



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

# Delegated Legislation Monitor No. 5 of 2025

6 May 2025



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Delegated Legislation Committee

# **Delegated Legislation Monitor No. 5 of 2025**

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

Delegated Legislation Monitor No. 5 of 2025

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

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# 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. 5 of 2025

- 1.11** For this monitor, the Committee has reviewed 24 instruments published on the NSW legislation website or in the NSW Government Gazette between 29 November 2024 and 4 April 2025. The Committee has:
- concluded its scrutiny of four instruments, as set out in Chapter 1,
  - concluded that 18 instruments raise no scrutiny concerns, as set out in Chapter 2, and
  - raised scrutiny concerns in relation to two instruments, for consideration in a future monitor, as set out in Chapter 3.
- 1.12** A further 17 instruments notified between 28 March 2025 and 25 April 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).

### Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025

SI number	2025 No 45
Published on Legislation Website	21/02/2025
Tabled in Legislative Council	18/03/2025
Last date of notice for disallowance motion	24/06/2025

#### Overview

- 1.1 The [\*Road Transport \(Driver Licensing\) Amendment \(Demerit Points Reduction Trial\) Regulation 2025\*](#) (the amending regulation) amends the *Road Transport (Driver Licensing) Regulation 2017* (the regulation), as stated in the explanatory note, to—
  - (a) prescribe a further trial period for the demerit points reduction trial, and
  - (b) change the date on which the *Road Transport Act 2013*, sections 31(5)(b) and 32A expire.
- 1.2 The amending regulation was made under the *Road Transport Act 2013*, section 32A, the general regulation-making power and commenced on the date of publication on the NSW Legislation website on 21 February 2025.
- 1.3 The demerit points reduction trial (the trial) was established under the *Road Transport Amendment (Demerit Point Reduction Trial) Act 2023* by the insertion of section 32A into the Act. Section 32A prescribed the commencement of the trial on 17 January 2023 for a period of 12 months until 16 January 2024. The trial was subsequently extended for an additional 12 months by the *Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2024*, Schedule 1.
- 1.4 The amending regulation, Schedule 1[1] omitted and inserted into the regulation clause 72(1) to prescribe the definition of **trial period**, paragraph (a) to include another period starting on 17 January 2025 and ending on 31 January 2026. In effect, clause 72(1) extended the trial for the second time since its commencement on 17 January 2023.
- 1.5 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b) (vii) in relation to the amending regulation by letter sent to the Minister for Roads on 17 March

2025. The Minister responded on 31 March 2025. This correspondence is included in Appendix 2.

### Scrutiny concerns

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

- 1.6 Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.
- 1.7 The amending regulation, Schedule 1[1], clause 72(1) relies on the regulation-making power in the Act, section 32A(2), definition of **trial period**, paragraph (a), which defines **trial period** as 'the period prescribed by the statutory rules'. While section 32A(2) provides that the statutory rules may prescribe or alter the default period set out in the Act, the Committee queried whether this provision intended to support a rule-making power to prescribe an ongoing series of trial periods. In the Committee's view, the references in the Act to 'the **trial period**' indicated a temporary or preliminary arrangement designed to enable evaluation of the demerit point scheme, rather than an arrangement that would consist of ongoing trial periods.
- 1.8 The Committee sought elucidation regarding the intended use of section 32A(2), noting that in the Committee's view, there was no issue with the amending regulation under the *Legislation Review Act 1987*, section 9(1)(b)(vii) at the time. However, the Committee informed the Minister that concerns may arise if the intention is to utilise the provision to establish an ongoing demerit point reduction scheme through a series of trial periods.
- 1.9 In response to the Committee's request for elucidation, the Minister advised that:
- The first matter addressed relates to the Committee's view that the statutory rule making power in section 32A of the *Road Transport Act 2013* (the Act) implies a temporary arrangement when referring to the Demerit Point 'trial period' that first commenced in January 2023 and was extended for a third 12-month period by the amending Regulation. I note that while no issues are raised with the amending Regulation, the Committee may hold concerns if the Government's intention is to utilise section 32A of the Act prescribe [sic] any further trial periods.
- The Government has received advice that using regulation to extend the trial is nearing the limit of the power provided in the Act. The future of this initiative is under review and the limits of section 32A are a key consideration.
- 1.10 The Committee further noted that the amending regulation, clause 72(1)(b) prescribed a trial period that began on 17 January 2025 prior to the commencement of the regulation on 21 February 2025. The Committee drew to the attention of the Minister the presumption against retrospectivity at common law and the preference that the amending regulation be published before the start of the trial. The Committee also noted that it did not take issue with the commencement of the clause at the current time as there had not been any amendments to the legal framework under the Act, section 32A. The Committee did not require a response from the Minister on this matter.

**Committee conclusion**

- 1.11** The Committee appreciates the Minister's engagement with the scrutiny concerns raised by the Committee. The Committee acknowledges the Minister's commitment to reviewing the demerit points reduction trial, including the consideration of the limits of the legal framework surrounding the trial. The Committee would appreciate an update from the Minister by 19 December 2025 in regard to the any proposed changes to the *Road Transport (Driver Licensing) Regulation 2017* following the review of the trial.
- 1.12** The Committee is satisfied that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. On this basis, the Committee concludes its scrutiny of the regulation.

## Water Management (General) Amendment (Metering) Regulation 2025

SI number	2025 No 92
Date published on Legislation Website	07/03/2025
Date tabled in Legislative Council	18/03/2025
Last date of notice for disallowance motion	24/06/2025

### Overview

- 1.13** The [\*Water Management \(General\) Amendment \(Metering\) Regulation 2025\*](#) (the amending regulation) makes various amendments to the *Water Management (General) Regulation 2018* (the regulation) to, among other matters:
- clarify and make further provision for the circumstances in which works are exempt from metering and reporting requirements in relation to the taking of water, including—
    - (i) to exempt approval holders and licence holders from metering requirements in relation to small works in groundwater sources formerly specified in the *Water Management (General) Regulation 2018*, Schedule 9 before its substitution by this regulation, and
    - (ii) to require approval holders and licence holders in relation to large works in groundwater sources to install and maintain telemetry equipment.
- 1.14** The amending regulation is made under various provisions of the *Water Management Act 2000* and commenced on 7 March 2025.
- 1.15** The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the amending regulation by letter sent to the Minister for Water on 11 April 2025. The Minister responded on 17 April 2025. This correspondence is included in Appendix 2.

### Scrutiny concerns

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

- 1.16** Under this ground, the Committee may raise potential errors in drafting that affect the meaning or interpretation of the regulation, and any other matters requiring clarification.
- 1.17** The amending regulation, section 232A(1) provides that the Minister may exempt a holder of an authority, or a class of holders, from the application of the mandatory metering equipment condition in relation to a work under an authority. Section 238CA(1) provides that the Minister may exempt an approval holder, or a class of holders, from the mandatory floodplain harvesting metering condition in relation to a work under the approval.

- 1.18 Sections 232A(3) and 238CA(3) provide that the Minister must not grant the exemption unless the Minister is satisfied of one of the circumstances listed in paragraphs (a)-(e). The Committee notes the structure of section 232A(3)(a)-(e) is very similar to section 238CA(3)(a)-(e), with minor differences in paragraphs (c) and (e).
- 1.19 Section 232A(3)(c) states 'the work is **only** for taking water in accordance with the holder's basic landholder **rights**'. In comparison, section 238CA(3)(c) states 'the work is **only used** for taking water in accordance with the holder's basic landholder **right**'.
- 1.20 In its letter to the Minister, the Committee noted that this appears to be the only occasion in the regulation where *basic landholder right* is preceded by the definite article 'the', indicating that there is a specific or sole basic landholder right. In the Committee's view, cross references to section 238CA(3)(c) are consistent with section 238CA(3)(c) capturing rights in the plural. For example, section 31(1B)(b) requires these exemptions to be registered in the class 'constructed, basic landholder rights only'. Section 238CB(a) also uses the phrase 'a basic landholder right', which if section 238CA(3)(c) was intended to be singular, the Committee would expect this cross-reference to also refer to *the* right.
- 1.21 Given it was not immediately apparent to the Committee as to why sections 232A(3)(c) and 238CA(3)(c) were slightly different, the Committee sought clarification on the rationale behind differentiating the paragraphs.
- 1.22 Further, Section 232A(3)(e) states 'the approval holder has declared the work **will not** take water from a water source'. In comparison, section 238CA(3)(e) inserts 'is and' after 'work': 'the approval holder has declared the work **is and will not** take water from a water source'. For clarity, the Committee sought confirmation that section 238CA(3)(e) is intended to require the approval holder to declare the work *is not currently taking and will not take* water from a water source.
- 1.23 In response to the Committee request for clarification, the Minister stated that:
- I have been advised by the Department of Climate Change, Energy, the Environment and Water that the inconsistent wording is a result of drafting errors.
- In the case of clause 238CA(3)(c), it is clear that "basic landholder right" should be "basic landholder rights", as the *Water Management Act 2000* clearly provides for 3 categories of basic landholder rights.
- In the case of clause 238CA(3)(e), it appears this was also a drafting error and the words "not taking" should have been included. It should have been drafted as "the approval holder has declared the work is not taking and will not take water from a water source."
- The Department also advises me that in both cases the intended meaning is clear, and it will not interfere with the Department implementing the new metering rules.
- 1.24 Regarding potential future amendments to the regulation in response to the Committee's scrutiny concerns, the Minister made the following remarks:
- The Water Management (General) Amendment (Metering) Regulation 2025 has the effect of amending the Water Management (General) Regulation 2018. While the 2018 Regulation now includes these drafting errors it is expected to be repealed and replaced

on 1 September this year. This will provide an opportunity to address the inconsistencies in the way these clauses are drafted.

### **Committee conclusion**

- 1.25** The Committee appreciates the prompt and clear engagement by the Minister with the scrutiny concerns raised by the Committee. The Committee acknowledges the Minister's commitment to address the scrutiny concerns raised by the Committee in regard to sections 232A(3)(c), 232A(3)(e), 238CA(3)(c), 238CA(3)(e). This commitment will be marked as an undertaking on the Delegated Legislation Committee webpage, and the Committee would appreciate a prompt written update from the Minister when the undertaking has been implemented.
- 1.26** In light of this, the Committee considers the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the regulation.



## Public Notaries Act 1997—Public Notaries Appointment Amendment (Second Fees) Rule 2024

SI number	2024 No 510
Date published on Legislation Website	30/09/2024
Date tabled in Legislative Council	15/10/2024
Last date of notice for disallowance motion	18/02/2025

### Overview

- 1.27 The [\*Public Notaries Appointment Amendment \(Second Fees\) Rule 2024\*](#) (the amending rule) amends the *Public Notaries Appointment Rules* made under the *Public Notaries Act 1997* (the Act) to update the fees payable for late applications for appointment as a public notary.
- 1.28 The amending rule was made by the Legal Profession Admission Board (the Board) under the Act, section 9 and commenced on 29 November 2024.

### Scrutiny concerns

***The regulation may not have been within the general objects of, or may not accord with the spirit of, the legislation under which it was made***

- 1.29 Under these grounds, the Committee is required to consider the consistency of the rule with the objects and intended effects of the Act, including whether the effect of the rule appears to detract from the operation of the Act, as envisioned by Parliament, and whether fees are imposed without or beyond power.
- 1.30 The amending rule retains a \$110 fee for an 'Annual Notification in Form 6' and a \$110 fee for an 'Other application/certificate – Public Notary' (the fees).
- 1.31 The Committee has previously raised scrutiny concerns in relation to the *Public Notaries Appointment Amendment (Fees) Rule 2024*, which are set out in Delegated Legislation Monitor No. 10 of 2024. With specific regard to the fees, the Committee:
- expressed concerns that should Form 6 be returned without changes, a not insignificant fee of \$110 is imposed where no service appears to have been provided.
  - questioned whether \$110 is a reasonable fee for the service provided for notaries who do return the form with changes, i.e., recovery of the administrative costs involved in updating a notary's details in the roll.

- queried the matters for which the \$110 fee for an 'Other application/certificate – Public Notary' is charged and whether the amount is reasonable.<sup>4</sup>

**1.32** In light of the Committee's concerns, the Presiding Member committed to reviewing the *Public Notaries Appointment Rules*. The Committee also requested an update before the first sitting day of 2025 on any changes to the Board proposes to implement, relevant to the scrutiny concerns raised. The Presiding Member provided an update by letter to the Committee on 12 February 2025. This correspondence is included in Appendix 2.

**1.33** In the requested update, the Presiding Member provided the following information:

The matters raised by the Committee have been discussed at each of the Board's meetings on 8 October 2024, 3 December 2024 and yesterday. The Committee will note that the Board made the *Public Notaries Appointment Amendment (Second Fees) Rule 2024* at its meeting on 8 October 2024. This addressed the Committee's concern about the basis for charging late fees. The Board resolved to charge fees based on published cut-off dates, rather than the imposition of late fees.

The Committee will also note that the Board passed the *Public Notaries Appointment Amendment (Miscellaneous) Rule 2024* on 8 October 2024. That Rule updated the definitions in the Rules to bring them into line with *Legal Profession Uniform Law* (NSW) and by adding headings to improve its readability. A consolidated version of the Rules is expected to be available on the Board's website in March 2025.

The Board has raised the Committee's concerns with the Chief Justice of New South Wales, the Honourable Andrew Bell. Naturally, the views of the Court are highly relevant to how the Board maintains the Roll on behalf of the Court. The Board is reluctant to make changes to the Rules until the Court finalises its response to the matters set out in your letter.

The Board expects to be able to provide the ability for online engagement with Public Notaries by the end of June this year. We expect that in our April Board meeting, we will address any necessary rule changes to reflect the changes brought about by online lodgements. The removal of prescribed forms will be one aspect of that change.

In light of the ongoing consultation with the Supreme Court and the imminence of our new online system, our preference is for these matters to be considered at future meetings of the Board, rather than taking a rushed approach to their resolution. I can assure the Committee that the Board continues to be actively engaged in reviewing the Rules.

Thank you again for the close attention of your Committee to the work of the Board.

### **Committee conclusion**

**1.34** The Committee thanks the Presiding Member for promptly providing the requested update to the Committee. The Committee recognises the ongoing consultation with the Supreme Court to address the concerns raised by the Committee about the fees.

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<sup>4</sup> For a detailed description of the scrutiny concerns the Committee has previously raised in relation to the fees, see paragraphs 2.6 – 2.26 of Delegated Legislation Monitor No. 10 of 2024.

- 1.35** Nevertheless, the Committee wishes to reiterate its concerns with the \$110 fee for an 'Annual Notification in Form 6' and a \$110 fee for an 'Other application/certificate – Public Notary' as previously concluded in relation to the *Public Notaries Appointment Amendment (Fees) Rule 2024*, as set out in Delegated Legislation Monitor No. 10 of 2024.
- 1.36** Given the Board's willingness to engage with the Committee, and the update from the Presiding Member, the Committee considers the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (iv) are likely to be resolved in the in the next six months. On this basis, the Committee concludes its scrutiny of the amending rule.

## Land and Environment Court—Practice Note—Use of Generative Artificial Intelligence (Gen AI)

Government Gazette reference	NSWGG-2025-90-1
Date published in Government Gazette	07/03/2025
Date tabled in Legislative Council	18/03/2025
Last date of notice for disallowance motion	24/06/2025

### Overview

- 1.37 The [Land and Environment Court—Practice Note—Use of Generative Artificial Intelligence \(Gen AI\)](#) (the Practice Note) relates to the use of generative artificial intelligence (Gen AI) in proceedings of the Land and Environment Court of New South Wales (the Court). The Practice Note was made under the *Land and Environment Court Act 1979*, section 76, and the *Civil Procedure Act 2005*, section 15 and commenced on 12 February 2025.
- 1.38 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iv) and (vii) in relation to the practice note by letter sent to the Chief Judge of the Court, the Honourable Justice Brian J Preston SC, on 7 April 2025. The Chief Judge responded on 17 April 2025. This correspondence is included in Appendix 2.

### Scrutiny concerns

***The regulation may not have been within the general objects of, or may not accord with the spirit of the legislation under which it was made, and the form or intention of the regulation calls for elucidation***

- 1.39 Under these grounds, the Committee is generally concerned with clarity and certainty in delegated legislation, whether any matters require clarification and the extent to which the instrument accords with the general objects and intention of the enabling Act.
- 1.40 The Practice Note, paragraph 1 states that the 'Practice Note replaces the Practice Note that commenced on 3 February'. The Committee noted that an announcement published on the Court's website, dated 21 November 2024, indicated that the Chief Judge had issued a practice note to commence on 3 February 2025. The announcement included an amending note stating that an updated practice note was issued effective from 12 February 2025.
- 1.41 The Committee was unable to locate a copy of the instrument referred to in paragraph 1 of the Practice Note that was being replaced and sought clarification regarding the status of the instrument. In its request for clarification, the Committee drew to the attention of the Chief Judge that the *Land and Environment Court Act 1979*, section 76 and the *Civil Procedure Act 2005*,

section 15 require the Land and Environment Court of New South Wales to publish practice notes issued by the court in the Government Gazette.

- 1.42** In response to the Committee's request for clarification, the Chief Judge, the Honourable Justice Brian J Preston SC, advised that:

On receiving your correspondence, the Land and Environment Court became aware that the two earlier versions of the Practice Note - Use of Generative Artificial Intelligence (Gen AI) (Gen AI Practice Note) that were published on the Court's website were not published in a timely manner in the NSW Government Gazette.

The Court apologises for this oversight which happened as a result of a misunderstanding between Court staff. The practice and process of the timely gazettal of practice notes has since been clarified and this issue has been addressed.

The Court has since made arrangements for the Practice Note - Use of Generative Artificial Intelligence (Gen AI) made on 21 November 2024 and the Practice Note – Use of Generative Artificial Intelligence (Gen AI) made on 28 November 2024 to be published in the NSW Government Gazette on 17 April 2025 to regularise this error.

- 1.43** The Practice Notes referred to in the Chief Judge's response were subsequently published in [Government Gazette No. 152 of 17 April 2025](#).

### **Committee conclusion**

- 1.44** The Committee appreciates the engagement by the Chief Judge with the scrutiny concerns raised by the Committee. The Committee acknowledges the response regarding the status of the Practice Note commencing on 3 February 2025 and its subsequent publication in the Government Gazette on 17 April 2025.
- 1.45** The Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iv) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the Practice Note.



## 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>
Prevention of Cruelty to Animals Regulation 2025	2025 No 18
Sheriff Amendment (Sheriff's Alternate) Regulation 2025	2025 No 100
Casino Control Amendment (Manager Appointment Extension) Regulation 2025	2025 No 137
NSW Trustee and Guardian Amendment (Fees) Regulation 2025	2025 No 124
Births, Deaths and Marriages Registration Amendment (Fees) Regulation 2025	2025 No 141
Conveyancing (General) Amendment (Telstra Limited) Regulation 2025	2025 No 142
Environmental Planning and Assessment Amendment (Bush Fire Protection Mechanisms) Regulation 2025	2025 No 143
Local Government (General) Amendment (Minimum Amounts of Rate) Regulation 2025	2025 No 144
Music Festivals Amendment (Delegation) Regulation 2025	2025 No 145
Property and Stock Agents Amendment (Landcom Exemptions) Regulation 2025	2025 No 146
Public Health Amendment Regulation 2025	2025 No 147
Local Court Act 2007—Practice Note – Bail Proceedings (Centralised Bail Courts)	NSWGG-2025-101-1
Professional Standards Act 1994—The Western Australian Bar Association Professional Standards Scheme	NSWGG-2025-121-5
Professional Standards Act 1994—The Victorian Bar Professional Standards Scheme	NSWGG-2025-121-6
Professional Standards Act 1994—The New South Wales Bar Association Professional Standards Scheme	NSWGG-2025-121-7
Professional Standards Act 1994—The Chartered Accountants Australia and New Zealand Professional Standards Scheme	NSWGG-2025-121-8
National Parks and Wildlife Act 1974—Notice of Reservation of a Nature Reserve	NSWGG-2025-128-2
National Parks and Wildlife Act 1974—Notice of Reservation of a State Conservation Area	NSWGG-2025-128-3





## 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
The Honourable Justice Sarah Huggett, Chief Judge of the District Court	District Court Practice Note 26 Walama List Sentencing Procedure	NSWGG-2025-78-3
The Honourable Justice Sarah Huggett, Chief Judge of the District Court	District Court Practice Note 26 Walama List Sentencing Procedure	NSWGG-2025-90-10



# Appendix 1 Minutes

## Draft minutes no. 23

Monday 5 May 2025

Delegated Legislation Committee

Room 1136, Parliament House, Sydney, 12.33 pm

### 1. Members present

Mrs Maclaren-Jones, *Chair (via teleconference)*

Ms Boyd, *Deputy Chair (via teleconference)*

Mrs Carter

Mr Donnelly *(via teleconference)*

Dr Kaine *(via teleconference)*

Mr Murphy

Mr Nanva *(via teleconference)*

### 2. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 22 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

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

- 18 March 2025 – Letter from Chair to Chair of the Legislation Review Committee, Ms Lynda Voltz MP regarding potential opportunities for collaboration between the two committees
- 1 April 2025 – Letter from Chair to Presiding Member of the Legal Profession Admission Board, the Honourable Justice Anthony Payne regarding the *Public Notaries Appointment (Amendment) Fees Rule 2024* and the *Public Notaries Appointment Amendment (Second Fees) Rule 2024*
- 7 April 2025 – Letter from Chair to the Chief Judge of the Land and Environment Court, the Hon Justice Brian J Preston SC, regarding the *Land and Environment Court Act 1979—Practice Note—Use of Generative Artificial Intelligence (Gen AI)*
- 7 April 2025 – Letter from Chair to Chief Judge of the District Court of New South Wales, the Hon Justice S Huggett, regarding the *District Court Criminal Practice Note 26 Walama List Sentencing Procedure*
- 11 April 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC regarding the *Water Management (General) Amendment (Metering) Regulation 2025*.

#### ***Received:***

- 18 March 2025 – Email from Northern Territory Legislative Assembly regarding a request for information in relation to sunseting or automatic repeal provisions.
- 27 March 2025 – Email from Legislation Review Committee secretariat acknowledging receipt of correspondence from the Chair regarding potential opportunities for collaboration between the two committees.
- 31 March 2025 – Letter from Minister for Roads, the Hon Jenny Aitchison MP regarding the *Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025*
- 15 April 2025 – Letter from Chief Judge of the District Court of New South Wales, the Hon Justice S Huggett, regarding the *District Court Criminal Practice Note 26 Walama List Sentencing Procedure*

- 17 April 2025 – Letter from Minister for Water, the Hon Rose Jackson MLC, regarding the *Water Management (General) Amendment (Metering) Regulation 2025*
- 17 April 2025 – Letter from Chief Judge of the Land and Environment Court, the Hon Justice Brian J Preston SC, regarding Land and Environment Court Act 1979—Practice Note—Use of Generative Artificial Intelligence (Gen AI).

#### 4. **Delegated Legislation Monitors Nos 3 and 4 of 2025**

The Committee noted that Delegated Legislation Monitors Nos 3 and 4 of 2025 were adopted via email on 14 March 2025 and 20 March 2025.

#### 5. **Proposed approach to undertakings**

The Committee noted the current practices surrounding the recording of relevant undertakings made by a minister or body for specific action to address scrutiny concerns in the Index of Undertakings on its website.

The Committee also noted that, at present, only when a minister or body makes a promise to the Committee expressed as an 'undertaking' does the Committee regard it as such, i.e., 'intentions' or a 'commitment' to amend or review legislation have not to date been recorded as an undertaking.

Resolved, on the motion of Mrs Carter: That the Committee consider that a commitment, or any similarly named indication of intention, by a responsible minister or body to amend delegated legislation in response to scrutiny concerns identified by the Committee to be regarded as an undertaking and be recorded as such on the Index of Undertakings.

#### 6. **Consideration of Chair's draft report**

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 5 of 2025*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mrs Carter: 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 6 May 2025.

#### 7. **Inquiry into the consolidation of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987***

The Committee noted that in its report entitled '*Evaluation of the Regulation Committee's technical scrutiny function*', agreed to on Friday 31 January 2025, the Committee made two recommendations regarding inquiries to be undertaken in 2025. These two recommendations are as follows:

##### **Recommendation 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.

##### **Recommendation 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.

Resolved, on the motion of Mr Donnelly: That the secretariat draft terms of reference for an inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* for consideration by the Committee at its next meeting on 26 May 2025.

**8. Adjournment**

The Committee adjourned at 12.44 pm.

**9. Next Meeting**

Monday 26 May 2025, 12.30 pm, Room 1136 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 6 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:

- Received 12 February 2025 – Letter from Presiding Member, Legal Profession Admission Board, the Hon Justice Anthony Payne to Chair regarding scrutiny concerns identified in the *Public Notaries Appointment Amendment (Fees) Rule 2024*
- Sent 17 March 2025 – Letter from Chair to Minister for Roads, the Hon John Graham MLC<sup>5</sup> regarding the *Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025*
- Received 31 March 2025 – Letter from Minister for Roads, the Hon Jenny Aitchison MP to Chair regarding the *Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025*
- Sent 1 April 2025 – Letter from Chair to Presiding Member, Legal Profession Admission Board, the Hon Justice Anthony Payne regarding scrutiny concerns identified in the *Public Notaries Appointment Amendment (Second Fees) Rule 2024*
- Sent 7 April 2025 – Letter from Chair to Chief Judge of the Land and Environment Court, the Hon Justice Brian J Preston SC, regarding scrutiny concerns identified in the *Land and Environment Court—Practice Note—Use of Generative Artificial Intelligence (Gen AI)*
- Sent 11 April 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC regarding scrutiny concerns identified in the *Water Management (General) Amendment (Metering) Regulation 2025*
- Received 17 April 2025 – Letter from Chief Judge of the Land and Environment Court, the Hon Justice Brian J Preston SC to Chair regarding scrutiny concerns identified in the *Land and Environment Court—Practice Note—Use of Generative Artificial Intelligence (Gen AI)*
- Received 17 April 2025 – Letter from Minister for Water, the Hon Rose Jackson MLC to Chair regarding scrutiny concerns identified in the *Water Management (General) Amendment (Metering) Regulation 2025*.

<sup>5</sup> At the time of sending the letter, the Hon John Graham MLC was the Minister for Roads. On 17 March 2025, the Hon Jenny Aitchison MP was appointed as the Minister for Roads.



# LEGAL PROFESSION ADMISSION BOARD

The Hon Natasha Maclaren-Jones MLC  
Chair of the Regulation Committee  
Legislative Council  
Parliament of New South Wales

Your ref: D24/048424

By email: [regulation.committee@parliament.nsw.gov.au](mailto:regulation.committee@parliament.nsw.gov.au)

12 February 2025

Dear Ms Maclaren-Jones

**Re: Legal Profession Admission Board  
Public Notaries Appointment (Amendment) Fees Rule 2024**

I refer to your letter to me dated 26 September 2024 regarding the Board's response to scrutiny concerns raised by the Regulation Committee in relation to the *Public Notaries Appointment (Amendment) Fees Rule 2024*. In your letter, you included the Committee's Delegated Legislation Monitor No. 10 of 2024 (Monitor). At 2.32, the Committee requested that the Board provide an update before the first sitting day of 2025.

The matters raised by the Committee have been discussed at each of the Board's meetings on 8 October 2024, 3 December 2024 and yesterday. The Committee will note that the Board made the *Public Notaries Appointment Amendment (Second Fees) Rule 2024* at its meeting on 8 October 2024. This addressed the Committee's concern about the basis for charging late fees. The Board resolved to charge fees based on published cut-off dates, rather than the imposition of late fees.

The Committee will also note that the Board passed the *Public Notaries Appointment Amendment (Miscellaneous) Rule 2024* on 8 October 2024. That Rule updated the definitions in the Rules to bring them into line with *Legal Profession Uniform Law (NSW)* and by adding headings to improve its readability. A consolidated version of the Rules is expected to be available on the Board's website in March 2025.

The Board has raised the Committee's concerns with the Chief Justice of New South Wales, the Honourable Andrew Bell. Naturally, the views of the Court are highly relevant to how the Board maintains the Roll on behalf of the Court. The Board is reluctant to make changes to the Rules until the Court finalises its response to the matters set out in your letter.

The Board expects to be able to provide the ability for online engagement with Public Notaries by the end of June this year. We expect that in our April Board meeting, we



will address any necessary rule changes to reflect the changes brought about by online lodgements. The removal of prescribed forms will be one aspect of that change.

In light of the ongoing consultation with the Supreme Court and the imminence of our new online system, our preference is for these matters to be considered at future meetings of the Board, rather than taking a rushed approach to their resolution. I can assure the Committee that the Board continues to be actively engaged in reviewing the Rules.

Thank you again for the close attention of your Committee to the work of the Board.

Yours sincerely



The Honourable Justice Payne  
Presiding Member



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

17 March 2025

The Hon. John Graham MLC  
Special Minister of State  
Minister for Transport  
Minister for Roads  
Minister for the Arts  
Minister for Music and the Night-time Economy  
Minister for Jobs and Tourism

D25/010977

By email: [REDACTED]

Dear Minister

**Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial)  
Regulation 2025**

As you are aware, on 19 October 2023 the Legislative Council adopted a resolution expanding the functions of the Delegated Legislation Committee (formerly known as 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 amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the scrutiny principles set out in the aforementioned section of the Act, 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, which is to be tabled in Parliament on 17 March 2025:

- *Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025*

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

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

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Delegated Legislation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

### Scrutiny concerns

	Provision	Issue
1	Schedule 1[1]	<p>The <i>Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025</i> (the <b>amending regulation</b>), Schedule 1[1] omits and inserts into the <i>Road Transport (Driver Licensing) Regulation 2017</i> (the <b>regulation</b>), clause 72(1) to prescribe the definition of <i>trial period</i>, paragraph (a). In effect, clause 72(1) extends the current demerit point reduction trial (the <b>trial</b>) for another twelve months, the second extension since its commencement on 17 January 2023.</p> <p>The Committee notes the trial commenced on 17 January 2023, initially for a period of 12 months and was subsequently extended for an additional 12 months by the <i>Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2024</i>, Schedule 1.</p> <p>Clause 72(1) purports to rely on the regulation-making power in the <i>Road Transport Act 2013</i> (the <b>Act</b>), section 32A(2), definition of <b>trial period</b>, paragraph (a), which defines <b>trial period</b> as 'the period prescribed by the statutory rules'.</p> <p>It is clear that the Act, s 32A(2), contemplates that the statutory rules could alter the default timeframe for the trial period set out in the Act. However, it is not entirely clear to the Committee that this provision intends to support a rule-making power to prescribe an ongoing series of trial periods. In the Committee's view, references to 'the trial period' in the Act point to an arrangement of a temporary or preliminary nature designed to enable evaluation of the demerit reduction scheme, rather than an arrangement that would be rolled forward indefinitely.</p> <p>Although the Committee does not take issue with this regulation at this point in time, the Committee may hold concerns if the intention of the Government is to utilise the Act, section 32A to establish an ongoing demerit points reduction scheme by way of a succession of trial periods.</p> <p>To this end, the Committee seeks clarification on whether the Minister intends to prescribe further trial periods pursuant to section 32A. If so, the Committee queries whether consideration should be given to amending the Act to confirm the availability of such a power on an ongoing basis.</p>
2	Schedule 1[1]	<p>The amending regulation provides that it is to commence on the day on which it was published on the NSW legislation website. The amending regulation was published on 17 February 2025. The Committee notes that the amending regulation prescribes a trial period beginning prior to that commencement date, namely from 17 January 2025 to 16 January 2026.</p> <p>The Committee does not take issue with the commencement of proposed clause 72(1)(b) at this time as the legal framework surrounding the trial remains unchanged, and because the action required by section 32A(1) does not arise until after the conclusion of the trial period. However, the Committee wishes to draw to the attention of the Minister the Committee's</p>

		preference that the amending regulation would be published <i>before</i> the period of the trial begins, consistent with the presumption against retrospectivity at common law.
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Please provide a response to the issue identified as no 1 by **31 March 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issue identified as no 2 is for information and noting only and does not require a response.

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

Kind regards



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

**The Hon Jenny Aitchison MP**

Minister for Roads  
Minister for Regional Transport



31 March 2025

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

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Re: Scrutiny concerns identified under the Legislation Review Act 1987, section 9(1)(b)

Dear Chair,

Thank you for your letter dated 17 March 2025 to the former Minister for Roads, the Hon. John Graham MLC, regarding the Committee's comments on the Road Transport (Driver Licensing) Amendment (Demerit Points Reduction Trial) Regulation 2025 (the amending Regulation).

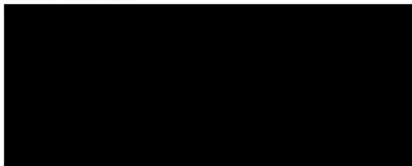
The first matter addressed relates to the Committee's view that the statutory rule making power in section 32A of the *Road Transport Act 2013* (the Act) implies a temporary arrangement when referring to the Demerit Point 'trial period' that first commenced in January 2023 and was extended for a third 12-month period by the amending Regulation. I note that while no issues are raised with the amending Regulation, the Committee may hold concerns if the Government's intention is to utilise section 32A of the Act prescribe any further trial periods.

The Government has received advice that using regulation to extend the trial is nearing the limit of the power provided in the Act. The future of this initiative is under review and the limits of section 32A are a key consideration.

The second matter raised by the Committee relates to the amending Regulation commencing on the date of publication (being the 17 February 2025) but prescribing the new trial period being backdated to commence on 17 January 2025. While I note the Committee's preference is that the amending Regulation would be published before the new trial period commenced, it has raised this issue for information and noting only and does not require a response.

I would like to thank the Committee for providing the opportunity to respond to these concerns.

Sincerely,



Jenny Aitchison MP  
Minister for Roads  
Minister for Regional Transport



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

1 April 2025

The Hon. Justice Anthony Payne  
Presiding Member  
Legal Profession Admission Board

D25/014243

By email: [REDACTED]

Dear Judge,

Thank you for your correspondence dated 12 February 2025 regarding the Board's response to scrutiny concerns raised by the Delegated Legislation Committee (formerly the Regulation Committee) in relation to the *Public Notaries Appointment (Amendment) Fees Rule 2024*. The Committee welcomes your timely and detailed update on the Board's forward agenda and recent reforms following the Committee's request in September 2024.

The Committee acknowledges and appreciates the amendment to the *Public Notaries Appointment Fees Rules* (Rules) to address the concerns raised by the Committee in the Delegated Legislation Monitor No.7 of 2025 by codifying the cut-off dates for applications.

The Committee notes the *Public Notaries Appointment Amendment (Second Fees) Rule 2024 (the Amendment Rule)*, published in the Gazette on 29 November 2025, retains the \$110 fee for an 'Annual Notification in Form 6' and a \$110 fee for an 'Other application/certificate – Public Notary' in the Rules. While the Committee recognises the ongoing consultation with the Supreme Court to address the concerns raised by the Committee about these fees, in accordance with the Committee's establishing resolution, an entry on the Amendment Rule will be included in an upcoming Delegated Legislation Monitor. The Committee intends to reiterate its concerns with the fees as previously concluded in the Delegated Legislation Monitor No. 10 of 2024, acknowledging your considered engagement with the Committee and the ongoing work of the Board to resolve the issues raised.

The Committee looks forward to your further updates following the meeting of the Board in April 2025.

Kind regards

[REDACTED]

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



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

7 April 2025

The Hon. Justice Brian J Preston SC  
Chief Judge  
Land and Environment Court of New South Wales  
Level 4, 225 Macquarie Street  
Windeyer Chambers  
Sydney NSW 2000

D25/015066

By email: [REDACTED]

Dear Chief Judge,

**Land and Environment Court Act 1979—Practice Note – Use of Generative Artificial Intelligence (Gen AI)**

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 18 March 2025:

1. *Land and Environment Court Act 1979—Practice Note – Use of Generative Artificial Intelligence (Gen AI)*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(iv) and (vii). I am writing to you as the Chief Judge of the Land and Environment Court of NSW to seek clarification on the issue outlined below.

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

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Delegated Legislation Committee's technical scrutiny function*, on the [NSW Parliament website](#).



## Scrutiny concerns

	Provision	Issue
1	Paragraph 1, Commencement	<p>The <i>Land and Environment Court Act 1979—Practice Note—Use of Generative Artificial Intelligence (Gen AI)</i> (<b><i>the Practice Note</i></b>), paragraph 1 states that 'this Practice Note replaces the Practice Note that commenced on 3 February'.</p> <p>The Committee notes an <a href="#">announcement published on the LEC website</a> dated 21 November 2024. This announcement indicates that the Chief Judge had at that time issued a practice note to commence on 3 February 2025 'in the same terms' as an equivalent practice note issued by the Chief Justice applicable to the Supreme Court (<i>Supreme Court Practice Note SC Gen 23—Use of Generative Artificial Intelligence (Gen AI)</i>). The announcement concludes with an amending note apparently added at a later point in time: "NOTE: Amended 12 February 2025 to link updated Practice Note effective 12 February 2025."</p> <p>From this, the Committee infers that an earlier iteration of the Practice Note was issued in November 2024, and that this is the instrument referred to in paragraph 1 of the current document. However, the Committee has not been able to locate that earlier practice note in a search of the Gazette.</p> <p>Noting that it is a requirement for practice notes issued by the LEC to be published in the Gazette (<i>Land and Environment Court Act 1979 (the Act)</i>, section 76 and <i>Civil Procedure Act 2005 (the CPA)</i>, section 15), the Committee requests clarification regarding the status of the instrument referred to in paragraph 1 of the Practice Note.</p>

Please provide a response to the issue identified as no 1 by **22 April 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**



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

11 April 2025

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

D25/016498

By email: [REDACTED]

Dear Minister

### **Water Management (General) Amendment (Metering) 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 18 March 2025:

- *Water Management (General) Amendment (Metering) Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(viii) on the basis that the form or intention of the regulation calls for elucidation. I am writing to you as the responsible minister to seek clarification on the issues outlined below.

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

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

## Scrutiny concerns

	Provision	Issue
1	Sections 232A(3) and 238CA(3)	<p>The <i>Water Management (General) Amendment (Metering) Regulation 2025</i>, section 232A(1) provides that the Minister may exempt a holder of an authority, or a class of holders, from the application of the mandatory metering equipment condition in relation to a work under an authority. Section 238CA(1) provides that the Minister may exempt an approval holder, or a class of holders, from the mandatory floodplain harvesting metering condition in relation to a work under the approval.</p> <p>Sections 232A(3) and 238CA(3) provides that the Minister must not grant the exemption unless the Minister is satisfied of one of the circumstances listed in paragraphs (a)-(e). The Committee notes the structure of section 232A(3)(a)-(e) is very similar to section 238CA(3)(a)-(e), with minor differences in paragraphs (c) and (e).</p> <p>Section 232A(3)(c) states 'the work is <i>only</i> for taking water in accordance with the holder's basic landholder <i>rights</i>'. In comparison, section 238CA(3)(c) inserts 'used' after 'only' and the noun 'rights' is in the singular. This appears to be the only occasion in the <i>Water Management (General) Regulation 2018 (the regulation)</i> where <i>basic landholder right</i> is preceded by the definite article 'the', indicating that there is a specific or sole basic landholder right. In the Committee's view, cross references to section 238CA(3)(c) are consistent with section 238CA(3)(c) capturing rights in the plural. For example, section 31(1B)(b) requires these exemptions to be registered in the class 'constructed, basic landholder rights only'. Section 238CB(a) also uses the phrase 'a basic landholder right', which if section 238CA(3)(c) was intended to be singular, the Committee would expect this cross-reference to also refer to <i>the</i> right. It is not immediately apparent to the Committee as to why sections 232A(3)(c) and 238CA(3)(c) are slightly different and would appreciate clarification on the rationale behind differentiating the paragraphs.</p> <p>Section 232A(3)(e) states 'the approval holder has declared the work <i>will not</i> take water from a water source'. In comparison, section 238CA(3)(e) inserts 'is and' after 'work': 'the approval holder has declared the work <i>is and will not</i> take water from a water source'. The Committee seeks confirmation that section 238CA(3)(e) is intended to require the approval holder to declare the work <i>is not currently taking and will not take</i> water from a water source.</p>

Please provide a response to the issue identified as no 1 by **29 April 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



Land and Environment Court of New South Wales

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

Chief Judge's Chambers  
Land and Environment Court of NSW  
GPO Box 3565  
Sydney NSW 2001  
Australia  
Telephone: (02) 9113 8261  
Facsimile: (02) 9113 8266

17 April 2025

By email: [dlc@parliament.nsw.gov.au](mailto:dlc@parliament.nsw.gov.au)

Dear Ms Maclaren-Jones,

**Use of Generative Artificial Intelligence (Gen AI) Practice Notes**

Thank you for your correspondence dated 7 April 2025.

On receiving your correspondence, the Land and Environment Court became aware that the two earlier versions of the Practice Note - Use of Generative Artificial Intelligence (Gen AI) (Gen AI Practice Note) that were published on the Court's website were not published in a timely manner in the NSW Government Gazette.

The Court apologises for this oversight which happened as a result of a misunderstanding between Court staff. The practice and process of the timely gazettal of practice notes has since been clarified and this issue has been addressed.

The Court has since made arrangements for the Practice Note - Use of Generative Artificial Intelligence (Gen AI) made on 21 November 2024 and the Practice Note - Use of Generative Artificial Intelligence (Gen AI) made on 28 November 2024 to be published in the NSW Government Gazette on 17 April 2025 to regularise this error.

Yours sincerely

  
The Hon. Justice Brian J Preston AO FRSN SC  
Chief Judge  
Land and Environment Court of NSW



**The Hon Rose Jackson MLC**

Minister for Water, Minister for Housing,  
Minister for Homelessness  
Minister for Mental Health, Minister for Youth



Our ref: MF25/806

The Hon Natasha Maclaren-Jones MLC  
Member of the Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

By email: [dlc@parliament.nsw.gov.au](mailto:dlc@parliament.nsw.gov.au)

Dear Mrs Maclaren-Jones

**Water Management (General) Amendment (Metering) Regulation 2025**

Thank you for your letter of 11 April 2025 about the Water Management (General) Amendment (Metering) Regulation 2025.

The Delegated Legislation Committee has identified the following inconsistencies in the Water Management (General) Amendment (Metering) Regulation 2025—

- Clause 232A(3)(c) refers to a work “taking water in accordance with the holder’s basic landholder **rights**”, while clause 238CA(3)(c) refers to a work “taking water in accordance with the holder’s basic landholder **right**”
- Clause 232A(3)(e) states “the approval holder has declared the work will not take water from a water source”, while clause 238CA(3)(e) states “the approval holder has declared the work **is and** will not take water from a water source”.

I have been advised by the Department of Climate Change, Energy, the Environment and Water that the inconsistent wording is a result of drafting errors.

In the case of clause 238CA(3)(c), it is clear that “basic landholder right” should be “basic landholder rights”, as the *Water Management Act 2000* clearly provides for 3 categories of basic landholder rights.

In the case of clause 238CA(3)(e), it appears this was also a drafting error and the words “not taking” should have been included. It should have been drafted as “the approval holder has declared the work is not taking and will not take water from a water source.”

The Department also advises me that in both cases the intended meaning is clear, and it will not interfere with the Department implementing the new metering rules.

The Water Management (General) Amendment (Metering) Regulation 2025 has the effect of amending the Water Management (General) Regulation 2018. While the 2018 Regulation now includes these drafting errors it is expected to be repealed and

replaced on 1 September this year. This will provide an opportunity to address the inconsistencies in the way these clauses are drafted.

If you would like more information, please contact Beth Overton, Director Water Policy and Legislation, in the Department, on [REDACTED]

Yours sincerely

**Rose Jackson MLC**

Minister for Water, Minister for Housing, Minister for Homelessness,  
Minister for Mental Health, Minister for Youth

Date: 17-4-25

