed immediately.

I have considered, and support, the Committee's suggestion that the relevant provisions of the Regulation should be revised to clarify that the power to use website notifications to close parks is limited to emergency circumstances. I have instructed the Department to amend the Regulation to give effect to this clarification at the earliest available opportunity or (at the latest) during the scheduled remake of the Regulation by September 2026.

In the meantime, as also indicated in my previous letter, the Department will continue to apply discretion when ensuring compliance with park closures, and the defence of honest and reasonable mistake of fact remains available where relevant.

I am also advised that planned closures (such as for routine road maintenance and pest species control programs) will continue to be supported by both on-ground signage and website notifications, through alerts listed on the NPWS website at: www.nationalparks.nsw.gov.au.

Depending on the type and length of planned closure, additional steps may be taken to notify local communities, commercial operators and park neighbours about planned closures, such as phone calls, direct emails or letters, social media, SMS messaging, community newsletters and media releases.

Thank you again for taking the time to bring the Committee's careful scrutiny of this matter to my attention.

Sincerely

Penny Sharpe MLC

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

11/9/25

