LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor
No. 11 of 2025

16 September 2025

www.parliament.nsw.gov.au

Delegated Legislation Committee

Delegated Legislation Monitor No. 11 of 2025

Ordered to be printed Tuesday 16 September 2025

New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 11 of 2025

'September 2025'

Chair: Hon Natasha Maclaren-Jones MLC

ISSN: 2982-0111

Table of contents

Committee details

Committee members

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

Contact details

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

Hon Natasha Maclaren-Jones MLC
Committee Chair

Secretariat

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

Overview of the Delegated Legislation Monitor

Operation of the Committee's technical scrutiny function

1.1 The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.[1] The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.[2]

1.2 On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in Legislation Review Act 1987, section 9(1)(b) on a 12-month trial basis from the first sitting day in 2024.[3]

1.3 On 12 February 2025, the Legislative Council resolved to amend the resolution establishing the Regulation Committee to permanently expand the Committee to include the technical review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). The House also resolved to change the name of the Regulation Committee to the Delegated Legislation Committee to more accurately reflect the Committee's role and remit.

1.4 Paragraph (3) of the amended resolution requires that:

> The committee is:
>
> (a) to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in section 9(1)(b) of the *Legislation Review Act 1987*.
>
> (b) may report on such instruments as it thinks necessary, including setting out its opinion that an instrument or portion of an instrument ought to be disallowed and the grounds on which it has formed that opinion, and
>
> (c) may consider and report on an instrument after it has ceased to be subject to disallowance if the committee resolves to do so while the instrument is subject to disallowance.".

1.5 In accordance with paragraph (3), the Committee considers any instrument that is disallowable, during the period within which it may be disallowed. This includes 'statutory rules', within the meaning of the *Interpretation Act 1987*, that are disallowable by virtue of section 41 of that Act. It also includes other instruments to which section 41 applies indirectly, i.e., where the Act under which an instrument is made provides it is to be treated as if it were a statutory rule for the purposes of section 41.

1.6 A list of instruments that are subject to disallowance is published on the Parliament's website on the first Tuesday of each month and each Tuesday when the Legislative Council is sitting.

---

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

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

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

1.7 With regard to the scrutiny principles the Committee is required to assess instruments against, the *Legislation Review Act 1987*, section 9(1)(b) sets out eight grounds of scrutiny as follows:

(i) that the regulation trespasses unduly on personal rights and liberties

(ii) that the regulation may have an adverse impact on the business community

(iii) that the regulation may not have been within the general objects of the legislation under which it was made

(iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made

(v) that the objective of the regulation could have been achieved by alternative and more effective means

(vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act

(vii) that the form or intention of the regulation calls for elucidation, or

(viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

1.8 The Committee has published guidelines on its webpage that provide an overview of its intended approach to its technical scrutiny function and specific guidance in respect of each of these eight grounds.

1.9 Each sitting week, the Committee publishes a Delegated Legislation Monitor setting out its progress and conclusions relating to the technical scrutiny of disallowable instruments. The monitor sets out matters where the Committee has sought further information from the responsible minister, department or other body, the Committee's conclusions in relation to instruments where concerns have been raised and a list of those instruments the Committee has reviewed which have not raised scrutiny concerns.

1.10 In addition to the regular publication of monitors the Committee may, from time to time and under paragraph (2) of the resolution establishing it, inquire into and report on:

(a) any instrument of a legislative nature regardless of its form, including the policy or substantive content of the instrument,

(b) draft delegated legislation, and

(c) trends or issues in relation to delegated legislation.

Conclusions and structure of Monitor No. 11 of 2025

1.11 For this monitor, the Committee has reviewed 12 instruments published on the NSW legislation website or in the NSW Government Gazette between 4 July 2025 and 22 August 2025. The Committee has:

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

1.12 A further 43 instruments notified between 27 June 2025 and 10 September 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).

Surrogacy Amendment (Qualified Counsellors) Regulation 2025

SI number	2025 No 326
Published on Legislation Website	02/07/2025
Tabled in Legislative Council	05/08/2025
Last date of notice for disallowance motion	11/11/2025

Overview

1.1 The *Surrogacy Amendment (Qualified Counsellors) Regulation 2025* (the amending regulation) amends the *Surrogacy Regulation 2016* (the regulation) to:

(a) consolidate definitions of qualified counsellor for the *Surrogacy Act 2010* (the Act), and

(b) allow overseas counsellors to exercise the functions of a qualified counsellor under the Act for surrogacy arrangements entered into outside Australia, and

(c) allow the continuation of counselling arrangements made with a person who met the experience and qualification requirements to exercise the functions of a qualified counsellor under the Act before this regulation commences, and

(d) allow the affected parties in relation to a surrogacy arrangement entered into outside Australia before the commencement of the amendments to engage a counsellor qualified in Australia or in a jurisdiction outside Australia to exercise functions under the Act.

1.2 The amending regulation was made under the *Surrogacy Act 2010* (the enabling Act), section 4(1), and commenced on publication on the NSW legislation website on 2 July 2025.

1.3 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 Attorney General, the Hon Michael Daley MP, on 18 July 2025. The Attorney General responded on 4 September 2025. This correspondence is included in Appendix 2.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

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

1.5 The enabling Act, section 4(1), definition of **qualified counsellor**, defines a qualified counsellor to be a person who has the experience or qualifications (or both) of a kind required by the regulations to exercise the functions of a counsellor under this Act.

1.6 The amending regulation proposed to insert clause 6A into the regulation and provides that, to exercise the functions of a counsellor for a surrogacy arrangement entered into outside Australia, a person must—

> (c) be one or more of the following—
>
> …
>
> (v) authorised to practise as a psychiatrist by a law of a jurisdiction outside Australia,
> (vi) authorised to practise as a psychologist by a law of a jurisdiction outside Australia,
> (vii) authorised to undertake social work by a law of a jurisdiction outside Australia.

1.7 The Committee sought clarification from the Attorney General regarding the intended meaning of the words 'a jurisdiction outside Australia' in the amending regulation, proposed clause 6A(c)(v)-(vii), as it was unclear to the Committee whether the person could be qualified as a psychiatrist, psychologist or social worker in a country unconnected to the country in which the surrogacy arrangement was entered into. The Committee also queried whether the intention of the proposed clause was instead to provide that a qualified counsellor was to be qualified in either Australia or the same jurisdiction as the jurisdiction in which the surrogacy arrangement was entered into. In the event that this was the case, the Committee considered whether the drafting of proposed clause 6A(c)(v)-(vii) should instead have included the word '**the** jurisdiction outside Australia' rather than '**a** jurisdiction outside Australia'.

1.8 In its request for clarification, the Committee also noted that psychiatrists, psychologists and social workers who have trained overseas do not have their qualifications automatically recognised when they come to Australia and seek to work. In light of this, as the insertion of clause 6A was designed to facilitate counsellors in overseas jurisdictions for the purposes of an Australian law, the Committee also queried whether the clause should have included provisions specifying what exact qualifications were to be recognised as being equivalent and whether the provisions should have included agreed definitions of 'psychiatrist', 'psychologist' and 'social worker'.

1.9 In response to the Committee's query regarding the intended meaning of the words 'a jurisdiction outside Australia' in proposed clause 6A(c)(v)-(vii), the Attorney General stated the following:

The words 'a jurisdiction outside Australia' in clause 6A(c)(v) - (vii) are intended to provide flexibility to parties to an international commercial surrogacy agreement to select a counsellor who can best support the birth mother, intended parents and other affected parties.

Targeted stakeholder consultation and research conducted by the Department of Communities and Justice indicated that there may be circumstances where it is beneficial for a party to an overseas surrogacy arrangement to be able to engage a counsellor in a jurisdiction other than the jurisdiction in which the surrogacy agreement was entered into. This could include where:

- a birth mother, a birth mother's partner and/or another birth parent live in a location other than the jurisdiction where the surrogacy arrangement was entered into and wish to access ongoing, face-to-face care;
- a counsellor able to comply with clauses 6A(a) and (b) of the Regulation, or any other requirement of the Act, is not available in the jurisdiction where the surrogacy arrangement was entered into;
- a counsellor from a different jurisdiction is required to allow an affected party to access culturally or linguistically appropriate or ongoing care; or
- there is ambiguity as to where the surrogacy arrangement was 'entered into' (for example, if the arrangement was signed digitally or in counterparts).

Further, requiring a counsellor to be connected to the country in which the surrogacy arrangement was entered into is unlikely to be a meaningful safeguard, given that the Act permits the granting of a parentage order regardless of the jurisdiction in which the arrangement was entered, so long as preconditions are met.

1.10 In response to the Committee's query regarding whether clause 6A should have included provisions specifying criteria for measuring the equivalence of qualifications and agreed definitions of 'psychiatrist', 'psychologist' and 'social worker', the Attorney General stated the following:

The Act and Regulation impose additional requirements that mitigate against the risk of the relevant functions being performed by a counsellor who is not suitably qualified.

Clause 6A provides that, in addition to being authorised to practice as a psychiatrist, psychologist or social worker in a jurisdiction outside of Australia, the qualified counsellor must also:

- hold a qualification conferred by a university, after the equivalent of at least 3 years full time study;
- have specialised knowledge, based on the person's training, study or experience, of the social and psychological implications of a surrogacy arrangement.

In addition, if the counsellor is providing an independent counsellor's report, clause 6B requires the counsellor to have specialised knowledge, based on their training, study or experience, that enables the person to give opinion evidence of the matters referred to in

section 17 of the Act. The Act also provides that any laws or rules of the court relating to the adducing of opinion evidence apply in relation to the independent counsellor's report.

The independent counsellor is also required to adhere to the same rules of evidence as all other foreign experts adducing opinion evidence in Australian Courts, and abide by the witness code of conduct. Both contain stringent requirements to ensure the Court can make an appropriate assessment of the admissibility and credibility of the evidence put before it, including the qualifications of the expert to prepare the report.

Noting the key role that the Supreme Court plays under the Act through making parentage orders, it is appropriate to allow the Court to satisfy itself that it is considering material prepared by a suitably qualified individual. Further provisions relating to qualifications are not necessary.

Committee conclusion

1.11 The Committee appreciates the Attorney General's considered engagement with the scrutiny concerns raised by the Committee.

1.12 With regard to the Committee's query relating to whether clause 6A should have included provisions specifying criteria for measuring the equivalence of qualifications and agreed definitions of 'psychiatrist', 'psychologist' and 'social worker', the Committee considers any technical scrutiny concerns to be concluded. While noting that the different requirements for qualified counsellors depending on whether the surrogacy arrangement takes place in Australia or overseas may have a policy impact, consideration of that policy impact is not within the technical scrutiny function of this Committee.

1.13 The Committee acknowledges the clear and comprehensive explanation regarding the intention of the Government in relation to extended jurisdictional surrogacy arrangements. However, whilst the Committee recognises the application of the Act, section 17 in relation to independent counsellor reports, and the role of the Supreme Court, the Committee notes that without agreed definitions of 'psychiatrist', 'psychologist' and 'social worker', there remains potential uncertainty in the application of the amending regulation regarding how and whether equivalent standards to those that apply in New South Wales will be measured and met. While noting this potential uncertainty, the Committee is not of the view that it amounts to an outstanding scrutiny concern.

1.14 In light of this, 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 *Surrogacy Amendment (Qualified Counsellors) Regulation 2025*.

Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025

SI number	2025 No 392
Published on Legislation Website/	8/08/2025
Tabled in Legislative Council	9/09/2025
Last date of notice for disallowance motion	18/11/2025

Overview

1.15 The *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025* (the regulation) commenced on 1 September 2025. The regulation remakes, without substantial changes, the *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2019*, which was automatically repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2).

1.16 The regulation was made under the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* (the Act), in particular sections 7, 17 and 14.

1.17 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(viii) in relation to the regulation by letter sent to the Minister for Natural Resources, the Hon Courtney Houssos MLC, on 26 August 2025. The Minister responded on 5 September 2025. This correspondence is included in Appendix 2.

Scrutiny concerns

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

1.18 This ground requires the Committee to consider the extent to which the minister responsible for a regulation has complied with relevant duties relating to the preparation of a regulation, imposed upon the relevant minister by the *Subordinate Legislation Act 1989*.

1.19 The *Subordinate Legislation Act 1989*, section 5(1) applies to 'principal statutory rules', being, in essence, statutory rules other than amending statutory rules.[4] The *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025* is a principal statutory rule.

1.20 Section 5(1) provides that:

> Before a principal statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, a regulatory impact statement complying with

[4] *Subordinate Legislation Act*, section 3(1), definition of ***principal statutory rule***.

> Schedule 2 is prepared in connection with the substantive matters to be dealt with by the statutory rule.

1.21 The *Subordinate Legislation Act 1989,* Schedule 2 requires a regulatory impact statement (a RIS) to include a statement of the objectives sought to be achieved by the statutory rule, an identification of the alternative options by which the objections can be achieved, an assessment of the costs and benefits of the statutory rule and each alternative option, an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community, and a statement of the consultation program to be undertaken. Notice of the statutory rule must be published before the principal statutory rule is made, along with advice as to where a copy of the RIS may be obtained or inspected, inviting comments and submissions within a specified time, being not less than 21 days from publication of the notice.[5]

1.22 However, section 6(1)(a) provides that it is not necessary to comply with section 5 to the extent that 'the responsible Minister certifies in writing that, on the advice of the Attorney General or the Parliamentary Counsel, the proposed statutory rule comprises or relates to matters set out in Schedule 3'.

1.23 The *Subordinate Legislation Act 1989,* Schedule 3 comprises a list of matters not requiring a RIS, and includes, for example 'matters of a machinery nature' (item 1), 'matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory' (item 4) and 'matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public, having regard to any assessment of those issues by the relevant agency after the consideration and application of relevant guidelines set out in Schedule 1 to this Act' (item 6).

1.24 Relevantly, 'matters of a machinery nature' is not further defined.

1.25 The Committee observed that the Explanatory Note for the regulation stated:

> This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature.

1.26 A RIS was therefore not required to be prepared under the *Subordinate Legislation 1989*, section 5.

1.27 However, the Committee noted that the regulation, section 4 authorised money required to meet expenditure incurred by the Department of Primary Industries and Regional Development in relation to the *Explosives Act 2003* and the *Protection From Harmful Radiation Act 1990* to be paid from the Mine and Petroleum Site Safety Fund.

1.28 The *Mine and Petroleum Site Safety (Cost Recovery) Act 2005*, section 7(1)(e), is the regulation-making power for the regulation, section 4. It provides that '[t]he following is to be paid from the Fund…

> (e) all other money directed or authorised to be paid from the Fund by this Act or by the regulations under this Act.'

[5] *Subordinate Legislation Act*, section 5(2)(a).

1.29 The Committee did not query the legality of, or the policy reasons for, section 4. However, the Committee did note that a regulation made under section 7(1)(e) did not appear to be necessary for the operation of the Act, and that the particular expenditure authorised by section 4 is not specifically anticipated by the Act.

1.30 Therefore, it appeared to the Committee that, on its face, it was unclear on what basis section 4 was considered to comprise or relate to 'matters of a machinery nature', and the Committee wrote to the Minister seeking confirmation of the reasons for this position.

1.31 The Minister provided a helpful and thorough response, stating the following:

> While the [*Subordinate Legislation Act 1989*] does not define how a regulation is taken to provide for matters of a 'machinery nature', my Department has anticipated this to mean regulations which are intended to give further procedural or operational effect to matters substantively covered by the regulation's parent Act.
>
> The Act provides, at sections 7(1)(a) and (b), that the Mine and Petroleum Site Safety Fund is to be used to meet expenditure incurred by the Department in carrying out regulatory activities in connection with the 'mine and petroleum site safety legislation' (the WHS legislation). The definition in the Act for what constitutes the WHS legislation includes the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* itself, the *Work Health and Safety (Mines and Petroleum Sites) Act 2013,* provisions of the *Work Health and Safety Act 2011* to the extent that it relates to a mine or petroleum site, and any regulations made under these Acts.
>
> While the WHS legislation does not explicitly include the Acts listed in section 4 of the Regulation (the *Explosives Act 2003* and the *Protection from Harmful Radiation Act 1990*), the WHS legislation captures all work health and safety hazards and risks arising from work, including those relating to the use of explosives and from ionising radiation. For example, Schedule 2 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 requires mine operators to develop an explosives control plan, and a health control plan which addresses hazards including exposure to ionising radiation.
>
> Significantly, the WHS legislation authorises the Secretary of the Department, and the officials the Secretary appoints, to regulate compliance with all WHS hazards and risks arising from work at mine and petroleum sites. That is, the performance of regulatory activities pertaining to explosives and radiation hazards are authorised by the WHS legislation as presently defined in the Act.
>
> The *Explosives Act 2003* and *Protection from Harmful Radiation Act 1990* contain specific provisions relating to safety at mine sites. This legislation further enables the regulation of these particular hazards. The Acts form part of, and give effect to, the overarching work health and safety framework which is established by the mine and petroleum site safety legislation listed in the Act. Specifically, authority for the Secretary of the Department to perform certain functions in relation to radiation hazards and explosives is conferred by the Protection from Harmful Radiation Regulation 2013 (section 47) and Explosives Regulation 2024 (section 4), which in turn specify that these functions may be exercised at workplaces to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies.

> Inclusion of the *Explosives Act 2003* and the *Protection from Harmful Radiation Act 1990* in the Regulation makes unambiguous that the Department's safety compliance work for these particular hazards may be funded from the Mine and Petroleum Site Safety Fund. Were section 4 not included in the Regulation, the object of the Act – to provide for the funding of regulatory and administrative activities in connection with safety at mine and petroleum workplaces – would be impeded. Without being able to fund regulatory activities under these two Acts, as authorised by section 4, the Department would have less capacity to perform its existing regulatory activities and, as a consequence, safety at the State's mine and petroleum sites could be compromised.
>
> It is for these reasons that inclusion of section 4 in the Regulation is important for the operation of the Act and necessary for achieving its objects described in the long title of the Act…

1.32 In the response, the Minister also noted that the regulation was remade in substantially the same terms as previous iterations of the regulation made in 2013 and 2019, each of which included a provision equivalent to section 4, and that these regulations had been characterised as comprising or relating to matters of a machinery nature.

Committee conclusion

1.33 The Committee appreciates the Minister's considered and comprehensive engagement with the Committee's scrutiny concerns. As noted above, 'matters of a machinery nature' is not defined in the *Subordinate Legislation Act 1989*, so it is unclear how departments and stakeholders interpret this phrase, and whether it is being applied consistently. It was therefore helpful for the Committee to be provided with a detailed account of how a particular department has interpreted and applied it.

1.34 The Committee considered the Minister's clear articulation of the object of the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* and subsequent explanation of how the object of the Act would be impeded if section 4 were not included and how section 4 fits into the broader regulatory scheme to be a particularly persuasive account of why section 4 is machinery in nature.

1.35 While the Committee is satisfied with the Minister's response, the Committee also expresses the following preliminary views about 'matters of a machinery nature' generally, which should not be taken as a further comment on the *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025* in particular. The Committee considers that, in general:

- caution should be taken in characterising a regulation as comprising or relating to matters of a machinery nature where the regulation authorises money to be paid from a statutory fund, where the authorisation of that expenditure is not necessary for the operation of the relevant Act or is not specifically anticipated by the Act, and
- while it can be helpful to note that a previous iteration of a regulation had been considered to comprise or relate to a matter of a machinery nature, that in itself is not persuasive. Each time a new principal statutory rule is made, a substantive exercise to determine whether the rule comprises or relates to a matter listed in the *Subordinate Legislation Act 1989,* Schedule 3 should be undertaken.

1.36 In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(viii) have been appropriately addressed. The Committee concludes its scrutiny of the *Mine and Petroleum Site Safety (Cost Recovery) 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
Co-operatives (New South Wales) Regulation 2025	2025 No 410
Crimes (Domestic and Personal Violence) Regulation 2025	2025 No 411
Police Amendment Regulation 2025	2025 No 413
Registered Clubs Regulation 2025	2025 No 414
Work Health and Safety Amendment (Silica Worker Register) Regulation 2025	2025 No 417
Border Fence Maintenance Regulation 2025	2025 No 427
Child Protection (Offenders Prohibition Orders) Regulation 2025	2025 No 428

Chapter 3 Instruments raising scrutiny concerns

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

Responsible minister or body	**Instrument**	**SI number / GG reference**
Minister for the Environment	National Parks and Wildlife Amendment Regulation 2025	2025 No 329
Attorney General	Summary Offences Regulation 2025	2025 No 394
Minister for the Environment	National Parks and Wildlife Act 1974—Erratum	NSWGG-2025-291-2

Appendix 1 Minutes

Draft minutes no. 28
Monday 15 September 2025
Delegated Legislation Committee
Room 1136, Parliament House, Sydney, 12.32 pm

1. Members present
Mrs Maclaren-Jones, *Chair*
Mrs Carter
Mr Donnelly
Ms Mihailuk *(via teleconference)*
Mr Murphy
Mr Nanva *(via teleconference)*

2. Apologies
Ms Boyd *(Deputy Chair)*

3. Previous minutes
Resolved, on the motion of Mr Donnelly: That draft minutes no. 27 be confirmed.

4. Correspondence
The Committee noted the following items of correspondence:

Sent:

- 5 September 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *National Parks and Wildlife Act 1974- Erratum (NSWGG-2025-291-2)*.
- 9 September 2025 – Letter from Chair to the Presiding Member of the Legal Profession Admission Board, the Hon Justice Anthony Payne, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 10 of 2025.
- 9 September 2025 – Letter from Chair to Chief Magistrate of the Local Court of New South Wales, His Honour Judge Michael Allen, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 10 of 2025.
- 9 September 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. 10 of 2025.
- 9 September 2025 – Letter from Chair to Minister for Health, the Hon Ryan Park MP, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 10 of 2025.

Received:

- 4 September 2025 – Letter from Attorney General, the Hon Michael Daley MP, regarding scrutiny concerns identified in the *Surrogacy Amendment (Qualified Counsellors) Regulation 2025*.
- 5 September 2025 – Letter from Minister for Natural Resources, the Hon Courtney Houssos MLC, regarding scrutiny concerns identified in the *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025*.

5. Consideration of Chair's draft report

The Chair submitted her draft report entitled Delegated Legislation Monitor No. 11 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 16 September 2025.

6. Use of surveillance devices by anticorruption bodies across Australia and the tabling of the *Surveillance Devices Amendment (ICAC) Regulation 2025*

Committee noted the following:

- the document prepared by the secretariat, as resolved at the meeting of the Committee on 8 September 2025, providing a jurisdictional comparison regarding the legislative basis for the use of surveillance devices by anticorruption bodies across Australia,
- the publication on the NSW legislation website on 10 September 2025 of the *Surveillance Devices Amendment (ICAC) Regulation 2025*, which was tabled in the Legislative Council on Thursday 11 September 2025,
- the object of this amending regulation is to extend the exemption of the Independent Commission Against Corruption (ICAC) from the *Surveillance Devices Act 2007*, Part 2 in relation to the use of surveillance device recordings unlawfully obtained by a person other than ICAC,
- the *Surveillance Devices Act 2007*, section 59(3) provides that the amendment takes effect on and from the expiry of the period during which either House of Parliament may, under the *Interpretation Act 1987*, section 41, disallow the regulation. Therefore, the amending regulation will take effect from Friday 21 November 2025, given that the last date for notice of disallowance in the Legislative Council is currently Thursday 20 November 2025.

7. Research request to the Parliamentary Research Service regarding regulation trends

The Committee noted the following resolution of 8 September 2025: That the Committee request that the Parliamentary Research Service undertake research into the historical data trends relating to subordinate legislation, including the proportion of legislation that is subordinate or primary and how this proportion has changed over time.

The Committee noted that given there are no further issues to be incorporated into the research request, the request will now be provided to the Research Service.

8. Adjournment

The Committee adjourned at 12.35 pm.

9. Next Meeting

Monday 13 October 2025, 12.30 pm, Room 1136 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 12 of 2025).

Madeleine Dowd
Committee Clerk

Appendix 2 Correspondence

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

- Sent 18 July 2025 – Letter to Attorney General, the Hon Michael Daley MP, regarding the *Surrogacy Amendment (Qualified Counsellors) Regulation 2025*.
- Sent 26 August 2025 – Letter to Minister for Natural Resources, the Hon Courtney Houssos MLC, regarding the *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025*.
- Received 4 September 2025 – Letter from Attorney General, the Hon Michael Daley MP, regarding the *Surrogacy Amendment (Qualified Counsellors) Regulation 2025*.
- Received 5 September 2025 – Letter from Minister for Natural Resources, the Hon Courtney Houssos MLC, regarding the *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025*.

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

18 July 2025

The Hon Michael Daley MP
Attorney General

D25/039991

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

Dear Attorney General,

Surrogacy Amendment (Qualified Counsellors) Regulation 2025

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

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which is to be tabled in Parliament on 5 August 2025:

- *Surrogacy Amendment (Qualified Counsellors) Regulation 2025*

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

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

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

Scrutiny concerns

	Provision	Issue
1	Schedule 1[2], proposed clause 6A(c)(v)-(vii)	The *Surrogacy Act 2010* (the ***Act***), section 4(1), definition of ***qualified counsellor***, defines a 'qualified counsellor' to be a person who has the experience or qualifications (or both) of a kind required by the regulations to exercise the functions of a counsellor under this Act. The *Surrogacy Amendment (Qualified Counsellors) Regulation 2025* (the ***amending regulation***) proposes to insert clause 6A into the *Surrogacy Regulation 2016* (the ***regulation***) and provides that, to exercise the functions of a counsellor for a surrogacy arrangement entered into outside Australia, a person must— (c) be one or more of the following— … (v) authorised to practise as a psychiatrist by a law of a jurisdiction outside Australia, (vi) authorised to practise as a psychologist by a law of a jurisdiction outside Australia, (vii) authorised to undertake social work by a law of a jurisdiction outside Australia. The Committee queries the intended meaning of the words '**a** jurisdiction outside Australia' in clause 6A(c)(v)-(vii) as it is unclear to the Committee whether the person could be qualified as a psychiatrist/psychologist/social worker in a country unconnected to the country in which the surrogacy arrangement was entered into. The Committee seeks clarification about whether the intention of the proposed clause is instead to provide that a ***qualified counsellor*** is to be qualified in either Australia or the same jurisdiction as the jurisdiction in which the surrogacy arrangement is entered into. If so, the Committee also queries whether the drafting of clause 6A(c)(v)-(vii) should have instead included the word '**the** jurisdiction outside Australia' rather than '**a** jurisdiction outside Australia'. The Committee also notes that psychiatrists, psychologists and social workers who have trained overseas do not have their qualifications automatically recognised when they come to Australia and seek to work. In light of this, the Committee also queries, as the insertion of clause 6A is designed to facilitate counsellors in overseas jurisdictions for the purposes of an Australian law, whether the clause should have included provisions specifying what exact qualifications will be recognised as being equivalent and/or whether the provisions should have included definitions of 'psychiatrist', 'psychologist' and 'social worker'. The Committee seeks the views and/or clarification from the Attorney General on the above matters.

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

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

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

26 August 2025

The Hon Courtney Houssos MLC
Minister for Finance
Minister for Domestic Manufacturing and Government Procurement
Minister for Natural Resources

D25/048994

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

Dear Minister

Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025

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

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

- *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025*

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

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

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

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

Scrutiny concerns

	Provision	Issue
1	Explanatory note	The Committee observes that the Explanatory Note for the Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025 (the ***regulation***) states: This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature. A regulatory impact statement was therefore not required to be prepared under the *Subordinate Legislation 1989*, section 5. The Committee notes that the regulation, section 4 authorises money required to meet expenditure incurred by the Department of Primary Industries and Regional Development in relation to the *Explosives Act 2003* and the *Protection From Harmful Radiation Act 1990* to be paid from the Mine and Petroleum Site Safety Fund. The regulation-making power for section 4 is the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005*, section 7(1)(e), which provides that '[t]he following is to be paid from the Fund… (e) all other money directed or authorised to be paid from the Fund by this Act or by the regulations under this Act.' The Committee does not query the legality of, or the policy reasons for, section 4. However, the Committee notes that a regulation made under section 7(1)(e) does not appear to be necessary for the operation of the Act, and the particular expenditure authorised by section 4 is not specifically anticipated by the Act. The Committee therefore seeks confirmation of the basis on which section 4 is considered to comprise or relate to 'matters of a machinery nature'.

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

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

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

The Hon Michael Daley MP
Attorney General

EAP25/11866

The Hon. Natasha Maclaren-Jones MLC
Committee Chair
Delegated Legislation Committee
NSW Parliament

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

Dear Ms Maclaren-Jones, Natasha

D25/03991, Issue No 1 – Surrogacy Amendment (Qualified Counsellors) Regulation 2025

Thank you for your correspondence on behalf of the Delegated Legislation Committee (**Committee**) regarding the Surrogacy Amendment (Qualified Counsellors) Regulation 2025 (**Amending Regulation**). I note that the Committee has requested clarification on aspects of the Amending Regulation under section 9(1)(b)(vii) of the *Legislation Review Act 1987*. Please find a response below.

I understand that a copy of this correspondence will be annexed to a future Delegated Legislation Monitor.

Background

Under the *Surrogacy Act 2010* (the **Act**), it is an offence for a resident of NSW to enter into a commercial surrogacy arrangement. This includes an arrangement entered into outside of Australia.[1]

On 1 July 2025, amendments to the Act, introduced by the *Equality Legislation Amendment (LGBTQIA+) Act 2024* (**Equality Act**) commenced. These amendments enable the Court to make a parentage order in respect of a child born from an overseas surrogacy arrangement where it is in the best interests of the child.[2] This is a pragmatic measure to ensure that children do not suffer disadvantage because they were born through commercial surrogacy and can have their family legally recognised.

Under the Act, pre-arrangement counselling for all affected parties and post-birth counselling for the birth mother and her partner (if any) are pre-conditions to the making of a parentage order.[3] All applications for a parentage order must also be accompanied by an independent counsellor's report, containing the matters specified under the Act.[4] Each of these functions must be carried out by a 'qualified counsellor', as defined in the Regulation.[5]

---

[1] *Surrogacy Act 2010*, ss 8 and 11.

[2] See the Second Reading speech of Minister the Hon Penny Sharpe MLC.

[3] *Surrogacy Act 2010*, ss 35(1) and (2).

[4] *Surrogacy Act 2010*, s 17.

[5] *Surrogacy Act 2010*, s 4.

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

02 7225 6070
nsw.gov.au/attorneygeneral

Before the commencement of the Amending Regulation, the Surrogacy Regulation did not allow for overseas qualified counsellors to exercise the functions of a 'qualified counsellor' under the Act. This limited the ability of families to comply with the pre-conditions for the making of a parentage order in relation to children born through international surrogacy.

The Department of Communities and Justice engaged in targeted consultation with key stakeholders regarding the appropriate qualifications for counsellors in relation to domestic and international surrogacy.

The Amending Regulation was consequently made to allow appropriately qualified counsellors to exercise the relevant functions under the Act.

Intended meaning of the words 'a jurisdiction outside Australia' in clause 6A(c)(v)-(vii)

The words 'a jurisdiction outside Australia' in clause 6A(c)(v) – (vii) are intended to provide flexibility to parties to an international commercial surrogacy agreement to select a counsellor who can best support the birth mother, intended parents and other affected parties.

Targeted stakeholder consultation and research conducted by the Department of Communities and Justice indicated that there may be circumstances where it is beneficial for a party to an overseas surrogacy arrangement to be able to engage a counsellor in a jurisdiction other than the jurisdiction in which the surrogacy agreement was entered into. This could include where:

- a birth mother, a birth mother's partner and/or another birth parent live in a location other than the jurisdiction where the surrogacy arrangement was entered into and wish to access ongoing, face-to-face care;
- a counsellor able to comply with clauses 6A(a) and (b) of the Regulation, or any other requirement of the Act, is not available in the jurisdiction where the surrogacy arrangement was entered into;
- a counsellor from a different jurisdiction is required to allow an affected party to access culturally or linguistically appropriate or ongoing care; or
- there is ambiguity as to where the surrogacy arrangement was 'entered into' (for example, if the arrangement was signed digitally or in counterparts).

Further, requiring a counsellor to be connected to the country in which the surrogacy arrangement was entered into is unlikely to be a meaningful safeguard, given that the Act permits the granting of a parentage order regardless of the jurisdiction in which the arrangement was entered, so long as preconditions are met.

Whether clause 6A should include provisions specifying the exact qualifications of a 'psychologist', 'psychiatrist' or 'social worker' practising overseas that will be recognised for the purpose of the Act.

The Act and Regulation impose additional requirements that mitigate against the risk of the relevant functions being performed by a counsellor who is not suitably qualified.

Clause 6A provides that, in addition to being authorised to practice as a psychiatrist, psychologist or social worker in a jurisdiction outside of Australia, the qualified counsellor must also:

- hold a qualification conferred by a university, after the equivalent of at least 3 years full time study;
- have specialised knowledge, based on the person's training, study or experience, of the social and psychological implications of a surrogacy arrangement.

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

02 7225 6070
nsw.gov.au/attorneygeneral

In addition, if the counsellor is providing an independent counsellor's report, clause 6B requires the counsellor to have specialised knowledge, based on their training, study or experience, that enables the person to give opinion evidence of the matters referred to in section 17 of the Act. The Act also provides that any laws or rules of the court relating to the adducing of opinion evidence apply in relation to the independent counsellor's report.

The independent counsellor is also required to adhere to the same rules of evidence as all other foreign experts adducing opinion evidence in Australian Courts,[6] and abide by the witness code of conduct.[7] Both contain stringent requirements to ensure the Court can make an appropriate assessment of the admissibility and credibility of the evidence put before it, including the qualifications of the expert to prepare the report.

Noting the key role that the Supreme Court plays under the Act through making parentage orders, it is appropriate to allow the Court to satisfy itself that it is considering material prepared by a suitably qualified individual. Further provisions relating to qualifications are not necessary.

Thank you for taking the time to write to me.

Sincerely,

Michael Daley MP
Attorney General

2 SEP 2025

[6] See for example *Evidence Act 1995*, s 79.

[7] Uniform Civil Procedure Rules 2005, Sch 7.

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

02 7225 6070
nsw.gov.au/attorneygeneral

The Hon Courtney Houssos MLC
Minister for Finance
Minister for Domestic Manufacturing and Government Procurement
Minister for Natural Resources

NSW GOVERNMENT

Ref: MF25/1935

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

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

Re: Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025

Natasha,

Dear Ms Maclaren-Jones,

Thank you for your letter of 26 August 2025 raising scrutiny concerns identified by the Delegated Legislation Committee (the Committee) in relation to the *Mine and Petroleum Site Safety (Cost Recovery) Regulation 2025* (the Regulation).

The Committee seeks confirmation of the basis on which section 4 of the Regulation is considered to comprise or relate to 'matters of a machinery nature'. I understand that while the Committee does not query the legality of, or the policy reasons for, section 4, the Committee observes that the provision, which is made under section 7(1)(e) of the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* (the Act), does not appear to be necessary for the operation of the Act, and the particular expenditure authorised by section 4 of the Regulation is not specifically anticipated by the Act.

As the Committee would be aware, the *Subordinate Legislation Act 1989* (SLA) provides that a Regulatory Impact Statement does not need to be prepared where the responsible Minister certifies that, on the advice of the Attorney-General or the Parliamentary Counsel, the proposed statutory rule comprises matters set out in Schedule 3 of the SLA. Under item 1 of Schedule 3, this includes regulations made for matters of a machinery nature.

How section 4 of the Regulation provides for matters of a machinery nature

While the SLA does not define how a regulation is taken to provide for matters of a 'machinery nature', my Department has anticipated this to mean regulations which are intended to give further procedural or operational effect to matters substantively covered by the regulation's parent Act.

The Act provides, at sections 7(1)(a) and (b), that the Mine and Petroleum Site Safety Fund is to be used to meet expenditure incurred by the Department in carrying out regulatory activities in connection with the 'mine and petroleum site safety legislation' (the WHS legislation). The definition in the Act for what constitutes the WHS legislation includes the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* itself, the *Work Health and Safety (Mines and Petroleum*

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

02 7225 6160
nsw.gov.au/ministerhoussos

Sites) Act 2013, provisions of the *Work Health and Safety Act 2011* to the extent that it relates to a mine or petroleum site, and any regulations made under these Acts.

While the WHS legislation does not explicitly include the Acts listed in section 4 of the Regulation (the *Explosives Act 2003* and the *Protection from Harmful Radiation Act 1990*), the WHS legislation captures all work health and safety hazards and risks arising from work, including those relating to the use of explosives and from ionising radiation. For example, Schedule 2 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 requires mine operators to develop an explosives control plan, and a health control plan which addresses hazards including exposure to ionising radiation.

Significantly, the WHS legislation authorises the Secretary of the Department, and the officials the Secretary appoints, to regulate compliance with all WHS hazards and risks arising from work at mine and petroleum sites. That is, the performance of regulatory activities pertaining to explosives and radiation hazards are authorised by the WHS legislation as presently defined in the Act.

The *Explosives Act 2003* and *Protection from Harmful Radiation Act 1990* contain specific provisions relating to safety at mine sites. This legislation further enables the regulation of these particular hazards. The Acts form part of, and give effect to, the overarching work health and safety framework which is established by the mine and petroleum site safety legislation listed in the Act. Specifically, authority for the Secretary of the Department to perform certain functions in relation to radiation hazards and explosives is conferred by the Protection from Harmful Radiation Regulation 2013 (section 47) and Explosives Regulation 2024 (section 4), which in turn specify that these functions may be exercised at workplaces to which the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* applies.

Inclusion of the *Explosives Act 2003* and the *Protection from Harmful Radiation Act 1990* in the Regulation makes unambiguous that the Department's safety compliance work for these particular hazards may be funded from the Mine and Petroleum Site Safety Fund. Were section 4 not included in the Regulation, the object of the Act – to provide for the funding of regulatory and administrative activities in connection with safety at mine and petroleum workplaces – would be impeded. Without being able to fund regulatory activities under these two Acts, as authorised by section 4, the Department would have less capacity to perform its existing regulatory activities and, as a consequence, safety at the State's mine and petroleum sites could be compromised.

It is for these reasons that inclusion of section 4 in the Regulation is important for the operation of the Act and necessary for achieving its objects described in the long title of the Act. Section 4 is anticipated by the Act and can be construed as being of a machinery nature, as it has for the past several iterations of the Regulation.

Previous iterations of section 4 also provided for matters of a machinery nature

The Regulation has been remade in substantially the same terms as the previous iterations of the Regulation made in 2013 and 2019. Furthermore, section 4 of the Regulation makes the same provision as the equivalent clauses in the 2013 and 2019 iterations of the Regulation.

The reference to the Explosives Act first appeared in 2008, by being added to the Mine Safety (Cost Recovery) Regulation 2005 as clause 4A by the Mine Safety (Cost Recovery) Amendment Regulation 2008, while the Radiation Act first appeared in 2013, in the Mine Safety (Cost Recovery) Regulation 2013 under clause 4 when that Regulation was first made.

In preparing the Regulation, the Department also sought the Parliamentary Counsel's opinion on this matter. The Parliamentary Counsel advised that the Regulation was of a machinery nature. The Parliamentary Counsel similarly advised that the previous iterations of the Regulation made in 2013 and 2019 provided for matters of a machinery nature.

I trust this response is of assistance and welcome any further recommendations the Committee may wish to propose for the Regulation.

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

02 7225 6160
nsw.gov.au/ministerhoussos

If you have any further enquiries, I have asked Angela Hudson, Director Policy and Reform, to be available to answer any questions you may have. Ms Hudson can be contacted at

Sincerely,

The Hon Courtney Houssos MLC
Minister for Finance
Minister for Domestic Manufacturing and Government Procurement
Minister for Natural Resources

5 September 2025