



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 15 of 2025



18 November 2025

www.parliament.nsw.gov.au

Delegated Legislation Committee

Delegated Legislation Monitor No. 15 of 2025

Ordered to be printed Tuesday 18 November 2025

New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 15 of 2025

'November 2025'

Chair: Hon Natasha Maclaren-Jones MLC

ISSN: 2982-0111

Table of contents

	Committee details	iv
	Overview of the Delegated Legislation Monitor	v
	Operation of the Committee's technical scrutiny function	v
	Conclusions and structure of Monitor No. 15 of 2025	vii
Chapter 1	Concluded scrutiny matters	1
	Work Health and Safety Regulation 2025	1
	Overview	1
	Scrutiny concerns	2
	Committee conclusion	3
	Protection from Harmful Radiation Regulation 2025	4
	Overview	4
	Scrutiny concerns	4
	Committee conclusion	7
	Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025	9
	Overview	9
	Scrutiny concerns	9
	Committee conclusion	11
Chapter 2	Instruments with no scrutiny concerns	13
Chapter 3	Instruments raising scrutiny concerns	15
Appendix 1	Minutes	17
Appendix 2	Correspondence	19

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	

Contact details

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

Hon Natasha Maclaren-Jones MLC
Committee Chair

Secretariat

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

Overview of the Delegated Legislation Monitor

Operation of the Committee's technical scrutiny function

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

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

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

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

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

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

Conclusions and structure of Monitor No. 15 of 2025

- 1.11** For this monitor, the Committee has reviewed nine instruments published on the NSW legislation website or in the NSW Government Gazette between 22 August 2025 and 31 October 2025. The Committee has:
- concluded its scrutiny of three instruments, as set out in Chapter 1,
 - concluded that five instruments raise no scrutiny concerns, as set out in Chapter 2, and
 - raised scrutiny concerns in relation to an instrument, for consideration in a future monitor, as set out in Chapter 3.
- 1.12** A further eight instruments notified between 31 October 2025 and 7 November 2025 remain under review, for consideration in a future monitor.

Chapter 1 Concluded scrutiny matters

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

Work Health and Safety Regulation 2025

SI number	2025 No 440
Published on Legislation Website	22/08/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

- 1.1 The [Work Health and Safety Regulation 2025](#) (the regulation) remakes, with no significant changes, the *Work Health and Safety Regulation 2017*, which would otherwise have been repealed on 1 September 2025 under the *Subordinate Legislation Act 1989*, section 10(2).
- 1.2 As relevant to the Committee, the Explanatory Note provides that the regulation prescribes matters under the *Work Health and Safety Act 2011* to give effect to the operation of that Act and that the provisions are substantially uniform with the *Model Work Health and Safety Regulations 2011* (the Model WHS Regulations) prepared by Safe Work Australia.
- 1.3 The commencement dates for the regulation are as follows:
 - for Part 8A.4—on 1 October 2025,
 - otherwise—on publication on the NSW legislation website on 22 August 2025.
- 1.4 The regulation was made under the *Work Health and Safety Act 2011* (the Act), including section 276 and Schedule 3, the general regulation-making powers.
- 1.5 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the regulation by letter sent to the Minister for Work Health and Safety, the Hon Sophie Cotsis MP, on 17 October 2025. The Minister responded on 11 November 2025. All correspondence is included in Appendix 2.

Scrutiny concerns*That 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 regulation, section 55D provides the control measures that a person conducting a business or undertaking (PCBUs) must implement to eliminate or minimise psychosocial risks, so far as is reasonably practicable. The following note is contained at the foot of section 55D(3):

Note—WHS Act, section 19—see this regulation, section 9.

1.8 The regulation, section 9 provides the following:

If a note in the foot of a provision of the regulation states "WHS Act" followed by a reference to a section number of the Act, the provision sets out the way in which a person's duty or obligation under that section of the Act must be performed in relation to the matters and to the extent set out in the regulation provision.

Note—A failure to comply with a duty or obligation under a section of the Act referred to in a "WHS Act" note is an offence to which a penalty applies.

1.9 Therefore, the note provides that, under the regulation, section 9, it would be necessary to read section 55D(3) with the Act, section 19, which sets out the primary work health and safety duty requiring PCBUs to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work.

1.10 The Committee noted the following:

- in the Model WHS Regulations, regulation 55D, the same note does not appear at the foot. Instead, the note has been placed at the foot of section 55C.
- throughout the regulation, placement of a note linking a provision with the Act, section 19 is typically at the foot of a section relating to the management of risks by a PCBU, i.e., sections 48, 51, 52, 54, 57.

1.11 The Committee sought clarification regarding the rationale for the note being placed at the foot of the regulation, section 55D, rather than section 55C, noting that it appeared to be a departure from the Model WHS Regulations.

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

Sections 55C and 55D were introduced into the Model WHS Regulations by the Model Work Health and Safety Legislation Amendment 2022, with the note in question included by this instrument at the foot of section 55D. Subsequently, the Model Work Health and Safety Legislation Amendment (Offences and Penalties) 2023 made a technical amendment to remove the note from the foot of section 55D and reinsert it at the end of section 55C. Inadvertently, this technical amendment has not been adopted in NSW.

To ensure consistency with the current version of the Model WHS Regulations, I confirm that I will identify a suitable opportunity to seek to amend the Regulation with a view to relocating the relevant note to the foot of section 55C.

Committee conclusion

- 1.13** The Committee appreciates the Minister's considered engagement with the scrutiny concerns raised by the Committee.
- 1.14** The Committee acknowledges the Minister's undertaking to amend the regulation by relocating the note from the foot of section 55D to section 55C in order to ensure consistency with the Model WHS Regulations. The undertaking will be published on the Committee's webpage, and the entry will be updated when the relevant undertaking has been implemented.
- 1.15** In light of the Minister's undertaking, the Committee is of the view 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 *Work Health and Safety Regulation 2025*.

Protection from Harmful Radiation Regulation 2025

SI number	2025 No 461
Published on Legislation Website	29/08/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

- 1.16** The [*Protection from Harmful Radiation Regulation 2025*](#) (the regulation) repeals and remakes, with amendments, the *Protection from Harmful Radiation Regulation 2013*, which would otherwise have been repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).
- 1.17** As relevant to the Committee, the explanatory note provides that the regulation provides for exemptions from the requirement to hold a radiation management licence or radiation user licence for particular persons or in relation to particular regulated material and imposes requirements relating to the safe disposal of regulated material.
- 1.18** The regulation was made under various provisions of the *Protection from Harmful Radiation Act 1990* (the Act) signposted in the heading or body of each section of the regulation. Relevantly, the licence exemptions provided for in Part, Division 3, are made under the Act, section 39, and the provisions relating to the destruction and disposal of records is made under the Act, section 40(3)(h).
- 1.19** The commencement dates for the regulation are as follows:
- for section 11—on 1 September 2026,
 - for sections 19, 23(2) and 25—on 1 December 2025,
 - otherwise—on the day on which the regulation was published on the NSW legislation website (being 29 August 2025).
- 1.20** The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(v) and (vii) in relation to the amending regulation by letter sent to the Minister for the Environment, the Hon Penny Sharpe MLC, on 17 October 2025. The Minister responded on 3 November 2025. All correspondence is included in Appendix 2.

Scrutiny concerns

That the form or intention of the regulation calls for elucidation

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

- 1.22 The regulation, section 70(1) provides that an employer or person responsible for regulated material must not destroy or otherwise dispose of a record required to be kept under the regulation, otherwise than in accordance with the section.
- 1.23 Section 70(3) provides that if the record is required to be kept by an employer under section 51 (relating to personal radiation exposure records), 'the record must not be destroyed or otherwise disposed of until at least 5 years after the employee concerned ceases to be employed by the employer.'
- 1.24 However, under section 70(4) and (5):
- (4) An employer may forward a required record to the Authority if the employer ceases to carry on business in New South Wales.
 - (5) The Authority may dispose of a required record forwarded to, or otherwise kept by, the Authority.
- 1.25 The Committee sought confirmation that the intention is that subsection (5) is to be read as being subject to subsection (3), such that the Authority must keep a record forwarded pursuant to subsection (4) for at least 5 years after the employee concerned ceases to be employed by the employer.
- 1.26 Assuming this to be the case, the Committee suggested that in future drafting consideration be given to stating the scope of this obligation more clearly.
- 1.27 In response to the Committee's request, the Minister provided the following advice:
- I confirm that the intention of section 70(5) of the Regulation is that it be read as being subject to section 70(3). Accordingly, section 70(5) requires the EPA to retain relevant records for at least five years. The EPA agrees with this interpretation.
- Under the circumstances, I do not consider that change is currently required to the provision. However, for the purposes of providing certainty, I accept the Committee's suggestion that in future drafting consideration be given to stating the scope of this obligation more clearly.

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

- 1.28 Under this scrutiny ground, the Committee will consider whether the legislative 'means' of a regulation are the most appropriate to achieve its objectives. The focus is not a policy evaluation of whether the regulation will, in fact, achieve its objectives.
- 1.29 Sections 14(2)(b), 15(2)(a)(ii), 16(2), 17(2)(a), (b)(i) and (d), 19(2)(b)(i), 20(2)(a), 24(2)(a) and 26(2)(a) (the relevant sections) set out exemptions from the requirement contained in the Act to hold a radiation user licence.
- 1.30 The exemptions are contingent on the person being 'subject to immediate supervision'. For example, section 16(2) sets out an exemption for industrial radiographer assistants as follows:
- (2) The person is exempt from the requirement to hold a radiation user licence under the Act, section 7 for the use of regulated material in the course of

employment if the person, when using the material, is subject to immediate supervision.

1.31 The term 'immediate supervision' is defined in section 9 as follows:

immediate supervision, of a person using regulated material, means the supervision of the person—

- (a) by a qualified person who, at all times when the person being supervised uses the material—
 - (i) is physically present with the person being supervised, and
 - (ii) observes and directs the use of the material, and
- (b) for the purposes of ensuring the person being supervised follows safe radiation work practices for the use of the material.

1.32 The Committee expressed concern that, given the involved nature of 'immediate supervision', which requires a qualified person to be physically present and observing at all times, whether or not an exemption in the relevant sections applies is dependent on the actions of a third party. For example, if, when an industrial radiographer assistant is using regulated material, the qualified person supervising them were to leave the room, it appeared to the Committee that the industrial radiographer assistant may no longer have the benefit of the exemption in section 16, through no fault of their own.

1.33 The Committee did not query the policy reasons for requiring persons using regulated material under exemptions to be subject to immediate supervision as the policy appeared to the Committee to be sensible on its face. However, the Committee noted the following:

- students, registrars, assistants and people in similar roles may not be able to control whether their supervisors diligently provide them with immediate supervision as required by the regulation, and
- if an exemption does not apply, the penalty for using regulated material without a radiation user licence is 250 penalty units or imprisonment for 2 years, or both.

1.34 Additionally, it was also unclear to the Committee whether a person who, through no fault of their own, discovers that their supervision requirements have fallen short of the statutory standard would have the benefit of a common law defence of honest and reasonable mistake of fact.

1.35 The Committee sought confirmation regarding whether alternative regulatory mechanisms had been considered, for example:

- rephrasing the relevant sections so that they require the person to, when using the material, make all reasonable efforts (or similar language) to ensure that they are subject to immediate supervision, or
- relying on the requirement in the regulation, section 32, which creates an offence of a qualified person failing to provide the kind of supervision required for an exemption, to achieve the policy goal of ensuring that the required supervision is provided.

1.36 In response, the Minister advised the following:

To ensure the requirements of the Regulation are known and understood, the EPA provides information about radiation user licence exemption and supervision requirements and the obligations of exempt persons, qualified persons and persons responsible for regulated material in relation to licensing exemptions on its website at www.epa.nsw.gov.au/Yourenvironment/Radiation/radiation-user-licence/user-licence-introduction/user-licence-exemptionsrequirements and www.epa.nsw.gov.au/Your-environment/Radiation/managing-radiationnsw/changes-regulation-radiation.

As you note, different offences under the Act and Regulation may apply where a person is using regulated material without the requisite level of supervision. In considering whether an individual, their supervisor, or the person responsible for the regulated material should be held liable for any failure of an exempt person to be supervised, the EPA would apply its Regulatory Policy to the relevant facts and circumstances in each specific case. The EPA's Regulatory Policy is available at www.epa.nsw.gov.au/Licensing-and-Regulation/Regulation.

Prosecution action against an exempt person would be one option among several regulatory tools. However, that option would only be pursued if the circumstances warranted that degree of response, taking into consideration relevant factors in the EPA's Prosecution Guidelines. These guidelines can be found at www.epa.nsw.gov.au/Publications/legislation/Prosecution-Guidelines.

Given the available information about the requirements and that if there is any breach, there are other regulatory responses available other than prosecution with regulatory decisions made in accordance with the EPA's regulatory framework, no change is proposed to the relevant provisions.

Committee conclusion

- 1.37** The Committee appreciates the Minister's prompt and considered engagement with the scrutiny concerns raised by the Committee.
- 1.38** In relation to the first issue, the Committee acknowledges the confirmation that section 70(5) is intended to be read as being subject to section 70(3), such that the Environment Protection Authority must retain a record forwarded pursuant to section 70(4) for at least 5 years after the employee concerned ceases to be employed by the employer. While the Committee appreciates that the Authority agrees with this interpretation, the Committee maintains the suggestion that the Minister should consider that the drafting of section 70(5) states the scope of the obligation more explicitly in order to ensure clarity and accessibility of the regulation.
- 1.39** In relation to the second issue, the Committee acknowledges and appreciates the Minister's advice regarding the resources and information available on the EPA's website about radiation user licence exemptions, supervision requirements and the obligations of exempt persons, qualified persons and persons responsible for regulated material in relation to licensing exemptions. The Committee also appreciates the Minister's advice that "[p]rosecution action against an exempt person would be one option among several regulatory tools. However, that option would only be pursued if the circumstances warranted that degree of response, taking into consideration relevant factors in the EPA's Prosecution Guidelines."

- 1.40** The Committee is satisfied that the Minister is aware of the potential unfairness of a strict application of the relevant sections, and the Committee welcomes the advice that the issue has been considered in the EPA's prosecution guidelines. However, the Committee does not consider it ideal that the "relevant factors" referred to by the Minister are contained only in the prosecution guidelines. The Committee suggests that the Minister consider incorporating the relevant factors into the regulation itself.
- 1.41** In light of the above, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(v) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the *Protection from Harmful Radiation Regulation 2025*.

Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025

SI number	2025 No 475
Published on Legislation Website	5/09/2025
Tabled in Legislative Council	09/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

- 1.42 The [*Local Government \(General\) Amendment \(Mutual Recognition of Approvals\) Regulation 2025*](#) (the *amending regulation*) commenced on 5 September 2025, concurrently with the commencement of the *Local Government Amendment Act 2019*, Schedules 1[4] and [20] and 2.2.
- 1.43 As explained in the explanatory note, the object of the amending regulation was to establish a scheme for mutual recognition by councils of approvals granted under the *Local Government Act 1993*, Chapter 7, Part 1 for certain activities.
- 1.44 The amending regulation was made under the *Local Government Act*, Schedule 6, item 8AA.
- 1.45 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) in relation to the amending regulation by letter sent to the Minister for Local Government, the Hon Ron Hoenig MP, on 17 October 2025. The Minister responded on 4 November 2025. All correspondence is included in Appendix 2.

Scrutiny concerns

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

- 1.46 Under the first ground, the Committee is asked to consider the consistency of a regulation with the objects of the statute under which it is made and the degree to which the regulation as a whole, or specific provisions of it, conforms with those objects.
- 1.47 Under the second ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.
- 1.48 The Committee noted that the amending regulation, Schedule 1[2] inserted a new Division 7 dealing with a scheme for the mutual recognition of approvals granted by local governments into the *Local Government (General) Regulation 2021* (the *regulation*), Part 2. The new Division was made under the Act, Schedule 6, item 8AA, which allows the Governor to make regulations, not inconsistent with the Act, for or with respect to:

8AA A scheme for mutual recognition by councils of approvals under Part 1 of Chapter 7

1.49 The new Division includes section 81B(3), which provides:

For the purposes of the scheme, in the Act and this regulation—

- (a) a reference to an approval extends to a recognition certificate, and
- (b) a reference to an application for an approval extends to an application for a recognition certificate.

1.50 It was unclear to the Committee whether section 81B(3) was intended to:

- **Option A:** purport to directly change the meaning of terms used in the Act for the purposes of the scheme, by widening the meaning of "approval" under the Act to include recognition certificates, or
- **Option B:** create, by regulation, a parallel version of the Act in which all the references to an approval are also references to a recognition certificate (except for references in the provisions specified in section 81B(4)).

1.51 If the intention was Option A, the Committee was concerned that section 81B(3) purported to change the meaning of terms used in the Act without a specific power (such as a Henry VIII power) to do so. The Committee sought confirmation of the regulation-making power in the Act that would allow the regulations to extend the meaning of terms used in the Act in this way. The Committee noted that the Explanatory Note to the regulation did not specify that a Henry VIII provision has been relied upon.

1.52 If the intention was Option B, the Committee was concerned that the implications of the provision may not have been fully considered.

1.53 For example, the Act, section 748(4) provides that "the regulations may create an offence punishable by a penalty not exceeding 10 penalty units...". If the effect of the regulation, section 81B(3) is to create another version of the text of the Act in which "approval" includes "recognition certificate", then it would appear to the Committee that the regulation creates a version of the Act, section 627(2) containing an offence of carrying out an activity otherwise than in accordance with the terms of the recognition certificate. The offence would carry a maximum penalty of 20 penalty units, which would be impermissible because of section 748(4).

1.54 The Committee sought confirmation of the consideration given to the implications of option (b), if that was the intention, and, if it was not the intention, the Committee sought confirmation of the intended meaning of section 81B(3) and the consideration given to its implications.

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

I can confirm that the intended operation of section 81B(3) of the Amending Regulation corresponds to Option B as outlined in your letter. Section 81B(3) is intended to make clear that, for the purposes of the mutual recognition of approvals scheme (scheme), a reference to an 'approval' is to be considered a reference to a 'recognition certificate'. The provision is not intended to alter the meaning of terms in the *Local Government Act 1993* (the Act). This approach, as the Committee noted, effectively creates a 'parallel' version, or conditional duplication, of the

Act within the scheme's context, with defined exceptions. This ensures that a council's recognition of another council's approval operates effectively under a familiar framework, without the Amending Regulation claiming to redefine any terms in the Act.

The intent of the Amending Regulation is to stay within the Act's limits and to uphold its purpose, while delivering the practical benefits of mutual recognition of approvals. This allows councils to recognise approvals granted by other councils for certain activities. It also reduces duplication and delay for businesses and individuals whilst abiding to local conditions. Option B achieves this by integrating the recognition certificate into the existing approval.

I acknowledge the Committee's concern regarding offence provisions. Notably the question of whether 81B(3) of the Amending Regulation may inadvertently create an offence with a higher penalty than permitted under section 748(4) of the Act.

I have consulted with the Office of Local Government (OLG) and can confirm that this issue was carefully considered. It is not intended that the Amending Regulation create a version of section 627 of the Act, containing an offence for carrying out an activity otherwise than in accordance with the terms of the recognition certificate.

The only new offence introduced by the Amending Regulation is in section 81F(1), which imposes a duty on recognition certificate holders to notify the council of any modification or revocation of the original approval. The penalty for this offence is expressly and appropriately capped at 10 penalty units, in accordance with the requirements of section 748(4) of the Act.

This offence and penalty are clearly separate to and distinct from the offence under section 627 of the Act for failing to comply with an approval.

An offence under section 627 of the Act applies to an approval for breaches to conditions of an approval to operate issued by any council, with a maximum penalty of 20 penalty units. This offence and penalty apply to a breach of any local conditions of the (original) approval imposed by a council, as well as any supplementary conditions integrated within that approval by another council. The recognition certificate, which may include local conditions, only exists by virtue of the original approval and becomes part of the original approval. The offence and its penalty are therefore set by the Act itself and are not created by the Amending Regulation. This ensures consistent enforcement while remaining within the scope of the regulation-making power.

Committee conclusion

- 1.56 The Committee appreciates the Minister's thoughtful engagement with the Committee's scrutiny concerns. The Committee also acknowledges and welcomes the Minister's advice that the issue has been carefully considered.
- 1.57 However, the Committee also notes that, unfortunately, some of the assertions made in the Minister's letter have not been fully explained.
- 1.58 While the Minister states that "[i]t is not intended that the Amending Regulation create a version of section 627 of the Act, containing an offence for carrying out an activity otherwise than in accordance with the terms of the recognition certificate," on a plain reading of section 81B(3), it still appears to the Committee that a reference to an "approval" anywhere in the Act other than the provisions listed in the regulation, section 81B(4) (which contains specified exceptions) will extend to a recognition certificate.

- 1.59** The Minister states that section 627 applies "to a breach of any local conditions of the (original) approval imposed by a council, as well as any supplementary conditions integrated within that approval by another council" but does not articulate how the amending regulation provides for "supplementary conditions" to be "integrated" within that "original approval" by another council. For example, the regulation, section 81D (which deals with the determination of applications for recognition certificates) provides that a recognition certificate may be granted with conditions, but these appear to be treated as conditions of the *recognition certificate* (by using the language "A council, on application, may (a) *grant a recognition certificate, with or without conditions*" in subsection (1)) and there does not appear to be a mechanism for the conditions on the recognition certificate to be "integrated" within the original approval.
- 1.60** The Committee understands that "[t]he recognition certificate, which may include local conditions, only exists by virtue of the original approval", but it has not been explained why, in the context of the existence of the section 81B(3), this would mean that the recognition certificate "becomes part of the original approval", such that "[t]he offence and its penalty are therefore set by the Act itself and are not created by the Amending Regulation".
- 1.61** For example, if a person has an approval from Council A and a recognition certificate from Council B that has been granted with conditions specific to Council B, and carries out the activity in the local government area of Council B and in breach of Council B's conditions, it still appears to the Committee that the combined effect of the Act, section 627 and the regulation, section 81B(3) would be that the person commits an offence of failing to comply with the *recognition certificate* under section 627, with a maximum penalty of 20 penalty units.
- 1.62** The Committee acknowledges that some further articulation of the Minister's interpretation might resolve the Committee's queries.
- 1.63** However, the Committee also suggests that the Minister consider:
- seeking further legal advice on the interpretation and implications of the regulation, section 81B(3), and
 - making further amendments to the Act and/or the regulation, section 81B(2) and (3) to more clearly articulate how a recognition certificate is intended to relate to an "original approval" for the purposes of the relevant offence provisions in the Act.
- 1.64** In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the *Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025*.

Chapter 2 Instruments with no scrutiny concerns

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

Instrument	SI number/ GG reference
Fair Trading Amendment (Penalty Notice Publications) Regulation 2025	2025 No 581
Electricity Supply (General) Amendment (Peak Demand Reduction Targets) Regulation 2025	2025 No 586
Passenger Transport (General) Amendment (Converted E-bike Batteries) Regulation 2025	2025 No 590
Civil Procedure Act 2005 and Industrial Relations Act 1996—Practice Note No. 35	NSWGG-2025-420-1
Civil Procedure Act 2005 and Industrial Relations Act 1996—Practice Note No. 34	NSWGG-2025-420-2

Chapter 3 Instruments raising scrutiny concerns

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

Responsible minister or body	Instrument	SI number / GG reference
President of the Industrial Court of New South Wales	Industrial Relations Act 1996—Industrial Court Criminal Practice Note No.1	NSWGG-2025-421-1

Appendix 1 Minutes

Draft minutes no. 31

Monday 17 November 2025

Delegated Legislation Committee

Room 1136, Parliament House, Sydney, 12.31 pm

1. Members present

Ms Boyd, *Deputy Chair*

Mrs Carter (*via teleconference*)

Mr Donnelly

Dr Kaine (*via teleconference*)

Ms Mihailuk (*via teleconference*)

Mr Murphy

Mr Nanva (*via teleconference*)

2. Apologies

Mrs Maclaren-Jones (*Chair*)

3. Deputy Chair

In the absence of the Chair, the Deputy Chair took the Chair for the purpose of the meeting.

4. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 30 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 7 November 2025 – Letter from Chair to President of the Industrial Court of New South Wales, Justice Ingmar Taylor, regarding scrutiny concerns identified in the *Industrial Relations Act 1996—Industrial Court Criminal Practice Note No. 1*
- 7 November 2025 – Letter from Chair to President of the Industrial Court of New South Wales, Justice Ingmar Taylor, regarding minor issues identified in the *Civil Procedure Act 2005 and Industrial Relations Act 1996—Practice Notes No. 34 and No. 35*
- 11 November 2025 – Letter from Chair to Minister for Mental Health, the Hon Rose Jackson MLC, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 14 of 2025
- 11 November 2025 – Letter from Chair to Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 14 of 2025
- 11 November 2025 – Letter from Chair to Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 14 of 2025
- 11 November 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 14 of 2025

Received:

- 11 November 2025 – Letter to Chair from Minister for Work Health and Safety, the Hon Sophie Cotsis MP, regarding scrutiny concerns identified in the *Work Health and Safety 2025*.

6. Consideration of Chair's draft report

The Deputy Chair submitted her draft report entitled Delegated Legislation Monitor No. 15 of 2025, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: 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 18 November 2025.

7. Adoption of Delegated Legislation Monitor No. 14 of 2025 by email

Resolved, on the motion of Mr Murphy: That, as agreed by email on 7 November 2025, the Chair's draft report entitled 'Delegated Legislation Monitor No. 14 of 2025' be adopted and tabled in the House on 11 November 2025.

8. Follow-up of outstanding undertakings

Resolved, on the motion of Mr Donnelly: That the secretariat, on behalf of the Chair, follow up on undertakings made in response to the Committee's scrutiny concerns using the template adopted by the Committee on 11 November 2024.

9. Scheduling of Delegated Legislation Committee meetings in 2026

Resolved, on the motion of Ms Mihailuk: That the Committee's regular meeting to consider the Delegated Legislation Monitor in 2026 be scheduled as follows:

- Monday 2 February 2026, 12.30 pm
- Monday 9 February 2026, 12.30 pm
- Monday 16 March 2026, 12.30 pm
- Monday 23 March 2026, 12.30 pm
- Monday 4 May 2026, 12.30 pm
- Monday 25 May 2026, 12.30 pm
- Monday 1 June 2026, 12.30 pm
- Monday 22 June 2026, 12.30 pm
- Monday 3 August 2026, 12.30 pm
- Monday 14 September 2026, 12.30 pm
- Monday 21 September 2026, 12.30 pm
- Monday 12 October 2026, 12.30 pm
- Monday 19 October 2026, 12.30 pm
- Monday 9 November 2026, 12.30 pm
- Monday 16 November 2026, 12.30 pm
- Monday 23 November 2026, 12.30 pm (reserve week).

10. Adjournment

The Committee adjourned at 12.34 pm.

11. Next Meeting

Sine die.

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 17 October 2025 – Letter from Chair to Minister for Industrial Relations, the Hon Sophie Cotsis MP, regarding the *Work Health and Safety Amendment 2025*
- Sent 17 October 2025 – Letter from Chair to Minister for Local Government, the Hon Ron Hoenig MP, regarding the *Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025*
- Sent 17 October 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding the *Protection from Harmful Radiation Regulation 2025*
- Received 3 November 2025 – Letter to Chair from Minister for the Environment, the Hon Penny Sharpe MLC, regarding the *Protection from Harmful Radiation Regulation 2025*
- Received 4 November 2025 – Letter to Chair from Minister for Local Government, the Hon Ron Hoenig MP, regarding the *Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025*
- Received 11 November 2025 – Letter to Chair from Minister for Industrial Relations, the Hon Sophie Cotsis MP, regarding the *Work Health and Safety Amendment 2025*.



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

17 October 2025

The Hon Sophie Cotsis MP
Minister for Industrial Relations
Minister for Work Health and Safety

D25/072162

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

Dear Minister

Work Health and Safety Regulation 2025

As you are aware, on 19 October 2023 the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

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

- *Work Health and Safety Regulation 2025*

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

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

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

Scrutiny concerns

	Provision	Issue
1	Sections 55C and 55D	The <i>Work Health and Safety Regulation 2025</i> (the regulation), section 55D provides the control measures that a person conducting a business or undertaking (PCBUs) must implement to eliminate or minimise psychosocial risks, so far as is reasonably practicable. The following note is at the foot of the section 55D(3): Note— WHS Act, section 19—see this regulation, section 9. Section 9 provides that if a note in the foot of a provision of the regulation states 'WHS Act' followed by a reference to a section number of the WHS Act, the regulation provision sets out the way in which a person's duty or obligation under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision. A failure to comply with a duty or obligation under a section of the Act referred to in a regulation linked to the Act is an offence to which a penalty applies. Therefore, under section 9, it would be necessary to read section 55D(3) with the <i>Work Health and Safety Act 2011</i>, section 19, which sets out the primary work health and safety duty requiring PCBUs to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work. The Committee notes, however, at the foot of the Model WHS Regulations, regulation 55D, there does not appear to be the same note. Rather the note is placed at the foot of section 55C: 55C Managing psychosocial risks A person conducting a business or undertaking must: (a) manage psychosocial risks in accordance with Part 3.1 other than regulation 36, and (b) implement the control measures required by regulation 55D. Note WHS Act—section 19 (see regulation 9). The Committee notes that throughout the regulation, placement of a note linking a provision with the <i>Work Health and Safety Act 2011</i>, section 19 is typically at the foot of a section relating to the management of risks by a PCBU, i.e., sections 48, 51, 52, 54, 57. The Committee seeks clarification from the Minister as to the rationale for the note at the foot of section 55D, rather than section 55C, noting that this appears to be a departure from the Model WHS Regulations.

Please provide a response to the issue identified as no 1 by **3 November 2025, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.**

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

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

17 October 2025

The Hon Ron Hoenig MP
Minister for Local Government

D25/072166

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

Dear Minister

Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025

As you are aware, on 19 October 2023 the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

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

- *Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(iii) 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[2], section 81B(3)	The <i>Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025</i> (the amending regulation), Schedule 1[2] inserts a new Division 7 dealing with a scheme for the mutual recognition of approvals granted by local governments into the <i>Local Government (General) Regulation 2021</i> (the regulation), Part 2. The new Division is made under the <i>Local Government Act 1993</i> (the Act), Schedule 6, item 8AA, which allows the Governor to make regulations, not inconsistent with the Act, for or with respect to: 8AA A scheme for mutual recognition by councils of approvals under Part 1 of Chapter 7 The new Division includes section 81B(3), which provides: (3) For the purposes of the scheme, in the Act and this regulation— (a) a reference to an approval extends to a recognition certificate, and (b) a reference to an application for an approval extends to an application for a recognition certificate. It is unclear to the Committee whether section 81B(3) is intended to: a) purport to directly change the meaning of terms used in the Act for the purposes of the scheme, by widening the meaning of "approval" under the Act to include recognition certificates, or b) create, by regulation, a parallel version of the Act in which all the references to an approval are also references to a recognition certificate (except for references in the provisions specified in section 81B(4)). Option A If the intention is (a), the Committee is concerned that section 81B(3) purports to change the meaning of terms used in the Act without a specific power (such as a Henry VIII power) to do so. The Committee seeks confirmation of the regulation-making power in the Act that would allow the regulations to extend the meaning of terms used in the Act in this way. The Committee notes that the Explanatory Note to the regulation does not specify that a Henry VIII provision has been relied upon. Option B If the intention is (b), the Committee is concerned that the implications of the provision may not have been fully considered. For example, the Act, section 748(4) provides that "the regulations may create an offence punishable by a penalty not exceeding 10 penalty units". If the effect of the regulation, section 81B(3) is to create another version of the text of the Act in which "approval" includes "recognition certificate", then it would appear to the Committee that the regulation creates a version of the Act, section 627(2) containing an offence of carrying out an activity

	otherwise than in accordance with the terms of the recognition certificate, with a maximum penalty of 20 penalty units, which would be impermissible because of section 748(4). The Committee seeks confirmation of the consideration given to the implications of option (b), if that was the intention. In any case, the Committee seeks confirmation of the intended meaning of section 81B(3) and the consideration given to its implications.
--	---

Please provide a response to the issue identified as no 1 by **3 November 2025, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.**

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

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

17 October 2025

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

D25/072169

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

Dear Minister

Protection from Harmful Radiation Regulation 2025

As you are aware, on 19 October 2023 the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

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

- *Protection from Harmful Radiation Regulation 2025*

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

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

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

Scrutiny concerns

	Provision	Issue
1	Section 70	The <i>Protection from Harmful Radiation Regulation 2025</i> (the regulation), section 70(1) provides that an employer or person responsible for regulated material must not destroy or otherwise dispose of a record required to be kept under the regulation, otherwise than in accordance with the section. Section 70(3) provides that if the record is required to be kept by an employer under section 51 (relating to personal radiation exposure records), "the record must not be destroyed or otherwise disposed of until at least 5 years after the employee concerned ceases to be employed by the employer." However, under section 70(4) and (5): (4) An employer may forward a required record to the Authority if the employer ceases to carry on business in New South Wales. (5) The Authority may dispose of a required record forwarded to, or otherwise kept by, the Authority. The Committee seeks confirmation that the intention is that subsection (5) is to be read as being subject to subsection (3), such that the Authority must keep a record forwarded pursuant to subsection (4) for at least 5 years after the employee concerned ceases to be employed by the employer. Assuming this to be the case, the Committee suggests that in future drafting consideration be given to stating the scope of this obligation more clearly.
2	Sections 14(2)(b), 15(2)(a)(ii), 16(2), 17(2)(a), (b)(i) and (d), 19(2)(b)(i), 20(2)(a), 24(2)(a) and 26(2)(a) (the relevant sections)	The relevant sections set out exemptions from the requirement contained in the <i>Protection from Harmful Radiation Act 1990</i> (the Act) to hold a radiation user licence. The exemptions are contingent on the person being "subject to immediate supervision". For example, section 16(2) sets out an exemption for industrial radiographer assistants as follows: (2) The person is exempt from the requirement to hold a radiation user licence under the Act, section 7 for the use of regulated material in the course of employment if the person, when using the material, is subject to immediate supervision. "Immediate supervision" is defined in section 9 as follows: immediate supervision, of a person using regulated material, means the supervision of the person— (a) by a qualified person who, at all times when the person being supervised uses the material— (i) is physically present with the person being supervised, and (ii) observes and directs the use of the material, and (b) for the purposes of ensuring the person being supervised follows safe radiation work practices for the use of the material. The Committee's concern is that, given the involved nature of "immediate supervision", which requires a qualified person to be physically present and

	observing at all times, whether or not an exemption in the relevant sections applies is dependent on the actions of a third party. For example, if, when an industrial radiographer assistant is using regulated material, the qualified person supervising them leaves the room, it appears to the Committee that the industrial radiographer assistant may no longer have the benefit of the exemption in section 16, through no fault of their own. The Committee does not query the policy of requiring persons using regulated material under exemptions to be subject to immediate supervision. This policy appears to be obviously sensible. However, the Committee does note that: • students, registrars, assistants and people in similar roles may not be able to control whether their supervisors diligently provide them with immediate supervision as required by the regulation, and • if an exemption does not apply, the penalty for using regulated material without a radiation user licence is 250 penalty units or imprisonment for 2 years, or both. It is also unclear to the Committee whether a person who, through no fault of their own, discovers that their supervision requirements have fallen short of the statutory standard would have the benefit of a common law defence of honest and reasonable mistake of fact. The Committee seeks confirmation of whether alternative regulatory mechanisms have been considered, for example: • rephrasing the relevant sections so that they require the person to, when using the material, make all reasonable efforts (or similar language) to ensure that they are subject to immediate supervision, or • relying on the requirement in section 32, which creates an offence of a qualified person failing to provide the kind of supervision required for an exemption, to achieve the policy goal of ensuring that the required supervision is provided.
--	--

Please provide a response to the issue identified as nos 1 and 2 by **3 November 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: D25/072169
Our ref: MD25/6568

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

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

Dear Ms Maclaren-Jones *Natasha*

Thank you for your letter on behalf of the Delegated Legislation Committee (the Committee) regarding the Protection from Harmful Radiation Regulation 2025 (the Regulation). I appreciate you bringing the Committee's concerns to my attention.

As you would be aware, the Regulation was published on 29 August 2025 with most provisions commencing on that date.

Regarding the specific issues outlined in your correspondence, I can provide the following information:

Retention of records

The Committee has sought clarification as to whether requirements for the retention of records under section 70 of the Regulation must be observed by the NSW Environment Protection Authority (EPA) in respect of records forwarded to the EPA under that provision.

As you note:

- section 70(3) provides that a record kept by an employer which relates to an employee's personal radiation exposure "must not be destroyed or otherwise disposed of until at least 5 years after the employee concerned ceases to be employed by the employer"
- section 70(4) provides for any such record to be forwarded to the EPA if the employer ceases to carry on business in New South Wales; and
- section 70(5) provides that the EPA may dispose of a record forwarded to, or otherwise kept by, the EPA.

I confirm that the intention of section 70(5) of the Regulation is that it be read as being subject to section 70(3). Accordingly, section 70(5) requires the EPA to retain relevant records for at least five years. The EPA agrees with this interpretation.

Under the circumstances, I do not consider that change is currently required to the provision. However, for the purposes of providing certainty, I accept the Committee's suggestion that in future drafting consideration be given to stating the scope of this obligation more clearly.

Immediate supervision of certain exempt persons

The Committee raised concerns about whether it is appropriate for the exemption from the requirement to hold a radiation user licence to be contingent on immediate supervision where the exempt person cannot ensure this is provided. You note the example of a supervisor leaving the room or absenting themselves beyond the control of the person being supervised.

To ensure the requirements of the Regulation are known and understood, the EPA provides information about radiation user licence exemption and supervision requirements and the obligations of exempt persons, qualified persons and persons responsible for regulated material in relation to licensing exemptions on its website at www.epa.nsw.gov.au/Your-environment/Radiation/radiation-user-licence/user-licence-introduction/user-licence-exemptions-requirements and www.epa.nsw.gov.au/Your-environment/Radiation/managing-radiation-nsw/changes-regulation-radiation.

As you note, different offences under the Act and Regulation may apply where a person is using regulated material without the requisite level of supervision. In considering whether an individual, their supervisor, or the person responsible for the regulated material should be held liable for any failure of an exempt person to be supervised, the EPA would apply its Regulatory Policy to the relevant facts and circumstances in each specific case. The EPA's Regulatory Policy is available at www.epa.nsw.gov.au/Licensing-and-Regulation/Regulation.

Prosecution action against an exempt person would be one option among several regulatory tools. However, that option would only be pursued if the circumstances warranted that degree of response, taking into consideration relevant factors in the EPA's Prosecution Guidelines. These guidelines can be found at www.epa.nsw.gov.au/Publications/legislation/Prosecution-Guidelines.

Given the available information about the requirements and that if there is any breach, there are other regulatory responses available other than prosecution with regulatory decisions made in accordance with the EPA's regulatory framework, no change is proposed to the relevant provisions.

Thank you for taking the time to bring these matters to my attention.

Sincerely

Penny Sharpe MLC

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

3/11/25

The Hon. Ron Hoenig MP

Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government



Your Ref: D25/072166
Our Ref: A983843 / MO25-0547

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

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

Dear Ms Maclaren-Jones,

Thank you for your letter about the Local Government (General) Amendment (Mutual Recognition of Approvals) Regulation 2025 (Amending Regulation).

I can confirm that the intended operation of section 81B(3) of the Amending Regulation corresponds to Option B as outlined in your letter. Section 81B(3) is intended to make clear that, for the purposes of the mutual recognition of approvals scheme (scheme), a reference to an 'approval' is to be considered a reference to a 'recognition certificate.' The provision is not intended to alter the meaning of terms in the *Local Government Act 1993* (the Act). This approach, as the Committee noted, effectively creates a 'parallel' version, or conditional duplication, of the Act within the scheme's context, with defined exceptions. This ensures that a council's recognition of another council's approval operates effectively under a familiar framework, without the Amending Regulation claiming to redefine any terms in the Act.

The intent of the Amending Regulation is to stay within the Act's limits and to uphold its purpose, while delivering the practical benefits of mutual recognition of approvals. This allows councils to recognise approvals granted by other councils for certain activities. It also reduces duplication and delay for businesses and individuals whilst abiding to local conditions. Option B achieves this by integrating the recognition certificate into the existing approval.

I acknowledge the Committee's concern regarding offence provisions. Notably the question of whether section 81B(3) of the Amending Regulation may inadvertently create an offence with a higher penalty than permitted under section 748(4) of the Act.

I have consulted with the Office of Local Government (OLG) and can confirm that this issue was carefully considered. It is not intended that the Amending Regulation create a version of section 627 of the Act, containing an offence for carrying out an activity otherwise than in accordance with the terms of the recognition certificate.

The only new offence introduced by the Amending Regulation is in section 81F(1), which imposes a duty on recognition certificate holders to notify the council of any modification or revocation of the original approval. The penalty for this offence is expressly and appropriately capped at 10 penalty units, in accordance with the requirements of section 748(4) of the Act.

This offence and penalty are clearly separate to and distinct from the offence under section 627 of the Act for failing to comply with an approval.

An offence under section 627 of the Act applies to an approval for breaches to conditions of an approval to operate issued by any council, with a maximum penalty of 20 penalty units. This offence and penalty apply to a breach of any local conditions of the (original) approval imposed by a council, as well as any supplementary conditions integrated within that approval by another council. The recognition certificate, which may include local conditions, only exists by virtue of the original approval and becomes part of the original approval. The offence and its penalty are therefore set by the Act itself and are not created by the Amending Regulation. This ensures consistent enforcement while remaining within the scope of the regulation-making power.

Further, this Amending Regulation was drafted by Parliamentary Counsel's Office, with instruction from OLG and the Department of Planning, Housing and Infrastructure, and an opinion was issued by the Parliamentary Counsel that the Amending Regulation may legally be made.

Thank you for bringing this important matter to my attention. If you have any questions, you are welcome to contact Ms Tina Baldock, Director Sector Policy at OLG on

Yours sincerely,

The Hon. Ron Hoenig MP
Leader of the House in the Legislative Assembly
Vice-President of the Executive Council
Minister for Local Government

The Hon Sophie Cotsis MP

Minister for Industrial Relations
Minister for Work Health and Safety



Ref: COR-05196-2025

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

Re: Work Health and Safety Regulation 2025

Dear Committee Chair

Natasha

Thank you for your correspondence about the Delegated Legislation Committee's consideration of the Work Health and Safety Regulation 2025 (the Regulation).

I acknowledge that the Committee has identified an issue under section 9(1)(b)(vii) of the *Legislation Review Act 1987*, on the basis that the form or intention of the Regulation calls for elucidation. I understand that the Committee seeks clarification regarding an apparent inconsistency with the Model WHS Regulations. In particular, in connection with a note which is included at the foot of section 55D of the Regulation as opposed to at the foot of section 55C, as is the case in the Model WHS Regulations.

Sections 55C and 55D were introduced into the Model WHS Regulations by the Model Work Health and Safety Legislation Amendment 2022, with the note in question included by this instrument at the foot of section 55D.¹ Subsequently, the Model Work Health and Safety Legislation Amendment (Offences and Penalties) 2023 made a technical amendment to remove the note from the foot of section 55D and reinsert it at the end of section 55C.² Inadvertently, this technical amendment has not been adopted in NSW.

To ensure consistency with the current version of the Model WHS Regulations, I confirm that I will identify a suitable opportunity to seek to amend the Regulation with a view to relocating the relevant note to the foot of section 55C.

I would like to thank the Committee for its diligent work and for bringing this matter to my attention.

Yours sincerely,

Sophie Cotsis MP

Minister for Industrial Relations
Minister for Work Health and Safety

Date: *11.11.23*

¹ See <https://www.safeworkaustralia.gov.au/sites/default/files/2023-10/Model%20Work%20Health%20and%20Safety%20Legislation%20Amendment%202022.PDF>, p 19.

² See https://www.safeworkaustralia.gov.au/sites/default/files/2023-07/model-whs-legislation-amendment_offences-penalties_july2023.pdf, p 10.

